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SENATE

JUDICIARY

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SB

186

SENATE COMMITTEE REPORT

DATE: 4/28/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 186

SB 186 EXECUTIVE BRANCH ETHICS

"An Act relating to the Alaska Executive Branch Ethics Act."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

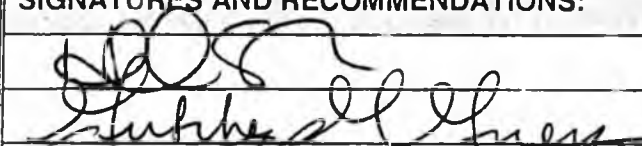
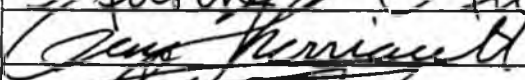
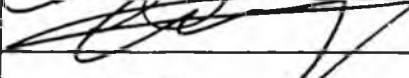

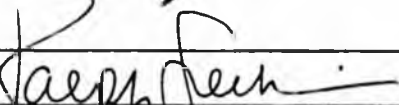
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	N'O REC	AMEND
		X		
			X	X
			X	
				
CHAIR: 	✓			

CS FOR SENATE BILL NO. 186()

IN THE LEGISLATURE OF THE STATE OF ALASKA.

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Executive Branch Ethics Act; establishing the crime of
2 disclosing confidential ethics information; and providing for an effective date."

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

4 * Section 1. AS 11.56 is amended by adding a new section to read:

5 **Sec. 11.56.823. Disclosing confidential ethics information.** (a) A person
6 commits the crime of disclosing confidential ethics information if the person
7 knowingly violates a confidentiality requirement of AS 39.52.340(a).

8 (b) Disclosing confidential ethics information is a class A misdemeanor.

9 * Sec. 2. AS 39.52.110(b) is amended to read:

10 (b) Unethical conduct is prohibited, but there is no [SUBSTANTIAL]
11 impropriety if, as to a specific matter, a public officer's

12 (1) personal or financial interest in the matter is [INSIGNIFICANT,
13 OR] of a type that is possessed generally by the public or a large class of persons to
14 which the public officer belongs; [OR]

1 (2) action or influence would have insignificant or conjectural effect
2 on the matter; *HA after consulting with the public officer design their supervisor*

3 (3) financial interest in a matter is held in a blind trust or the
4 public officer does not have management control over the financial interest; or

5 (4) personal or financial interest in a matter is in regard to a
6 business and the public officer

7 (A) does not own a controlling interest in the business;

8 (B) does not own more than one percent of the stock in the
9 business and the stock owned has a value of less than \$10,000;

10 (C) owns an equity interest in the business worth less than
11 \$10,000;

12 (D) is not a member of the board of directors or another
13 governing body of the business;

14 (E) is not an elected officer of the business;

15 (F) does not provide personal or professional services to the
16 business;

17 (G) does not have a contract with the business; and

18 (H) is not an employee of the business.

19 * Sec. 3. AS 39.52.130(f) is amended to read:

20 (f) A public officer who knows or reasonably ought to know that an
21 immediate [A] family member or a business associate has received a gift because of
22 the family member's or business associate's connection with the public office held by
23 the public officer shall report the receipt of the gift by the family member or business
24 associate to the public officer's designated supervisor if the gift would have to be
25 reported under this section if it had been received by the public officer or if receipt of
26 the gift by a public officer would be prohibited under this section.

27 * Sec. 4. AS 39.52.140 is amended to read:

28 **Sec. 39.52.140. Improper use or disclosure of information.** (a) A current
29 or former public officer may not disclose or use information gained in the course of, or
30 reason of, the officer's official duties or position that could in any way result in the
31 receipt of any benefit for the officer, [OR] an immediate family member, or a

1 business associate if the information has not also been disseminated to the public.

2 (b) A current or former public officer may not disclose or use, without
3 appropriate authorization, information acquired in the course of official duties or by
4 reason of the officer's position that is confidential by law.

5 * Sec. 5. AS 39.52.150(a) is amended to read:

6 (a) A public officer, [OR] an immediate family member, or a business
7 associate may not attempt to acquire, receive, apply for, be a party to, or have a
8 personal or financial interest in a state grant, contract, lease, or loan if the public
9 officer may take or withhold official action that affects the award, execution, or
10 administration of the state grant, contract, lease, or loan.

11 * Sec. 6. AS 39.52.150(c) is amended to read:

12 (c) The prohibition in (a) of this section does not apply to a state loan if
13 (1) the public officer does not take or withhold official action that
14 affects the award, execution, or administration of the loan held by the officer, [OR] an
15 immediate family member, or a business associate;
16 (2) the loan is generally available to members of the public; and
17 (3) the loan is subject to fixed eligibility standards.

18 * Sec. 7. AS 39.52.150(d) is amended to read:

19 (d) A public officer shall report in writing to the designated supervisor a
20 personal or financial interest held by the officer, [OR] an immediate family member,
21 or a business associate [,] in a state grant, contract, lease, or loan that is awarded,
22 executed, or administered by the agency the officer serves.

23 * Sec. 8. AS 39.52.210(b) is amended to read:

24 (b) A public employee's designated supervisor shall make a written
25 determination whether an employee's involvement violates AS 39.52.110 - 39.52.190
26 and shall provide a copy of the written determination to the public employee and to the
27 attorney general. If the supervisor determines that a violation could exist or will
28 occur, the supervisor shall [,]

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

31 (2) direct

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(A) the divestiture or removal by the employee of the [PERSONAL OR] financial interest that gives [INTERESTS THAT GIVE] rise to the potential violation; or

(B) the placement by the employee of the financial interest that gives rise to the potential violation into a blind trust or other investment where the employee does not have management control over the financial interest.

* Sec. 9. AS 39.52.230 is amended to read:

Sec. 39.52.230. Reporting of potential violations. A person may report to a public officer's designated supervisor, under oath and in writing, a potential violation of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report and to the attorney general, and shall review the report to determine whether a violation may exist. Except where the report concerns the governor, lieutenant governor, or the attorney general, the [THE] supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor determines that the matter may result in a violation of AS 39.52.110 - 39.52.190. If the report concerns the governor, lieutenant governor, or the attorney general, the supervisor shall refer the report as provided in (b) of this section.

* Sec. 10. AS 39.52.230 is amended by adding a new subsection to read:

(b) If a report or allegation of a violation of AS 39.52.110 - 39.52.190 by the governor, lieutenant governor, or attorney general comes to the attention of the designated supervisor for the governor, lieutenant governor, or attorney general, other than by the declaration of a potential violation by the governor, lieutenant governor, or attorney general under AS 39.52.210(a)(2) or by the filing of an ethics complaint under AS 39.52.310(b), then,

(1) in the case of a report or allegation against the governor or the lieutenant governor, the attorney general shall refer the matter to the personnel board, which shall appoint an independent counsel to investigate; the independent counsel shall have power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390; the independent counsel shall prepare a written report of the investigation; the written

1 report must include findings of fact and a conclusion as to whether, in the opinion of
2 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -
3 39.52.190; the report of the independent counsel shall be submitted to the attorney
4 general; the attorney general shall review the report and make an independent
5 determination as to whether the independent counsel's findings of fact, if true, would
6 constitute conduct in violation of AS 39.52.110 - 39.52.190; if the attorney general
7 concludes that the facts as found by the independent counsel would constitute a
8 violation of AS 39.52.110 - 39.52.190, then the attorney general shall treat the
9 independent counsel's report as a complaint and shall refer the report to the personnel
10 board under AS 39.52.310(c); if the attorney general concludes that the facts as found
11 by the independent counsel would not constitute a violation of AS 39.52.110 -
12 39.52.190, the investigation shall be closed and no further enforcement action shall be
13 taken; nothing in this paragraph precludes a person from filing a complaint concerning
14 the same matter under AS 39.52.310(b);

15 (2) in the case of a report or allegation against the attorney general, the
16 governor shall refer the matter to the personnel board, which shall appoint an
17 independent counsel to investigate; the independent counsel shall have power to issue
18 and enforce subpoenas under AS 39.52.380 and 39.52.390; the independent counsel
19 shall prepare a written report of the investigation; the written report must include
20 findings of fact and a conclusion as to whether, in the opinion of the independent
21 counsel, the facts constitute conduct in violation of AS 39.52.110 - 39.52.190; the
22 report of the independent counsel shall be submitted to the governor; the governor
23 shall review the report and make an independent determination as to whether the
24 independent counsel's findings of fact, if true, would constitute conduct in violation of
25 AS 39.52.110 - 39.52.190; if the governor desires legal advice in making this
26 determination, the personnel board, at the governor's request, shall appoint an
27 additional independent counsel to advise the governor on legal issues; if the governor
28 concludes that the facts as found by the independent counsel would constitute a
29 violation of AS 39.52.110 - 39.52.190, then the governor shall refer the report to the
30 personnel board for appropriate action in accordance with the procedures set out in
31 AS 39.52.310(c); if the governor concludes that the facts as found by the independent

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counsel would not constitute a violation of AS 39.52.110 - 39.52.190, the investigation shall be closed and no further enforcement action shall be taken; nothing in this paragraph precludes a person from filing a complaint concerning the same matter under AS 39.52.310(b).

* Sec. 11. AS 39.52.240(a) is amended to read:

(a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall issue opinions interpreting this chapter. The requester must supply any additional information requested by the attorney general in order to issue the opinion. Within 60 days after receiving a complete request, the attorney general shall issue an advisory opinion on the question. This section does not apply to a report or an allegation investigated under AS 39.52.230(b).

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

(a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210, 39.52.220, 39.52.230(a), 39.52.250, or 39.52.260. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

* Sec. 13. AS 39.52.335(c) is amended to read:

(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, the subject of the complaint, and the complainant. The summary is confidential unless the

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[(1)] dismissal or resolution agreed to under AS 39.52.320 or 39.52.330 is public [; OR

(2) SUPERIOR COURT MAKES THE MATTER PUBLIC UNDER (h) OF THIS SECTION].

* Sec. 14. AS 39.52.335(f) is amended to read:

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint to the attorney general, the subject of the complaint, and the complainant. The report is confidential [. IF THE MATTER IS CONFIDENTIAL AND THE BOARD DETERMINES THAT PUBLICATION OF

1 THE NAME OF THE SUBJECT IS IN THE PUBLIC INTEREST, THE REPORT
2 MAY INCLUDE A RECOMMENDATION THAT THE MATTER BE MADE
3 PUBLIC].

4 * Sec. 15. AS 39.52.340(a) is amended to read:

5 (a) Except as provided in AS 39.52.335, before the initiation of formal
6 proceedings under AS 39.52.350, the complaint and all other documents and
7 information regarding an investigation conducted under this chapter or obtained by the
8 attorney general or independent counsel during the investigation are confidential and
9 not subject to inspection by the public. In the case of a complaint concerning the
10 governor, lieutenant governor, or attorney general, all meetings of the personnel board
11 concerning the complaint and investigation before the determination of probable cause
12 are closed to the public. If, in the course of an investigation or probable cause
13 determination, the attorney general finds evidence of probable criminal activity, the
14 attorney general shall transmit a statement and factual findings limited to that activity
15 to the appropriate law enforcement agency. If the attorney general finds evidence of a
16 probable violation of AS 15.13, the attorney general shall transmit a statement to that
17 effect and factual findings limited to the probable violation to the Alaska Public
18 Offices Commission. The attorney general, complainant, subject of the complaint,
19 and all persons contacted during the course of an investigation shall maintain
20 confidentiality regarding the existence of the investigation or proceeding. A person
21 may not disclose to any other person the filing of or intention to file a complaint
22 under AS 39.52.310 except to a person assisting in the filing of the complaint. A
23 person may not disclose information regarding the intention of another to file a
24 complaint under AS 39.52.310. This subsection does not prevent a person from
25 obtaining directly from a state agency a public record of that agency that has also
26 been made available in connection with an investigation or a formal proceeding
27 under AS 39.52.310 - 39.52.390.

