

HOUSE FINANCE COMMITTEE  
March 31, 2008  
1:45 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:45:39 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair  
Representative Kevin Meyer, Co-Chair  
Representative Bill Stoltze, Vice-Chair  
Representative Harry Crawford  
Representative Les Gara  
Representative Mike Hawker  
Representative Reggie Joule  
Representative Mary Nelson  
Representative Bill Thomas Jr.

MEMBERS ABSENT

Representative John Harris  
Representative Mike Kelly

ALSO PRESENT

Mike Sica, Staff, Representative Bob Lynn; Joyce Anderson, Administrator, Select Committee on Legislative Ethics; Jerry Burnett, Director, Division of Administrative Services, Department of Revenue; Chris Birdsall, Staff, Representative Harry Crawford

PRESENT VIA TELECONFERENCE

Chris Ellingson, Acting Executive Director, Alaska Public Offices Commission (APOC), Anchorage; Jan DeYoung, Assistant Attorney General, Labor and State Affairs Division, Civil Section, Department of Law, Anchorage; Tamara Cook, Director, Legislative Legal Services, Legislative Affairs Agency, Juneau

SUMMARY

HB 281 An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns.

HB 218 was HEARD & HELD in Committee for further consideration.

HB 366 An Act relating to an exemption from public disclosure of certain appropriations from the dividend fund; and providing for an effective date.

HB 366 was HEARD & HELD in Committee for further consideration.

HB 368 An Act modifying the limitations on political fund raising during legislative sessions by candidates for governor or for lieutenant governor, and amending the Legislative Ethics Act to modify the limitation on political fund raising by legislators and legislative employees during legislative sessions, to allow legislators and legislative employees to accept certain gifts from lobbyists within their immediate families, to clarify the Legislative Ethics Act as it relates to legislative volunteers and educational trainees, to reduce the frequency of publication of summaries by the Select Committee on Legislative Ethics, to revise procedures and penalties related to the late filing of disclosures required by the Legislative Ethics Act, and to add a definition to that Act.

HB 368 was HEARD & HELD in Committee for further consideration.

#HB368  
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HOUSE BILL NO. 368

An Act modifying the limitations on political fund raising during legislative sessions by candidates for governor or for lieutenant governor, and amending the Legislative Ethics Act to modify the limitation on political fund raising by legislators and legislative employees during legislative sessions, to allow legislators and legislative employees to accept certain gifts from lobbyists within their immediate families, to clarify the Legislative Ethics Act as it relates to legislative volunteers and educational trainees, to reduce the frequency of publication of summaries by the Select Committee on Legislative Ethics, to revise procedures and penalties related to the late filing of disclosures required by the Legislative Ethics Act, and to add a definition to that Act.

MIKE SICA, STAFF, REPRESENTATIVE BOB LYNN, introduced the legislation & Ms. Joyce Anderson from the Select Committee on Legislative Ethics.

JOYCE ANDERSON, ADMINISTRATOR, SELECT COMMITTEE ON LEGISLATIVE ETHICS, advised that the State Ethics Committee had recommended and requested that the House State Affairs Committee bring the bill forward. The legislation contains recommendations by the Committee & provides a clean-up measure from HB 109, the major ethics bill last year.

- Section 1

Section 1 addresses campaigning while in a municipality where the session is being convened, presently, stating the "capital city". She noted that following discussion, the Ethics Committee determined that there should be no campaigning in the place where the legislative session is being held.

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Co-Chair Chenault addressed the issue of whether campaigning comes into play within 90-days of a special session or only the primary general election. Ms. Anderson explained during a regular session, legislators are prohibited from campaigning and that 90-days of a primary election, becomes the start point for the 90-days. Within that period, legislators are allowed to send solicitation letters & hold fund raisers but not the legislators living in the municipality, where special session is to be held.

Co-Chair Chenault asked if any legislator would be allowed to have a fund raiser while in the capital city. Ms. Anderson said yes as long as it is not convened in the place of that session.

