

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

March 19, 2008

1:11 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Lindsey Holmes

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 37

Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor and to eliminate personal pronoun references in the sections proposed to be amended.

- MOVED CSHJR 37(JUD) OUT OF COMMITTEE

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."

- MOVED CSHB 281(JUD) OUT OF COMMITTEE

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."

- HEARD AND HELD

#### PREVIOUS COMMITTEE ACTION

BILL: HJR 37

SHORT TITLE: CONST AM: SEC. OF STATE REFERENCES

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG

02/19/08	(H)	READ THE FIRST TIME - REFERRALS
02/19/08	(H)	STA, JUD
03/13/08	(H)	STA AT 8:00 AM CAPITOL 106
03/13/08	(H)	Scheduled But Not Heard
03/15/08	(H)	STA AT 11:00 AM CAPITOL 106
03/15/08	(H)	Moved Out of Committee
03/15/08	(H)	MINUTE(STA)
03/17/08	(H)	STA RPT 4DP 1NR
03/17/08	(H)	DP: JOHNSON, GRUENBERG, DOLL, ROSES
03/17/08	(H)	NR: COGHILL
03/17/08	(H)	FIN REFERRAL ADDED AFTER JUD
03/19/08	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 281

SHORT TITLE: CAMPAIGN FINANCE COMPLAINTS

SPONSOR(S): REPRESENTATIVE(S) LYNN, GATTO

01/04/08	(H)	PREFILE RELEASED 1/4/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	STA, JUD
01/17/08	(H)	STA AT 8:00 AM CAPITOL 106
01/17/08	(H)	Heard & Held
01/17/08	(H)	MINUTE(STA)
01/19/08	(H)	STA AT 11:00 AM CAPITOL 106
01/19/08	(H)	Moved CSHB 281(STA) Out of Committee
01/19/08	(H)	MINUTE(STA)
01/22/08	(H)	STA RPT CS(STA) NT 1DP 3NR 2AM
01/22/08	(H)	DP: LYNN
01/22/08	(H)	NR: ROSES, COGHILL, DOLL
01/22/08	(H)	AM: JOHNSON, JOHANSEN
01/22/08	(H)	FIN REFERRAL ADDED AFTER JUD
01/25/08	(H)	JUD AT 1:00 PM CAPITOL 120
01/25/08	(H)	-- MEETING CANCELED --
02/01/08	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/08	(H)	Heard & Held

02/01/08 (H) MINUTE(JUD)  
 02/06/08 (H) JUD AT 1:00 PM CAPITOL 120  
 02/06/08 (H) <Bill Hearing Rescheduled to 02/08/08>  
 02/08/08 (H) JUD AT 1:00 PM CAPITOL 120  
 02/08/08 (H) Heard & Held  
 02/08/08 (H) MINUTE(JUD)  
 03/19/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 368

SHORT TITLE: ETHICS: LEGISLATIVE & GOV/LT GOV  
 SPONSOR(S): STATE AFFAIRS

02/19/08 (H) READ THE FIRST TIME - REFERRALS  
 02/19/08 (H) STA, JUD, FIN  
 02/26/08 (H) STA AT 8:00 AM CAPITOL 106  
 02/26/08 (H) Moved CSHB 368(STA) Out of Committee  
 02/26/08 (H) MINUTE(STA)  
 02/27/08 (H) STA RPT CS(STA) NT 3DP 4NR  
 02/27/08 (H) DP: ROSES, GRUENBERG, LYNN  
 02/27/08 (H) NR: JOHNSON, JOHANSEN, COGHILL, DOLL  
 03/19/08 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

MIKE SICA, Staff  
 to Representative Bob Lynn  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Presented HB 281, Version N, on behalf of Representative Lynn, joint prime sponsor; presented HB 368 on behalf of Representative Lynn, chair of the House State Affairs Standing committee, sponsor.

CHRISTINA ELLINGSON, Acting Director  
 Alaska Public Offices Commission (APOC)  
 Department of Administration (DOA)  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 281.

