

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

January 25, 2005

8:01 a.m.

**MEMBERS PRESENT**

Representative Paul Seaton, Chair  
Representative Jim Elkins  
Representative Carl Gatto  
Representative Bob Lynn  
Representative Jay Ramras  
Representative Berta Gardner  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

OVERVIEW(S): DEPARTMENT OF ADMINISTRATION, DIVISION OF PERSONNEL

- HEARD

HOUSE BILL NO. 21

"An Act relating to false statements in state election advertising; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 21

SHORT TITLE: POLITICAL ADVERTISING

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	STA, JUD
01/25/05	(H)	STA AT 8:00 AM CAPITOL 106

**WITNESS REGISTER**

MILA COSGROVE, Director  
Division of Personnel  
Department of Administration

Juneau, Alaska

POSITION STATEMENT: Presented the overview of the Department of Administration's Division of Personnel.

REPRESENTATIVE RAMRAS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 21.

BROOKE MILES, Executive Director

Alaska Public Offices Commission (APOC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions on behalf of APOC during the hearing on HB 21.

### **ACTION NARRATIVE**

**CHAIR PAUL SEATON** called the House State Affairs Standing Committee meeting to order at [8:01:54 AM](#). Representatives Gatto, Elkins, Lynn, Gardner, and Seaton were present at the call to order. Representatives Ramras and Gruenberg arrived as the meeting was in progress.

### OVERVIEW(S)

#### DEPARTMENT OF ADMINISTRATION, DIVISION OF PERSONNEL

[8:02:33 AM](#)

CHAIR SEATON announced that the first order of business was the overview from the Division of Personnel.

[8:02:55 AM](#)

MILA COSGROVE, Director, Division of Personnel, Department of Administration, said the division has changed considerably. In September 2004, the governor announced that he wanted to integrate human resource (HR) services to form an enterprise model of service delivery. She said on October 16, all HR staff transferred into the direct line of supervision of the Division of Personnel, and by November 10, most of those individuals had been physically moved and co-located, and their assignments had been changed. She emphasized that the transitional change has been massive. She referenced a one-page handout [included in the committee packet], entitled, "Division of Personnel HR Integration Year One Accomplishments." She listed the governor's four goals, as noted on the handout, to: standardize

HR policy and practice within the executive branch; implement enterprise technology systems and tools to improve service delivery; increase operational efficiency; and reduce administrative costs.

[8:05:35 AM](#)

MS. COSGROVE gave examples of how all four goals are being reached, including a new system that allows unions and management to go through the grievance process online. She said there is a new online position description system that will allow people to submit classification actions through the web. In terms of reducing administrative costs, Ms. Cosgrove stated that the division has reduced the budgeted positions by at least 7.9 percent. She noted that the average salary range of HR employees has decreased from 15.3 to 14.7, thus, the division is doing more "with a whole lot less."

REPRESENTATIVE LYNN asked what the enterprise model of delivery mentioned by Ms. Cosgrove is and, if it is the new model, how it differs from the old model.

[8:08:41 AM](#)

MS. COSGROVE explained that with the earlier model, the 14 different operating agencies had their own HR services, including managers and payroll, and approximately 225 people delivered those services. After integration, all of the people providing HR services were integrated into the Division of Personnel.

[8:09:58 AM](#)

REPRESENTATIVE GATTO asked if the number of grievances increases when the grievance process is streamlined, and if there is a backlog of filed grievances.

[8:10:44 AM](#)

MS. COSGROVE said the only change is that the grievance is filed electronically, and she said she is not aware of an increase in filing or a significant backlog in grievances.

[8:11:19 AM](#)

CHAIR SEATON wanted clarity on how agencies are charged for the HR services, and if the savings are passed on to them.

8:11:51 AM

MS. COSGROVE said the division now has a complex cost allocation model that is based on each individual worker. A good portion of the budget comes from federal funds, and some of it comes from general funds. She noted that approximately 85 percent of the budget is staffing charges. She explained that there's been an overall reduction in the number of bodies, but associated costs, such as the Public Employees' Retirement System (PERS) and leasing costs, have gone up. In response to a question from Chair Seaton, she said that - looking at the state as a whole - it could be said there is definite cost savings, while the prices of individual agencies may fluctuate more or less, depending on the number of individuals servicing them now.