28 * Sec. 16. AS 39.52.380(a) is amended to read:

29 (a) As provided in AS 39.52.230(b), 39.52.310(g) [AS 39.52.310(g)],
30 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained
31 under AS 39.52.230(b) or 39.52.310(c) [AS 39.52.310(c)], a hearing officer, the

1 subject of an accusation, and the personnel board may summon witnesses and require
2 the production of records, books, and papers by the issuance of subpoenas.

3 * Sec. 17. AS 39.52.410(a) is amended to read:

4 (a) If the personnel board determines that a public employee has violated this
5 chapter, it

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

8 (2) may order divestiture, establishment of a blind trust for a period of
9 time or under conditions determined appropriate, placement of the financial
10 interest into an investment where the employee does not have management
11 control over the financial interest, restitution, or forfeiture; and

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

14 * Sec. 18. AS 39.52.960(9) is amended to read:

15 (9) "financial interest" means

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

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

23 (C) an interest held by a public officer with a business
24 associate;

25 * Sec. 19. AS 39.52.960(11) is amended to read:

26 (11) "immediate family member" means

27 (A) the spouse of the person;

28 (B) another person living in the same household
29 [COHABITING] with the person in a sexual [CONJUGAL] relationship that is
30 not a legal marriage;

31 (C) a child, including a stepchild and an adoptive child, of the

1 person;

2 (D) a parent or [,] sibling [, GRANDPARENT, AUNT, OR
3 UNCLE] of the person; [AND]

4 (E) a child, parent, or sibling of the person's spouse; and

5 (F) a child, parent, or sibling of another person living in the
6 same household with the person in a sexual relationship that is not a legal
7 marriage;

8 * Sec. 20. AS 39.52.960 is amended by adding new paragraphs to read:

9 (23) "business associate" means any person with whom a public officer
10 jointly shares the management, control, or majority ownership of a business for the
11 conduct of trade, commerce, the practice of a profession, or any other occupation
12 engaged in for the purpose of providing income or potential income to the public
13 officer, regardless of how the business is organized;

14 (24) "household" means a social unit of those persons living together
15 in the same dwelling.

16 * Sec. 21. AS 39.52.335(h) is repealed.

17 * Sec. 22. This Act takes effect January 1, 2006.

SB 186 – REVISED – 4/29/05 PUNCH LIST

1. Page 4, line 8: ADD A NEW SECTION AS FOLLOWS:

*Sec. __. AS 39.52.230 is amended to read:

(a) A person may report to a public officer's designated supervisor, under oath and in writing, a potential violation of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report and to the attorney general, and shall review the report to determine whether a violation may exist. **Except where the report concerns the governor, the lieutenant governor, or the attorney general, the [THE]** supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor determines that the matter may result in a violation of AS 39.52.110 - 39.52.190. **If the report concerns the governor, the lieutenant governor, or the attorney general, the supervisor shall act in accordance with AS 39.52.230(b).**

2. Section 9, pages 4-5: SEE ATTACHED MARK-UP

3. Section 10, page 5: SEE ATTACHED MARK-UP

4. Section 11, page 6, line 2: CORRECT ERROR IN CROSS-REFERENCE

(a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210, 39.52.220, [39.52.230(b)] 39.52.230(a), 39.52.250, or 39.52.260. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

**5. Section 16, page 7, line 28: ADD CONFORMING AMENDMENT FOR
REMEDY OPTION:**

(a) If the personnel board determines that a public employee has violated this chapter, it

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

(2) may order divestiture, establishment of a blind trust for a period of time or under conditions determined appropriate, order the placement of the financial interest into an investment where the employee does not have management control over the financial interest, restitution, or forfeiture; and

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

1 (A) the divestiture or removal by the employee of the
2 [PERSONAL OR] financial interest that gives [INTERESTS THAT GIVE]
3 rise to the potential violation; or

4 (B) the placement by the employee of the financial interest
5 that gives rise to the potential violation into a blind trust or other
6 investment where the employee does not have management control over
7 the financial interest.

*Sec. 9
changes*

8 * Sec. 9. AS 39.52.230 is amended by adding a new subsection to read:

9 (b) ^{a report or} If an allegation of a violation of AS 39.52.110 - 39.52.190 by the
10 governor, lieutenant governor, or attorney general comes to the attention of the
11 designated supervisor for the governor, lieutenant governor, or attorney general, other
12 than by the declaration of a potential violation by the governor, lieutenant governor, or
13 attorney general under AS 39.52.210(a)(2) or by the filing of an ethics complaint
14 under AS 39.52.310(b), then, ^{a report or}

15 (1) in the case of an allegation ^{matter} against the governor or the lieutenant
16 governor, the attorney general shall refer the ~~allegation~~ to the personnel board, which
17 shall appoint an independent counsel to investigate; ~~the allegation;~~ the independent
18 counsel shall have power to issue and enforce subpoenas under AS 39.52.380 and
19 39.52.390; the independent counsel shall prepare a written report of the investigation;
20 the written report must include findings of fact and a conclusion as to whether, in the
21 opinion of the independent counsel, the facts constitute conduct in violation of
22 AS 39.52.110 - 39.52.190; the report of the independent counsel shall be submitted to
23 the attorney general; the attorney general shall review the report and make an
24 independent determination as to whether the independent counsel's findings of fact, if
25 true, would constitute conduct in violation of AS 39.52.110 - 39.52.190; if the attorney
26 general concludes that the facts as found by the independent counsel would constitute
27 a violation of AS 39.52.110 - 39.52.190, then the attorney general shall treat the
28 independent counsel's report as a complaint and shall refer the report to the personnel
29 board under AS 39.52.310(c); if the attorney general concludes that the facts as found
30 by the independent counsel would not constitute a violation of AS 39.52.110 -
31 39.52.190, the investigation shall be closed and no further enforcement action shall be

a person from

1 taken; nothing in this paragraph precludes ~~the~~ filing ~~X~~ a complaint concerning the
2 same ~~allegation~~ ^{matter} under AS 39.52.310(b);

3 (2) in the case of ^{a report or} an allegation against the attorney general, the
4 governor shall refer the ~~allegation~~ ^{matter} to the personnel board, which shall appoint an
5 independent counsel to investigate ~~the allegation~~; the independent counsel shall have
6 power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390; the
7 independent counsel shall prepare a written report of the investigation; the written
8 report must include findings of fact and a conclusion as to whether, in the opinion of
9 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -
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12 whether the independent counsel's findings of fact, if true, would constitute conduct in
13 violation of AS 39.52.110 - 39.52.190; if the governor desires legal advice in making
14 this determination, the personnel board, at the governor's request, shall appoint an
15 additional independent counsel to advise the governor on legal issues; if the governor
16 concludes that the facts as found by the independent counsel would constitute a
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18 personnel board for appropriate action in accordance with the procedures set out in
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20 counsel would not constitute a violation of AS 39.52.110 - 39.52.190, the
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22 in this paragraph precludes ~~the~~ filing ~~X~~ a complaint concerning the same ~~allegation~~ ^{matter}
23 under AS 39.52.310(b).

Sec. 10
changes

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25 (a) Upon the written request of a designated supervisor or a board or
26 commission, the attorney general shall issue opinions interpreting this chapter. The
27 requester must supply any additional information requested by the attorney general in
28 order to issue the opinion. Within 60 days after receiving a complete request, the
29 attorney general shall issue an advisory opinion on the question. This section does
30 not apply to ~~an~~ ^{a report or an} allegation investigated under AS 39.52.230(b).

31 * Sec. 11. AS 39.52.310(a) is amended to read:

SB 186 – REVISED – 4/29/05 PUNCH LIST

1. Page 4, line 8: ADD A NEW SECTION AS FOLLOWS:

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(a) A person may report to a public officer's designated supervisor, under oath and in writing, a potential violation of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report and to the attorney general, and shall review the report to determine whether a violation may exist. **Except where the report concerns the governor, the lieutenant governor, or the attorney general, the [THE]** supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor determines that the matter may result in a violation of AS 39.52.110 - 39.52.190. **If the report concerns the governor, the lieutenant governor, or the attorney general, the supervisor shall act in accordance with AS 39.52.230(b).**

2. Section 9, pages 4-5: SEE ATTACHED MARK-UP

3. Section 10, page 5: SEE ATTACHED MARK-UP

4. Section 11, page 6, line 2: CORRECT ERROR IN CROSS-REFERENCE

(a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210 39.52.220, [39.52.230(b)] 39.52.230(a), 39.52.250, or 39.52.260. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

**5. Section 16, page 7, line 28: ADD CONFORMING AMENDMENT FOR
REMEDY OPTION:**

(a) If the personnel board determines that a public employee has violated this chapter, it

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

(2) may order divestiture, establishment of a blind trust for a period of time or under conditions determined appropriate, order the placement of the financial interest into an investment where the employee does not have management control over the financial interest, restitution, or forfeiture; and

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4 (B) the placement by the employee of the financial interest
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22 AS 39.52.110 - 39.52.190; the report of the independent counsel shall be submitted to
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28 independent counsel's report as a complaint and shall refer the report to the personnel
29 board under AS 39.52.310(c); if the attorney general concludes that the facts as found
30 by the independent counsel would not constitute a violation of AS 39.52.110 -
31 39.52.190, the investigation shall be closed and no further enforcement action shall be

a person from

1 taken; nothing in this paragraph precludes ~~the~~ ^{matter} filing ~~of~~ a complaint concerning the
2 same ~~allegation~~ under AS 39.52.310(b);

3 (2) in the case of ^{a report or} an allegation against the attorney general, the
4 governor shall refer the ~~allegation~~ ^{matter} to the personnel board, which shall appoint an
5 independent counsel to investigate ~~the allegation~~; the independent counsel shall have
6 power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390; the
7 independent counsel shall prepare a written report of the investigation; the written
8 report must include findings of fact and a conclusion as to whether, in the opinion of
9 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -
10 39.52.190; the report of the independent counsel shall be submitted to the governor;
11 the governor shall review the report and make an independent determination as to
12 whether the independent counsel's findings of fact, if true, would constitute conduct in
13 violation of AS 39.52.110 - 39.52.190; if the governor desires legal advice in making
14 this determination, the personnel board, at the governor's request, shall appoint an
15 additional independent counsel to advise the governor on legal issues; if the governor
16 concludes that the facts as found by the independent counsel would constitute a
17 violation of AS 39.52.110 - 39.52.190, then the governor shall refer the report to the
18 personnel board for appropriate action in accordance with the procedures set out in
19 AS 39.52.310(c); if the governor concludes that the facts as found by the independent
20 counsel would not constitute a violation of AS 39.52.110 - 39.52.190, the
21 investigation shall be closed and no further enforcement action shall be taken; nothing
22 in this paragraph precludes ~~the~~ ^{a person from} filing ~~of~~ a complaint concerning the same ~~allegation~~ ^{matter}
23 under AS 39.52.310(b).

*Sec. 10
changes*

* Sec. 10. AS 39.52.240(a) is amended to read:

(a) Upon the written request of a designated supervisor or a board or
commission, the attorney general shall issue opinions interpreting this chapter. The
requester must supply any additional information requested by the attorney general in
order to issue the opinion. Within 60 days after receiving a complete request, the
attorney general shall issue an advisory opinion on the question. This section does
not apply to ^{a report or an} ~~allegation~~ investigated under AS 39.52.230(b).