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- Section 2

Ms. Anderson explained that Section 2 addresses the gift statute, which the Select Committee recommends to be relaxed. Last year a section was inserted, prohibiting any gifts from lobbyists unless it fits into certain exceptions. She pointed out that statute affects some spouses of lobbyists. The language proposed in Section 2 provides clean-up language allowing gift exchange for that class of employee. She pointed out that legislators are not allowed to have spouses that are registered lobbyists.

Ms. Anderson continued, language was added to Page 2, Line 30, "a contribution to a charity event", attempting to place all exceptions regarding lobbyists into one area. Additional language was added to (d) & (e) from other parts of statute, loosening gift restrictions from lobbyists, placing all other restrictions into that section as well.

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Representative Joule referenced Section 1, reiterating concerns about fundraising in the capital city. Ms. Anderson stressed that would not be okay. Representative Joule stressed that the three legislators from Juneau would not have a level playing field with other legislators. Ms. Anderson agreed.

Representative Nelson commented that is a disservice to those constituents. Ms. Anderson referenced the campaign year which three special sessions happened in which many concerns were voiced by the Juneau legislators, who were unable to campaign during those sessions. It was an issue.

Representative Nelson worried that the proposed special session could last up to 60-days, reiterating the challenges to the local legislators in the area. Ms. Anderson clarified that only those covered by the Legislative Ethics Acts would be prohibited from campaigning.

Representative Nelson inquired if the sponsor was amenable to amending that language. Mr. Sica requested that Ms. Anderson explain the intent of that section. Ms. Anderson stated that the intent was to prohibit fund raising, preventing the appearance of impropriety. She did not know a "good amendment" to address the concern but acknowledged the unfair playing field.

Co-Chair Meyer agreed with the need level the playing field, however, worried about fund raising activities. Representative Nelson mentioned what could happen when special sessions occur in other cities; she asked if it would apply to Anchorage legislators when it happens there. Ms. Anderson restated that nothing can occur in any borough of the place where the session is being held.

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Representative Joule interjected that the issue is short sighted. Co-Chair Chenault directed comments regarding "any" municipality and asked if Juneau legislators could campaign and fund raise in Douglas. Ms. Anderson read the definition of municipality:

"A political subdivision incorporated under the laws of the State that is a home rule or general law city, a home rule or general law borough, or a unified municipality".

Representative Thomas recommended considering an amendment that if the Legislature called themselves into special session, then any legislator would not be able to raise

money; however, if the Governor called the special session, it would be difficult. He pointed out that most special session issues are related to oil. Ms. Anderson commented on past legislation, which provides an exemption for Juneau legislators. Representative Thomas recommended language specific to the location of the special session.

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Vice-Chair Stoltze pointed out that the Juneau legislators have not requested the addition of changed language to the current ethic standards.

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Representative Crawford echoed the sentiments expressed by Representative Joule and recommended that an exemption be made for local legislators. Co-Chair Meyer encouraged Ms. Anderson to provide the appropriate language for an amendment.

Mr. Sica pointed out that Representative Lynn was carrying the bill on behalf of the House State Affairs Committee (HSA) and that the Legislative Ethics Committee would do whatever is advised by them.

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Representative Gara emphasized that having a rule in place which limits three of the sixty legislators is "not the right thing to do", maintaining that what happens during special session should apply to all legislators. The rules should be the same for everyone.

Co-Chair Meyer questioned if it was okay to make campaign phone calls from a hotel room. Ms. Anderson explained the legislator is prohibited from raising funds during a regular session; however, during a special session, a legislator can campaign as long as it is not in the place of the capital city. The treasurer of each campaign would still be able to make the phone calls or send out a fund raising solicitation letter.

Vice-Chair Stoltze recommended the query be addressed by the Alaska Public Office Commission (APOC) rather than the Legislative Ethics Committee. Ms. Anderson responded that the ethics code covers legislators with regard to campaigning and APOC covers the filing of campaign reports.