DENNIS "SKIP" COOK, Co-chair  
 Select Committee on Legislative Ethics  
 Alaska State Legislature  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 281; answered questions during the hearing on HB 368.

BRENDA PAGE, Assistant Attorney General  
Labor and State Affairs Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 281.

JANE W. PIERSON, Staff  
to Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered a question during the hearing on HB 281.

LISA MARIOTTI, Staff  
to Representative Max Gruenberg  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 368.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:11:42 PM](#). Representatives Lynn, Gruenberg, Dahlstrom, Coghill, and Ramras were present at the call to order. Representative Samuels arrived as the meeting was in progress.

#### HJR 37 - CONST AM: SEC. OF STATE REFERENCES

[1:12:05 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 37, Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor and to eliminate personal pronoun references in the sections proposed to be amended.

[1:13:01 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HJR 37, Version 25-LS1527\E, Chenoweth,

3/18/08, as the work draft. There being no objection, Version E was before the committee.

REPRESENTATIVE GRUENBERG, speaking as the sponsor of HJR 37, relayed that the resolution cures an oversight that occurred in 1970, when the legislature changed the name of the office of secretary of state to the office of lieutenant governor. At that time, two sections were missed and so this resolution would conform those sections. Version E also removes the provision in the original resolution to eliminate personal pronoun references, he explained, because gender neutral references are instead being addressed by HJR 7.

CHAIR RAMRAS, after ascertaining that no one wished to testify, closed public testimony on HJR 37.

[1:14:52 PM](#)

REPRESENTATIVE GRUENBERG, in response to questions, indicated that his attention was drawn to this matter by an identical bill that died in committee during a prior legislature.

REPRESENTATIVE COGHILL pointed out that the proposed constitutional amendment must be approved by the voters. He then asked about the purpose of the change from secretary of state to lieutenant governor.

REPRESENTATIVE GRUENBERG surmised that it was a more modern term.

REPRESENTATIVE COGHILL observed that the governor has the authority to assign broad duties to the lieutenant governor.

[1:16:58 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the committee substitute for HJR 37, 25-LS1527\E, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 37(JUD) was reported out of the House Judiciary Standing Committee.

HB 281 - CAMPAIGN FINANCE COMPLAINTS

[1:17:30 PM](#)

CHAIR RAMRAS announced that the next order of business would be 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." [Before the committee was CSHB 281(STA) as amended on 2/8/08.]

[1:17:55 PM](#)

REPRESENTATIVE LYNN, speaking as one of the joint prime sponsors of HB 281, made a motion to adopt the proposed committee substitute for HB 281, Version 25-LS1115\N, Bullard, 3/18/08, as the work draft. There being no objection, Version N was before the committee.

REPRESENTATIVE LYNN characterized HB 281 as the flagship bill for ethics and suggested that it would be appropriate for it to "sail" from this committee and on to the House Finance Committee. He then summarized the main provisions of Version N as follows: it extends the statute of limitations from one year to five years for the review of complaints of alleged Alaska Public Office Commission (APOC) violations or ethics committee complaints; and requires six years for retention of records relating to this act and when leaving office. Representative Lynn said that the five-year statute of limitations was supported by the APOC, the ethics committee and most constituents; in fact, recent events have illustrated that the one-year statute of limitations was inadequate. He noted that HB 281 is not retroactive, and urged passage of the bill from committee.

CHAIR RAMRAS asked for an explanation of the title change and the differences between CSHB 281(STA) [as amended] and Version N.

[1:22:51 PM](#)

MIKE SICA, Staff to Representative Bob Lynn, Alaska State Legislature, informed the committee, on behalf of Representative Lynn, joint prime sponsor of HB 281, that there were many good changes made to CSHB 281(STA). First, the change proposed to AS 15.13.040(f) was deleted so as not to put the burden of recordkeeping on campaign workers or small print shops, and the title was "tightened." Next, language was added that allows a person who has left state elected office to file records in his/her final report.

REPRESENTATIVE SAMUELS asked whether he could simply turn over all his records to the APOC while he is still in office.