* Sec. 11. AS 39.52.310(a) is amended to read:

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 186(STA)
 (S) Publish Date: 4/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to the Alaska Executive Branch Ethics Act." RDU: CIVIL
 Component: Opinions, Appeals & Ethics
 Sponsor: Senator Seekins
 Requestor: Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill makes numerous amendments to the Executive Branch Ethics Act. It amends AS 39.52.110(b) (Scope of Code) to establish a "bright line" test for when a personal or financial interest is insignificant under the ethics act. The bill amends AS 39.52.960 (Definitions) to add a definition for "closely associated person," amend the definition of "financial interest" to include the financial interests of a "closely associated person," amend the definition of "immediate family member," and repeal the definition of "parent." It amends AS 39.52.150(b) (Gifts) and AS 39.52.150(a), (c), and (d) (Contracts, Leases, Loans) to add "closely associated person" to the list of people whose interests that must be considered. It amends AS 39.52.335 (Summary of Disposition of Complaints and Review by Personnel Board) to provide that the complaint process is confidential and repeals the provisions by which an interested party could go to court to try to get the summary made public. It also amends AS 39.52.340

Prepared by: Kathryn Daughetee, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 4/26/05 8:09 AM
 Approved by: Kathryn Daughetee for David Márquez, Attorney General Date: 4/26/2005
 Agency: Department of Law

FISCAL NOTE # 1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 186(STA)

ANALYSIS CONTINUATION

(Confidentiality) to expand the information that is confidential under the ethics act. The bill also amends AS 11.56, the criminal code, to make disclosure of confidential ethics information a class A misdemeanor. Passage of this legislation will have no fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 186(STA)
 (S) Publish Date: 4/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act relating to the Alaska RDU Central Administrative Services
Executive Branch Ethics Act" Component Personnel
 Sponsor Senator Seekins
 Requester (S) STA Component No. 56

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Division of Personnel.

Prepared by: Mila Cosgrove, Director Phone 465-4429
 Division: Personnel Date/Time 4/25/05 8:39 AM
 Approved by: Mike Tibbles, Deputy Commissioner Date 4/25/2005
 Agency: Administration


MEMORANDUM

State of Alaska
Department of Law

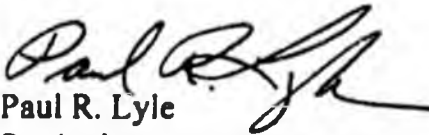
TO: David W. Marquez
Acting Deputy Attorney General

DATE: March 24, 2005

FILE NO: 663-05-0171

FROM: Barbara J. Ritchie 
Chief Assistant Attorney General
Designated Ethics Supervisor

TEL. NO.: 465-2133


Paul R. Lyle
Sr. Assistant Attorney General
State Ethics Attorney

SUBJECT: Ethics Act Considerations:
Personal Investments

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(AS 39.52.240)

Introduction

You requested a review of your personal investments in order to determine whether your official duties would be limited under the Ethics Act in the event Governor Murkowski were to appoint you to serve as Attorney General or Commissioner of Environmental Conservation. Based on your disclosures, we have examined whether you may be involved in negotiations on behalf of the state with oil companies concerning the construction of the proposed natural gas line.

Our advice is based upon your 2005 disclosure to the Alaska Public Offices Commission, a February 16, 2005 letter from your investment counselor, Roger Shaar, of AYCO, and a March 21, 2005 telephone conversation between Mr. Shaar and the authors of this memorandum.

You have investments in ten accounts. We have grouped the accounts into three types: (1) Discretionary managed brokerage accounts, (2) deferred compensation plans with ARCO/BP and ConocoPhillips from which you are currently receiving level (or near level) annual payments, (3) investments in mutual funds, and (4) cash accounts. We describe these accounts in more detail below and discuss the attendant ethics implications of each.

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Facts & Legal Analysis

A. Discretionary Managed Brokerage Accounts

You have two discretionary accounts with AYCO, a corporate bond account and a municipal bond account. Discretionary accounts allow a broker to make investments on your behalf without your prior knowledge or approval. However, you receive monthly reports of the investments made and, if you so choose, may review your account activity on a daily basis via the Internet. You have the authority to place prior restrictions on the types of investments in which the broker may invest, and you may withdraw money from or close the account at any time. Therefore, although your broker exercises wide discretion in investing the funds in these accounts, the assets in the accounts are not "blind" to you and you remain in ultimate control of the funds.

(i) Corporate Bond Account

Mr. Shaar reported to us the specific corporate bonds currently held in your corporate bond account. You do not own oil company bonds in your corporate bond account.

We have determined that it is unlikely that you would be required to have dealings as a state official with any of the companies in which you currently own bonds. Therefore, there are no present Ethics Act concerns with this account.

AS 39.52.120(b)(4) precludes a public official from taking or withholding official action in any matter in which the officer holds a "financial interest." An investment in a corporate bond is a "financial interest" under the Ethics Act. AS 39.52.960(9). Because your broker has broad discretion to invest in corporate bonds, it is possible that he could, without your knowledge, make an investment in a company that you are likely to deal with in your role as a public official.

In order to avoid the creation of an inadvertent conflict, and because it is possible you may be involved in negotiations with oil industry companies, we recommend that you restrict this account to non-oil industry investments. In the alternative, we recommend that you restrict the account to preclude your broker from investing in oil industry companies that do business in Alaska.

Furthermore, we recommend that you closely review your monthly statements to make sure that you are not invested in a company in litigation with the State of Alaska or concerning which you might take or withhold official

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action. If you find that an investment has been made in a company with which you deal as a state official in a matter, you should withhold taking action until you have disclosed the potential conflict to your designated ethics supervisor. Your designated supervisor will review the matter under AS 39.52.210 and advise you of any preventive action that must be taken.

(ii) Municipal Bond Account

Mr. Shaar reported that your municipal bond account is not invested in any Alaska municipality or other Alaska government or public or quasi-public corporation bonds. Therefore, there is no possibility that your investments in this account create a conflict of interest with your public duties under the Ethics Act.

However, Alaska does have a gas line authority. The authority is comprised of Alaska municipalities. Because your official duties may require you to interact with this authority and its members, we recommend that you restrict investments in the municipal bond account to non-Alaska municipal bonds.

B. Deferred Compensation Plans

(i) The Structure of the Plans

You participated in two deferred compensation plans while in private industry, a BP/ARCO plan and a ConocoPhillips plan. The combined value of these plans is between one and two million dollars. Because these plans are with oil companies involved in the gas line negotiations, and because you will be taking official action with respect to the gas line negotiations if you are appointed to serve as Attorney General or DEC Commissioner, we must analyze these financial interests under the Ethics Act.¹

It is important to understand how these plans operate and whether you can do anything as a public official that may increase the value of the plans.

Both plans are "non-qualified" deferred compensation plans. It is our understanding from Mr. Shaar that, under a non-qualified plan, an employee's deferred compensation is not deposited into an account owned by the employee.

¹ Although your compensation plans are now with BP and ConocoPhillips, you did not work for either of these companies. You were employed by ARCO before it was merged with BP. You worked for Phillips before it was merged with Conoco. Thus, you worked for competitors of BP and Conoco before the respective mergers occurred. As part of the merger agreements, BP and ConocoPhillips assumed the obligations of ARCO and Phillips under these plans.

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Rather, the company owns the employee's plan contributions. Therefore, the contributions to non-qualified deferred compensation plans cannot be rolled over into independent Individual Retirement Accounts after an employee leaves the company.

At some point in time, an employee (or former employee) may begin to receive payments under the plan. In your plans, the amount paid each year equals a level portion of the total value of the account. The total value of the account, in turn, equals the total contributions to the plan plus the earned rate of return from year to year on those contributions while the account continues to exist. You are receiving level payments from both of your plans.

The method used for setting the rate of return is an important consideration in our analysis. Under the ARCO/BP plan, the rate of return (called a "fixed crediting rate") is set on an annual basis and is the highest of three independently set rates, such as a treasury rate. The contributions made to that plan earn the fixed crediting rate selected for each year. The fixed crediting rate applied in any year is completely out of the control of the plan participant.

The rate of return on the ConocoPhillips plan is figured differently. Contributions to the ConocoPhillips plan earn a return tied to the investment performance of a broadly diversified group of mutual funds. Employees choose the fund (or funds) in which to invest their contributions.² Mr. Shaar was unsure whether ConocoPhillips actually invests plan contributions into the mutual funds or holds the plan contributions in its own accounts and merely applies to the contributions the rate of return earned by the mutual fund or funds selected by the employee. Regardless, the rate of return on the mutual funds (and thus on the employee's contributions) is completely out of the control of the plan participant. The rate of return depends entirely on how the mutual funds selected by the employee perform in any year.

In both plans, the ability of the employee to receive payments due under the plan depend upon the company's continuing existence because the level payments are made out of operating revenue. Therefore, if the company becomes insolvent, the employee may lose the investment entirely. On the other hand, if the company is merged or acquired by another company, the acquiring firm assumes the deferred compensation debt of the acquired company.

² In this regard, the ConocoPhillips plan appears similar to the State Deferred Compensation Plan, which allows state employees to invest some of their pre-tax income into one or more pre-selected mutual funds. The gain or loss on the contributions is dependent on how the mutual fund performs in any given period.

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More importantly, however, neither the amount of the level payment received under either plan nor the rate of return on plan contributions is connected to the company's profitability in any year. In other words, so long as the company remains solvent, the pay out received by a plan participant does not depend upon either the profitability of the company in any given year or on the price of the company's stock.

(ii) Ethics Act Considerations of the Plans

As we stated above, the Ethics Act precludes a public official from taking or withholding official action "in order to affect a matter in which the public officer has a personal or financial interest." AS 39.52.120(b)(4). A "financial interest" is an "an interest in a business ... that is a source of income" to the public officer. AS 39.52.960(9). Furthermore, "in rendering opinions under AS 39.52, we assume generally that if the requisite interest in a matter is found, then participation by the interest holder is for his/her own benefit." 1989 *Inf. Op. Att'y Gen.* (663-89-0526; Jul. 1), 1989 WL 266908 at *2 (Alaska A.G. 1989).

Although it is not an equity interest, your financial interest in the BP/ARCO and ConocoPhillips deferred compensation plans is a "financial interest" in those companies. The deferred compensation plans are obligations that those companies owe to you and that are paid out of their operating revenue. Therefore, unless there is some exception in the Ethics Act for this type of interest, you would be precluded from being involved in any matter affecting these companies.

There are no specific exceptions to the Ethics Act's definition of "financial interest." However, AS 39.52.110 provides general, mandatory guidelines for interpreting the Ethics Act. Section .110(a)(3) provides that the Act's ethical conduct standards must distinguish between "minor and inconsequential" conflicts and those conflicts that are "substantial and material."

AS 39.52.110(b) provides that there is no substantial impropriety where a public officer's "financial interest in the matter is insignificant" or the public officer's action or influence would have an "insignificant or conjectural effect on the matter." Here, the "matter" is a possible gas line contract between the State and BP and ConocoPhillips and that contract's effect, if any, on your deferred compensation plans with these companies. AS 39.52.110(c) requires the attorney general and designated ethics supervisors to be guided by these principles when rendering opinions under the Ethics Act. Therefore, we must determine whether

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your interest in the BP/ARCO or ConocoPhillips deferred compensation plans creates a significant financial interest in BP and ConocoPhillips that would preclude you from being involved in the gas line contract negotiations on behalf of the state.

In determining whether a public officer's financial interest in a matter crosses section .110's "significance threshold," this office focuses, not on the bare market value of the interest, but on whether the public officer may take or withhold official action in the matter that will likely affect the value of the official's interest. In other words, we look to see whether the officer's actions in the matter would likely increase or decrease the value of the officer's financial interest. If so, we may preclude the officer from being involved in the matter, depending on the value of the officer's financial interest and the degree of the change in its value. If the public officer cannot affect the value of his financial interest in a matter through the exercise of official action, then the officer's financial interest does not create a conflict of interest under the Act.

