

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 12, 2007

1:37 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Bill Wielechowski  
Senator Gene Therriault

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 64

"An Act relating to the requirement for candidates, groups, legislators, public officials, and other persons to submit reports electronically to the Alaska Public Offices Commission; relating to disclosures by legislators, public members of the Select Committee on Legislative Ethics, legislative directors, public officials, and certain candidates for public office concerning services performed for compensation and concerning certain income, gifts, and other financial matters; requiring legislators, public members of the Select Committee on Legislative Ethics, legislative directors, public officials, and municipal officers to make certain financial disclosures when they leave office; relating to insignificant ownership interest in a business and to gifts from lobbyists for purposes of the Alaska Executive Branch Ethics Act; relating to certain restrictions on employment after leaving state service for purposes of the Alaska Executive Branch Ethics Act; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 64

SHORT TITLE: DISCLOSURES & ETHICS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/26/07	(S)	READ THE FIRST TIME - REFERRALS
01/26/07	(S)	JUD, STA, FIN
02/08/07	(S)	JUD AT 3:30 PM BUTROVICH 205

02/08/07 (S) Heard & Held  
02/08/07 (S) MINUTE(JUD)  
02/12/07 (S) JUD AT 1:30 PM BELTZ 211

#### **WITNESS REGISTER**

David Jones, Senior Assistant Attorney General  
Civil Division  
Opinions, Appeals, and Ethics  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Provided an overview of SB 64

Brooke Miles, Executive Director  
Alaska Public Offices Commission (APOC)  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Commented on SB 64

#### **ACTION NARRATIVE**

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at [1:37:20 PM](#). Present at the call to order were Senator Wielechowski, Senator Huggins, Senator Therriault, and Chair French.

#### **SB 64- DISCLOSURES & ETHICS**

CHAIR FRENCH announced that the business before the committee is to continue the overview of SB 64, which began on February 8.

DAVID JONES, Senior Assistant Attorney General, Civil Division, Department of Law, continued the overview starting on Section 4. It relates to electronic filing requirements of financial disclosures from legislators, legislative directors, and public members of the Select Committee on Legislative Ethics.

[1:38:29 PM](#)

MR. JONES said the governor's bill has three other disclosure improvements that apply to candidates and public officials in the executive branch.

CHAIR FRENCH asked if that pertains to electronic filing or the broader topic of disclosure and the amount of information that is released.

MR. JONES replied the three provisions include electronic filing, filing with broader disclosure of details about finances, and disclosures from former public officials.

Section 5 requires disclosure from former public officials within 90 days of leaving service in an official position. This would apply to the governor, to high-ranking executive branch officials, to judicial officers, to certain municipal officers, and to other public officials as defined in Chapter 50 of Title 39. Basically this section would extend the existing financial disclosure requirements to the final period of service.

Section 6 requires more detail in the financial disclosures that candidates and public officials file with APOC. The threshold for reporting income or interest is reduced to \$1,000 from the current \$5,000 level. The disclosure would include: the source of the income, the amount received, the number of hours it took to earn the income, and details regarding the services that were provided. The \$1,000 threshold would also apply to the existing disclosure requirements for stocks, trusts, similar interests, loans, loan guarantees, and indebtedness.

MR. JONES said DOL is currently comparing the definitions in AS 39.50.200 with the list of boards and commissions so it's possible that an amendment will identify additional boards and commissions that should be subject to the financial disclosure requirements.

[1:41:51 PM](#)

Section 7 requires that candidates and public officials electronically file financial disclosures. Again, APOC may grant exceptions in extraordinary circumstances.

MR. JONES explained that Sections 8-11 contain four substantive improvements to the Executive Branch Ethics Act.

Section 8 defines an "insignificant financial interest" for the purpose of the Executive Branch Ethics Act. It establishes a presumption that stock or other business ownership is insignificant if the value of the interest is less than \$5,000. The presumption addresses a situation where an interest is worth less than \$5,000, but has the potential for substantial increase as a result of an official action by the executive branch member. In such cases a designated ethics supervisor would make the determination - perhaps after consulting the attorney

general. He noted that SB 19 addresses the issue somewhat differently.

Responding to a question from Senator Therriault he said Section 8 says: "Stock or other ownership interest in a business is presumed to be insignificant if the value of the stock or other ownership interest is less than \$5,000."

[1:44:59 PM](#)

CHAIR FRENCH recalled that someone made a point that the presumptive phrase could cover the situation where a stock fluctuates; some days it's over the \$5,000 limit and some days it's under.