8:15:21 AM

CHAIR SEATON queried whether individual agencies might have seen a cost increase because the Division of Personnel functions are being charged back to them.

8:15:39 AM

MS. COSGROVE said that the entire model is being split 14 ways. She turned to a one-page handout [included in the committee packet] that shows a functional overview of the Division of Personnel. She pointed out that the division has administrative services, and its own information technology services. In response to a question from Representative Gatto, she explained that she uses the phrase "like pay for like work" rather than "equal pay for equal work," because that is how it read in statute.

8:19:35 AM

MS. COSGROVE, in response to a question from Representative Gatto, said she is not aware of any overarching grievances that have been filed regarding discrimination issues. She noted that, within the last several years, an outside review of the classification scheme showed that there weren't any gender, racial, or other inequities; however, she said there are times when unions assert that there is a class of people who is underpaid compared to another class, and then the division does an analysis.

8:21:18 AM

MS. COSGROVE, in response to a question from Chair Seaton, stated that the classification and pay plan is separate from the state's pay policy. The former assigns relative pay, and the latter sets the actual dollar amount. She said the dollar amounts of the ranges change, and that an employee can get step-raises within a range. In response to a follow-up question from Chair Seaton, she said a Range 19 in one state agency can be a different level than a Range 19 in another state agency.

[8:24:48 AM](#)

CHAIR SEATON surmised that the policy description of a particular range should be the same even if the pay is different. He requested a spreadsheet detailing pay ranges.

[8:25:05 AM](#)

MS. COSGROVE offered to provide a list of pay ranges by bargaining unit for the committee.

[8:25:30 AM](#)

MS. COSGROVE returned to the division chart, to the Equal Employment Opportunity Program (EEO). She explained what that program entails, and said that it is a successful program. In response to Chair Seaton, she said EEO is not the same as Alaska Commission on Human Rights, but that the two interact. In response to a question from Chair Seaton, she said it is the division's hope that people with a complaint within the administration go through EEO before filing with the Alaska Commission on Human Rights. In response to a question from Representative Gruenberg, she said she believes that the EEO and the Alaska Commission on Human Rights should be kept separate, because the division provides proactive training to management to ensure that problems don't arise, and it resolves informal complaints.

[8:29:31 AM](#)

MS. COSGROVE pointed to Workplace Alaska on the chart and said that agency has won awards. The agency works with hiring managers to maintain consistency with employment law. Furthermore, it also houses a recruitment section that works with the Department of Corrections, the Department of Transportation & Public Facilities, and the Department of Public Safety, to recruit people who are certified by the Alaska Police

Standard Council, including: troopers, correctional officers, and airport safety officers. The agency also houses the Employee Call Center.

[8:31:46 AM](#)

MS. COSGROVE said Employee Services also manages the Employee Records function and a small program called WorkFirst, which works to get people on occupational disability back on the work force. She offered an example.

[8:34:07 AM](#)

MS. COSGROVE, in response to a question from Representative Gardner regarding how effective the program is, said the division is presently putting together a report. She offered to send the report to the committee.

[8:34:42 AM](#)

CHAIR SEATON said there is a problem in Seward in getting and retaining corrections officers because of the backlog and timing in actually getting a person hired. He said he appreciates the efforts of HR services to speed the process.

[8:36:37 AM](#)

MS. COSGROVE, in response to a question from Representative Gruenberg regarding the Americans with Disabilities Act (ADA), said "that is part of our WorkFirst program." She offered further details. In response to a follow-up question, from Representative Gruenberg, she said recruitment is set up so any person with disabilities does not have an adverse experience in the hiring process.