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Representative Gara agreed with Co-Chair Meyer regarding telephone calls, however, maintained that the playing field would not be level and that the capital city legislators

would not be able to leave on the weekends to undertake their campaigning. Co-Chair Meyer agreed it is a gray area.

Co-Chair Chenault realized that the bill is complex and has unintended consequences from the one passed last year. He mentioned the APOC disclosure issues. He noted concerns brought forward from his district regarding recording requirements, an issue which could over-step legislative bounds. He agreed that ethics concerns should be tightened.

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Ms. Anderson continued:

- Section 3

Ms. Anderson stated there was no change in Section 3, except that it splits the statute. The split language was moved into the next section.

- Section 4

Ms. Anderson stated that Section 4 restructures language for the Act as it relates to legislative volunteers and trainees.

- Section 5

Ms. Anderson pointed out that currently in statute, the Committee is supposed to publish semiannual summaries of complaint & advisory decisions. To date that has not been happening. The Committee recommends that requirement be changed to only annual reports, corresponding with current procedures. There is a procedure in place guaranteeing that the information does get out. The publication is a booklet assembled by the Committee and provided to the House Clerk & Senate Secretary.

- Section 6

Ms. Anderson noted that Section 6 speaks to the fine structure. At present time, there are two fine; the first, \$25 dollars for the inadvertent late filing of an ethics disclosure & the second, a \$2 dollar a day fine for a maximum of up to \$100 dollars. The Committee has recommended a third fine structure for willful late fees in the amount of \$100 dollars per day, not exceeding a maximum of \$2,500 dollars.

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PUBLIC TESTIMONY CLOSED

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Co-Chair Meyer referenced Section 1, proposing amendments to address the legislators affected by the area of where special sessions are held. He requested that Ms. Anderson provide the research on that concern.

Representative Gara emphasized that the language should be worded to cover only special session and not regular session and maintained that no legislator should fund raise during regular session. He asked about a wedding that happened for a staff person and if gifts less than \$250 dollars should be reported. Ms. Anderson responded that a person is allowed to receive a gift up to \$250 dollars, given their connection to legislative status. If not connected to that, such as a wedding, the gift could exceed the \$250 dollar amount. If a group of individuals got together to purchase a gift and the value of that gift exceeded \$250 dollars, it would be okay.

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Co-Chair Chenault MOVED to ADOPT Amendment 1, 25-LS1326\V.1, Wayne, 3/28/08. Co-Chair Meyer OBJECTED for the purpose of discussion.

Co-Chair Chenault explained that the amendment would prohibit members of the Select Committee from being able to file complaints. He stated that members from either the Ethics Committee or APOC should not be able to file a complaint on the complaint.

Co-Chair Meyer asked the number of members that serve on the Ethics Committee. Ms. Anderson replied that two from the House and two from the Senate, one minority and one from a bi-partisan working group serve on the Committee.

Representative Gara asked if at this time, a member files a complaint, would they then be exempt from making a decision on that complaint. Ms. Anderson explained that the Ethics Committee would file the complaint on behalf of the Committee; individuals do not file complaints. She did not understand the amendment.

Representative Gara advised that the language of the amendment would prohibit the Committee from filing a complaint, which he thought was contrary to the purpose of APOC. There are essentially two types of complaints, the first filed by a "watch-dog" committee. The amendment could make the two committees close to "toothless".

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Co-Chair Chenault countered that under the amendment, staff of either committee could still file a complaint. Co-Chair Meyer asked if a member finds a violation, could another legislator bring it forward. Co-Chair Chenault understood that currently that could happen. Under the amendment, a member of the Committee would not be able to file a complaint but their staff member could.