For example, we permitted a permanent fund trustee to vote on an investment in a building partly owned by an ANCSA village corporation in which his children owned shares. We found that "[t]he impact on his children's shares ... if the ... Permanent Fund actually invested in the property is *de minimis*." 1989 *Inf. Op. Att'y Gen.*, 1989 WL 266908 at *3.³

In another case, we determined that a commission member could vote on a petition creating a new borough that would encompass property owned by the member because it was not likely that "the property value of the cabin would change as a result of action taken on the petition. . . ." 1996 *Inf. Op. Att'y Gen.* (663-97-0074; Sep. 6), 1996 WL 913884 at *2 (Alaska A.G. 1996)(emphasis added). Thus, in determining whether the official's financial interest in the petition was significant, we looked at whether official action on the petition would likely increase or decrease the value of the cabin. We did not consider the bare market value of the cabin itself.

Where a Fish Board member owned a commercial fishing permit on a certain river, we advised the board chair that, in deciding whether the board member could vote on an allocation issue affecting that river's fishery, the chair "should focus on how the proposal will affect the financial interests of the Board member as a permit holder and fisher in the particular fishery in question." 1994

³ In that case, we also considered the percentage of the company that the children owned. *Id.* at *1 n. 1. That factor is not relevant in your situation since your interest in the deferred compensation plans is not an ownership interest in the companies.

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Inf. Op. Att'y Gen. (661-95-0214; Nov. 29), 1994 WL 1029333 at *3 (Alaska A.G. 1994)(emphasis added). As to a fish processing business owned by the same board member, we concluded that the board member would be precluded from voting only on issues that "significantly affect Mr. X's financial interests as a fish processor." *Id.* at *4 (emphasis added).

In each of these opinions, our determination of whether a financial interest in a matter was "significant" turned, in the first instance, not on the value of the interest, but on whether the public officer could take official action in the matter that would be likely to increase or decrease the value of that interest. Therefore, we must determine whether you could take official action in gas line negotiations that would likely increase or decrease the value of your deferred compensation plans.

In our opinion, your involvement in gas line negotiations – whether or not they result in a contract between the state and BP and ConocoPhillips for construction of a gas line – would not likely increase the value of your interest in either the BP/ARCO or ConocoPhillips deferred compensation plans. First, the level payments you receive under the plans are not tied to company profits or the price of the company stock. Thus, if the gas line contract (or the companies failure to obtain a contract) were to move the price of BP or ConocoPhillips stock or affect the profitability of the companies over a given period, the value of your deferred compensation plans (and the level payments) would be unaffected.

Second, the rate of return earned on your plan contributions is not dependent upon the profitability of the companies in any given period. Rather, in the case of BP/ARCO, the rate of return is dependent upon pre-determined rates (such as treasury rates) which vary depending upon general economic conditions and actions taken by the Federal Reserve. For the ConocoPhillips plan, the rate of return is tied to the overall performance of the mutual funds in which your contributions are invested. The rates of return are not tied to company performance. Therefore, it is highly unlikely that you could take official action in the gas line negotiations that would change the value of your interest in the deferred compensation plans or their rates of return, even if the result of the gas negotiations affected the overall profitability of BP or ConocoPhillips for some period of time.

Your ability to continue receiving level payments under these plans is tied to the continuing solvency of these companies. Whether or not the gas line negotiations result in a contract between these companies and the state, there is no evidence to suggest that these companies risk insolvency in the foreseeable future,

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and certainly not within the likely period of your state service. Furthermore, even if one the companies were to encounter severe financial difficulties while you remained in state service, the fact that the company owns valuable assets, leases and natural resources indicates that the company and its obligations under its deferred compensation plan would be acquired by another corporation, as has been the case with past mergers affecting your compensation plans.

Successful gas line negotiations with these companies will require them to commit substantial resources to the project. However, given the considerable resources and experience of these companies, it is highly conjectural that the gas line negotiations will lead to the companies' insolvency, thus threatening the viability of your deferred compensation plan payments. AS 39.52.110(b)(2). Moreover, if these companies do not invest their resources into an Alaska gas line, those resources will be invested elsewhere in projects that may have equally attendant investment risk for the companies. In either case, it does not appear the companies risk insolvency in the foreseeable future.

Thus, we find that, given the structure of these deferred compensation plans, your ability to take official action in the gas line negotiations that would affect the value of your plan payments is conjectural. You may be involved in gas line negotiations with these companies while retaining your interest in the deferred compensation plans.

C. Mutual Funds

You have invested in mutual fund companies. These companies, in turn, invest in a broadly diversified portfolio of stocks, bonds and other investment vehicles. At any given time, some of these mutual funds may invest in BP, ConocoPhillips, or other companies with which you will deal as a state official. You have asked whether your financial interests in mutual funds that may own stock in oil companies with which you must deal creates a conflict of interest under the Ethics Act. We conclude that they do not.

The Act's definition of "financial interest" includes "an interest held by a public officer ... in a business ... that is a source of income, or from which [the officer] expects to receive a financial benefit." AS 39.52.960(9)(A). You also have a "financial interest" in a business if you are an officer, director or manager of that business. AS 39.52.960(9)(B). To our knowledge, the issue of whether ownership of mutual fund shares constitutes a "financial interest" in the companies in which the mutual fund invests is an issue of first impression under Alaska's Ethics Act.

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When an individual invests in a mutual fund, the individual does not purchase fractional shares of the stocks of companies contained within the mutual fund's portfolio. Rather, the individual purchases shares in the mutual fund itself. The manager of the fund company then invests the money in a variety of stocks and bonds. A purchaser of a mutual fund does not own stock in the companies in which the fund invests. Rather, the purchaser owns shares in the mutual fund.

Therefore, if a public officer invests in a mutual fund that owns BP stock, for example, the officer does not own an interest in BP's business. The interest held is an interest in a separate mutual fund company. Thus, unless the officer is a board member, officer or manager of BP, the officer does not have a "financial interest" in BP by virtue of his ownership of shares in a mutual fund that, in turn, owns BP stock.

Moreover, even if ownership of mutual fund shares constitutes an interest in the stock of the companies in which the fund is invested, we find that it is a *de minimis* interest where, as in your case, the money is invested in large, broadly diversified mutual funds. As stated above, mutual fund shareholders have no control over the investment decisions of the fund. Professional money managers who are employed by the fund make all investment decisions. In accordance with pre-set rules, limitations and investment objectives contained in the fund's prospectus, the fund manager (not the mutual fund shareholder) determines whether, and when, to buy and sell individual stocks and how much of the stock to acquire or divest.

The net asset value of the mutual fund's shares (and thus the value of any particular shareholder's investment) is determined on a daily basis. It reflects the per-share market value of the fund's total assets for that day (as determined by the activity of the markets in which the stock is traded) less the fund's liabilities and expenses.⁴ In any given trading day, changes in the value of one of the fund's stocks may be offset by changes in other holdings.

So, for example, a fund that owns BP stock may see the net asset value of the fund increase over a quarter even though the value of its BP stock may have decreased during the same quarter. A public officer has little ability to affect the value of his mutual fund shares through his official dealings with any particular company in which the fund is invested. Thus, in the words of the statute, the official's "action or influence [on the gas line contract] would have insignificant or

⁴ See definition of "net asset value" at www.mutualfunds.about.com.

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conjectural effect on the matter' of the official's mutual fund value. AS 39.52.110(b)(2).

This conclusion is supported by at least two opinions from other states. In *Opinion of the Justices No. 368*, 716 So.2d 1149 (Alabama 1998), the Alabama Supreme Court was asked whether legislators could vote on a bill that would benefit companies owned by mutual funds in which the legislators had invested. The Alabama Constitution prohibits legislators from voting on any bill in which they have a "personal or private interest." The court ruled that legislators owning shares in mutual funds could vote on bills affecting companies in which their mutual funds were invested. The court held:

Mutual funds differ in kind from many other investment opportunities. Because of these differences, they have been singled out for special consideration in the context of ethics. Although mutual funds are not expressly addressed in the Ethics Act, they *are* addressed in the Alabama Canons of Judicial Ethics.

Canon 3C.(1)(c), requires a judge to "disqualify himself in a proceeding in which ... [h]e knows that he ... has a financial interest in ... a party to the proceeding." "Financial interest" is defined as "ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party." Canon 3C.(3)(c). But Canon 3C.(3)(c)(i) *excepts* mutual funds from this definition, stating that "[o]wnership in a mutual or common investment fund that holds securities *is not a 'financial interest'* in such securities unless the judge participates in the management of the fund." (Emphasis added.)

Some of the reasons for the mutual-fund exception were set out in *New York City Housing Development Corp. v. Hart*, 796 F.2d 976 (7th Cir. 1986) (per curiam)(discussing 28 U.S.C. ("Judiciary and Judicial Procedure") § 455(d)(4)(i), the federal counterpart to Alabama Canon 3C.(3)(c)(i)):

"A judge may hold a mutual fund that contains AT & T stock. Yet the judge is expressly authorized by § 455(d)(4)(i) to sit in a case involving AT & T, in part because the fund may sell the stock before the judge decides the case, in part because a change in the value of AT & T stock will have a small effect on the fund as

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a whole, and in part because a decision that helps or hurts AT & T may have the opposite effect on MCI, GTE, or other securities in the fund, washing out the effect on the judge's portfolio. When Congress amended § 455 in 1974, it designed § 455(d)(4)(i) as a *safe harbor*, a way for judges to hold securities without needing to make fine calculations of the effect of a given suit on their wealth."

796 F.2d at 980 (emphasis added). Moreover, because ownership in a mutual fund--by definition--does not constitute a "financial interest," the *quantity* of this type of investment held by the judge is immaterial. *Id.*

716 So.2d at 1154 (italics in original).

The court went on to hold that the reasoning concerning mutual funds under the Canons of Judicial Ethics applied with equal force to other public officials, observing that

it would be anomalous to hold that [Section 82 of the Alabama Constitution] imposes a higher standard in this respect on legislators than the Canons of Judicial Ethics impose on judges. It would seem especially anomalous in view of the fact that Canon 3C.(3)(c) disqualifies a judge who owns even a *de minimis* financial interest in a party, while [the Ethics Act] prohibits legislative action only if the legislator owns more than 5%. In other words, if the standards of the Canons are higher than those of the Ethics Act, and if the Canons expressly exempt mutual fund investment, then, *a fortiori*, mutual fund investment should be excluded from the prohibitions of the Ethics Act, and, by extension, from § 82. Thus, § 82 does not "prohibit a legislator from voting ... on [legislation], if ... [t]he legislator participates in a mutual fund or similar type investment venture in which the legislator has no control over the investments made."

*Id.*⁵

⁵ The definition of "financial interest" in Alaska's Judicial Canons and in Alaska's Ethics Act are similar to the definition of "financial interest" construed by the Alabama Supreme Court. Compare Alabama Canon 3C.(3)(c)(i) (quoted above) with 2005 Alaska Rules of Court, Code of Judicial Conduct, at p. 983 and AS 39.52.960(9).

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In the second opinion, the Attorney General for the State of Illinois held that state officials invested in mutual funds through the state's deferred compensation plan could take official action affecting companies with which they deal without violating a state law prohibiting officials from holding stock or bonds in such companies. 1998 Ill. Att'y Gen. Op. 021, (98-021; Sep. 29), 1998 WL 986001 (Ill. A.G. 1998). In concluding ownership of mutual funds shares does not create a conflict of interest, the attorney general cited, *inter alia*: (1) the inability of mutual fund shareholders to control the acquisition or divestment of particular stocks, (2) the *de minimis* interest in any one company an official possesses through the ownership of mutual fund shares, and (3) the "virtually nonexistent" likelihood that a state official could take official action affecting the return on an investment in mutual fund shares. *Id.* at *2, *4.

Consistent with these authorities that construe ethics provisions similar to Alaska's, we find that where a public official has a financial interest in a company through the ownership of shares in a broadly diversified mutual fund, the interest of the official in the company in which the mutual fund is invested is *de minimis*. Therefore, if your mutual funds own shares in companies with which you must deal as a state official, your interest is *de minimus* under AS 39.52.110 and you are not disqualified from taking official action with respect to those companies.