[8:39:09 AM](#)

MS. COSGROVE, in response to a question from Representative Gruenberg regarding the grievance process, said people who are not state employees can file a complaint with her, while state employees go first through their department coordinators and then, depending on the issue, they come to the division. She stated that, almost exclusively, employment related grievances end up in HR. She offered further details.

[8:40:07 AM](#)

REPRESENTATIVE GRUENBERG

[8:40:22 AM](#)

MS. COSGROVE, in response to a question from Representative Gruenberg, said there is a right to appeal. She spoke about the procedure and the right to file through the federal government. In response to a follow-up question from Representative Gruenberg regarding dissatisfaction with a decision about hiring, she said she believes people have formal complaint rights and can go through the statewide ADA coordinator's office, as well as filing through federal avenues. In response to questions from Chair Seaton and Representative Gruenberg, she offered her belief that people would also have the option to file through the Alaska Human Rights Commission or EEOP.

[8:41:40 AM](#)

MS. COSGROVE explained that each agency has an ADA coordinator.

[8:42:09 AM](#)

REPRESENTATIVE GRUENBERG asked if there is a state law that specifies what the procedure is.

[8:42:30 AM](#)

MS. COSGROVE said she would get back to Representative Gruenberg on that question.

[8:42:52 AM](#)

MS. COSGROVE directed attention back to the handout and pointed to management services, which includes training and development, statewide planning and research, and the management consulting unit. She described the function of each service. The management consulting unit includes the general agencies group, the resources group, the public protection group, the DOT&PF group, and the [Department of Health & Social Services (DHSS)] group.

[8:47:37 AM](#)

MS. COSGROVE, in response to a question from Representative Gatto, said there are 14,500 permanent employees in the state executive branch core work force. She estimated there are approximately 1,200-1,300 supervisors and probably another 200-

300 people operating as division directors or in a supervisory capacity in a partially exempt service.

8:48:27 AM

REPRESENTATIVE GATTO said it sounds like one out of ten is a supervisor, which is above the recommended one out of five or six.

8:49:05 AM

MS. COSGROVE surmised that one out of ten sounds about right, but many of those supervisors have assistants helping them. In response to a question from Representative Gatto regarding whether a supervisor with an office manager would be counted as two supervisors, answered that it depends on whether it was a permanent duty assignment; if that manager was indeed supervising staff, he/she would be placed in a supervisory bargaining unit and that position would then be included in the numbers the committee is reviewing. She noted that on the division's web page, under web-based planning and research, is a workforce profile.

8:51:08 AM

MS. COSGROVE pointed out the box on the handout showing technical services (TS), which includes a general government TS center, a resources TS center, a public protection TS center, a DOT&PF TS center, and a [DHSS] TS center.

8:52:28 AM

CHAIR SEATON said one of the reasons for overviews is to look at missions and measures. He offered a recent history of adopting missions and measures. He stated concern that the department may go one direction while the legislature has not formally adopted measures to give the administration the tools to proceed. He mentioned the Budgetary Finance Committee. He asked Ms. Cosgrove to briefly address missions and measures and the procedures of the division regarding them.

8:55:09 AM

MS. COSGROVE said the missions and measures of 2001 and 2002 would not match today's department, because the missions have changed. The old ones were good for the limited core services existing at that time. She said HR is not only looking at

client base but is considering the following: overall effectiveness base, quality of how services are delivered, recruitment, internal alignment, and effectiveness of training.

[8:57:15 AM](#)

CHAIR SEATON said he wants continued communication in the future regarding this issue.

[8:58:03 AM](#)

REPRESENTATIVE GRUENBERG noted that AS 37.07.050 requires that agencies submit a report annually. He asked if her agency has submitted such a report.

[8:58:35 AM](#)

MS. COSGROVE responded, "The document that I referred to, in terms of the workforce profile, we believe meets the requirements in terms of legislative reporting." She offered further details. In response to a follow-up question from Representative Gruenberg, she said she has not personally checked the document against statute, but would be happy to do so.

The committee took an at-ease from [9:04:10 AM](#) to [9:04:22 AM](#).

