

# Responsibilities, Policies and Procedures of the Alaska State Emergency Response Commission and Local Emergency Planning Committees

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# **I. State Emergency Response Commission Responsibilities, Policies, and Procedures**

## **A. OVERVIEW OF SERC COMPOSITION AND RESPONSIBILITIES**

Composition. The composition of the SERC is established by statute (AS 26.23.071). The members of the SERC are nine specified Alaska state departmental commissioners (DCED, DEC, ADF&G, DHSS, DOL (Labor), DNR, DPS, DOT&PF, and DMVA) or their designees, and seven members of the public appointed by the governor. Two of the public members must be from a predominantly rural local emergency planning district (LEPD) and two from a predominantly urban LEPD. AS 26.23.071(b). SERC policy is that an LEPD is considered predominantly urban in character if it has 40,000 total population or greater, is a Unified Home Rule Municipality, or contains a city with greater than 7,000 population. An LEPD that does not meet these criteria is considered predominantly rural in character. The Balance-of-State LEPD is not considered as urban or rural.

Responsibilities. The SERC's statutory responsibilities are established by federal law (42 U.S.C. 11001-11005) and state law (AS 26.23.071). By law, the SERC must: (1) designate and as necessary revise the boundaries of LEPDs; (2) establish a Local Emergency Planning Committee for each LEPD, and supervise and coordinate the activities of LEPCs; (3) facilitate the preparation and implementation of, and review and make recommendations on, a wide range of emergency response plans, including all state agencies' emergency plans, all statewide, inter-jurisdictional, and local emergency plans prepared under AS 26.23; and the state and regional oil and hazardous substance discharge and prevention contingency plans; (4) review reports about responses to disaster emergencies and make recommendations concerning improved prevention and preparedness; (5) Perform other coordinating, advisory, or planning tasks related to emergency planning and preparedness for all types of hazards. The Alaska SERC is unique in that it is an all hazards SERC.

## **B. SERC ORGANIZATION AND MEETINGS**

### *1. SERC Committees and Subcommittees*

The SERC has established the following as standing committees: Finance Committee, All-Hazards Plan Review Committee, Training Committee, Interoperable Communications Committee, Citizen Corps Committee and Urban Search and Rescue Committee. The SERC may modify or eliminate these committees and establish such other committees as it determines is necessary. Each committee may adopt and modify its own internal procedures by majority vote of the members at a meeting at which a quorum is present. Each committee shall keep written notes showing action taken by

the committee. Each Committee may schedule meetings as necessary to conduct their business. Composition of committees is as identified in this manual. Committee chairs are appointed by the SERC. Other committee members are selected by the committee's chair. Committee members are normally members of the SERC or an LEPC. If unique expertise is required, the committee chair may select a member from other resources. When a vacancy occurs, the committee chair will solicit volunteers from the SERC or LEPC's. The committee's chair will inform the SERC of changes in membership. Unless there is an objection by a majority vote of the SERC, a committee member selected by a chair is approved without a vote of the SERC.

a. *SERC Finance Committee*

Composition. The SERC Finance Committee consists of five SERC members, two of whom are also LEPC representatives. Two state agency representatives are also on the committee but are non voting members. DHS&EM provides staff support to the Committee.

Mission. The SERC Finance Committee provides expertise to the SERC regarding LEPC funding matters, including standards for allocation of available funds to LEPCs; guidance to LEPCs for proper expenditure of funds; and oversees LEPCs' expenditures of funds. The SERC Finance Committee approves funding allocations to the LEPCs based on SERC adopted standards. The committee will provide verbal or written reports to the SERC that explains funding decisions they approved. The SERC Finance Committee meets at least three times a year, in conjunction with or prior to regular SERC meetings.

b. *SERC All-Hazards Plan Review Committee*

Composition. The All-Hazards Plan Review Committee (AHPRC) consists of one representative each from the state DHS&EM, DEC, DHSS, DNR, DOT&PF, and DPS, and a representative from FEMA. To the extent practicable, members of the AHPRC should be knowledgeable in emergency management matters.

Mission. The AHPRC reviews emergency plans to determine consistency with each other and with applicable statutes and makes recommendations to the SERC regarding them. Specifically, the AHPRC reviews and makes recommendations on the following: (1) state, inter-jurisdictional and local plans prepared under AS 26.23; (2) state and regional plans prepared under AS 46.04.200-210; (3) plans prepared by state agencies under other authorities; (4) integrated or combined state/federal emergency operations plans; and (5) the state's model community emergency response plan. In reviewing plans, the AHPRC evaluates their consistency with each other and with SARA Title III (Section 303(c)), AS 26.23.075, AS 26.23.077, AS 46.04.200, AS 46.04.210, the National Response Framework, National Infrastructure Protection Plan, National Incident Management System, and other criteria as may be adopted by the AHPRC.

The AHPRC develops the emergency operation plan review process for the SERC. Where appropriate, the AHPRC recommends changes to the state Emergency Operations Plan to improve the state's ability to prevent and minimize injury and damage from natural or manmade disasters. The AHPRC also reviews the results of exercises and response operations, assesses the adequacy of emergency resources as well as emergency plans, and addresses other emergency operations planning issues, as requested by the SERC co-chairs.

*c. SERC Training Committee*

The SERC Training Committee consists of individuals who have expertise in training for emergency planning and/or responders. This would leave it more open-ended.

Composition. To the extent practicable, the SERC Training Committee consists of individuals who have expertise in training for emergency planning and/or responders. Its minimum composition includes three local government representatives and two LEPC representatives. Additional members may be added by the committee members as they deem beneficial to the conduct to their business.

Mission. The SERC Training Committee (1) identifies training needs, based on established standards and SERC policy, for all emergency response organizations listed in the emergency response plans; (2) evaluates established training standards and policies for consistency with best emergency response practices; (3) in cooperation with the All-Hazards Planning Committee of the SERC, evaluates whether the responders have the training plan, personnel, equipment, and other resources necessary to carry out the planned response; (4) identifies training needs for LEPC members (as planners, not as responders); (5) develops policies and recommendations for the SERC regarding development, funding, and implementation of training programs for emergency response; (6) oversees implementation of SERC policies regarding all-hazards training curricula, programs, instructors and students; and (7) carries out other duties as are assigned by the DMVA co-chair.

The committee researches and develops policies based on an analysis of: potential hazards, federal, state and local laws and regulations, national association and industry standards applicable to Alaska for appropriate numbers of emergency responders, basic equipment for emergency responders, levels of training for emergency responders considering availability of other assistance, difficulties of maintaining level of response/education, and other appropriate factors. It consults with and supports all groups involved in or needing such training.

*d. Urban Search and Rescue (USAR) Committee*

Composition. At a minimum, the Urban Search and Rescue (USAR) Committee shall consist of representatives from the Anchorage Fire Department, the Municipality of Anchorage, the State Division of Homeland Security and Emergency Management

(DHS&EM), the State Department of Natural Resources (DNR), the State Department of Public Safety, the AK State Fire Chiefs Association, the Alaska National Guard, the U.S. Army Corps of Engineers, the U.S. Department of Defense, the U.S. Department of the Interior, the U.S. Coast Guard – District 17 and the Federal Emergency Management Agency (FEMA). DHS&EM will arrange for necessary staff support. Each department or agency must provide funding support from its operating budget for its Committee representative.

*Mission.* The Committee meets at the direction of its chairperson to: (1) identify existing USAR capabilities and deficiencies within Alaska, (2) take short-term steps using existing resources to increase USAR preparedness in Alaska, and (3) make recommendations to the SERC for long-term steps, which may require additional resources, that would further enhance the State's USAR capabilities.

*e. SERC Work Plan Committee*

*Composition.* The SERC Work Plan Committee consists of one SERC member or designee, the SERC Coordinator, one LEPC Representative and one state agency representative.

*Mission.* The SERC Work Plan Committee develops a SERC work plan every two years. The work plan describes the committees, and identifies the various SERC tasks along with their proponents.