However, there may be circumstances where ownership of mutual funds would create a conflict of interest. For example, if you own shares in a mutual fund company that itself has a matter pending before you (as may be the case for officials sitting on the Permanent Fund Corporation), you may not be able to take official action affecting the mutual fund company itself. If you are a board member, officer, or manager of any company you are precluded from taking official action with respect to that company regardless of whether or how you own shares in that company. AS 39.52.960(9)(B).

If you own shares in a mutual fund that is heavily invested in one company or class of companies, you may be able to affect the value of those shares if you are dealing with the company or class of companies in which the fund is invested. If that were the case, you should disclose the matter to your designated ethics supervisor and withhold taking official action until the matter has been analyzed.

D. Cash Accounts

Your cash accounts and depository bank accounts do not implicate any concerns under the Ethics Act unless you are taking or withholding official action that affects the company in which the cash is deposited and there is a possibility

CONFIDENTIAL

that your account value could be reduced. Since bank accounts are federally insured, it is unlikely a conflict of interest would arise unless your account exceeds the insured amount provided by the federal government.⁶

However, if your depository accounts exceed the insured maximum under federal law, you should take no official action in any matter affecting the institutions holding your funds until you have received advice from your designated ethics supervisor.

You have one cash account that is not federally insured. If you must take official action in a matter involving that company, you should advise your designated ethics supervisor of the situation before acting on the matter.

Conclusion

Your current investments and your interest in the deferred compensation plans described above do not constitute conflicts of interest that would preclude you from taking official action under the Ethics Act affecting BP, ConocoPhillips or other oil companies.

Direct ownership by you of stocks or bonds in those companies or of Alaska municipalities may create a conflict. You should avoid making those investments and should place restrictions on discretionary brokerage accounts to avoid the creation of a conflict.

If you have any questions concerning this advice, please do not hesitate to contact us.

cc: James F. Clark, Chief of Staff

⁶ The Alaska Judicial Canons except from the term "economic interest" depository accounts in financial institutions unless a proceeding pending before the judge "could substantially affect the value of the interest." Alaska Rules of Court, Code of Judicial Conduct, at p. 983. This rule is similar to the analysis we conduct under AS 39.52.110 in determining whether a financial interest is significant. Again, where the value of an official's financial interest is unlikely to be affected by official action, we find no significant conflict precluding the exercise of official action in the matter by the owner of the interest.

SB

187

SENATE COMMITTEE REPORT

DATE: 4/28/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 187

SB 187 LEGISLATIVE ETHICS/MEETINGS

"An Act relating to legislative ethics open meetings guidelines, to the public members of the Select Committee on Legislative Ethics, to alternate members of the legislative subcommittees, to advisory opinions, and to confidential information and proceedings regarding legislative ethics complaints and investigations."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

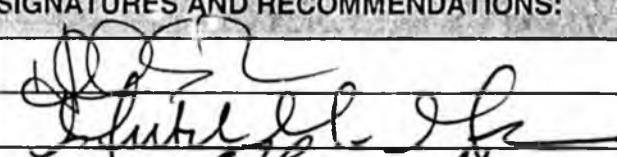
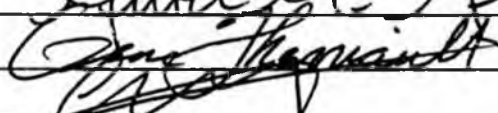
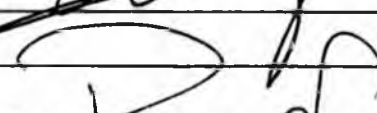


NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
		X		
			X	
			X	
	✓			
CHAIR: 				

CS FOR SENATE BILL NO. 187(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/28/05

Referred: Judiciary

Sponsor(s): SENATOR SEEKINS

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to legislative ethics open meetings guidelines, to the public members of
2 the Select Committee on Legislative Ethics, to alternate members of the legislative
3 subcommittees, to advisory opinions, and to confidential information and proceedings
4 regarding legislative ethics complaints and investigations."

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

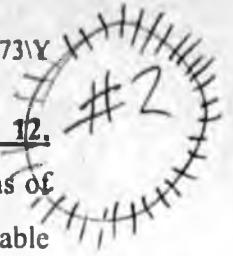
6 * Section 1. AS 11.56 is amended by adding a new section to read:

7 Sec. 11.56.803. **Disclosing confidential ethics information.** (a) A person
8 commits the crime of disclosing confidential ethics information if the person
9 knowingly violates a confidentiality requirement of AS 24.60.170(s).

10 (b) Disclosing confidential ethics information is a class A misdemeanor.

11 * Sec. 2. AS 24.60.020(b) is amended to read:

12 (b) The provisions of this chapter specifically supersede the provisions of the
13 common law relating to legislative conflict of interest that may apply to a member of
14 the legislature or a legislative employee. This chapter does not supersede the



1 uniform rules of procedure adopted by the legislature under art. II, sec. 12,
 2 Constitution of the State of Alaska, and does not supersede or repeal provisions of
 3 the criminal laws of the state. This chapter does not exempt a person from applicable
 4 provisions of another law unless the law is expressly superseded or incompatibly
 5 inconsistent with the specific provisions of this chapter.

6 * Sec. 3. AS 24.60.037(e) is amended to read:

7 (c) In cases where there are conflicts between the open meetings [THESE]
 8 guidelines established in this section and the uniform rules adopted by the Alaska
 9 State Legislature, the uniform rules prevail.

10 * Sec. 4. AS 24.60.130(c) is amended to read:

11 (c) Not [NO] more than one public member may be a former legislator and
 12 not [NO] more than two public members of the committee may be members of the
 13 same political party. Public members shall be selected to represent a diversity of
 14 professions and geographic regions, and not more than one may be employed by
 15 the state or a political subdivision of the state.

16 * Sec. 5. AS 24.60.130(n) is amended to read:

17 (n) When appointing members of the legislature to serve on the committee, the
 18 speaker of the house or the president of the senate, as appropriate, shall appoint an
 19 alternate member for each regular member. An alternate must have the same
 20 qualifications as the regular member for whom the alternate stands as alternate and is
 21 subject to confirmation as required for the regular member. An alternate member
 22 may not vote but may attend all committee and subcommittee meetings and
 23 hearings to the same extent as the regular member for whom the person serves as
 24 an alternate. The alternate shall vote in place of the regular member if the
 25 regular member is absent and the alternate member is present. The alternate
 26 may not vote in place of a regular member if the alternate is disqualified from
 27 voting as provided in this subsection. If a regular legislative member of the
 28 committee or a subcommittee is disqualified under (h) of this section from serving on
 29 the committee or the subcommittee concerning a proceeding under AS 24.60.170, the
 30 chair of the committee or a subcommittee shall designate the regular member's
 31 alternate to serve in place of the regular member in the proceeding unless the alternate

1 is also disqualified from serving. The designation shall be treated as confidential to
2 the same extent that the identity of the subject of a complaint is required to be kept
3 confidential.

4 * Sec. 6. AS 24.60.160(b) is amended to read:

5 (b) An opinion issued under this section is binding on the committee in any
6 subsequent proceedings concerning the facts and circumstances of the particular case
7 unless material facts were omitted or misstated in the request for the advisory opinion.
8 Except as provided in this chapter, an advisory opinion is confidential but shall be
9 made public if a written request by the person who requested the opinion is filed with
10 the committee. In the request for an opinion, if the requestor identifies another
11 person subject to this chapter, the opinion shall be provided to that person as
12 well as the requestor and shall remain confidential. The opinion may not be
13 released unless all persons who are required to be provided with the opinion
14 consent in writing to the release of the opinion.

15 * Sec. 7. AS 24.60.170(c) is amended to read:

16 (c) When the committee receives a complaint under (a) of this section, it may
17 assign the complaint to a staff person. The staff person shall conduct a preliminary
18 examination of the complaint and advise the committee whether the allegations of the
19 complaint, if true, constitute a violation of this chapter and whether there is credible
20 information to indicate that a further investigation and proceeding is warranted. The
21 staff recommendation shall be based on the information and evidence contained in the
22 complaint as supplemented by the complainant and by the subject of the complaint, if
23 requested to do so by the staff member. The committee shall consider the
24 recommendation of the staff member, if any, and shall determine whether the
25 allegations of the complaint, if true, constitute a violation of this chapter. If the
26 committee determines that the allegations, if proven, would not give rise to a violation,
27 that the complaint is frivolous on its face, that there is insufficient credible information
28 that can be uncovered to warrant further investigation by the committee, or that the
29 committee's lack of jurisdiction is apparent on the face of the complaint, the
30 committee shall dismiss the complaint and shall notify the complainant and the subject
31 of the complaint of the dismissal. The committee may ask the complainant to provide

1 clarification or additional information before it makes a decision under this subsection
2 and may request information concerning the matter from the subject of the complaint.
3 Neither the complainant nor the subject of a complaint is obligated to provide the
4 information. [A PROCEEDING CONDUCTED UNDER THIS SUBSECTION,
5 DOCUMENTS THAT ARE PART OF A PROCEEDING, AND A DISMISSAL
6 UNDER THIS SUBSECTION ARE CONFIDENTIAL AS PROVIDED IN (I) OF
7 THIS SECTION UNLESS THE SUBJECT OF THE COMPLAINT WAIVES
8 CONFIDENTIALITY AS PROVIDED IN THAT SUBSECTION.]

9 * Sec. 8. AS 24.60.170(d) is amended to read:

10 (d) If the committee determines that some or all of the allegations of a
11 complaint, if proven, would constitute a violation of this chapter, or if the committee
12 has initiated a complaint, the committee shall investigate the complaint [, ON A
13 CONFIDENTIAL BASIS]. Before beginning an investigation of a complaint, the
14 committee shall adopt a resolution defining the scope of the investigation. A copy of
15 this resolution shall be provided to the complainant and to the subject of the
16 complaint. As part of its investigation, the committee shall afford the subject of the
17 complaint an opportunity to explain the conduct alleged to be a violation of this
18 chapter.

19 * Sec. 9. AS 24.60.170(f) is amended to read:

20 (f) If the committee determines after investigation that there is not probable
21 cause to believe that the subject of the complaint has violated this chapter, the
22 committee shall dismiss the complaint. The committee may also dismiss portions of a
23 complaint if it finds no probable cause to believe that the subject of the complaint has
24 violated this chapter as alleged in those portions. The committee shall issue a
25 dismissal order and decision explaining its dismissal. [COMMITTEE
26 DELIBERATIONS AND VOTE ON THE DISMISSAL ORDER AND DECISION
27 ARE NOT OPEN TO THE PUBLIC OR TO THE SUBJECT OF THE
28 COMPLAINT.] A copy of the dismissal order and decision shall be sent to the
29 complainant and to the subject of the complaint. [NOTWITHSTANDING (I) OF
30 THIS SECTION, A DISMISSAL ORDER AND DECISION IS OPEN TO
31 INSPECTION AND COPYING BY THE PUBLIC.]

Start here

1 * Sec. 10. AS 24.60.170(g) is amended to read:

2 (g) If the committee investigation determines that a probable violation of this
3 chapter exists that may be corrected by action of the subject of the complaint and that
4 does not warrant sanctions other than correction, the committee may issue an opinion
5 recommending corrective action. This opinion shall be provided to the complainant
6 and to the subject of the complaint [, AND IS OPEN TO INSPECTION BY THE
7 PUBLIC]. Within 20 days after receiving the opinion, the subject of the complaint
8 may request a [CONFIDENTIAL] meeting with the committee at which meeting the
9 committee shall explain the reasons for its recommendations. The committee may
10 divulge confidential information to the subject of the complaint. [THE
11 INFORMATION REMAINS CONFIDENTIAL.] The subject of the complaint may
12 comply with the opinion or may request a hearing before the committee under (j) of
13 this section. After the hearing, the committee may amend or affirm the opinion. If the
14 subject of the complaint agrees to comply with the opinion but later fails to complete
15 the corrective action in a timely manner, the committee may formally charge the
16 person as provided in (h) of this section or may refer the matter to the appropriate
17 house of the legislature, in the case of a legislator, or, in the case of a legislative
18 employee, to the employee's appointing authority. The appropriate house of the
19 legislature or the appointing authority, as appropriate, may take action to enforce the
20 corrective action or may decline to take action and refer the matter to the committee.
21 In either case, the committee may formally charge the person under (h) of this section.
22 The committee order making a referral to a house or appointing authority under
23 this subsection, together with any record of action taken on the referral order by
24 the house or appointing authority, are public records. Proceedings of the house
25 regarding the referral order, or of a legislative committee to which the referral
26 order is referred, are open to the public.