HB 21-POLITICAL ADVERTISING

[9:04:22 AM](#)

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 21, "An Act relating to false statements in state election advertising; and providing for an effective date."

REPRESENTATIVE GATTO moved to adopt HB 21 as the working document. There being no objection, HB 21 was before the committee.

[9:04:50 AM](#)

REPRESENTATIVE RAMRAS, Alaska State Legislature, as sponsor of HB 21, said the bill is coined the "liars' bill." He said the moral intention of the bill is excellent, but trying to prove it is the challenge. He said it can be shown that people do cross the line [regarding making false statements during campaigns].

[9:06:55 AM](#)

REPRESENTATIVE RAMRAS said there are three options to counter an attack of false statements: to counter with a similar type of attack; to spend a considerable amount in defense against the falsehood; and to file a complaint to the court system. He said he hopes that HB 21 will provide a simpler method by allowing a person to file a complaint with the Alaska Public Office Commission (APOC). A person would use a simple form and provide proof that the statement is false, and APOC, under an expedited review, would be able to dispute the [false] advertisement and force it to be discontinued and would have the authority to fine the offending campaign or individual. He said the purpose of HB 21 is to ensure that the standards for truth in advertising would apply to political campaigns, just as they do in regard to buying commercial products or service.

[9:08:48 AM](#)

REPRESENTATIVE RAMRAS talked about a 1994 gubernatorial campaign when someone was charged with domestic violence - a charge which was later proven to be unfounded. He offered further examples. He said the result of false accusations is that good people are backing away from the process to protect their integrity.

[9:12:15 AM](#)

CHAIR SEATON let the committee know that his intent was not to move HB 21 from committee today.

[9:12:34 AM](#)

REPRESENTATIVE GARDNER said she applauds Representative Ramras's intent. She described a scenario in which a private citizen may speak on the radio, not in the form of paid advertising.

[9:13:14 AM](#)

REPRESENTATIVE RAMRAS said that issue has been considered. He indicated that a person speaking on his own behalf via public radio [has that right through] the First Amendment. He said he thinks adding the word "paid" to the bill might clean up the process.

[9:13:56 AM](#)

REPRESENTATIVE LYNN applauded the purpose of bill. He asked if the bill differentiates between a purposeful lie versus a situation where someone failed to check readily available facts. He suggested it's the difference between a lie and being incompetent. He offered an example where he had been accused of being absent during contentious votes. He said anybody could check the House journal to find out that wasn't true. He said, "It's like debating what's the capital of North Dakota when you can look at a map." He said responding to that may have given wings to the lie and probably would have caused more damage than he suffered. He questioned whether he suffered damage, since he was reelected.

[9:16:07 AM](#)

REPRESENTATIVE RAMRAS said Representative Lynn's example is relevant. He said he thinks it would be beneficial to use APOC as a referee, of sorts. He concurred that if a person chooses to respond to false accusations, that person may dignify the act.

[9:17:53 AM](#)

REPRESENTATIVE RAMRAS, in response to a question from Representative Elkins regarding whether the bill had been checked for constitutionality, said the bill was shown to Legislative Legal and Research Services, and he said his recollection is that there is a law like this in the State of Washington. Representative Ramras reiterated that First Amendment rights are a concern. He noted that Representative Bruce Weyhrauch suggested there could be language added, like the previously mentioned word "paid." He said he would leave it to the committee to decide.

[9:19:53 AM](#)

REPRESENTATIVE GARDNER asked if it was practical or even possible for APOC to do an adequate investigation in just a few days.

[9:20:22 AM](#)

REPRESENTATIVE RAMRAS said he thinks the committee should hear from APOC on that issue.

[9:20:37 AM](#)

CHAIR SEATON turned to page 1 of the bill [lines 5-7], which read as follows:

**Sec. 15.13.092. False statements in election advertising.** (a) A person may not make a false statement in election advertising with knowledge that the statement is false or with a reckless disregard for whether or not the statement is false.

CHAIR SEATON said he interpreted the language as only referring to a situation in which someone knows that a statement is false.