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Representative Gara referenced Section 2, pointing out that in current law, the Committee can initiate a complaint, while the amendment states the opposite. Co-Chair Chenault stated that the correct wording was "or take other appropriate action". Ms. Anderson interjected that Section 2 only refers to the State benefit and loan program. She agreed with Representative Gara that removing that language, if the Committee determines unfair and improper influence, the matter would be referred to the Attorney General's office. The other appropriate action would be the Committee initiating a complaint.

Ms. Anderson referenced that under Section 8, regarding a complaint initiated by anyone other than the Committee and pointed out that in the past couple years, fewer complaints had been filed by the public than in the past, perhaps because the Federal Bureau of Investigation (FBI) and the federal government's involvement in some of the current statewide issues. The Ethics Committee has initiated some complaints in the past year.

Ms. Anderson thought to not allow the Committee to file complaints, could tie their hands. The way the statute reads, if proven true, there could be a violation.

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Co-Chair Chenault commented that if the Committee has the ability to recommend and also be the "judge and jury" of that complaint, the result could be troublesome. He recommended reviewing the amendment for the next meeting.

Co-Chair Chenault WITHDREW Amendment 1.

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Representative Gara stated that he opposes Section 8 as currently written, which stipulates that the committee or APOC can not initiate a complaint. He agreed to language indicating that if a member of that committee initiates the proceeding, then the person should not be part of deciding that case.

Co-Chair Chenault stated he proposed the amendment because it is the correct action to take.

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Co-Chair Meyer MOVED to ADOPT Amendment 2, Page 5, Line 3 & Line 5, deleting "willful" and inserting "willful". Co-Chair Chenault OBJECTED.

Co-Chair Meyer explained that Amendment 2 would correct a typo. Co-Chair Chenault WITHDREW his OBJECTION. Vice-Chair Stoltze pointed out that either spelling was correct.

Ms. Anderson noted that in the rest of the Statute, it is spelled with two "l's".

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HB 368 was HELD in Committee for further consideration.

#hb281

[2:33:17 PM](#)

HOUSE BILL NO. 281

An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns.

MIKE SICA, STAFF, REPRESENTATIVE BOB LYNN, explained that HB 381 will strengthen the oversight of Alaska's ethics laws by allowing watchdog agencies more time to receive complaints and properly investigate alleged violations. The bill would establish an adequate period of time for the retention of records related to complaints.

The act would cover the four areas of oversight assigned to the Alaska Public Offices Commission (APOC) and the Select Committee on Legislative Ethics:

- Campaign disclosures (AS 15.13)
- Lobbying (AS 24.45)
- Legislative financial disclosure (AS 24.60)
- Public Official financial disclosure (AS 39.50)

Mr. Sica continued, HB 281 creates a standard statute of limitation of five years for complaints filed with APOC and the Select Committee. It codifies a period of six years for the retention of required records. The bill provides an important follow-up to the recent efforts from the Foundation of Trust between Alaskan's and the government.

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Co-Chair Meyer asked if previously, it had been four years. Mr. Sica replied yes. Co-Chair Meyer asked why the change was proposed. Mr. Sica explained that choosing five years, captures the longest term and twelve of the eighteen months that a legislator is allowed to campaign before being seated.

Co-Chair Meyer inquired if legislators then would be required to keep their records for five years. Mr. Sica explained that the provisions in Section 1, sub section (c), clarifies that language and added that the records could be electronically submitted. Co-Chair Meyer noted that most of his own records are not electronically capable.

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Co-Chair Meyer asked about the requirements for the Internal Revenue Service (IRS). Mr. Sica pointed out that the IRS recommendations present a sliding scale from between three to seven years.

Representative Gara understood that the "thrust of the bill" extends the Statute of Limitations, which he supports. He referenced Section 1 and asked which records would need to be saved. Mr. Sica did not know.

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CHRIS ELLINGSON, ACTING EXECUTIVE DIRECTOR, ALASKA PUBLIC OFFICES COMMISSION, ANCHORAGE, testified via teleconference, explained that the retained records would need to represent all the necessary items each legislator was given as a candidate when undertaking those activities.