In any case, open the opinion in my file for inspection in the public notice to the complainant.

27 * Sec. 11. AS 24.60.170(i) is amended to read:

28 (i) A person charged under (h) of this section may engage in discovery in a
29 manner consistent with the Alaska Rules of Civil Procedure. The committee may
30 adopt procedures that

31 (1) impose reasonable restrictions on the time for this discovery and on

1 the materials that may be discovered;

2 (2) permit a person who is the subject of a complaint to engage in
3 discovery at an earlier stage of the proceedings;

4 (3) permit limited [IMPOSE REASONABLE RESTRICTIONS ON
5 THE] release of information that the subject of a complaint acquires from the
6 committee in the course of discovery, or on information obtained by use of the
7 committee's authority, in order to enable the subject of the complaint to conduct
8 investigations necessary for a defense; however the committee shall, to the
9 maximum extent possible, protect the privacy of persons not under investigation to
10 whom the information pertains [; HOWEVER, THE COMMITTEE MAY NOT
11 IMPOSE RESTRICTIONS ON THE RELEASE OF INFORMATION BY THE
12 SUBJECT OF THE COMPLAINT UNLESS THE COMPLAINANT HAS AGREED
13 TO BE BOUND BY SIMILAR RESTRICTIONS AND HAS NOT MADE PUBLIC
14 THE INFORMATION CONTAINED IN THE COMPLAINT, INFORMATION
15 ABOUT THE COMPLAINT, OR THE FACT OF FILING THE COMPLAINT].

16 * Sec. 12. AS 24.60.170(k) is amended to read:

17 (k) Following the hearing, the committee shall issue a decision stating whether
18 [OR NOT] the subject of the complaint violated this chapter, and explaining the
19 reasons for the determination. The committee's decision may also indicate whether
20 the subject cooperated with the committee in its proceedings. If the committee finds a
21 violation, or lack of cooperation by the subject, the decision shall recommend what
22 sanctions, if any, the committee believes are appropriate. If there has not been a
23 hearing because the person charged admitted to the allegations of the charge, the
24 committee shall issue a decision outlining the facts of the violation and containing a
25 sanctions recommendation. The decision issued under this subsection is a public
26 record.

27 * Sec. 13. AS 24.60.170(l) is amended to read:

28 (l) [PROCEEDINGS OF THE COMMITTEE RELATING TO
29 COMPLAINTS BEFORE IT ARE CONFIDENTIAL UNTIL THE COMMITTEE
30 DETERMINES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A
31 VIOLATION OF THIS CHAPTER HAS OCCURRED. EXCEPT TO THE EXTENT

1 THAT THE CONFIDENTIALITY PROVISIONS ARE WAIVED BY THE
2 SUBJECT OF THE COMPLAINT, THE PERSON FILING A COMPLAINT SHALL
3 KEEP CONFIDENTIAL THE FACT THAT THE PERSON HAS FILED A
4 COMPLAINT UNDER THIS SECTION AS WELL AS THE CONTENTS OF THE
5 COMPLAINT FILED. THE COMPLAINT AND ALL DOCUMENTS PRODUCED
6 OR DISCLOSED AS A RESULT OF THE COMMITTEE INVESTIGATION ARE
7 CONFIDENTIAL AND NOT SUBJECT TO INSPECTION BY THE PUBLIC.] If,
8 in the course of an investigation or probable cause determination, the committee finds
9 evidence of probable criminal activity, the committee shall transmit a statement and
10 factual findings limited to that activity to the appropriate law enforcement agency. If
11 the committee finds evidence of a probable violation of AS 15.13, the committee shall
12 transmit a statement to that effect and factual findings limited to the probable violation
13 to the Alaska Public Offices Commission. [ALL MEETINGS OF THE
14 COMMITTEE BEFORE THE DETERMINATION OF PROBABLE CAUSE ARE
15 CLOSED TO THE PUBLIC AND TO LEGISLATORS WHO ARE NOT MEMBERS
16 OF THE COMMITTEE. HOWEVER, THE COMMITTEE MAY PERMIT THE
17 SUBJECT OF THE COMPLAINT TO ATTEND A MEETING OTHER THAN THE
18 DELIBERATIONS ON PROBABLE CAUSE. THE CONFIDENTIALITY
19 PROVISIONS OF THIS SUBSECTION MAY BE WAIVED BY THE SUBJECT OF
20 THE COMPLAINT. EXCEPT TO THE EXTENT THAT THE
21 CONFIDENTIALITY PROVISIONS ARE WAIVED BY THE SUBJECT OF THE
22 COMPLAINT, IF THE COMMITTEE FINDS THAT A COMPLAINANT HAS
23 VIOLATED ANY CONFIDENTIALITY PROVISION THE COMMITTEE SHALL
24 IMMEDIATELY DISMISS THE COMPLAINT. DISMISSAL OF A COMPLAINT
25 UNDER THIS SUBSECTION DOES NOT AFFECT THE RIGHT OF THE
26 COMMITTEE OR ANY PERSON OTHER THAN THE COMPLAINANT TO
27 INITIATE A COMPLAINT BASED ON THE SAME FACTUAL ALLEGATIONS.]

28 * Sec. 14. AS 24.60.170(p) is amended to read:

29 (p) When the committee has a complaint concerning the conduct of a
30 candidate for state office pending before it at the beginning of a campaign period that
31 has not resulted in the issuance of formal charges under (h) of this section, the

1 committee may proceed with its consideration of the complaint [ONLY TO THE
 2 EXTENT THAT THE COMMITTEE'S ACTIONS ARE CONFIDENTIAL UNDER
 3 THIS SECTION]. The committee may not, during a campaign period, issue a
 4 dismissal order or decision under (f) of this section, issue an opinion under (g) of this
 5 section, or formally charge a person under (h) of this section. If the committee has
 6 formally charged a person under (h) of this section and the charge is still pending
 7 when a campaign period begins, the committee shall suspend any [PUBLIC] hearings
 8 on the matter until after the campaign period ends. The parties [TO THE HEARING]
 9 may continue with discovery during the campaign period. If a hearing has been
 10 completed before the beginning of a campaign period but the committee has not yet
 11 issued its decision, the committee may not issue the decision until after the end of the
 12 campaign period. Notwithstanding the suspension of [PUBLIC] proceedings provided
 13 for in this subsection, a candidate who is the subject of a complaint may notify the
 14 committee in writing that the candidate waives the suspensions under this
 15 subsection and chooses to have the committee proceed with all proceedings under
 16 the complaint [UNDER THIS SECTION].

17 * Sec. 15. AS 24.60.170 is amended by adding a new subsection to read:

18 (s) A person may not disclose to any other person the filing of a complaint
 19 under this section or the intention to file a complaint under this section if the person
 20 subsequently files a complaint on the same matter, except to a person assisting in the
 21 filing of the complaint. A person may not disclose the intention of another to file a
 22 complaint under this section. Except as provided in this section, a person may not
 23 disclose information regarding an investigation or proceeding conducted under this
 24 section. / Except as provided in this section, all proceedings conducted under this
 25 section and actions taken by the committee under this section are confidential.
 26 Meetings of the committee held under this section are closed to the public and to
 27 legislators who are not members of the committee. However, the committee may
 28 permit the subject of the complaint to attend a meeting other than the deliberations on
 29 probable cause. Except as provided in this section, the complaint and all documents
 30 filed with the committee, produced by the committee, or obtained or disclosed as a
 31 result of the committee investigation, discovery, or a hearing are confidential and not

#5

1 subject to inspection by the public. The subject of a complaint may waive specific
2 confidentiality requirements of this ~~subsection~~ [#]. However, if confidentiality is waived
3 for a meeting or proceeding before the committee, the proceeding is open to all
4 members of the public, and no confidentiality requirement applies with respect to any
5 aspect of the open proceeding. If confidentiality is waived for a document or
6 information, the document or information is available to all members of the public,
7 and no confidentiality requirement applies with respect to any aspect of the document
8 or information. The committee shall make appropriate efforts to provide notice of the
9 confidentiality requirements of this subsection. This subsection does not make any
10 record of an agency of the state, other than the committee, confidential or prevent a
11 person from obtaining directly from the agency a public record that has also been
12 made available to the committee in the course of a proceeding under this section.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 187(STA)
 (S) Publish Date: 4/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title "An Act relating to legislative ethics open meeting guidelines, to the public members of the Select.." BRU Legislative Council
 Sponsor Senator Seekins Component: Select Committee on Legislative Ethics
 Requestor Senate State Affairs Component No. 2321

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
 Division Administrative Services Date/Time 4/25/05 2:55 PM
 Approved by: Pamela Varni, Executive Director Date 4/25/2005
 Agency Legislative Affairs Agency

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 187(STA)
(S) Publish Date: 4/28/05

Revisor Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to legislative ethics open RDU CIVIL
meetings guidelines, to the public members..." Component Opinions, Appeals & Ethics
Sponsor Senator Seekins
Requester Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - Regulatory Cost Charge						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 of this bill makes it a class A misdemeanor to knowingly disclose confidential ethics information. It is unknown whether there will be many prosecutions under this statute, this fiscal note assumes there will not be. The remainder of the bill deals with legislative standards of conduct and ethics and will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
Division Administrative Services Division Date/Time 4/25/05 9:23 AM
Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 4/25/2005
Agency Department of Law

SB

189

SENATE COMMITTEE REPORT

DATE: 2/8/06

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 189

SB 189 REQUIREMENTS FOR DRIVER'S LICENSE/I.D.

"An Act relating to issuance of identification cards and to issuance of driver's licenses."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
CHAIR: <i>Ralph Atkins</i>	✓			

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 – Fax
Senator_Charlie_Huggins@legis.state.ak.us



State Capitol, Room 417
Juneau AK 99801-1182
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Charlie Huggins Senator

March 17, 2006

Sponsor Statement

CSSB 189 – “An Act relating to issuance of identification cards and to issuance of driver’s licenses.”

On May 11, 2005 President Bush signed into law the REAL ID Act. Provisions of this legislation improved security for drivers’ licenses and personal identification cards as well as set uniform standards for state driver’s licenses and identification cards. CSSB 189 is designed to bring Alaska into compliance with the new federal Real ID Act.

Proper documentation shall be provided to the Division of Motor Vehicles that establishes that an applicant is either a U.S. citizen or legally present in the United States for the purposes of issuing an identification card or drivers license.

As required by the REAL ID Act, CSSB 189 establishes that in order to issue temporary licenses or temporary ID cards, that will be acceptable to the federal government for identification purposes, there must be an expiration date of the identification card or driver license to coincide with the length of stay in the United States. If the period of authorized stay is indefinite, the expiration date of the license is one year from the date of issue.

A federal agency may not accept a driver’s license or personal identification card after May 11, 2008, unless the state has been certified by the U.S. Department of Homeland Security in consultation with the U.S. Department of Transportation to meet the requirements of the law.

CSSB 189 is needed to enhance the security of the driver’s license and identification card due to increasing problems of identity theft and fraud. Driver’s licenses and state issued identification cards have been used as proof of identity more often than proof of one’s ability to drive safely. Holding one of these credentials provides access to an ever-increasing number of privileges and services, from obtaining credit to cashing checks, buying or leasing cars and boarding airplanes.

Alaskans deserve the right to be assured motorists driving with Alaska driver’s licenses are legally in the United States and we know their identities.

