

CS FOR HOUSE BILL NO. 87(FSH)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered: 2/15/17

Referred: Resources

Sponsor(s): REPRESENTATIVES STUTES, Ortiz

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to participation in matters before the Board of Fisheries and the Board**
2 **of Game by the members of the respective boards."**

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

4 *** Section 1.** AS 39.52.120 is amended by adding a new subsection to read:

5 (g) Notwithstanding any other provision of this chapter, a personal or financial
6 interest in a matter arising directly from involvement of a member of the Board of
7 Fisheries or the Board of Game, or of an immediate family member of a member of
8 either board, in a business or organization relating to fish or game resources does not
9 disqualify a member of the Board of Fisheries or the Board of Game from deliberating
10 on a matter before the respective board. Before deliberating, the member shall disclose
11 the interest on the record. If a conflict is determined to exist, the member may not vote
12 on the issue. In this subsection, "immediate family member" means

13 (1) the spouse of the member;

14 (2) a person cohabiting with the member in a relationship that is like a

- 1 marriage but is not a legal marriage; or
- 2 (3) a parent, sibling, or child, including a stepchild and an adopted
- 3 child, of the member if the parent, sibling, or child
- 4 (A) resides with the member;
- 5 (B) is financially dependent on the member; or
- 6 (C) shares a substantial financial interest with the member.

Relevant Sections in Alaska Statutes 39.52 – Alaska Executive Branch Ethics Act

Sec. 39.52.010. Declaration of policy.

(a) It is declared that

(1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;

(2) a code of ethics for the guidance of public officers will

(A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;

(B) improve standards of public service; and

(C) promote and strengthen the faith and confidence of the people of this state in their public officers;

(3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;

(4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and

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

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

Sec. 39.52.120. Misuse of official position.

(a) A public officer may not use, or attempt to use, an official position for personal gain, and may not

intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

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

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

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

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

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

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

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

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

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

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor,

Relevant Sections in Alaska Statutes 39.52 – Alaska Executive Branch Ethics Act

inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning.

(e) Except for supplying information requested by the hearing officer or the entity with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a public officer may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer or individual, board, or commission with authority to make the final decision in the case assigned to the hearing officer unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the public officer to all parties to the hearing and the contact is made a part of the record.

(f) Use of state aircraft for partisan political purposes is permitted under (b) of this section only when the use is collateral or incidental to the normal performance of official duties and does not exceed 10 percent of the total of the use of the aircraft for official purposes and partisan political purposes, combined, on a single trip. A public officer who authorizes or makes any partisan political use of a state aircraft under (b) of this section shall disclose the authorization and use under AS 39.52.210 or 39.52.220 for each trip, and the person who uses the aircraft shall reimburse the state for the proportionate share of the actual cost of the use.

Sec. 39.52.220. Declaration of potential violations by members of boards or commissions.

(a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor and to the attorney general. The supervisor shall determine whether the member's involvement violates AS 39.52.110 - 39.52.190 and shall provide a copy of the written determination to the board or commission member and to the attorney general. If a member of the board or commission objects to the ruling of the supervisor, or if the supervisor discloses an involvement requiring a determination, the members present at a meeting, excluding the involved member, shall vote on the matter. If the supervisor or a majority of the members voting determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter.

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

Sec. 39.52.960. Definitions.

In this chapter, unless the context requires otherwise,

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

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

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

(4) "board or commission" means a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad, but excluding members of a negotiated regulation making committee under AS 44.62.710 - 44.62.800;

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

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

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

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

(A) the commissioner of each department in the executive branch, for public employees within the department;

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

(C) the attorney general, for the governor and lieutenant governor;

Relevant Sections in Alaska Statutes 39.52 – Alaska Executive Branch Ethics Act

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

(E) the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and

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

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

(9) "financial interest" means

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

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

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

(11) "immediate family member" means

(A) the spouse of the person;

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

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

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

(E) a parent or sibling of the person's spouse;

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

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

(14) "official action" means advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

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

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

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

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

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

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

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

(A) a public employee;

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

(C) a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties; in this paragraph, "trust" has the meaning given in AS 37.14.450 ;

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