1:25:30 PM

CHRISTINA ELLINGSON, Acting Director, Alaska Public Offices Commission (APOC), Department of Administration (DOA), explained that currently candidates and campaigns are required to keep their records with them for one year. She opined that her office would accept records in an electronic format as a portable document format (PDF) file, but the ultimate responsibility for the records falls to the candidate and the campaign.

REPRESENTATIVE SAMUELS further asked whether receipts for expenses were required.

MS. ELLINGSON said receipts or cancelled checks must be kept. The requirements are similar to those for any records kept for any type of financial transaction outside of a campaign.

REPRESENTATIVE SAMUELS surmised that a candidate could scan receipts and invoices and provide the APOC with a disc containing the records.

MS. ELLINGSON indicated that that would be an ideal situation, as long as the records are in an electronic format.

REPRESENTATIVE SAMUELS expressed his concern that he would not be able to locate a receipt from six years ago.

CHAIR RAMRAS observed that everyone has an obligation to the Internal Revenue Service (IRS). He expressed his concern about setting a standard with the APOC that is greater than that with the IRS. For his private sector business records, the IRS requires storage of many records. However, he indicated that he is in favor of the title change and the sponsor's other changes to the bill. Representative Ramras then spoke briefly about previous ethics legislation that was enacted and its effect on municipal office candidates.

MR. SICA responded that IRS recordkeeping is based on a sliding scale; in fact, records are to be kept from three to seven years, and some should be kept indefinitely.

1:30:52 PM

DENNIS "SKIP" COOK, Co-chair, Select Committee on Legislative Ethics, Alaska State Legislature, informed the committee that the ethics committee was more concerned with the statute of

limitations and has not discussed the retention of records. He opined that the records should be retained at least as long as the statute of limitations, but not longer.

REPRESENTATIVE LYNN explained that the intent of keeping the records available was to assist APOC and the ethics committee. He said that he felt the records should be retained for at least five years, and that six years would also be appropriate, although he is not adamant about maintaining that longer time period.

MS. ELLINGSON pointed out that the bill calls for a retention of records in the event that they are needed. Her experience has been that the APOC has required past records in three or four cases over the last twenty years. She advised that a prudent person would want to keep the records because of tax implications on campaign accounts, and in the case of an investigation.

REPRESENTATIVE COGHILL relayed that he has stored all of his campaign records as a matter of protection. He noted that the bill would allow a complaint to be filed within five years and so the records could be needed. He said that he is not uncomfortable with this policy and admonished everybody to keep records in the case of an allegation that may come five years after the date of the alleged violation.

[1:35:22 PM](#)

REPRESENTATIVE DAHLSTROM recalled the changes in her life when she first decided to run for office; in fact, if she had known all of the circumstances, she may have made a different decision. She explained that office holders live in a fishbowl, and with all of the restrictions on legislators, and requirements for recordkeeping, it is an almost overwhelming process to run for public office, particularly for a citizen legislature. Representative Dahlstrom warned that these circumstances may narrow the field of those who would run for public office; regardless, legislators must have the highest ethics.

CHAIR RAMRAS questioned whether unsuccessful candidates for office would be covered by HB 281 given that violations can occur during a campaign.

MS. ELLINGSON advised that current law provides that if a violation occurs, regardless of when, the candidate and campaign

are accountable. For example, if an illegal contribution is made, the candidate and the contributor are culpable, regardless of whether the candidate is elected. She described previous investigations that involved searching a campaign's records back three or four years.

CHAIR RAMRAS referred to the added language on page 2, lines 7-8, that read:

A person who has left state elected office may submit the records required to be preserved under (a) of this section to the commission electronically.

CHAIR RAMRAS then asked whether this addition allows a candidate to electronically submit his or her records to APOC for storage.

MS. ELLINGSON said that her interpretation is that this provision applies to a person who has left state office.

CHAIR RAMRAS suggested the need for a conceptual amendment to "level [the] playing field for candidates as well as elected officials."

REPRESENTATIVE GRUENBERG concurred.

1:43:29 PM

MR. SICA, returning to his explanation of the bill, said that Section 2 now allows a "person," as opposed to a qualified voter, to register a complaint. The language in Sections 3 and 4 of Version N is unchanged from that in CSHB 281(STA).