[9:21:45 AM](#)

REPRESENTATIVE RAMRAS said he thinks that's true. He said the intent of HB 21 is to protect someone like Representative Lynn, where the person who made the accusations could have know they were false by looking at the records.

[9:27:56 AM](#)

CHAIR SEATON mentioned an incident during a Senate race when a person was accused of "inadequate residency." He indicated that being able to say whether a person is a resident is a legitimate issue and a determination from APOC may take that issue off the table when it's perfectly legitimate. He said challengers may have a hard time if the intent is that they only talk about themselves.

[9:29:08 AM](#)

REPRESENTATIVE GATTO presented a possible scenario wherein an opponent brags about his/her abilities as a candidate, but someone may question his background in areas related to driving under the influence or pedophilia and want that investigated.

[9:29:57 AM](#)

REPRESENTATIVE RAMRAS said Representative Gatto's point is well taken; however, he turned back to Representative Lynn's previously stated example and asked how a person defends against that.

[9:31:32 AM](#)

REPRESENTATIVE ELKINS referred to Representative Gatto's previously stated scenario. He said, "What if that statement

was made in a radio interview and somehow then it was picked up by the press and printed in the press. It's not advertising, it's not true, but it's there.

[9:31:51 AM](#)

REPRESENTATIVE RAMRAS said, "Then I think you have an entirely different problem. He said he thinks there's a difference between regular discourse in an interview and purposely sitting down to write a campaign advertisement that is intentionally false.

[9:32:48 AM](#)

CHAIR SEATON referred to the following language in subsection (c):

(c) If the person who disseminates the false statement is not the maker of the false statement, the person who disseminates the statement violates (a) of this section only if the person had actual knowledge that the statement was false before disseminating the statement.

CHAIR SEATON said residency, in regard to where a person will file, is loosely interpreted by the court. He asked if that language would preclude someone talking about someone's residency.

[9:34:07 AM](#)

REPRESENTATIVE RAMRAS said he is not an attorney and doesn't know how someone would specifically interpret the language. He invited the committee to tighten up the language of the proposed legislation. He restated the intent of HB 21.

[9:36:02 AM](#)

CHAIR SEATON said it is incumbent upon the committee to consider what would and would not be acceptable with the outline of the proposed legislation. He agreed that it will be a balancing act [to figure it out].

[9:37:03 AM](#)

REPRESENTATIVE GRUENBERG said the policy against expanding liable and slander causes of action is in accord with a long

line of U.S. Supreme Court and state supreme court cases. He suggested HB 21 runs counter to that trend.

[9:38:38 AM](#)

REPRESENTATIVE RAMRAS said he doesn't know.

[9:38:46 AM](#)

REPRESENTATIVE GRUENBERG shared an anecdote about his dog that had been alive and prominently displayed in his campaign photo when the photo was taken, but died shortly thereafter. He asked if that would be considered an actionable lie.

[9:40:41 AM](#)

REPRESENTATIVE SEATON paraphrased from [AS] 15.13.380, [subsection (d), paragraphs (1), (2), and (3), included in the committee packet], which read:

(d) If the commission expedites consideration, the commission shall hold a hearing on the complaint within two days after granting expedited consideration. Not later than one day after affording the respondent notice and an opportunity to be heard, the commission shall

(1) enter an emergency order requiring the violation to be ceased or to be remedied and assess civil penalties under AS 15.13.390 if the commission finds that the respondent has engaged in or is about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter;

(2) enter an emergency order dismissing the complaint if the commission finds that the respondent has not or is not about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter; or

(3) remand the complaint to the executive director of the commission for consideration by the commission on a regular rather than an expedited basis.

[9:41:34 AM](#)

CHAIR SEATON asked how disruptive this process would be to a candidate during his/her campaign.

[9:42:28 AM](#)

REPRESENTATIVE RAMRAS said he thinks it would be very disruptive, which is the intent of HB 21. He noted that each election cycle is worse than the last one. He offered examples. He questioned who will want to participate in the future. Representative Ramras said it seems like this issue is right for the House State Affairs Standing Committee.