Representative Gara asked about keeping every beverage receipt. Ms. Ellingson stated that each legislator needs to be able to file a disclosure report and that they must save receipts from fund raising and the expenses associated with that.

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Ms. Ellingson reiterated that each legislator needs to be able to report the numbers turned in to the agency when filing their disclosure report in case of an investigation.

Representative Gara could not believe that would mean, keeping a receipt for every item including beverages. Ms. Ellingson reiterated some type of receipt is required.

Representative Gara inquired about the current rules. Ms. Ellingson explained at this time, records must be retained for two years.

Co-Chair Meyer wanted to avoid any complication on taxes and asked what the wisest amount of time needed to keep receipts. Ms. Ellingson said that four years should be sufficient. Mr. Sica echoed four years for record retention.

Representative Gara advised there are no statutes on the retention of records, noting that AS 111 proposes a new provision and asked if the referenced material was instead a regulation. Ms. Ellingson acknowledged that it is regulation for record-keeping retention.

Representative Gara inquired if the records needing to be kept through regulation were the same as those defined in the bill. Ms. Ellingson said yes.

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Vice-Chair Stoltze asked if the language was prospective and could change the Statute of Limitation for record-keeping requirements. Ms. Ellingson commented it would within one year of the effective date and then on or after the effective date indicated in Section 1.

Representative Thomas asked the association between the convictions and the reporting of expenses by legislators. Mr. Sica explained since the statewide events, there has been trial testimony and proceedings indicating questionable campaign contributions, beyond the current one year APOC regulations.

Co-Chair Chenault asked how many complaints had been filed. Ms. Ellingson thought between fifteen and twenty, which resulted from trial information. She added, the Commission had directed staff to look into those complaints.

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Representative Gara voiced concern with APOC investigating items older than one year, which criminal law allows APOC to go back five years. He asked if HB 281 allows APOC to go back more than one year. Ms. Ellingson explained that had been written into the applicability and date. She said Representative Gara was correct.

Representative Gara reiterated his concerns that the law allows APOC to go five years back to investigate a crime. Ms. Ellingson stated the agency does not provide criminal investigations, only civil.

Representative Gara pointed out that an agency cannot file a civil complaint if it is more than a year old, but definitely can be investigated.

Representative Gara asked if APOC was investigating claims more than a year old. Ms. Ellingson said yes they were, but they would be unable to issue civil penalties for such issues; they would instead be referred to the Attorney General's Office if appropriate.

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Representative Gara pointed out additional concern with hidden evidence and asked if APOC had issued a determination on that. Ms. Ellingson responded they had not at this time.

JOYCE ANDERSON, ADMINISTRATOR, SELECT COMMITTEE ON LEGISLATIVE ETHICS, interjected that the Legislative Ethics Act does have a Statute of Limitation that would apply.

Representative Gara pointed out that the Ethics Committee is allowed to do that and thought that APOC should also. Ms. Ellingson explained that APOC does not have the same provisions as the Select Committee on Legislative Ethics.

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Representative Thomas referenced survey funding and how to eliminate electorate confusion. Ms. Ellingson said that the statutes that APOC administers have a provision to address such concerns; however, there is no section regarding the polls. She added that is not within the limits of the bill, but should be closely scrutinized.

Representative Thomas suggested that an amendment be added requiring all public opinion surveys to indicate who is paying.

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Ms. Ellingson did not know if that could fit into the bill.

Representative Gara offered to work with Representative Thomas. He commented that some people form groups to cover up their name. The language should be written to indicate that if a candidate or party is paying, the information is revealed.

JAN DEYOUNG, ASSISTANT ATTORNEY GENERAL, LABOR AND STATE AFFAIRS DIVISION, CIVIL SECTION, DEPARTMENT OF LAW, ANCHORAGE testified via teleconference, offered to answer questions of the Committee.