REPRESENTATIVE GRUENBERG referred to the language on page 3, lines 4-14, which provides that 10 days are allowed to examine the statements and reports filed under AS 24.45, and that [there is] a duty to notify the person immediately if irregularities are found. He asked whether the APOC could reasonably respond to that 10-day deadline when year-end reports are filed.

MS. ELLINGSON stated that this requirement affects lobbying reports that are submitted monthly and quarterly to the lobbyist specialist.

MR. SICA reported that language in Sections 5 and 6 of Version N was changed for conforming purposes, and that the language of Section 7 of version N remains unchanged. In Section 8, "registered voter" was deleted and "person" was inserted, and

unnecessary language was removed. Further, in Section 9, subsection (c), now no longer contains the language, "or a member of its staff". The language of Section 10 of Version N is unchanged. Mr. Sica pointed out that Section 12 repeals AS 15.56.130; this change allows a complaint, which may achieve the level of a criminal offense, to also have a five-year statute of limitations. He explained that this would create consistency for civil and criminal complaints and would allow the Department of Law (DOL) to follow up on an allegation forwarded to it by the APOC or the ethics committee.

REPRESENTATIVE GRUENBERG directed the committee's attention to Section 10, which he characterized as the ethics enforcement Act. He emphasized that under Section 10, only "a registered Alaska voter" may bring about enforcement of the Legislative Ethics Act, and opined that it should be broadened to a "person." One reason to do so is because there are those who do not register to vote for either religious convictions or other reasons. This population should not be precluded from filing a complaint. He concluded that this restriction is poor public policy and, in fact, may be unconstitutional.

[1:52:23 PM](#)

BRENDA PAGE, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), informed the committee that she is unsure of the reason that "registered Alaska voter" remains in Section 10. She acknowledged that this language preceded the bill and offered to review the language for constitutional issues.

REPRESENTATIVE GRUENBERG stressed that the tag line, "Enforcement by private citizens", was in conflict with "registered Alaska voter" and offered to make an amendment.

MS. ELLINGSON explained that the law under discussion was not the executive branch ethics Act, but rather the public official financial disclosure law, which came about via a citizens' ballot initiative.

REPRESENTATIVE GRUENBERG reiterated his belief that the reference should be changed to conform to the remainder of the bill.

MS. ELLINGSON agreed, and noted that there was little improvement in this legislation from 1974 until about four or five years ago.

REPRESENTATIVE SAMUELS said that he prefers the version that requires the person filing a complaint to state their name instead of hiding behind an organization, such as a political party, or a "made-up" organization.

REPRESENTATIVE DAHLSTROM agreed. She added that she prefers "registered voter," and questioned why someone who was not registered to vote would be interested in political situations.

REPRESENTATIVE GRUENBERG returned attention to Section 12 and the repeal of AS 15.56.130, and questioned how this change would result in a five-year statute of limitations.

[Following was a brief discussion about contacting Legislative Legal and Research Services.]

CHAIR RAMRAS ascertained that Representative Gruenberg's staff would contact Legislative Legal and Research Services for that information.

[1:59:49 PM](#)

REPRESENTATIVE GRUENBERG asked Ms. Page to comment on whether it is clear that the repeal of AS 15.56.130 would allow the general criminal statute of limitations, AS 12.10.010, to apply to Title 15.

MS. PAGE indicated that she would need to defer this question to the criminal division of the DOL.

MR. SICA remarked that Anne Carpeneti from the DOL had relayed that the repeal of AS 15.56.130 would result in a five-year statute of limitations as long as the committee states that that is the intention.

REPRESENTATIVE GRUENBERG opined that in the real world of a trial lawyer, a statement on the record, after the repeal of a statute, was very shaky. He said that a statute of limitations is extremely important and that a voice in a committee meeting could be lost in the sands of time.

REPRESENTATIVE LYNN acknowledged that point.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 281.

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 1, such that on page 2, line 7, after "(c)", the phrase, "A candidate who has run for office or" would be inserted.