*f. SERC Interoperable Communications Committee*

*Composition.* The Interoperable Communications Committee is representative of the diverse public safety agencies and groups throughout Alaska. It consists of one representative each from the Department of Military and Veterans Affairs, Department of Public Safety, Department of Administration, Department of Natural Resources, Department of Environmental Conservation, and Department of Health and Social Services. Statewide public safety representation consists of one representative from the Alaska Association of Chiefs of Police, Alaska Fire Chiefs Association, the Alaska Council on Emergency Medical Services, the Alaska Land Mobile Radio Users Council, Anchorage Wide Area Radio Network, and the Amateur Radio Emergency Services. There are two representatives from the Local Emergency Planning Committee (LEPC) Association representing both Urban and Rural areas.

*Mission.* *To provide a statewide sustainable interoperable communications strategy in Alaska that is innovative, inclusive, scalable and well managed to support community and multijurisdictional response(s) to all-hazard and terrorist related incidents. This will be accomplished by overseeing the implementation of the Alaska Statewide Communications Interoperability Plan (SCIP) that promotes national standards and*

*addresses the unique urban and rural requirements of the public safety organizations serving the citizens of Alaska.*

g. *SERC Citizen Corps*

Composition. At a minimum, the Alaska Citizen Corps Committee consists of one representative each from the funded Citizen Corps Councils and one member for the State Division of Homeland Security and Emergency Management (DHS&EM).

Mission. The mission of the Citizen Corps Committee is to promote volunteer involvement and public education regarding disaster preparedness through Citizen Corps Programs within the state. The committee provides information to the SERC on programmatic issues. The SERC Citizen Corps Committee meets at least twice a year, in conjunction with or prior to regular SERC meetings, and as determined necessary by the chairperson. The chairperson position rotates on a yearly basis among the funded Citizen Corps Councils.

2. *SERC Meetings*

*Open Meetings Act Applies.* The SERC must conduct meetings in accordance with the Open Meetings Act (AS 44.62.310, including statutory provisions on teleconferencing and for executive sessions) and the bylaws (including provisions on quorums, agenda, rules of order, public participation, and voting). As provided in the bylaws, the SERC meets at least two times per year for regularly scheduled meetings, and it may schedule additional regular meetings as necessary to conduct its business.

*Notice.* Notice of meetings must be given to SERC members in accordance with the bylaws and given to the public in accordance with the Open Meetings Act. SERC staff must ensure that these notice requirements are met, and consistent with the bylaws provide written notice of each meeting to SERC members, including meeting packets, at least two weeks prior before each meeting.

*Teleconferenced Meetings and E-mail Action.* Meetings may be held by teleconference, provided notice is given in accordance with the Open Meetings Act (see AS 44.62.310(a)). The SERC should not take action by e-mail action, since such action may violate the Open Meetings Act and may be void.

*Appointment of Designee by SERC Member.* Permanent designees are appointed by a signed letter from the primary SERC member identified in AS 26.23.071. The letter is sent to the SERC coordinator at the Division of Emergency Services. Temporary designees are appointed by letter, fax, or email from the primary SERC member or his permanent designee.

*Executive Sessions.* Executive sessions at which the public is excluded may be held only if the standards in AS 44.62.310(b) and (c) are met. Basically, executive sessions

may be held only to consider matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity; subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion; matters which by law, municipal charter, or ordinance are required to be confidential; or matters involving consideration of government records that by law are not subject to public disclosure.

Order of Business. The order of business for a regularly scheduled meeting shall be:

- I. Call to Order by the DMVA Co-chair
- II. Welcome and Introductions
- III. Approval of Previous Meeting's Minutes
- IV. Public Comment
- V. Consent Agenda
- VI. State Agency Reports
- VII. LEPC Association Status Reports
- VIII. LEPC Status Reports – Reports by exception only
- IX. Old Business
- X. New Business
- XI. Ex-Officio Reports
- XII. Informational Items
- XIII. Public Comment
- XIV. Commission Member Closing Comments
- XV. Future Meetings
- XVI. Adjournment

Special Meetings. Special meetings and public comment meetings shall be scheduled, noticed, and conducted in accordance with the SERC bylaws and the Open Meetings Act (AS 44.62.310). The specific purpose for the meeting must be specified in the meeting notice and no other business may come before the SERC other than that for

which the special meeting or public comment meeting is called. The order of business for a special meeting or a public comment meeting is as follows:

- I. Call to Order by the DMVA Co-chair
- II. Welcome and Introductions
- III. Public Comment
- IV. Approval of the Agenda
- V. Special Meeting/Public Comment Item(s)
- VI. Commission Member Comments
- VII. Public Comment
- VIII. Adjournment

## **C. SERC DESIGNATION OF LOCAL EMERGENCY PLANNING DISTRICTS**

### *1. Responsibilities and Standards for Designating LEPDs*

The SERC has the statutory duty to designate, and revise as necessary, the boundaries of local emergency planning districts. AS 26.23.071(e)(3).

The SERC is to set the boundaries of an LEPD so that they are “coextensive with the boundaries of a single political subdivision, except when it would be more appropriate, based on findings of the commission, for the [LEPD] to include more than one political subdivision or some area that is not contained within a political subdivision.” AS 26.23.073(a). SERC policy is that LEPD boundaries shall be coextensive with the boundaries of a borough, regional educational attendance area (REAA), or inter-jurisdictional disaster planning and service area, unless the SERC finds that other boundaries are more appropriate. The basis for such findings must be reflected in the minutes, and must include findings relating to the ability of the LEPD to meet the requirements of federal and state law. The SERC may extend the LEPD boundaries to include communities in adjacent areas, if those communities and the borough favor the extension and the SERC finds that such extension is appropriate.

The SERC applies the following factors in designating new or revised boundaries of a local emergency planning district:

- a. How the designation will result in a logical capability for preparing for and responding to releases of oil and hazardous materials and other

natural or man-made hazards such as earthquakes, floods, fires, or tsunamis;

- b. The impact on adjacent areas not included in the LEPD;
- c. How the new LEPD boundary will be supported by affected communities;
- d. The ability of the LEPD to establish an LEPC and to meet the requirements of 42 U.S.C. 11001 et seq. and AS 26.23
- e. Such other criteria as the SERC determines are appropriate.

2. *Procedures for Forming a New LEPD or for Altering LEPD Boundaries.*

a. *Petition*

Persons (including political subdivisions) interested in forming a new LEPD or altering the boundaries of an existing LEPD must petition the SERC for approval.

The petition is addressed to the SERC DMVA Co-chair and must include: (1) a map showing the proposed LEPD boundaries and any existing LEPD boundaries affected by the proposal; (2) any letters of support or opposition from political subdivisions, LEPCs, and emergency response organizations in the proposed LEPD; and (3) a discussion of how the proposal will meet the requirements of federal law (42 U.S.C. 11001 et seq.) and state law (AS 26.23.073 et seq.).

b. *SERC Staff Review; AHPRC review and recommendation*

Upon receipt of a petition, SERC staff must review it for completeness. If additional information is required, staff must promptly notify the petitioner. When staff finds that the petition is complete, it provides the petition to the SERC All Hazards Plan Review Committee (AHPRC) for that committee's recommendation to the SERC.

The AHPRC makes its recommendation to the SERC based on (1) its evaluation of how the proposed LEPD will facilitate preparation for and response to oil and hazardous materials releases and other hazards; (2) the impact of the proposal on adjacent areas; (3) community support; and (4) the ability of an LEPC for the proposed LEPD to meet the requirements of 42 U.S.C. 11001 et seq. and AS 26.23. The AHPRC provides its recommendation to SERC staff who provides it to the SERC.

State law requires the SERC to recommend to the governor the designation of an inter-jurisdictional disaster planning and service area whose boundaries are coextensive with the boundaries of the LEPD, if it sets boundaries for an LEPD that includes more than one political subdivision and if the criteria of AS 26.23.070 are met. AS 26.23.073(b).

Therefore, whenever the petition seeks to establish boundaries for an LEPD that include more than one political subdivision, the AHPRC and the SERC shall consider whether to recommend the designation of an inter-jurisdictional disaster planning and service area.