Contact Information – Deborah Grundmann 465-4711

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 189(STA)
 (S) Publish Date: 2/8/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act relating to issuance of Identification Cards and RDU Division of Motor Vehicles
and the issuance of Driver's Licenses'... Component: Motor Vehicles
 Sponsor: Sen. Huggins
 Requester: (S) State Affairs Component No.: 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual	20.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	20.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Rcpt Svcs	20.0	0.0	0.0	0.0	0.0	0.0
TOTAL	20.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is designed to bring Alaska into compliance with the new federal Real ID Act. While all of the details of the Act are currently being created through the rulemaking committee, this bill includes the 2 major components of the Act: all DL/ID applicants must be either US citizens or be able to establish their legal presence; and those persons with 'time-limited' legal status may not receive a DL/ID with an expiration date later than the allowable length of stay.

The cost associated in FY 07 is to make major changes in our database (ALVIN) to accept these new expiration dates and other verification fields. Other costs may be associated with the Real ID Act that will not be noted until later.

Prepared by: Duane Bannock, Director Phone: 269 5008
 Division: Motor Vehicles Date/Time: 1/31/06 8:00 AM
 Approved by: Mike Tibbles, Deputy Commissioner Date: 1/31/2006
 Agency: Department of Administration

SB

2000

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 200(JUD) am

- 1 Page 4, line 30, following "vehicle":
- 2 Insert "; this paragraph does not apply to a person outside of a vehicle who is involved
- 3 in a dispute with a person inside of the vehicle who is a household member of that person; in
- 4 this paragraph, "household member" has the meaning given in AS 18.66.990"

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:

119 N. Cushman, Suite 101

Fairbanks, Alaska 99701

(907) 488-0857

Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

Sponsor Statement

Senate Bill 200

A Peron's Right To Defend With Force

Senate Bill 200 is generally based on Florida's recently codified "Castle Law".

The right to defend life and property needs to be clear. Senate Bill 200 not only recognizes that right to protect one's self at their home ("castle"), but in other specific places a person also has a legal right to be.

In this time of ever increasing child abduction, car jacking, and random threats to life and property it is incumbent that we have clear and concise laws securing the rights of individuals to protect themselves or children from would-be perpetrators.

SB 200 relieves victims of the need to flee and legally empowers them when confronted by force in situation involving kidnapping, sexual assault, sexual abuse of a minor in the first degree, car jacking, to "stand their ground" and meet and overcome such threats with force or deadly force if necessary.

A special provision is included to protect peace officers, firemen, and other emergency personnel.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gene Theriault

Current Version: CSSB 200 (JUD)

Contact: Dave Stancliff, 465-4797

Fact Sheet for: Senate Bill 200

Short Title: USE OF FORCE TO PROTECT SELF/HOME

Summary:

- Broadens existing statute, which allows a person to use force to defend property that a person owns or leases, to include "specific places a person has a right to be."
- Allows the use of force to protect children threatened with death or serious injury, kidnapping, sexual assault, sexual abuse of a minor in the first degree, or robbery.
- Permits use of force by a victim remaining inside an automobile being car-jacked, or by a person outside a vehicle being stolen if there is a victim inside that vehicle.
- Prohibits the use of force for any reason against law enforcement officers, firefighters, paramedics, EMTs, or those assisting them in their official duties.

Benefits:

- Allows individuals to more adequately protect themselves and others from violent crimes.

Background:

- Based on a Florida statute hailed as the "Castle Law," SB 200 allows force as a legal option under certain circumstances where life, property and the welfare of others is at high risk.

Oklahoma State Senate

Communications Division
State Capitol
Oklahoma City, Oklahoma 73105

For Immediate Release: November 3, 2004

How the 'Make My Day' law cut epidemic of violent burglary

By Charles Laurence

Sunday London Telegraph

At 3.30am on January 6, 1987, Dr Frank Sommer, a dentist in Tulsa, Oklahoma, woke to the sound of his garage door opening. He looked at the clock, mentally scolded his son, then 18, or his daughter 20, for getting home so late, and waited for the sound of their footsteps downstairs.

"After a few minutes, I thought that it was odd that I had heard nothing more. I took the gun from my nightstand, left my wife fast asleep and went downstairs to make sure everything was OK," he recalled yesterday.

What happened next was an experience of pure terror. As he looked through the peep-hole from the kitchen into the garage, he saw two strange men. One was pilfering from his wife's car: the other was standing at the opened door, by the tool racks.

Just as he stepped through the door to challenge the intruders, the lights went out. "It was total darkness and suddenly I was very, very scared. I fired one shot and yelled a warning. I saw one figure run off and as I went towards the driveway I saw a body in the doorway. 'Oh no!' I thought. 'He's dead.' "

In those few seconds Dr Sommer, 66, had been plunged into a case that

changed the law in Oklahoma and may yet influence a change in the law in Britain. Within weeks of the incident, the Oklahoma state government passed legislation that became known as the Make My Day Law, named for the celebrated scene in the Clint Eastwood Dirty Harry film.

The law was pushed through by Sen Charles Ford, a Republican, the opposition party in the state.

"The purpose of the law is to protect the victim of crime who defends his home and his family against unlawful intrusion from any criminal prosecution or civil action," Sen Ford said last week.

"We considered it outrageous that someone who protects his home and family should suffer. Our law says you can use any force, including deadly force, to defend your home."

It has been an unqualified success. Since the Make My Day Law came into force, burglary has declined by almost half in Oklahoma. In 1987, there were 58,333 cases; in 2000, just 31,661.

While crime rates throughout America fell in the 1990s, Make My Day supporters point to a second statistic in Oklahoma they say proves the impact of the new law: while burglary rates plunged, other forms of theft stayed constant. In 1988, there were 96,418 cases, in 2000, 96,111.

Similar anti-burglar laws have now been adopted in Colorado and Arizona. The reason, said Sen Ford, was simple: "The law works. We were in the grip of a violent burglary epidemic when Dr Sommer's home was invaded.

"Over that Christmas, we had six people in their 70s and 80s killed, bludgeoned

to death by burglars in their bedrooms. How were they meant to defend themselves if they could not legally resort to lethal force?" he said.

Giving householders immunity from criminal and civil action was also inspired by Dr Sommer's experience. Although he was taken to the police station and interrogated, the District Attorney read the public mood over the series of deadly burglaries and decided against charging him with the killing of the burglar, Russell Bryant, 19.

An "ambulance chaser" lawyer contacted Bryant's family and sought damages for a lifetime of lost earnings on the grounds that the killing was unlawful.

"This was outrageous and focused attention on the vague state of the law which left the victim of burglary vulnerable," said Sen Ford, 73.

Prior to the Make My Day legislation, the law, as it remains in most American states, sanctioned force in self-defence and the defence of property, but only on the basis of "reasonable" response to the violence offered by the criminal. This allows a baseball bat against a baseball bat, a knife against a knife, and a gun against a gun - although in theory the householder should allow the burglar to shoot first.

There have now been at least 11 cases where intruders have been shot dead in Oklahoma and the householders who pulled the trigger have escaped any sanction under the Make My Day law.

While Dr Sommer is a fervent supporter of the law protecting householders, he said that killing Bryant had left him into overwhelming feelings of guilt and that for years he was tormented by the thought that he had committed the "ultimate sin".

"Every time I go into that garage I think about it," he explained. "But I do not regret it. My wife and children were in our home. I am sorry that young man was in the wrong place at the wrong time. But that was of his choosing."

For more information contact:

Senate Communications Office - (405) 521-5774

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 200(JUD)
 (S) Publish Date: 2/03/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act relating to defense of self, other persons, RDU Alaska State Troopers
and property. Component AST Detachments
 Sponsor Senator Therriault
 Requester Senate Judiciary Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation will have no fiscal impact as it would be absorbed by the current assets of the Department of Public Safety.

Prepared by: Lieutenant James Helgoe
 Division: Alaska State Troopers
 Approved by: Commissioner William Tandeske
 Agency: Department of Public Safety

Phone 907-269-4532
 Date/Time 1/17/06 11:27 AM
 Date 1/17/2006

SB

206

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/9/06

FURTHER: Finance

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 206

SB 206 DETENTION OF MATERIAL WITNESSES

"An Act relating to material witnesses; and amending Rule 58.1, Alaska Rules of Civil Procedure, and Rule 204, Alaska Rules of Appellate Procedure."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
<input type="checkbox"/> Same Title
<input type="checkbox"/> New Title
SCS House Bill:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>				X
<i>[Signature]</i>	✓			
<i>[Signature]</i>				X
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>	✓			

24-LS1197U
Luckhaupt
3/14/06

CS FOR SENATE BILL NO. 206()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to contempt of court and to temporary detention and identification of
2 persons."

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

4 * Section 1. AS 09.50.020(a) is amended to read:

5 (a) A person who is guilty of contempt is punishable by a fine of not more
6 than \$300 or by imprisonment for not more than six months. However, when the
7 contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a
8 magistrate, the person is punishable by a fine of not more than \$100 unless it appears
9 that a right or remedy of a party to an action or proceeding was defeated or prejudiced
10 by the contempt, or the failure to honor a subpoena or refusal to be sworn or
11 answer as a witness under AS 09.50.010(10) was in connection with a court
12 proceeding relating to a felony crime or an appearance before the grand jury, in
13 which case the penalty shall be as prescribed for contempts described in
14 AS 09.50.010(1), (2), and (10) [AS 09.50.010(1) AND (2)].

1 * Sec. 2. AS 12.50 is amended by adding a new section to read:

2 **Article 3. Temporary Detention and Identification of Persons.**

3 **Sec. 12.50.201. Temporary detention and identification of persons.** (a) A
4 peace officer may temporarily detain a person under circumstances that give the
5 officer reasonable suspicion that

6 (1) the person

7 (A) witnessed the commission of a crime against a person
8 under AS 11.41 or a felony property crime under AS 11.46; or

9 (B) was at the scene, or in the vicinity, during the commission
10 of a crime against a person under AS 11.41 or a felony property crime under
11 AS 11.46;

12 (2) the person may have information of material aid in the
13 investigation of that crime; and *

14 (3) the temporary detention of the person is reasonably necessary to
15 obtain or verify the identification of the person, to obtain an account of the crime, to
16 protect a crime victim from imminent harm, or for other exigent circumstances.

17 (b) A peace officer who temporarily detains a person under (a) of this section
18 may

19 (1) take one or more photographs of the person, if photographs can be
20 taken without unreasonably delaying the person or removing the person from the
21 vicinity;

22 (2) serve a subpoena on the person to appear before the grand jury
23 where the crime was committed, if the person fails to provide valid government-issued
24 photographic identification; and

25 (3) take the person's fingerprint impressions if

26 (A) the person is detained in connection with the investigation
27 of a murder, attempted murder, or misconduct involving weapons in the first
28 degree under AS 11.61.195; and

29 (B) fingerprint impressions can be taken without unreasonably
30 delaying the person or removing the person from the vicinity.

31 (c) A peace officer electing to serve a subpoena under (b) of this section may

1 not require the person to sign the subpoena or another document. The officer or the
2 subpoena must advise the person that failure to honor the subpoena is punishable as
3 criminal contempt of court under AS 09.50.010. A person receiving a subpoena to
4 testify under (b) of this section may request the district attorney to withdraw the
5 subpoena if, before the grand jury proceeding for which the person has been served a
6 subpoena to appear, the person provides the peace officer who served the subpoena
7 with valid government-issued photographic identification.

8 (d) A person who refuses or resists the taking of photographs or fingerprints
9 under this section commits a class B misdemeanor, punishable as provided in
10 AS 12.55, except that a sentence of imprisonment, if imposed, may not exceed 10
11 days.