Representative Hawker asked if lawmakers had the authority to ban the use of polling for the purposes of information used in political campaigns. Ms. DeYoung believed that there may be first amendment questions related to that. Not

all polling is done through a candidate or group, the areas where APOC regulates and that there are polls done outside the regulatory scheme of APOC. Representative Hawker wanted to see a broader scope. Ms. DeYoung encouraged examination of the first amendment issues.

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In response to a query by Representative Gara, Ms. DeYoung pointed out that there is a provision where a poll would not be considered a contribution as long as it was limited to issues not mentioning a candidate.

Representative Gara wanted the person for whom the poll was given, to know which group was paying for it and hoped it would indicate the major donors.

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Representative Hawker added that corporations & unions should be included. Ms. DeYoung responded that to narrow the scope of the provision, the first amendment concerns would be reduced, especially when moving into the areas of regulation comparable to advertisement paid for by disclosure.

Representative Gara asked if to add "or business or union" would be acceptable. Ms. DeYoung stated that would move into the appropriate area for an expenditure, which currently a union or corporation already makes; there already are restrictions on campaigns related to those activities.

Ms. DeYoung thought that would cause no harm; however, the question remains whether a poll would be an expenditure. Each poll would need to be scrutinized to see if it fell within that prohibition. She requested time to determine the ramifications.

Representative Gara did not believe there would be constitutional concerns making someone reveal who paid for a poll. He reiterated that some polls hide behind other group names. He was interested in seeing an amendment to address the concern.

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Vice-Chair Stoltze requested clarification regarding polls mentioning candidates.

Ms. Ellingson thought that Vice-Chair Stoltze was referencing the definition of when something was a contribution. Vice-Chair Stoltze acknowledged polls can be valuable tool.

Co-Chair Chenault recommended determining the issue that arises from up-front disclosures. He said he does not support illegal polls.

Representative Gara reiterated his concern with polls that undermine the economic interests in the State of Alaska. He maintained that people have the right to know who is behind each poll.

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Co-Chair Meyer MOVED to ADOPT Amendment 1. Representative Gara OBJECTED. (Copy on File).

Co-Chair Meyer explained the amendment would keep the time period consistent to four years on Page 2, Line 2, Line 10, Line 16; Page 3, Line 27, Line 23, Line 27; Page 4, Line 8, Line 15, Line 23, and Line 29.

Representative Gara stated that these are two separate issues;

- #1 - Keeping the beverage receipts
- #2 - The issue of the Statutes of Limitations

Representative Gara pointed out that current law indicates five years in the Statutes of Limitations, recommending that be the civil time amount. He noted support for the amount of time needed for keeping records.

Co-Chair Meyer understood that a legislator would need to keep their records for five years. Representative Gara stated that the violation is determining if the legislator received an illegal campaign contribution.

Representative Hawker did not care how long the time limit is, but recommended that it be consistent.

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Representative Joule interjected that our current system is not broken.

Representative Gara maintained his objection, pointing out that the criminal Statute of Limitations is five years and that the civil should also be five years. Ms. Ellingson advised that APOC has no criminal jurisdiction.

Representative Gara refined the statement, explaining that the Department of Law is allowed to go after an APOC violation for five years if it is a criminal violation. Ms. Ellingson did not know if that was true. Ms. DeYoung

interjected that AS 15.56.130 is the criminal Statute of Limitation.

Representative Hawker requested that the amendment be made consistent with the five year number already in place.

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Mr. Sica clarified that on Page 4, Section 11, the current section is repealed for the Alaska Election code. Repealing that language would make the State default to AS 12.10.010, the general time limitations for a complaint to APOC.

Representative Gara clarified that the five year limit is not a criminal code and if it is a crime under APOC, it would be a civil matter. He reiterated that it be placed at five years.

Co-Chair Meyer asked what would constitute a criminal versus a civil crime. Representative Gara explained that if it does rise to the level of a crime, an illegal campaign donation, five years should apply.