*c. Notice to affected LEPCs, emergency responders, and political subdivisions*

When the petition is complete and the AHPRC has made its recommendation, SERC staff must give reasonable notice to any affected LEPCs, emergency response organizations, and political subdivisions. Unless staff or the SERC determines that other notice is more reasonable under particular circumstances, “reasonable notice” means written notice faxed or mailed to the principal executive or operating officer of each of the affected political subdivisions and emergency response organizations, and to each member of the LEPC involved, at least thirty days before the SERC meeting at which the petition will be discussed.

The notice must include a brief description of the proposal, the date on which the SERC will consider the petition and take public comment, the location of the meeting, and an invitation to interested parties to attend the hearing and comment or to provide written comments prior to the hearing. Staff also should provide notice to the general public, which may be through radio and newspaper announcements or advertisements, posting of notices in the communities affected, and posting on-line notice on the State of Alaska website.

*d. SERC hearing and notification of decision*

The SERC must consider a petition for a new or altered LEPD and the AHPRC's recommendation on the petition at a noticed public meeting at which interested persons are given an opportunity to comment.

When the SERC has made its decision on a petition, SERC staff informs the petitioner, all affected municipalities, and all parties that have submitted comments or otherwise shown interest, of its decision. If the SERC approves a petition for a new LEPD, it will request nominations and applications for LEPC positions and provide reasonable notice in the affected area of LEPC openings. If it approves a petition for an altered LEPD, it will advise the existing LEPC and the principal executive officer within the LEPD of the need for incorporating the new area into the emergency plan. If the SERC disapproves the petition, it will inform the petitioner in writing of the reason for the decision.

*3. Procedures to Join an Existing LEPD*

A community wishing to join an existing LEPD must submit a written request to the LEPC serving that LEPD. If the LEPD boundaries are coextensive with a municipality's boundaries, SERC the LEPC must convey the request to the principal executive officer of the municipality, otherwise it must convey the request to the principal executive

officer of each municipality in the LEPD. The principal executive officer of the community wishing to join may then petition the SERC using the process described in this policy. The SERC will provide notice, hearing, and notification of its decision on the petition in the same manner as discussed above for formation of a new LEPC.

#### *4. LEPD Boundary Changes*

A person or entity interested in changing the boundaries of existing LEPDs may petition for a change following the petition process outlined above.

Where an LEPD boundary is coextensive with a borough boundary and the borough boundary is altered, the LEPD boundary is automatically amended to be coextensive with the new borough boundary. This does not require SERC approval. The borough must notify the SERC and provide the SERC with a copy of the Local Boundary Commission's approval of the boundary change. The Commissioner of the Department of Community and Economic Development may notify SERC staff for presentation at the next SERC meeting. SERC staff must notify the principal executive officers of the affected municipalities, affected local emergency response organizations, and the LEPC of the LEPD boundary change. The LEPC notifies affected facilities added to the boundaries of the LEPD.

#### *5. Official Map of LEPDs*

The LEPDs established by the SERC are shown on the map, Appendix 2, titled "LEPD Map." DMVA, in conjunction with DCED, is responsible for keeping this map current.

#### *6. Balance-of-State LEPD*

Alaska law requires all areas outside of organized LEPDs to be organized under one Balance-of-State LEPD. AS 26.23.073(b). The Alaska Division of Homeland Security and Emergency Management will represent the interests of the citizens in the Balance-of-State LEPD.

### **D. SERC APPOINTMENT OF LEPC MEMBERS**

#### *1. Statutory Responsibility to Appoint LEPC Members*

Federal and state law require the State Emergency Response Commission to appoint all members of Local Emergency Planning Committees, including members representing the Local Emergency Planning Districts designated by the SERC and the Balance-of-State LEPD. 42 U.S.C. 11001(c); AS 26.23.073(d).

#### *2. Statutory Requirements for LEPC Composition*

State law requires that each Local Emergency Planning Committees must include, at a minimum, a representative from each of the following categories: (1) elected local officials; (2) law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital, and transportation personnel; (3) broadcast or print media; (4) community groups; (5) owners and operators of facilities subject to the federal Community Right-to-Know Act; (6) representatives of a local or inter-jurisdictional disaster planning and service area (if applicable); and (7) members of the public that are not described in (1)-(6) above. See AS 26.23.073(d) and 42 U.S.C. 11001(c). The SERC has adopted definitions of these categories as part of this Policies and Procedures Manual, which are included under VI. Definitions. As a matter of policy, the SERC considers it desirable that representation be sought from all 14 groups listed.

### *3. Procedures for Appointing LEPC Members*

#### *a. Notice of vacant LEPC positions*

When there are one or more vacancies on an LEPC, notice must be given to the public and to the political subdivisions in the LEPC of the vacancies, the qualifications required of applicants, and the application process. Where an LEPC already exists, the LEPC is responsible for giving the notice. SERC staff will give notice of vacancies for newly-established LEPCs, and will work with existing LEPCs to ensure that the notice given is reasonable and adequate. Public notice may be in the form of newspaper advertisements, public service announcements on radio or television, and/or posted notices in communities where no local news media exist. Notice to political subdivisions must include notice that the SERC will consider the recommendations of the political subdivisions in making appointments.

#### *b. Applications and political subdivision recommendations*

Applicants submit their applications to their LEPC. The LEPC forwards the application to the political subdivision/s principle executive officers' for a written recommendation. The application and the executive officers' recommendation are then forwarded to the DHS&EM SERC coordinator, who will include them in the consent agenda of the next SERC meeting.

#### *c. SERC review and appointment of LEPC Members*

The SERC will review applications and recommendations and attempt to fill LEPC vacancies within 90 days of a vacancy. The SERC must act on recommendations and appointments at a meeting conducted in accordance with the Open Meetings Act, the bylaws, and the policies and procedures. Procedures for teleconferenced meetings and for appointments by consent agenda may be used.

State law requires that if the LEPC contains only one political subdivision, the SERC must follow the recommendations of the political subdivision in making appointments if

the resulting LEPC would meet the requirements of AS 26.23.073(d). If the LEPC contains more than one political subdivision, the SERC shall consider the recommendation of each political subdivision and follow them to the extent they are in agreement and would result in an LEPC that meets the requirements of AS 26.23.073(d). If a political subdivision does not recommend a replacement to the SERC within a reasonable time, the SERC may make further inquiry as to political subdivision recommendations or it may make the appointment without further inquiry.

With the exception of the public category, LEPC positions should be filled by individuals who have experience or who are actively employed or volunteering in the categories referenced in AS 26.23.073(d). If an LEPC can demonstrate that no one who is currently active in a particular category is available or interested, then an individual who has past experience or knowledge in that category may be appointed. The SERC shall attempt to achieve equitable geographic representation on each LEPC.

The SERC may deny an application for appointment recommended by a political subdivision if the applicant's appointment does not meet the criteria of AS 26.23.073(d), if proper notice was not given, or if the SERC finds there is other good cause for denying the recommended appointment.

*d. Notification of LEPC appointments*

SERC staff will notify applicants of their appointment by mail with copies to the applicant's LEPC and the political subdivision which submitted the applicant's name. If the SERC denies an application for appointment to an LEPC, it must state its reasons for the denial in writing to the political subdivision with copies to the applicant and the LEPC. SERC staff will attempt to give notification within twenty-one working days of the appointment or denial.

*e. Inability to fill vacancy*

If an LEPC has advertised a committee category opening for three consecutive months with no qualified applicant for that category, the LEPC may continue to solicit names for appointment or it may notify the SERC that it has no one to recommend for the category. If the LEPC has followed this advertising procedure and finds no one to recommend for the category, and the SERC through its own initiative finds no one to fill the vacancy, the SERC will not appoint anyone for that category. However, the SERC periodically must review the membership of each LEPC and must ensure that reasonable efforts are made to fill vacancies in representation consistent with the requirements of AS 26.23.073(d) and (e).

*4. Alternate LEPC members*

LEPCs may provide rules for the designation of alternate members who may attend and vote in place of the primary members.

### 5. *Terms of LEPC Members*

LEPCs must adopt bylaws establishing the terms of LEPC members and providing for the notification of the SERC where members no longer meet the membership requirements under AS 26.23.073.