REPRESENTATIVE SAMUELS objected, and asked whether the intent was for any candidate, successful or not.

CHAIR RAMRAS clarified that the intent of Conceptual Amendment 1 is to level the playing field for a candidate and a state elected official so that both can avail themselves of the right to electronically file their records.

REPRESENTATIVE SAMUELS removed his objection.

CHAIR RAMRAS announced that Conceptual Amendment 1 was adopted.

2:04:50 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2 such that on page 5, line 4, the words, "AS 15.56.130 is repealed." would be deleted and replaced with the words, "A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within five years after the date of the election in connection with which the offense is alleged to have been committed."

REPRESENTATIVE COGHILL objected. He opined that Conceptual Amendment 2 pertains to criminal complaints.

REPRESENTATIVE GRUENBERG agreed, and said, "This is a prosecution by the attorney general."

REPRESENTATIVE COGHILL then asked about the scope of criminal complaints that would arise from the civil section of the bill.

REPRESENTATIVE GRUENBERG responded that an example would be election fraud, which falls under the general Title 12 statute of limitations of five years.

REPRESENTATIVE COGHILL stated his reluctance to have a five-year statute of limitations, even in the bill. He relayed that although he wants people to be held accountable for criminal actions, the cases addressed [by HB 281] are generally just infractions that may result in civil penalties and civil action. He removed his objection, but stated that he was unsure of his continued support for the bill.

[2:07:54 PM](#)

CHAIR RAMRAS remarked that there were no other objections and announced that Conceptual Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG pointed out that the commencement of this statute of limitations is the election date, not the date of the offense, as it would normally be under Title 12. He stressed that his intent is not to change that aspect of the provision but to merely change the length to five years.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

REPRESENTATIVE GRUENBERG recalled that the current language of AS 39.50.100 came from a ballot initiative. He opined that using the terms "an individual" or "a person" would be more appropriate than using the term, "a registered Alaska voter."

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 3 such that on page 4, lines 29-30, the words "registered [QUALIFIED] Alaska voter" are deleted and replaced with the word, "person".

VICE CHAIR DAHLSTROM objected.

REPRESENTATIVE SAMUELS indicated that he doesn't want to have political parties bringing a civil action under AS 39.50.100 which is what using the term, "person" would allow. He suggested changing the language to something along the lines, "an individual Alaskan who would otherwise be qualified to vote."

REPRESENTATIVE GRUENBERG indicated his acceptance of such language.

MS. ELLINGSON reminded the committee that AS 39.50.100 pertains to the public official financial disclosure law, and that the APOC would investigate a claim brought by anyone. [Under this provision] the claimant could go forward and file [a complaint] with the court system if they are unsatisfied by the APOC investigation. According to her experience, she relayed, such complaints are generally always filed by individuals rather than organizations because the remedies can be quite harsh. She mentioned a couple such complaints.

REPRESENTATIVE SAMUELS said that he would be satisfied if the language is changed such that this provision applies to an individual human being.

REPRESENTATIVE GRUENBERG expressed acceptance of that concept.

REPRESENTATIVE SAMUELS made a motion to amend Conceptual Amendment 3 such that the words, "a registered [QUALIFIED] Alaska voter" would be deleted and replaced with the words, "An individual citizen who would be qualified to register to vote."

REPRESENTATIVE GRUENBERG clarified, "An individual citizen who would be qualified to vote."

REPRESENTATIVE SAMUELS agreed.

VICE CHAIR DAHLSTROM asked whether there were any objections to the amendment to Conceptual Amendment 3. There being none, Conceptual Amendment 3 was amended.

VICE CHAIR DAHLSTROM asked whether there were any objections to Conceptual Amendment 3, as amended. There being none, Conceptual Amendment 3, as amended, was adopted.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

CHAIR RAMRAS asked whether the word "Alaska" was retained.

REPRESENTATIVE GRUENBERG answered, "Conceptually, it would have read, 'An individual citizen who would be qualified to vote' and, I would have no problem if we took another amendment to say, 'in Alaska'."