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Ms. DeYoung pointed out that currently, there is a one year criminal Statute of Limitation. The repealler in Section 11, repeals the one year statute, defaulting back to five years. Under HB 281, if it is adopted, there would be a five year criminal Statute of Limitation, which is not the current case.

Co-Chair Meyer understood that it could be repealed to four years. Ms. DeYoung advised that in the criminal provision, the repeal has the effect of five years, criminal statute, which would need to be adopted. She requested that the criminal unit of the Department of Law testify on the particulars of how to achieve that.

Mr. Sica understood the concern voiced by Representative Gara. A civil complaint could rise to the level of a criminal offense. Co-Chair Meyer agreed it does not make sense. Mr. Sica recommended that keeping records is for a person's own protection.

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Co-Chair Chenault noted that with Amendment 1 in place, a complaint could be filed anytime within four years. After four years, no complaint could be filed. Mr. Sica said yes, unless the bill is passed as is and the person intentionally intended to violate that point in statute.

Co-Chair Chenault questioned the chances of discovering some illegal activity in the fifth year versus the fourth year. Mr. Sica replied that would be about a 20% possibility. He added, Representative Lynn prefers five years.

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Mr. Sica advised in the past, these type concerns had been addressed through regulation.

Co-Chair Meyer WITHDREW Amendment 1.

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Co-Chair Chenault questioned the rules that affect advertising with regard to reporting contributors. Ms. Ellingson clarified that reference was to "issue communications" and under the definition in statute, communication either directly or indirectly identifies the candidate or addresses an issue of national, state or local political importance & does not support or oppose a candidate for election to public office. The only requirement is that there is a proper identifier. The statute has three definitions concerning such types of communications:

- Issue communication
- Electioneering communication
- Express communications

Co-Chair Chenault wondered if the statute should be amended.

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HB 281 was HELD in Committee for further consideration.

#HB366

[3:27:44 PM](#)

HOUSE BILL NO. 366

An Act relating to an exemption from public disclosure of certain appropriations from the dividend fund; and providing for an effective date.

REPRESENTATIVE HARRY CRAWFORD, SPONSOR, explained that approximately 5,000 children do not receive child support because the non-custodial parent is incarcerated and ineligible to receive a Permanent Fund Dividend (PFD). When the non-custodial parents are ordered to pay child support, but are unable to do so, their PFD is garnished.

Under current law, the PFD of individuals found ineligible under AS 43.23.005(d) are appropriated to the Department of Corrections and to the programs for the victim crimes. HB 366 allows the Department of Revenue to provide grants to minor children of incarcerated individuals. The bill ensures that minor children of incarcerated individuals do not lose out on the child support they depend upon.

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Vice-Chair Stoltze noted those funds are also being used by a number of other agencies such as the Council on Domestic Violence and Sexual Assault (CDVSA). He asked if the sponsor had discussed the impacted reductions the bill would have to the Department of Public Safety.

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JERRY BURNETT, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF REVENUE, addressed the effect on the other departments. As the bill is written, it allows payments to be written to Child Support Enforcement Agency (CSEA) for children of incarcerated parents out of the PFD fund. In the FY09 budget, there is approximately \$16 million dollars allocated between the Department of Public Safety and the Department of Corrections from the PFD felon funds. There are approximately 5,000 incarcerated parents in the Department of Corrections. If the program was an equivalent program, approximately half the money would not be available. He noted that in the Department of Corrections, all those funds are budgeted for inmate health and would then need to be paid through General Funds.

Vice-Chair Stoltze emphasized that the bill does carry fiscal impact, which is not indicated in the fiscal notes.

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Mr. Burnett clarified that the bill would have no affect on the FY09 budget, which has already passed. The effect of the bill would be shown in FY10.

Representative Crawford agreed HB 366 does have fiscal impact. The change was never intended to remove those funds from the children. He maintained that the debt is owed and should be given back to those children.

Co-Chair Chenault acknowledged that no one disagrees with that; however, was concerned with the zero note submitted by the Department of Corrections, stressing a fiscal impact to the General Funds.