### 6. *Petitions to SERC to Change LEPC Membership*

Under AS 26.23.073(f) and 42 U.S.C. 11001(d), any interested person may request the SERC to change the membership of an LEPC. The SERC must consider the recommendations of political subdivisions under AS 26.23.070(d), follow the requirements for representation of categories of groups in AS 26.23.073(d)(1)-(7), and will comply with the requirements of this manual for notification of its decision for LEPC appointments contained in these policies. The SERC will, within 30 days after the meeting at which the request is considered, issue its decision in writing to the petitioning individual, the affected LEPC, the affected LEPCs principal executive officers.

### 7. *Expansion or Contraction of LEPCs*

An LEPC may recommend to the SERC that its LEPC be expanded, or, contracted. An LEPC that recommends such a change shall first forward the recommendation to the principal executive officer of each municipality in the LEPC for its recommendation, and then submit its recommendation and the principal executive officers' recommendations to the SERC. The SERC will determine whether to make such a change in accordance with applicable statutes and this manual.

### 8. *Dissolution or Disestablishment of LEPCs*

An LEPC may be dissolved if the LEPC membership and the political subdivision/s executive officer/s agree to dissolve the LEPC. The LEPC chair and the political subdivision's executive officer's must each submit a letter to the SERC identifying the effective date of dissolution and the reason for the action.

## **E. SERC REVIEW OF EMERGENCY PLANS**

### 1. *Statutory Requirements for Plan Review and Recommendations*

The emergency planning duties of the SERC are specified in the Alaska statutes, at AS 26.23.071(e) and AS 26.23.077.

AS 26.23.077(a) requires the SERC to "review and make recommendations about local, inter-jurisdictional, regional, and state emergency plans, including plans prepared under

[AS 26.23] and AS 46.04.200-AS 46.04.210 and all emergency plans prepared by state agencies under other authorities.” These include:

- a. State Emergency Operations Plan and emergency plans by other state agencies
- b. Local Emergency Response Plans prepared by LEPCs or political subdivisions
- c. Federal/State Sub-area Regional Contingency Plans (Volume II) (AS 46.04.210)
- d. Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases (a/k/a State Master Plan, or Unified Plan-Volume I) (AS 46.04.200)
- e. Inter-jurisdictional and regional emergency plans.

AS 26.23.077(b) and (c) require the SERC, when making recommendations about a plan, to suggest changes that ensure that the plan includes an incident command system, the roles of state agencies are consistent with their statutory duties, the plans are well-integrated with related plans, and that provide a major role for DMVA in a state response to a disaster or other emergency.

The SERC has all-hazards planning and plan review responsibilities as stated in AS 26.23.071(e)(2), (3), and (9). In addition, it is required to review reports of responses to disaster emergencies and make recommendations for improvement, and to perform other coordinating, advisory, or planning tasks related to emergency planning and preparedness for all types of hazards. AS 26.23.071(e)(8).

## *2. SERC Emergency Plan Review Process*

Upon receiving a plan requiring SERC review, SERC staff copies it and forwards it to each AHPRC member for review and preliminary recommendations. The AHPRC may request that specific sections of the plan be distributed separately to committee members. SERC staff sends a letter to the LEPC acknowledging receipt of the plan, copying the letter to each SERC member.

The AHPRC must review the plan to make sure it meets minimum state and federal requirements and to make any recommendations, applying the criteria in AS 26.23.077 and also considering (a) hazards analysis; (b) authorities involved in the plan; (c) organizational structure of the entity preparing the plan and of the responders named in the plan (Incident Command System); (d) coordination of communications; (e) resources available or recommended to carry out the plan; and (f) how the plan relates to other plans, including the State Emergency Operations Plan, other plans within the same agency, other state agency plans, federal plans, local plans, LEPC plans, and industry plans.

The AHPRC should forward its recommendations to SERC staff within 60 days of receipt of the plan for SERC review at its next regularly scheduled meeting. SERC staff sends a copy of the recommendations to each member of the LEPC and includes it in each SERC member's meeting packet.

The SERC should act on the AHPRC's recommendation at the next regularly scheduled SERC meeting. A representative of the LEPC should be available in person or by teleconference to answer questions from the SERC. The SERC may adopt, modify, add to, or reject the AHPRC's recommendations as it determines is appropriate, considering the criteria in AS 26.23.077 and the factors stated herein. When the SERC has taken action, the AHPRC staff will send a letter to the LEPC describing the recommendations. The SERC may request that some or all of a plan be resubmitted to the committee. Reasons for doing so may include inadequacy of the plan or response in an event; changes to federal or state law; a request by the LEPC or political subdivision for changes to the plan; or failure of the plan to meet state or federal standards.

## **F. LEPC GRANTS AND GRANT ADMINISTRATION**

### *1. Development and Adoption of Funding Criteria*

The SERC Finance Committee develops and manages the process through which LEPCs may request annual grants for use by their LEPC. The SERC Finance Committee approves funding allocations to the LEPC based on adopted standards. LEPCs are eligible to apply for two types of annual grants: Baseline Grant and Special Projects Grant. The process will also include a prioritization of LEPC tasks.

The primary source of funding for this grant program is the Oil and Hazardous Substance Release Prevention and Response Fund. There may also be a state government increment to this grant, but; this is dependent on annual action by the legislature. The Finance Committee will annually review and approve LEPC grant applications based on standards previously approved by the SERC.

- a. *Baseline Grants* - The purpose of "Baseline" funding is to support the core activities of the LEPCs, thus providing stability to the LEPCs. Required baseline goals include:
  - Establish an LEPC and maintain membership
  - Establish and maintain bylaws to include:
    - Provisions for public notification of committee activities
    - Public meetings to discuss emergency plan
    - Receive public comments and response to such comments
    - Distribution of the emergency plan
  - Establish procedures for receiving and processing requests from the public for MSDS and Tier II information

- Review the emergency plan annually
- Evaluate the need for training and resources to develop, implement, and exercise the emergency plan
- Make recommendations to the Division of Homeland Security and Emergency Management (DHS&EM) and the SERC regarding the emergency plan execution
- Act as an advisory committee to the political subdivision within the LEPD
- Send an LEPC member to attend LEPC Association and SERC meetings
- Submit quarterly grant reports to DHS&EM in accordance with the grant award document
- Maintain a current list of all facilities within the LEPD required to complete Tier II reports

*b. Special Project Grants*

Available funds for LEPC grants that are in excess of the amount required for baseline grants may be used for special project grants. Special project grants may be requested annually in the LEPC grant application. Special project grants are awarded on a competitive basis between LEPCs. The SERC Finance Committee will review annual LEPC grant applications. The committee will consolidate, prioritize, and approve special project funding requests.

*2. Grant Administration*

Using funds from the Oil and Hazardous Substance Release Prevention and Response Fund, the Department of Environmental Conservation will annually provide a reimbursable services agreement to the Division of Emergency Services that is used for LEPC grants.

The Division of Homeland Security and Emergency Management (DHS&EM) will coordinate the approval of LEPC grant application forms with the SERC Finance Committee. DHS&EM will then distribute, collect, and consolidate these grant applications for review by the SERC Finance Committee.

**G. MISCELLANEOUS SERC POLICIES AND PROCEDURES**

*1. Receiving and Processing Community Right-to-Know Requests*

In accordance with 42 U.S.C. 11001(a) the SERC designates the Commissioner of the Department of Environmental Conservation to receive and process requests from the public for any Community Right-to-Know information which is reportable to the SERC, including Tier II information.

## *2. Emergency Reporting*

All agencies represented on the SERC will provide reports of emergencies to which they have responded, including fires, earthquakes, floods, tsunamis, volcanic activity and other natural or manmade hazards necessitating state intervention. Since under other statutes, a release of a hazardous substance must also be reported to the Department of Environmental Conservation, a report to DEC of such a release constitutes a report to the SERC.