[9:46:33 AM](#)

CHAIR SEATON directed attention to [AS 15.13.380, subsection (g)], which read:

(g) A commission order under (d) or (e) of this section may be appealed to the superior court by either the complainant or respondent within 30 days in accordance with the Alaska Rules of Appellate Procedure.

CHAIR SEATON offered his understanding that that process would hold in abeyance any order from APOC, until the appeal process was complete. He explained that he is considering the timeline of the process and would like feedback from APOC.

[9:48:05 AM](#)

REPRESENTATIVE GARDNER commented that the steps to proceeding with a suit include showing that the information is false. She asked, "What about showing that the person knew it was false?" Representative Gardner indicated that the legislation refers to a person who presents false information, and she noted that there have been times when organizations "do misleading or intentionally false things." She offered examples.

[9:49:24 AM](#)

REPRESENTATIVE GARDNER suggested that the proposed legislation could be used adversely. For example, if a political race was close, one candidate could submit a report of falsehood against his/her opponent, thereby pulling that opponent away to go deal with the complaint.

[9:49:48 AM](#)

REPRESENTATIVE RAMRAS said Representative Gardner brings up some interesting points. However, in the interest of time, he did not respond to them. He emphasized that the issue surrounding HB 21 is an important one and he encouraged the committee to work on changing any language to "clean up the process."

9:50:36 AM

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), said it is difficult to determine the impact of the bill on APOC, but she is sure it will have impact because of the scope of the bill. She explained that the commission already receives phone calls regarding the content of political advertising, but during its 30-year history has had no authority to address them, with one exception: the requirement through AS 15.13 regarding a "correct identifier." Ms. Miles also noted that the commission has no authority regarding residency; that rests with the Division of Elections.

9:52:40 AM

MS. MILES said the commission has not met yet regarding HB 21, but she is speaking on behalf of the staff. She applauded trying to "make campaigns more accountable." She said she has concerns over First Amendment rights, specifically in regard to including ballot proposition advertisements. She noted that "administering the campaign disclosure law, with respect to ballot propositions, is the most lenient." She offered examples.

9:54:07 AM

MS. MILES said she looks forward to working on the bill. She recommended that the committee consider that anything more than taking the advertisement off the air and being subject to a \$50 fine is not currently in statute. She said she would like committee members to review AS 15.13.095; that Section speaks to false statements in telephone polling or "calls to convince."

MS. MILES addressed the commission's complaint process. She offered her understanding that the committee is "looking for this to come before the commission on an expedited basis." She noted that the statute is permissive and requires that when a complaint is filed, the complainant must request expedited consideration, the commission must meet within 48 hours to decide whether or not to expedite the consideration, and the

hearing must occur within 48 hours if the complaint is accepted. She continued as follows:

Because of that very short time frame, the regulations that the commission has adopted regarding expedited hearings virtually requires that the complainant prosecute her or his own case. And that's simply because, in the time frame, there's not sufficient time for commission staff to conduct an in-depth investigation. However, we are available to assist the complainant with respect to issuing subpoenas and many other administrative assisting skills.

MS. MILES, in response to a question from Chair Seaton, said she believes that subpoenas can be served in a time-sensitive manner.

[9:57:52 AM](#)

MS. MILES, in response to a question from Representative Gruenberg, confirmed that the hearings could extend in the legislative session. However if any party to the complaint was a legislator, the issue would be held in abeyance "until after five days after the legislature adjourns, because of legislative immunity from civil process." In response to a follow-up question from Representative Gruenberg, she said it's her understanding that a legislator cannot waive legislative immunity, even if that legislator wants to participate in a hearing before APOC. She said cases can certainly go for 130 days with no action.

[9:59:47 AM](#)

CHAIR SEATON reminded the committee that the municipal elections wouldn't be exempt. He asked Ms. Miles if she would provide the committee with an estimated number of complaints received regarding false advertising.

[HB 21 was heard and held.]

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [10:01:26 AM](#).