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 4 such that "in Alaska" or "an Alaskan" would be added [to the language being added to page 4, lines 29-30]. There being no objection, Conceptual Amendment 4 was adopted.

[2:14:16 PM](#)

REPRESENTATIVE COGHILL noted that Conceptual Amendment 2 altered Section 12, and questioned whether the language on page 6, lines 1-3, that contains a reference to Section 12 needs to be altered as well.

CHAIR RAMRAS questioned whether the drafter, in incorporating Conceptual Amendment 2, would address that point.

REPRESENTATIVE GRUENBERG stressed that he does not intend to make the statutes of limitations retroactive because that could cause constitutional problems. He said he would simply ask for the bill drafter to conform "this provision" as necessary.

REPRESENTATIVE COGHILL stated his acceptance of Representative Gruenberg's position. He then questioned what effect the applicability provisions of Section 13, specifically subsections (a)(1) and (e)(1), would have on the proposed five-year statute of limitations provided for in Sections 2 and 7.

MR. SICA indicated that the intent with the language in Section 13 is to merely have the statute of limitations provided for in Sections 2 and 7 apply to those investigations currently allowed under law.

REPRESENTATIVE SAMUELS relayed that he may offer an amendment on the House floor to change "person" back to "individual".

The committee took an at-ease from 2:19 p.m. to 2:21 p.m.

[2:21:46 PM](#)

JANE W. PIERSON, Staff to the House Judiciary Standing Committee, Alaska State Legislature, relayed that the drafter has explained to her that the aforementioned language in Section 13 of HB 281 will simply ensure that the current look-back provisions pertaining to the current statute of limitations being altered by Sections 2 and 7 will still apply; no new time will be added to the proposed five-year statute of limitations.

REPRESENTATIVE GRUENBERG relayed that he'd had a misunderstanding with regard to the change made via the adoption of Conceptual Amendment 2; in adopting Conceptual Amendment 2, none of the case law associated with the statute of limitations provided for in AS 12.10.010 would apply, whereas simply allowing the language of Section 12 to remain as is would still provide for a five-year statute of limitations.

REPRESENTATIVE GRUENBERG moved that the committee rescind its action in adopting conceptual Amendment 2. There being no objection, the committee rescinded its action in adopting Amendment 2.

REPRESENTATIVE GRUENBERG withdrew Conceptual Amendment 2.

[2:24:19 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed committee substitute (CS) for HB 281, Version 25-LS1115\N, Bullard, 3/18/08, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 281(JUD) was reported from the House Judiciary Standing Committee.

HB 368 - ETHICS: LEGISLATIVE & GOV/LT GOV

[2:25:08 PM](#)

CHAIR RAMRAS announced that the final order of business would be 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." [Before the committee was CSHB 368(STA).]

REPRESENTATIVE LYNN, speaking as chair of the House State Affairs Standing Committee, sponsor, noted that HB 368 would allow lobbyists to give gifts to their spouses.

[2:27:30 PM](#)

MIKE SICA, Staff to Representative Bob Lynn, Alaska State Legislature, presented HB 368 on behalf of Representative Lynn, chair of the House State Affairs Standing Committee, sponsor. He explained that current law does not allow candidates for the office of governor or lieutenant governor to engage in campaign fund raising during a legislative session held in the capital city. House Bill 368 would in part expand that prohibition to include any municipality in which the legislative session is convened.

CHAIR RAMRAS asked whether candidates for federal offices would be affected.

MR. SICA answered that neither current law nor the bill address candidates for federal offices. Again, the bill in part merely addresses campaign fund raising by candidates for governor and lieutenant governor when legislative sessions are held outside of the capital city of Juneau.

CHAIR RAMRAS asked Representative Lynn why the bill only applies to candidates for governor and lieutenant governor and not to candidates campaigning for federal offices who might also be the governor or lieutenant governor.

REPRESENTATIVE LYNN opined that the Alaska State Legislature should only address Alaska issues, not federal issues. he said he is not sure whether it would be constitutional for the state to become involved in telling a candidate for federal office what he/she may or may not do.