## *3. SERC's Duty to Cooperate with Other Entities*

The SERC shall cooperate with citizens' groups, industry, political subdivisions, other state and federal agencies, research facilities and councils, and oil and hazardous substance response cooperatives for the purpose of enhanced, coordinated, efficient planning and preparedness for all hazards which might endanger the people, property or environment in the State of Alaska.

## *4. Compliance with Alaska Ethics Act*

SERC members are required to comply with the Alaska Ethics Act. Appendix C includes a summary of Ethics Information for Members of Boards and Commissions. If a SERC member has questions about the act, he may contact the DMVA attorney for additional information. Appendix 1 provides ethics information for members of boards and commissions.

# **II. Local Emergency Planning Committee Responsibilities**

## **A. OVERVIEW OF LEPCs**

### *1. Statutory Responsibilities*

LEPCs have statutory responsibilities established by federal law (42 U.S.C. 11001-11005) and state law (AS 26.23.073(g)). Essentially, they must: (1) establish procedures for receiving and processing requests for information under the Community-Right-to-Know Act; (2) appoint a chair and establish rules for functioning; (3) prepare and annually review an emergency plan in accordance with 11 U.S.C. 11003 (dealing with hazardous substances); (4) evaluate resources needed to develop, implement, and exercise the emergency plan, and submitting recommendations to political subdivisions in the LEPD regarding resource needs; (5) making recommendations to other agencies and entities about the preparation of local, state, and inter-jurisdictional plans; and (6) serving as an advisory committee to the political subdivisions or the inter-jurisdictional planning and service area.

## *2. LEPC Powers and Functions*

Local Emergency Planning Committees are planning entities and generally cannot commit manpower or resources. (An Attorney General's opinion concluded that LEPCs are state agencies; however, they are not authorized to hire employees as state employees.) Local governments, which can commit manpower and resources, should work with their LEPC, which can apply its members' expertise, to help their communities be prepared for, mitigate, and respond to disasters and emergencies. LEPCs help involve citizens in the discussion about what an appropriate emergency response is for each community, where public funds are spent, and whether and how much of those funds should go for additional responder training, training local government officials, or purchasing response equipment.

## *3. Assistance from Other Agencies*

Alaska law requires that state agencies represented on the commission, upon request, provide technical assistance to an LEPC in the performance of its duties. AS 26.23.073(h). Alaska law also requires the SERC to supervise and coordinate the activities of LEPCs. AS 26.23.071(e)(6). It is the intent of the SERC that the Department of Military and Veterans' Affairs coordinate the technical assistance which may be requested by LEPCs, as well as political subdivisions and federal representatives, in complying with 42 U.S.C. 11001 et seq. and AS 26.23.

## *4. Coordination and Cooperation With Political Subdivisions in LEPC*

Alaska law also requires each LEPC to prepare and periodically review its emergency plan in coordination with political subdivisions covered by the plan; to submit recommendations to the political subdivisions concerning the plan and resources needed to develop, implement, and exercise the plan; and to serve as an advisory committee to the political subdivisions in the LEPC. AS 26.23.073(g)(3), (4), (6) and (7). Each Local Emergency Planning Committee, through its Chair, must enter into a cooperative relationship with the political subdivisions in the LEPC with the LEPC serves. By cooperative relationship, the SERC intends that planning efforts are not duplicated between the LEPC and the political subdivision, that emergency preparedness and response are enhanced by cooperative planning efforts, that the Political Subdivision administer any grant amounts for the LEPC, and that the LEPC advertise vacancies on the LEPC with the Political Subdivision(s) making recommendations from those who respond to the advertisements.

## **B. PERFORMANCE OF LEPC DUTIES**

### *1. Maintain Necessary Representation on Committee*

An LEPC should work with each political subdivision in the LEPD to maintain committee representation and membership that satisfies statutory requirements (at AS 26.23.073(d) and 42 U.S.C. 11001(c), discussed above) and that maximizes the expertise on the LEPC. The LEPC is responsible for advertising openings on the LEPC and submitting names of candidates for membership to the appropriate principal executive officer(s) within the LEPD for recommendation to the SERC

## *2. Adopt LEPC Rules of Operation*

Each LEPC is required by law (AS 26.23.073(g)(2) and 42 U.S.C. 11001(c)) to appoint a chair and establish rules by which the committee shall function, including provisions for public notification of committee activities, public advertising of positions available on the committee, public meetings to discuss the emergency plan, public comments, response to the comments by the committee, distribution of the emergency plan, and designation of an official to serve as coordinator for information. In establishing their rules of operation, each LEPC should consider how it will perform its required duties listed in AS 26.23.073(g). To assist an LEPC, upon request SERC staff will provide example bylaws and/or rules of operation adopted by other LEPCs and assistance in adopting appropriate rules of operation

## *3. Establish Procedures for Handling Community Right-to-Know Information Requests.*

Each LEPC is required by law (AS 23.23.073(g)(1) and 42 U.S.C. 11001(c)) to establish procedures for receiving and processing requests from the public for information under the Community Right-to-Know Act (42 U.S.C. 11044, which deals with extremely hazardous substances), including (a) Emergency Planning Notification, (b) Emergency Release Notification and Follow up Emergency Notice, (c) Material Safety Data Sheets, (d) Emergency and Hazardous Chemical Inventory Forms including Tier II forms, and (e) Toxic Chemical Release Forms.

## *4. Annually Publish Notice of Public Availability of CRTK Data*

Each LEPC is required by law (42 U.S.C. 11044) to publish an annual notice in local newspapers that the emergency response plan, material safety data sheets and emergency and hazardous chemical inventory forms are available for public review. The notice must say that follow up emergency notices may later be issued. LEPCs may designate the times and place when the public may view the documents.

## *5. Emergency Plan Preparation and Annual Review*

Each LEPC is required by federal and state law (42 U.S.C. 11003 and AS 26.23.073(g)(3)) to prepare an emergency plan that meets the requirements of federal law for Extremely Hazardous Substance release planning (at 42 U.S.C. 11003(c)). A list of Extremely Hazardous Substances (EHS) and their threshold planning quantities (TPQ)

is found at 40 CFR 355. The operator of each facility that has an extremely hazardous substance present at the TPQ level is to notify the SERC. Each facility with EHS present above the threshold planning quantity also is required to designate a representative, a “facility emergency coordinator,” to participate in developing the LEPCs emergency response plan.

The LEPC is required to prepare the emergency plan in coordination with local political subdivisions. It is required by federal law to review the plan once a year or more frequently as changed circumstances in a community or at a facility may require. An LEPC may also, but is not required by law to, plan for response to other hazardous substances and response to other disasters and emergencies (all hazards planning) within the LEPC.

#### *6. Emergency Plan Minimum Requirements*

The minimum requirements for the plan are summarized as follows. However, LEPCs must be sure to review the federal and state statutes (especially 42 U.S.C. 11003(c) and AS 26.23.075) for the specific current requirements rather than relying on this summary. The plan must:

- Identify facilities that have extremely hazardous substances (as listed by EPA) present, facilities contributing to or subject to additional risk due to their proximity to these facilities (such as hospitals or natural gas facilities), and routes likely to be used for the transportation of extremely substances.
- Describe methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of an extremely hazardous substance.
- Designate an emergency coordinator and facility emergency coordinators who make determinations necessary to implement the plan.
- Describe procedures for reliable, effective, timely notification by facility emergency coordinators and the community emergency coordinator to persons designated in the plan, and to the public that a release has occurred, consistent with the notice requirements of 42 U.S.C. 11004 which depend in part on the substance released.
- Describe methods for determining the occurrence of a release and the area or population likely to be affected by such a release.
- Describe emergency equipment and facilities in the LEPC and at each applicable facility in the LEPC and identify the persons responsible for the equipment or facilities.

- Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.
- Describe training programs, including schedules for training of local emergency response and medical personnel.
- Describe methods and schedules for exercising the emergency plan.

Local Emergency Response Plans will include notification procedures to be followed by facility Emergency Coordinators in notifying the Community Emergency Coordinator. Further, Alaska law requires that each plan incorporate an incident command system.