FAIRBANKS POLICE DEPARTMENT

911 Cushman Street
Fairbanks, AK 99701-4616
Phone: (907) 450-6500
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Email: fpd@ci.fairbanks.ak.us



Senator Ralph Seekins
119 N. Cushman Street
Fairbanks, AK 99701

March 14, 2006

Dear Senator Seekins:

I am writing to voice my strongest support for **HB 206**, a measure introduced by Senator Con Bunde, which would allow police officers to briefly detain and identify material witnesses in homicide cases.

I am appreciative of the concerns that may arise from this bill- most notably from those who are concerned with an erosion of civil liberties, and are hesitant to grant "additional powers" to the police. I believe that these concerns are effectively addressed by the revised language of this bill, whose *very narrow focus* dictates that such brief detentions and identification efforts shall only be employed in the immediate aftermath of a homicide.

One only needs to look at the escalating gang-violence and homicide rate in Anchorage to know that this is a very *real problem* which needs to be addressed in a common-sense fashion. As one whom I view to be a long-time supporter of law-enforcement in Alaska, I'm hopeful that you will lend your support to the passage of HB 206.

Sincerely,

A handwritten signature in black ink that reads "Daniel P. Hoffman".

Daniel P. Hoffman, Chief
Fairbanks Police Department

CS FOR SENATE BILL NO. 206()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR RUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the penalty for contempt of court and to temporary detention and
2 identification."

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

4 * Section 1. AS 09.50.020(a) is amended to read:

5 (a) A person who is guilty of contempt is punishable by a fine of not more
6 than \$300 or by imprisonment for not more than six months. However, when the
7 contempt is one mentioned in AS 09.50.010(3) - (9), (11), and (12) [AS 09.50.010(3)
8 - (12)], or in an action before a magistrate, the person is punishable by a fine of not
9 more than \$100 unless it appears that a right or remedy of a party to an action or
10 proceeding was defeated or prejudiced by the contempt, in which case the penalty
11 shall be as prescribed for contempts described in AS 09.50.010(1), (2), and (10)
12 [AS 09.50.010(1) AND (2)].

13 * Sec. 2. AS 12 is amended by adding a new chapter to read:

14 Chapter 27. Temporary Detention and Identification.

1 **Sec. 12.27.010. Temporary detention and identification; interfering with a**
 2 **peace officer.** (a) A peace officer may temporarily detain a person under
 3 circumstances that give the officer reasonable suspicion that the person

4 (1) has recently committed, is committing, or is about to commit a
 5 crime; or

6 (2) witnessed or was at the scene, or in the vicinity, during the
 7 commission of a crime against a person under AS 11.41 or a felony property crime
 8 under AS 11.46, the person may have information of material aid in the investigation
 9 of that crime and the temporary detention is reasonably necessary to obtain or verify
 10 the identification of the person, to obtain an account of the crime, to protect a crime
 11 victim from imminent harm, or for other exigent circumstances. ?

12 (b) A person temporarily detained under (a)(1) of this section shall permit one
 13 or more photographs to be taken of the person on request of the officer and shall verify
 14 the person's identity, but is not required to answer questions. If the person does not
 15 verify identity by showing the peace officer valid government-issued photographic
 16 identification, the officer may obtain fingerprint impressions from the person if that
 17 can be done without unreasonably delaying the person or unreasonably removing the
 18 person from the vicinity. *except on the identity*

19 (c) A person temporarily detained under (a)(2) of this section is not required to
 20 answer questions, but shall permit one or more photographs of the person to be taken
 21 on request of the officer to assist in identifying the person or ensuring compliance with
 22 a subpoena. If the peace officer elects to serve a subpoena on the person detained
 23 under (a)(2) of this section, the subpoena need not contain the name of the person if
 24 the person has not provided the officer with satisfactory identification and must
 25 require the person to appear to testify in the grand jury for the area where the crime
 26 was committed. The officer may not require the person to sign the subpoena or another
 27 document, but the officer or the subpoena shall advise the person that failure to
 28 comply with the subpoena is punishable as criminal contempt of court.

29 (d) A person detained under (a) of this section commits the crime of
 30 interfering with a peace officer if, on request of the officer, the person resists or
 31 refuses the taking of

Handwritten notes on the right margin:
 1. *AS 11.41*
 2. *AS 11.46*
 3. *AS 11.41*
 4. *AS 11.46*
 5. *AS 11.41*
 6. *AS 11.46*
 7. *AS 11.41*
 8. *AS 11.46*
 9. *AS 11.41*
 10. *AS 11.46*
 11. *AS 11.41*
 12. *AS 11.46*
 13. *AS 11.41*
 14. *AS 11.46*
 15. *AS 11.41*
 16. *AS 11.46*
 17. *AS 11.41*
 18. *AS 11.46*
 19. *AS 11.41*
 20. *AS 11.46*
 21. *AS 11.41*
 22. *AS 11.46*
 23. *AS 11.41*
 24. *AS 11.46*
 25. *AS 11.41*
 26. *AS 11.46*
 27. *AS 11.41*
 28. *AS 11.46*
 29. *AS 11.41*
 30. *AS 11.46*
 31. *AS 11.41*

1
2
3
4
5

(1) fingerprints or photographs permitted under (b) of this section; or

(2) photographs permitted under (c) of this section.

(e) Interfering with a peace officer is a class B misdemeanor, punishable as provided in AS 12.55, except that a sentence of imprisonment if imposed, may not be for a term of more than 10 days.



Alaska State Legislature
Senator Con Bunde
Senate District P
Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

SPONSOR STATEMENT

SB 206

"An Act relating to material witnesses; amending Rule 58.1, Alaska Rules of Civil Procedure, and Rule 204, Alaska Rules of Appellate Procedure; and providing for an effective date."

Written in Alaska's constitution is an acknowledgement of an individual's freedom and an individual's corresponding obligation to our state. Striking a balance between the needs of society to prosecute crime, the rights of a defendant to witnesses on their behalf and the right of an individual to be free from unreasonable arrest is the central issue in Senate Bill 206 Detention of Material Witnesses.

A material witness is a "witness whose testimony is crucial to either the defense or prosecution."¹ Regrettably, citizens do not always come forward to fulfill their "corresponding obligations" as a witness during the investigation or prosecution of a crime. Nearly all states and the federal government have adopted statutes dealing with the pretrial confinement of material witnesses and SB 206 sets the guidelines and protections for issuing a material witness order in the state of Alaska.

Giving the court system the ability to compel a person to testify protects both the needs of society and the rights of the individual. For law enforcement officials, material witnesses can be the deciding factor in bringing indictments and prosecuting crime. For defendants, a material witness order can ensure that testimony crucial to their defense is offered. For individuals, the process in SB 206 protects them from unreasonable arrests or confinement.

SB 206 attempts to balance these competing interests to give law enforcement officials tools to fight crime and individuals testimony crucial to their defense.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Con Bunde
Current Version: SB 206
Contact: Lauren Wickersham, 465-3881

Fact Sheet for: Senate Bill 206

Short Title: DETENTION OF MATERIAL WITNESSES

Summary:

- Sets guidelines and protections for issuing a material witness order in Alaska.
- Allows a prosecuting attorney or defendant to apply to the superior court to compel a person to appear at a material witness hearing if there is probable cause to believe the person has information material to the prosecution or defense, and the witness is unlikely to respond to a subpoena.
- Gives courts the authority to:
 - Issue an arrest warrant if there is clear and convincing evidence that the person named in a material witness order will not be available unless immediately arrested;
 - Order the witness to appear at a hearing to determine whether the person should be adjudged a material witness;
- Authorizes a law enforcement officer to arrest an alleged material witness without a warrant only if the arrest occurs before the filing of an indictment and other conditions are met.
- Outlines the rights of a material witness, including the right to be represented by an attorney and appeal a material witness order to the court of appeals
- Outlines the conditions of release, confinement and fees for a material witness, which prohibit holding a witness in a correctional facility and entitle the witness to fees as provided in Rule 7, Alaska Rules of Administration.
- Requires the office of public advocacy to provide legal representation to a material witness.

Benefits:

- Balances the need to protect individual freedom with the ability to prosecute crime and to provide defendants with witnesses on their behalf.

Background:

- A material witness is a "witness whose testimony is crucial to either the defense or prosecution." Unfortunately, material witnesses often refuse to cooperate with law enforcement officials, significantly impeding the ability to bring indictments or prosecute crime. SB 206 protects material witnesses from unreasonable arrests or confinement and helps ensure the availability of crucial testimony.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB206
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to material witnesses; ... RDU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Senator Bunde
 Requester (S) Judiciary Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	*	*	*	*	*	*
Travel						
Contractual	*	*	*	*	*	*
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would establish a process through which a prosecutor or defendant could apply to the superior court for an order compelling a person to appear at a material witness hearing if the individual has relevant information for the prosecution or defense and the person is unlikely to respond to a subpoena. The bill also provides a process to arrest material witnesses with or without a warrant, and a process under which a material witness could be confined. The bill further provides that alleged material witnesses are entitled to legal representation through the Office of Public Advocacy, regardless of the financial need of the individual.

Prepared by: Josh Fink, Director Phone 269-3500
 Division: Office of Public Advocacy Date/Time 2/27/06 12:00 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/27/2006
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. SB206

ANALYSIS CONTINUATION

If this statute were rarely used, the costs to OPA would be de minimus. However, if prosecutors and/or defense attorneys made significant use of this legislation (for instance, to hold alleged gang members who do not cooperate with police), costs could be significant. Each individual held in relation to a particular case would be entitled to conflict-free counsel. This would mean OPA would first use staff attorneys and then have to retain private counsel on contract for each additional material witness held in relation to a particular case. Because there is no financial indigency requirement, even those who could afford counsel would receive counsel through OPA.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 206
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An act relating to material witnesses. . ." RDU Institutional Facilities
 Component Institution Director's Office
 Sponsor Senator Bunde
 Requester Senate Judiciary Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type -Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation should not have a significant fiscal impact on the Department of Corrections based on the following language, located on page 5, lines 2 and 3 of the legislation, "...The party obtaining the material witness order bears the cost of confinement and payment, unless the party is indigent." And on page 4, lines 20, 21, and 22 "...An arrested or confined material witness may not be held in a correctional facility but shall be provided food and board as is provided to a member of a jury when sequestered."

Prepared by: Sharleen Griffin, Director Phone (907) 465-3339
 Division Administrative Services Date/Time 2/16/06 9:02 AM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 2/16/2006
 Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 206
 () Publish Date: _____

Revision Date/Time (Note if correction): 2/16/06/10:04 a.m. Dept. Affected: Administration
 Title: An Act relating to material witnesses RDU: Legal and Advocacy Services
 Component: Public Defender Agency
 Sponsor: Sen. Bunde
 Requester: (S)JUD Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill permits a material witness to be arrested and confined under an order of the court, and provides for legal representation in the event that a person can not afford an attorney. The Office of Public Advocacy would be required to represent indigent material witnesses.

 This bill is not expected to affect the Public Defender Agency's fiscal operations.

Prepared by: Quinlan Steiner, Director Phone 907.334.4414
 Division: Public Defender Agency Date/Time 2/16/06 10:04 a.m.
 Approved by: Mike Tibbles, Deputy Commissioner Date 2/17/2006
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB206-LAW-CJL-2-16-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to material witnesses..." RDU CRIMINAL
 Component Criminal Justice Litigation
 Sponsor Senator Bunde
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds new sections to Article 2 (Witness Immunity) of the Code of Criminal Procedure, Sentencing and Probation. These changes would allow the arrest of people who are important witnesses, when there is probable cause that they won't appear to testify. The bill requires that those arrested be housed in hotels rather than jails. The Department of Law assumes that the Department of Corrections would be responsible for such individuals and the resultant fiscal impact from the higher costs associated with hotel bills would be borne by that agency. If that assumption is correct, there would be no fiscal impact on the Department of Law as a result of passage of this legislation.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 2/16/06 9:44 AM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 2/16/2006
 Agency Department of Law

**REPORT AND RECOMMENDATIONS
RELATING TO MATERIAL WITNESSES**

**NEW JERSEY LAW REVISION COMMISSION
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