REPRESENTATIVE GRUENBERG recalled other legislation that attempts to limit campaign fund raising for members of the legislature who are running for federal office. He asked for time to research federal case history with regard to whether doing so would be constitutional.

REPRESENTATIVE LYNN pointed out that bills should be discussed on their merit and not in light of current political situations.

CHAIR RAMRAS noted that other legislation has been reactive in nature.

REPRESENTATIVE COGHILL questioned which statutes would best address the changes proposed in HB 368.

[2:31:45 PM](#)

MR. SICA relayed although Section 1 was not recommended by the Select Committee on Legislative Ethics, it was included by the sponsor because he felt that the limitations on campaign fund raising by legislative candidates provided for via Section 2 should also apply to candidates for governor and lieutenant governor. Section 2 of the bill prohibits legislators from campaign fund raising during a legislative session in the municipality in which the legislative session is held. Section 3 amends AS 24.60.080(a) to allow a legislator or legislative employee to accept a gift worth \$250 or more in value, in a calendar year, or accept a gift of any monetary value from a lobbyist, an immediate family member of a lobbyist or a person

acting on behalf of a lobbyist, if that gift is unconnected with the recipient's legislative status and is from a member of the legislator's or legislative employee's immediate family. He noted that the term "immediate family" is defined in AS 24.60.990(a)(6) as meaning:

- (A) the spouse or domestic partner of the person; or
- (B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

[2:34:12 PM](#)

MR. SICA explained that Sections 4 and 5 merely take the last two sentences in existing in AS 24.60.080(h) and place them into a proposed new subsection (l). This change was proposed by the Select Committee on Legislative Ethics in order to make the language easier to read. Section 6 provides that the publishing of summaries of decisions and advisory opinions shall occur annually, rather than semi-annually. Section 7 provides for a fine of \$100 per day, up to a maximum of \$2,500, for a willful late filing of a public disclosure. He noted that CSHB 368 uses the term, "may impose", rather than the term, "shall impose" as was used in the original bill; this change gives the ethics committee the discretion to impose that larger fine. He also noted that CSHB 368 no longer contains a proposed definition of the term, "partisan political activity".

REPRESENTATIVE DAHLSTROM asked how the term, "wilful" is defined.

MR. SICA said that he did not recall, but surmised that that is something that would be determined by the ethics committee.

[2:36:43 PM](#)

DENNIS "SKIP" COOK, Co-chair, Select Committee on Legislative Ethics, Alaska State Legislature, informed the committee that he did not have a definition of the term, "willful". However, most problems stem from an inadvertent failure to file a disclosure in a timely fashion rather than knowingly failing to file in a timely fashion.

REPRESENTATIVE LYNN added that most violations are due to oversights or errors, and so the concept was that those who

willfully refuse to file a disclosure with the APOC could be assessed the higher fine.

REPRESENTATIVE DAHLSTROM asked whether, theoretically, she could refuse to file the required disclosures and simply pay the maximum fine every year instead.

REPRESENTATIVE LYNN, noting that there would be no other consequences for failing to file a disclosure - aside from negative publicity - characterized thumbing one's nose at the law as very inappropriate.

REPRESENTATIVE DAHLSTROM questioned what would happen if a legislator's religious beliefs mandated that he/she not file a disclosure.

REPRESENTATIVE LYNN, remarking on the importance of following one's religious beliefs, suggested that perhaps such a person shouldn't be running for office to begin with.

[2:40:20 PM](#)

MR. COOK relayed that the ethics committee usually makes recommendations for statutory penalties to the legislature, and that penalties are directly assessed by the committee only under this section. He opined that in the case of a legislator who refuses to file reports, the legislature could impose further sanctions.

CHAIR RAMRAS noted that AS 24.60.010(1) in part says:

Sec. 24.60.010. Legislative findings and purpose.

The legislature finds that

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

CHAIR RAMRAS then remarked on the fact that the governor recently endorsed the lieutenant governor, who is in charge of the Division of Elections, as a candidate for U.S. Congress, and relayed that at some point he would be attempting to address such situations via an amendment.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 368.