### *7. All-Hazards Emergency Planning*

The LEPC should consider planning for all realistic hazardous situations in the LEPC. To accomplish this task, the LEPC works cooperatively with the political subdivisions in the LEPC. The decision for an LEPC to plan for all hazards must be made with cooperation and support of the local political subdivisions. Many procedures for warning, evacuation, communications, etc., are similar to procedures used for a hazardous substance plan.

### *8. Guidelines for Plan Development*

LEPCs work with businesses, emergency responders, political subdivisions and other community members in developing local emergency response plans. Other than those specifically exempt by federal law, federal law requires each facility that has extremely hazardous substances present in an amount in excess of the threshold planning quantity to designate a facility emergency coordinator to participate in local planning and to provide any information needed by the LEPC for developing and implementing the plan. AS 26.23.073 requires LEPCs to prepare emergency response plans in cooperation with the political subdivisions covered by the plan. The LEPC and political subdivision should decide whether the LEPC plan will encompass only oil and hazardous substances or will encompass all possible hazards to the LEPC. State agencies represented on the SERC are available to give technical assistance to LEPCs in performing their duties (AS 26.23.073 (h)). In developing their plans, LEPCs should be aware that the final product will be reviewed for consistency with the state emergency operations plan, other local emergency plans, the federal/state sub-area regional contingency plans, the federal/state preparedness plan for response to oil and hazardous substance discharges/releases, and inter-jurisdictional, regional and emergency plans prepared by state and federal agencies and by industry. LEPCs should use the following reference documents in developing their plans:

- Local ordinances
- 42 U.S.C. 11001 et seq.
- FEMA Guide for the Development of State and Local Emergency Operations plans 108 (CPG 1-8)

- FEMA Guide for the Review of State and Local Emergency Operations Plans 1-8 (CPG 1-8)
- Hazardous Materials Emergency Planning Guide (NRT-1)
- Criteria for Review of Hazardous Materials Emergency Plans (NRT-1A)
- Alaska Disaster Act (AS 26.23)
- Alaska State Emergency Response Commission (AS 26.23)

At any time prior to submitting the plan for local approval, the LEPC and/or local government may submit the plan or portions of the plan to appropriate state agencies for technical review.

#### *9. Municipal Review and Approval of Plan*

Upon completing the plan, the LEPC will submit the plan for review and approval to the principal executive officer(s) of the political subdivision within the LEPC. The political subdivision will follow its own procedures for public review of the plan. Upon obtaining the proper signatures indicating approval, commitment to support and acceptance of the plan or other appropriate action, the principal executive officer(s) will forward the plan to the SERC for its review and recommendations and will notify the LEPC that it has forwarded the plan to the SERC. Each municipality will provide the LEPC with a copy of any comments it makes to the SERC regarding the plan, and will notify the LEPC if any questions or concerns prevent it from approving the plan. The LEPC will follow up with the municipalities to make sure they have acted on the plan.

#### *10. Evaluate and Make Recommendations on Resources Needed to Develop, Implement, and Exercise the Plan*

State law and federal law (42 U.S.C. 11003(b) and AS 26.23.073(g)(4)) require each LEPC to “evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and submit recommendations to the political subdivisions in the emergency planning district with respect to the resources that may be required and the means for providing the resources.”

#### *11. Make Recommendations to Municipal and State Agencies*

State law requires that each LEPC shall “to the extent considered advisable by the committee, make recommendations to political subdivisions, representatives of inter-jurisdictional disaster planning and service areas, and state agencies about the preparation of local, state, and inter-jurisdictional plans.” AS 26.23.073(g)(6).

#### *12. Serve as Advisory Committee to Political Subdivisions*

State law requires that each LEPC shall “serve as an advisory committee to the political subdivisions within the emergency planning district or the inter-jurisdictional planning

and service area established under AS 26.23.070 with respect to emergency planning, training, and response.” AS 26.23.073(g)(7).

## **C. MISCELLANEOUS LEPC POLICIES AND PROCEDURES**

### *1. Compliance with Alaska Ethics Act*

A 1994 Attorney General’s opinion states that the Alaska Executive Branch Ethics Act applies to LEPCs, and concludes that an LEPC member may not remain a member and enter into or participate in a contract that is awarded, executed, or administered by the LEPC. (AG File No. 663-95-0001 (Aug. 15, 1994)). This would include SERC grants requested or recommended by the LEPC, and also applies to a contract proposed to be awarded to the LEPC member’s employer or immediate family member. The LEPC member may not simply abstain from voting on the contract; he or she must first resign from the LEPC in order to participate in the contract. The opinion also notes that when an LEPC member resigns, there are restrictions on employment after leaving state service relating to potential conflicts of interest, under AS 39.52. A copy of the opinion is available on request. Appendix 1 provides ethics information for members of boards and commissions. LEPC members are considered members of a board.

### **III. Training Guidelines for Emergency Plans**

Local Emergency Planning Committee Emergency Plans normally address training for responders based on the level of response approved by the political subdivision and listed in the emergency response plan.

The SERC recognizes the need to offer guidance to LEPCs in recommending training courses to meet the local jurisdiction's emergency response needs (i.e., defensive or offensive). It is not the intent of the SERC to restrict any jurisdiction from exceeding these guidelines.

The SERC recognizes that it is unlikely that all areas of the state have the capability of recruiting, training and continuing hazardous materials education for emergency response personnel, specialists, technicians and other responders. LEPCs should plan according to the ability of the LEPC to support a response.

Training for LEPC members is available through the Division of Homeland Security & Emergency Management (DHS&EM), Training Coordinator.

## IV. Definitions and Acronyms

Note: Unless otherwise specified, the provided definition is SERC defined.

**All Hazards:** Any natural or man-made disaster which may threaten life, property or environment (including extreme weather conditions, fires, earthquakes, oil or hazardous substance spills, floods, tsunamis, wind-driven water, etc.).

**Applicable Facility:** A facility that is covered by 42 U.S.C. 11001-11005, which under 42 U.S.C. 11002(b) includes any facility that has a substance listed the EPA's Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) and Section 112(r) of the Clean Air Act present at the facility in excess of the threshold planning quantity established for the substance. And, or a facility that is covered by AS 29.35.500(c)

**Borough** (per AS 29.71.800): A general law or home rule borough or unified municipality.

**Broadcast/Print Media:** An LEPC representative category for local newspaper, radio or television.

**CERCLA:** Comprehensive Environmental Response, Compensation, and Liability Act

**Civil Defense/Emergency Manager:** A local person responsible for emergency preparedness and response.

**Community Emergency Coordinator:** Designated by LEPC under 42 U.S.C. 11003 and AS 26.23.060 to receive spill notification and to implement the emergency response plan. (Could be the Civil Defense/Regency Manager)

**Community Group:** An LEPC representative category for a locally based, structured organization comprised of members which meet regularly to discuss issues of community interest.

**CPG 1-8:** (per FEMA) Guide for development of state and local emergency operations plans.

**DEC:** State of Alaska Department of Environmental Conservation.

**DHS&EM:** State of Alaska, Division of Homeland Security and Emergency Management in the Department of Military and Veterans' Affairs.

**Disaster** (per AS 26.23.900): The occurrence or imminent threat of widespread or severe damage, injury, loss of life or property, or shortage of food, water, or fuel resulting from

(A) an incident such as storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, avalanche, snowstorm, prolonged extreme cold, drought, fire, flood, epidemic, explosion, or riot;

(B) the release of oil or a hazardous substance if the release requires prompt action to avert environmental danger or mitigate environmental damage; or

(C) equipment failure if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation;

**Disaster Emergency** (per AS 26.23.900): The condition declared by proclamation of the governor or declared by the principal executive officer of a Political subdivision to designate the imminence or occurrence of a disaster.

**DMVA:** State of Alaska Department of Military and Veterans' Affairs.

**Elected Local Official:** An LEPC representative category for a public official chosen by vote among candidates to fill a public office other than a state legislative office. Eligible elected local officials could include city council or assemble members, mayors, or members of school district boards, or coastal resource service area boards.

**Emergency** (per FEMA): Any natural or man-caused situation that results in or may result in substantial injury or harm to the population or substantial damage to or loss of property.