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Representative Hawker asked why AS 43.23.028, the public notice section regarding the notice on the Permanent Fund Dividend stub, had been included. He recommended that the eligibility section be addressed. Representative Crawford explained that Legislative Legal Services had drafted that section and he requested they testify to it.

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TAMARA COOK, DIRECTOR, LEGISLATIVE LEGAL SERVICES, LEGISLATIVE AFFAIRS AGENCY, JUNEAU, testified via teleconference, addressed the concerns of Representative Hawker. She explained that the way in which the PFD program works with respect to AS 43.23.005(d) basically identifies individuals that will not be eligible for the dividends. Then the Legislature has an elaborate notice requirement. When the Legislature appropriates money from the fund for a non dividend fund purpose, including hold-harmless, the notice appears on the check stubs so that the State's population knows when money is being taken from the dividend fund and not paid directly as dividends. There is an exception, which is being amended in HB 366. The exception is established on Page 1, which clarifies that to the extent that the Legislature chooses to appropriate money from the PFD, that does not exceed the amount that would have been paid to State residents, then the notice requirement is not triggered. In order to avoid the trigger, there are certain emphases to certain purposes as established on Page 1 & Page 2; the bill essentially adds another purpose.

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Representative Hawker understood that there were no statutory provisions for the existing appropriations #1-#5 and that they were not noticed. Ms. Cook replied correct. The Legislature makes an appropriation from the dividend fund as long as the amount appropriated is from one of the five listed purposes.

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Representative Hawker stated that the bill would carve out another exception to the notice requirements and asked what was being accomplished by not disclosing the information through the notice requirement.

Representative Crawford pointed out that the State is not allowed to use public funds to pay the debt of an individual. Representative Hawker commented that to accomplish that intent, the language should return to the eligibility section stipulating the exception, AS 43.23.005, Section (d), add (f), placing another waiver requirement for the purpose of satisfying child support.

[3:46:37 PM](#)

Ms. Cook explained that the problem is that the recommendation is to set up a program that explains there are certain types of criminals that do not qualify for PFD's and then single out some of those people that owe child support. The problem becomes an equal protection concern. The State has an interest in determining who qualifies for the PFD; that sub-section (d) was litigated and it survived the litigation. The State will be allowing some of these people to qualify for another PFD. She did not know how to justify that. The State does not have an interest in helping criminals pay off debt.

Representative Hawker asked why under current statute and regulation, does the Department allow payments of dividends to a certain class of people absent from the State as students and at the same time regulate that they will not give the same treatment to a student on a Fulbright scholarship.

[3:49:05 PM](#)

Ms. Cook explained that Representative Hawker was addressing the "allowable absence" provision. The Legislature has created a list of allowable absences deemed to be residences for that program. She did not think that all allowable absences had been litigated.

Representative Crawford commented that the analogy is that to garnish a PFD check, is not on the same level as innocent children's equal protection concerns. He did not want to make all criminals eligible to pay off debts with their PFD's. Representative Hawker agreed it was defending and protecting the rights of that innocent individual. Representative Crawford suggested it would provide benefit in the right to satisfy part of their debt.

[3:51:44 PM](#)

Vice-Chair Stoltze commented on passage of the expanded aspect of application of felons. He did not recollect any change to the eligibility for child support but instead would expand the net of the number of penalized people. He asked that the record be made clear. Mr. Burnett agreed that the effects of making people ineligible for dividends never changed the eligibility for the Child Support Enforcement Agency to garnish. It only changed the number of people.

[3:54:09 PM](#)

Representative Crawford worried about children being in line for the garnishments.

Representative Hawker requested to see the House Letter of Intent related to the enactment of sub-Section (b).

PUBLIC TESTIMONY CLOSED

Co-Chair Chenault recommended discussion with the Department of Corrections regarding the zero note.

HB 366 was HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 3:56 P.M.