[2:44:56 PM](#)

LISA MARIOTTI, Staff to Representative Max Gruenberg, Alaska State Legislature, relayed that a memorandum, dated 1/25/08, from Legislative Legal and Research Services that was produced for HB 305 explains that the Federal Election Campaign Act of 1971 (FECA), as amended, preempts state law with regard to election to federal office, and that this has been upheld by the 11th Circuit Court of Appeals in a case addressing a Georgia state law concerning campaign contributions for federal office.

REPRESENTATIVE SAMUELS surmised that although activities of a candidate [for federal office] can not be regulated by state law, the activities of a state official can be regulated. He suggested that a law could be created that prohibits one to run for Congress while one holds an elected state position.

MS. MARIOTTI indicated that that is her understanding.

REPRESENTATIVE GRUENBERG called members' attention to the dissenting opinion by Judge Hill in the aforementioned case - Teper V. Miller - and noted that it states that [the Georgia state law did] not attempt to regulate the person as a candidate for federal office, but rather as a holder of state office.

MS. MARIOTTI, in response to a request, reiterated her comments.

REPRESENTATIVE SAMUELS reiterated his comments, adding that if a person who holds state office is precluded by state law from engaging in activities related to campaigning for federal office, he/she can simply relinquish his/her state position.

[2:51:05 PM](#)

REPRESENTATIVE GRUENBERG noted that the concurring opinion by Judge Carnes in the aforementioned case in part read [original punctuation provided along with some formatting changes]:

I concur in the Court's holding that O.C.G.A. § 21-5-35, which has the effect of limiting the time for making contributions to some candidates for federal office, is preempted by the Federal Election Campaign Act, 2 U.S.C. § 431 et seq. ("FECA"). However, I would base that conclusion upon the express language of the preemption clause in the act, 2 U.S.C. § 453, which states unambiguously that the provisions of the act and rules prescribed under it, "supersede and preempt any provision of State law with respect to

election to Federal office." (emphasis added) A state law regulating the time in which a category of citizens can accept contributions to run for election to federal office is a "State law with respect to election to Federal office." It is as simple as that.

REPRESENTATIVE GRUENBERG said this seems to him to pretty well trump the dissenting opinion. He predicted that if either HB 305 or HB 368 were challenged in court, it would rule as the majority did in Teper, and that either bill, if enacted, would likely invite legal challenges in federal court, and then the issue would be resolved, perhaps even by the U. S. Supreme Court.

REPRESENTATIVE SAMUELS asked whether, if the state cannot regulate an individual citizen, it can prohibit a public office holder from running for two offices at the same time.

REPRESENTATIVE GRUENBERG offered his recollection that when Lyndon B. Johnson ran for Vice President, he also ran for re-election to the U.S. Senate.

[2:55:31 PM](#)

MR. SICA, on the issue of the definition of "a willful violation," noted that a memorandum dated 1/7/08 written by Herman Walker, chair of the Select Committee on Legislative Ethics, states that the Select Committee on Legislative Ethics would make the determination of whether there has been a willful omission or a blatant failure to file the required reports.

MR. COOK noted that proposed AS 15.13.072(g) and proposed AS 24.60.031(a)(1) both use the term "solicit or accept", but proposed AS 24.60.031(a)(3) instead uses the term, "expend".

REPRESENTATIVE SAMUELS opined that it makes sense for the bill to make that distinction. For example, if a special session is called on short notice, a candidate for office could have already arranged for advertising.

[2:59:53 PM](#)

MR. COOK said he is unsure whether proposed AS 24.60.031(a)(3) is meant to apply to all candidates, or just to those already holding office.

REPRESENTATIVE GRUENBERG referred to Footnote 28 in the Teper opinion, and offered his understanding that the key difference between [HB 305] and the Georgia law is that the latter prohibits the raising of money anywhere during the time of a special session, whereas HB 305 prohibits fund raising only in the capital city. He opined that the fact that a smaller population will be affected by HB 305 may strengthen the standing of the Alaska law if challenged. He then suggested that a severability clause should be included in the bill.

CHAIR RAMRAS relayed that CSHB 368(STA) would be held over.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:03 p.m.