**Emergency Plans:** The state Emergency Operations Plan, all-hazards plans developed by Political subdivision, Local Emergency Planning Committee emergency response plans, business and industry plans and disaster response plans developed by state agencies.

**EPA:** U.S. Environmental Protection Agency

**EHS (Extremely Hazardous Substance)** (per 42 U.S.C 11002): Any substance contained within the list of substances published by the Administrator of the Environmental Protection Agency.

**Facility Emergency Coordinator** (per 42 U.S.C. 11004): Designated person in a facility who engages the facility's emergency response plan and provides notification to the Community Emergency Coordinator.

**FEMA:** Federal Emergency Management Agency

**Hazardous Substance** (per AS 46.03.826): (A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presentation imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found: (B) oil; or (C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

**Health:** An LEPC representative category for a local person responsible for or who participates in protecting and monitoring public health and/or reporting public health criteria.

**Hospital:** An LEPC representative category for a local person responsible for or who participates in the operation of a local hospital or health clinic.

**Incident Command System** (per FEMA): The combination of facilities, equipment, personnel, procedures and communications operating within a common organizational structure with responsibility for management of assigned resources to effectively accomplish stated objective at the scene of an incident.

**Law Enforcement:** An LEPC representative category for a local person who is a member of a local, state or federal law enforcement agency. This includes Village Public Safety Officers (as defined in AS 18.65.670) and Village Police Officers (as defined in 13 AAC 89.010).

**LEPC:** Local Emergency Planning Committee as defined in AS 26.23 and 42 U.S.C. 11001 (c).

**LEPD:** Local Emergency Planning District as defined in AS 26.23 and 42 U.S.C. 11001(b).

**Local Environmental:** An LEPC representative category for a local person representing a public interest group or groups associated with conservation or protecting the environment.

**Material Safety Data Sheets (MSDS):** Written or printed material concerning a hazardous chemical, including the manufacturer's name, the chemical's synonyms, trade name, chemical family, hazardous ingredients, physical data, fire and explosion hazard data, health hazard data, reactivity data, spill or leak procedures, special protection information, and special precaution (29 CFR 1900.1200(g)).

**National Response Team:** Regional teams made up of Federal agencies that protect our air, land, and water.

**NRT-1:** The Hazardous Materials Planning Guide developed by the National Response Team in compliance with 42 U.S.C. 11001-11050.

**NRT-1A:** Guide for the review of state and local emergency operations plans.  
Standard for assessing emergency plans

**Owners and Operator:** Any person under the employment of or in direct control of an applicable facility.

**Political Subdivision** (per AS 29.71.800): Incorporated under the laws of the state, a home rule or general law city, a home rule or general law borough, or a unified municipality.

**Principal Executive Officer:** Used herein to mean the mayor of a Political subdivision or another person designated to act on behalf of the Political subdivision.

**Public Member:** An LEPC representative category for a private citizen who is not representing any of the interests in any of the other categories present in an LEPC.

**SARA Title III:** Superfund Amendments and Reauthorization Act also known as Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986; and 42 U.S.C. 11001-11050.

**SERC:** State Emergency Response Commission as defined in AS 26.23 and 42 U.S.C. 11001.

**Transportation:** An LEPC representative category for a local person representing a transporter of oil or hazardous substances in or through the local area.

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# State of Alaska

## ETHICS INFORMATION FOR MEMBERS OF BOARDS AND COMMISSIONS

### (AS 39.52)

#### INTRODUCTION

This is an introduction to AS 39.52, the *Alaska Executive Branch Ethics Act*. This guide is not a substitute for reading the law and its regulations. State board and commission members who have further questions should contact their board chair or staff.

The Ethics Act applies to all current and former executive branch public employees and *members of statutorily created boards and commissions*.

#### SCOPE OF ETHICS ACT (AS 39.52.110)

Service on a state board or commission is a public trust. The Ethics Act prohibits substantial and material conflicts of interest. Further, board or commission members cannot improperly benefit financially or personally from their actions as board or commission members. The Act does not, however, discourage independent pursuits, and it recognizes that minor and inconsequential conflicts of interest are unavoidable.

#### MISUSE OF OFFICIAL POSITION (AS 39.52.120)

Members of boards or commissions may not use their positions for personal gain or to give an unwarranted benefit or treatment to any person. For example, board members may not:

- ◆ use their official positions to secure employment or contracts;

- ◆ accept compensation from anyone other than the State for performing official duties;
- ◆ use State time, equipment, property or facilities for their own personal or financial benefit or for partisan political purposes;
- ◆ take or withhold official action on a matter in which they have a personal or financial interest; or
- ◆ coerce subordinates for his/her personal or financial benefit.
- ◆ attempt to influence outcome of an administrative hearing by privately contacting the hearing officer.



Terry knew that a proposal that was before the board would harm Terry's business competitor. Instead of publicly disclosing the matter and requesting recusal, Terry voted on the proposal.



Board member Mick has board staff employee Bob type an article for him that Mick hopes to sell to an Alaskan magazine. Bob types the article on State time.

#### IMPROPER GIFTS (AS 39.52.130)

A board member may not solicit or accept gifts if it could reasonably be inferred that the gift is intended to influence the board member's action or judgment. "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and employment. All gifts from registered lobbyists are presumed to be improper, unless the giver is an immediate family member of the person receiving the gift.

A gift worth more than \$150 to a board member or the board member's family must be reported within 30 days if:

- ◆ the board member can take official action that can affect the giver, or
- ◆ the gift is given to the board member because he or she is on a state board.

The receipt of a gift worth less than \$150 may be prohibited if it could reasonably be inferred that the gift is intended to influence the board member's action or judgment. Receipt of such a gift should be disclosed.

Any gift received from another government, regardless of value, must be reported; the board member will be advised as to the disposition of this gift.

*A form for reporting gifts is available at [www.law.state.ak.u/sdoclibrary/ethics](http://www.law.state.ak.u/sdoclibrary/ethics) or from the board or commission staff.*

This restriction on gifts does not apply to lawful campaign contributions.

 The commission is reviewing Roy's proposal for an expansion of his business. Roy invites all the board members out to dinner at an expensive restaurant. He says it will be okay, since he isn't excluding any of the members.

 Sam buys a holiday gift every year for Jody. Jody was recently appointed to a board, but Sam has no business that is up before the board.

### **IMPROPER USE OR DISCLOSURE OF INFORMATION (AS 39.52.140)**

No former or current member of a board may use or disclose any information acquired through the board if that use or disclosure could result in a financial or personal benefit to the board member (or a family member), unless that information has already been disseminated to the public.

 Sheila has been on the board for several years. She feels she has learned a great deal of general information about how to have a successful business venture. So she sets up her own business and does well.

 Delores has always advised and assisted the other doctors in her clinic on their continuing education requirements. After Delores is appointed to the medical board, she discloses this role to the board and continues to advise the doctors in her clinic.

### **IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES OR LOANS (AS 39.52.150)**

A board member who can affect the award or administration of a State grant, contract, lease, or loan may not apply for, or have an interest in that State grant, contract, lease, or loan. This prohibition also applies to the board member's immediate family.

A board member (or a family member) may apply for or be a party to a *competitively solicited* State grant, contract or lease, if the board member does not serve in the same administrative unit awarding or administering the grant, contract, or lease *and* so long as the board member does not take official action in the award or administration of the grant, contract, or lease.

A board member (or a family member) may apply for and receive a State loan that is generally available to the public and has fixed eligibility standards, so long as the board member does not take (or withhold) official action affecting the award or administration of the loan.

Board members must report to the board chair any personal or financial interest (or that of a family member) in a State grant, contract, lease or loan that is awarded or administered by the agency

the board member serves. *A form for this purpose is available at [www.law.state.ak.us/doclibrary/ethics](http://www.law.state.ak.us/doclibrary/ethics) or from the board or commission staff.*



John sits on a board that awards state grants. John hasn't seen his daughter for nearly ten years so he figures that it doesn't matter when her grant application comes up before the board.



The board wants to contract out for an analysis of the board's decisions over the last ten years. Kim would like the contract since she has been on the board for ten years and feels she could do a good job.

#### **IMPROPER REPRESENTATION (AS 39.52.160)**

A nonsalaried board or commission member may represent, advise, or assist in matters in which the member has an interest that is regulated by the member's own board or commission, if the member acts in accordance with AS 39.52.220 by disclosing the involvement in writing and on the public record, and refrains from all participation and voting on the matter. This section does not allow a board member to engage in any conduct that would violate a different section of the Ethics Act.

#### **RESTRICTION ON EMPLOYMENT AFTER LEAVING STATE SERVICE (AS 39.52.180)**

For two years after leaving a board, a former board member may not work on any matter on which the former member had personally and substantially participated while on the board. This prohibition applies to cases, proceedings, applications, and contracts and similar matters.

Former members of the governing boards of public corporations and former members of boards and commissions that have regulation-

adoption authority, except those covered by the centralized licensing provisions of AS 08.01, may not lobby for pay for one year.

This section does not prohibit a State agency from contracting directly with a former board member.

With the approval of the Attorney General, the board chair may waive this prohibition if a determination is made that the public interest is not jeopardized.



The board has arranged for an extensive study of the effects of the Department's programs. Andy, a board member, did most of the liaison work with the contractor selected by the board, including some negotiations about the scope of the study. Andy quits the board and goes to work for the contractor, working on the study of the effects of the Department's programs.



Andy takes the job, but specifies that he will have to work on another project.

#### **AIDING A VIOLATION PROHIBITED (AS 39.52.190)**

Aiding another public officer to violate this chapter is prohibited.

#### **AGENCY POLICIES (AS 39.52.920)**

Subject to the Attorney General's review, a board may adopt additional written policies further limiting personal or financial interests of board members.

### **DISCLOSURE PROCEDURES**

#### **DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS (AS 39.52.220)**

A board member whose interests or activities could result in a violation of the Ethics Act must disclose the matter on the public record and in writing to the board chair who determines whether a

violation exists. A form for this purpose is available at [www.law.state.ak.us/doclibrary/ethics](http://www.law.state.ak.us/doclibrary/ethics) or from the board or commission staff. If a board member objects to the chair's ruling or if the chair discloses a potential conflict, the board members at the meeting (excluding the involved member) must vote on the matter. If the board chair or the board determines a violation would exist, the member must refrain from deliberating, voting, or participating in the matter. For more information, see *Ethics Act Procedures for Boards and Commissions* available at the above noted web site.

When determining whether a board member is involved in a matter that may result in a violation of the Ethics Act, either the board chair or the board or commission itself may request guidance from the Attorney General.

#### **ATTORNEY GENERAL'S ADVICE (AS 39.52.240-250)**

Board chairs or the board itself may request a written advisory opinion from the Attorney General. These opinions are confidential. Versions without identifying information may be made available to the public.

A former board member may request a written opinion from the Attorney General interpreting the Ethics Act.

#### **REPORTS BY THIRD PARTIES (AS 39.52.230)**

A third party may report a suspected violation of the Ethics Act by a board member in writing and under oath to the chair of a board or commission. The chair will give a copy to the board member and to the Attorney General and review the report to determine whether a violation may or does exist. If the chair determines a violation exists, the board member will be asked to refrain from deliberating, voting, or participating in the matter.

### **COMPLAINTS, HEARINGS, AND ENFORCEMENT**

#### **COMPLAINTS (AS 39.52.310-330)**

Any person may file a complaint with the Attorney General about the conduct of a current or former board member. Complaints must be written and signed under oath. The Attorney General may also initiate complaints from information provided by a board. A copy of the complaint will be sent to the board member who is the subject of the complaint and to the Personnel Board.

All complaints are reviewed by the Attorney General. If the Attorney General determines that the complaint does not warrant investigation, the complainant and the board member will be notified of the dismissal.

The Attorney General may refer a complaint to the board member's chair for resolution.

After investigation, the Attorney General may dismiss a complaint for lack of probable cause to believe a violation occurred. The complainant and board member will be promptly notified of this decision.

Alternatively, if probable cause exists, the Attorney General may initiate a formal proceeding by serving the board or commission member with an accusation alleging a violation of the Ethics Act.

#### **CONFIDENTIALITY (AS 39.52.340)**

Complaints and investigations prior to formal proceedings are confidential. If the Attorney General finds evidence of probable criminal activity, the appropriate law enforcement agency shall be notified.

#### **HEARINGS (AS 39.52.350-360)**

An accusation by the Attorney General of an alleged violation may result in a hearing. An administrative law judge from the state's Office of Administrative Hearings serves as hearing officer and determines the time, place and other matters. The parties to the hearing are the Attorney General, acting as prosecutor, and the accused public officer, who may be represented by an attorney. Within 30 days of the conclusion of the hearing, the hearing officer files a report with the Personnel Board and provides a copy to the parties.

**PERSONNEL BOARD ACTION (AS 39.52.370)**

The hearing officer's report will be reviewed by the Personnel Board. The Personnel Board is responsible for determining whether a violation occurred and for imposing penalties. An appeal may be filed by the board member in the Superior Court.

**PENALTIES (AS 39.52.410-460)**

When the Personnel Board determines a board member has violated the Ethics Act, the member must refrain from voting, deliberating, or participating in the matter. The Personnel Board may order restitution and may recommend that the board member be removed from the board or commission. If a recommendation of removal is made, the appointing authority will immediately remove the member. If the Personnel Board finds that a former board member violated the Ethics Act, the Personnel Board will issue a public statement about the case and will ask the Attorney General to pursue appropriate additional legal remedies.

State grants, contracts, and leases awarded in violation of the Ethics Act are voidable.

Loans given in violation of the Ethics Act may be made immediately payable.

Fees, gifts, or compensation received in violation of the Ethics Act may be recovered by the Attorney General.

The Personnel Board may impose a fine of up to \$5,000 for each violation of the Ethics Act. In addition, a board member may be required to pay up to twice the financial benefit received in violation of the Ethics Act.

Criminal penalties are in addition to the civil penalties listed above.

**DEFINITIONS (AS 39.52.960)**

Please keep the following definitions in mind:

**Benefit** - anything that is to a person's advantage regardless financial interest or from which a person hopes to gain in any way.

**Board or Commission** - 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 Corporation.

**Designated Ethics Supervisor** - the chair or acting chair of the board or commission for all board or commission members and for executive directors; for staff members, the executive director is the designated ethics supervisor.

**Financial Interest** - any property, ownership, management, professional, or private interest from which a board or commission member or the board or commission member's immediate family receives or expects to receive a financial benefit.

**Immediate Family** - spouse; another person cohabiting with the person in a conjugal relationship that is not a legal marriage; a child, including a stepchild and an adoptive child; a parent, sibling, grandparent, aunt, or uncle of the person; and a parent or sibling of the person's spouse.

**Personal Interest** - the interest or involvement of a board or commission member (or a family member) in any organization or political party from which a person or organization receives a benefit.

**Official Action** - advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

For further information and disclosure forms, visit our web site at <http://www.law.state.ak.us> (Executive Branch Ethics) or please contact:

State Ethics Attorney  
Alaska Department of Law  
1031 West 4<sup>th</sup> Avenue, Suite 200  
Anchorage, Alaska 99501-5903  
(907) 269-5100  
[Attorney\\_General@alaska.gov](mailto:Attorney_General@alaska.gov)

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## Organized LEPC's

Aleutian-Pribilofs  
Anchorage  
Copper River  
Delta-Greely  
Denali Borough  
Fairbanks  
Juneau  
Ketchikan Borough  
Kenai Peninsula Borough  
Kodiak Island Borough  
Matanuska-Susitna Borough  
Nome  
North Slope Borough  
Northern Southeast

Northwest Arctic Borough  
Petersburg-Wrangell  
Sitka Borough

Southern Southeast  
Valdez

## Inactive LEPC's

Aleutians East  
Bristol Bay Borough  
Iditarod Region  
Kuspuk  
Lake & Peninsula Borough  
Lower Kuskokwim  
Lower Yukon  
Prince William Sound  
Southwest Region  
Yukon Flats  
Yukon-Koyukuk