MR. JONES agreed and continued to Section 9. It establishes a presumption that all gifts from a lobbyist to a public officer or a member of the officer's immediate family are improper unless the lobbyist is giving the gift to an immediate family member.

MR. JONES said the presumptive phrase would allow flexibility to accommodate varying circumstances such as the following hypothetical example. Before accepting a wedding gift from a neighbor who happens to be a lobbyist, an executive branch administrative clerk would ask a designated ethics supervisor to make a determination of whether the gift is permissible. The supervisor would use the standard of whether a reasonable person could infer that the gift was intended to influence official duties. In that circumstance it would seem to be overreaching to prohibit the wedding gift, he stated.

CHAIR FRENCH asked about the volume of gifts currently coming to executive branch members from lobbyists.

MR. JONES said he did not have that information. "Those gifts would be reported only if they exceed \$150 to executive branch members," he said. The reports go to the designated ethics supervisor in each individual department.

CHAIR FRENCH asked if the restriction is strictly a prohibition on gifts from lobbyists or a blanket prohibition. He asked if the president of BP be prohibited from giving gifts to Department of Revenue employees.

MR. JONES said yes; existing law prohibits gifts when it would be reasonable to infer that the gift is intended to influence official action. Also, there is a reporting requirement if a

gift is worth more than \$150. SB 64 establishes an additional presumption that gifts from lobbyists are intended to influence the performance of official duties.

CHAIR FRENCH questioned whether this doesn't amount to an outright ban. "If every gift is presumed to be intended to influence the performance of official duties, why in the world would we tolerate that practice?"

MR. JONES said it's close to but not quite an outright ban. First, there is the explicit exemption for gifts to family members and second, the presumption is established to deal with the neighbor-lobbyist wedding-gift situation.

[1:51:08 PM](#)

SENATOR WIELECHOWSKI said SB 64 appears to say that no public officer may receive meals or drinks from a lobbyist. He asked about the current law.

MR. JONES agreed that SB 64 says that. Current law says that when beverage and other hospitality is provided at someone's home, it is presumed that it is not intended to influence official action.

CHAIR FRENCH asked for clarification of whose private home that covers.

MR. JONES said, "The regulation seems to indicate that the intent is to cover the home of the person giving the gift and not just anyone's home."

CHAIR FRENCH asked if that means that an individual can not take an executive branch member to lunch, but the individual may entertain the executive branch member at his or her home.

MR. JONES said existing law prohibits a gift that, it would be reasonable to infer, is intended to influence official action. He said that regulation has an explicit exception that applies to hospitality provided at the provider's home.

MR. JONES restated that under current law providing food and beverage is not prohibited outright. What is prohibited is a gift that it would be reasonable to infer is intended to influence official action.

CHAIR FRENCH asked if the ban is prophylactic or have there been ethics complaints.

MR. JONES said he believes that it is prophylactic.

1:53:40 PM

SENATOR THERRIAULT asked if presumptive language is automatically "rebuttable" such that a person could go to the department ethics supervisor who could make the case and exercise the latitude.

MR. JONES said that is both the intent and his understanding.

SENATOR THERRIAULT posed a hypothetical situation where a lobbyist organized a breakfast meeting with an administration official and the chair of the local PTA. He asked if it's okay if the PTA chair pays for the breakfast.

MR. JONES replied it would be okay if the gift is small. By regulation there is a presumption that anything less than \$50 is not intended to influence official action. "And assuming - based on that regulation - that it would be unreasonable to infer that the gift was intended to influence official action." There wouldn't be an outright ban on a lobbyist's client paying for a gift, he said, but generally there would be a ban on a lobbyist paying.

1:56:26 PM

MR. JONES explained that Section 10 amends AS 39.52.180(a) with respect to restrictions that apply after someone leaves the executive branch. Under current law a two-year restriction prevents a former executive branch member from working for compensation on a matter in which he or she was personally and substantially involved.

SB 64 eliminates an exception that currently exists for work on legislation and regulations. The current two-year restriction is extended to include work that former executive branch employees did on legislation and regulations during state service. He noted that the Senate Finance Committee adopted a similar provision for SB 19.

MR. JONES explained that section 11 extends the existing one-year ban on lobbying to include deputy commissioners of principal departments, and those holding policy-making positions in the governor's office. He clarified that the policy-making phrase was taken from the definition section of the financial disclosure provisions for APOC. The intent is that persons in the governor's office that must file financial disclosures with

APOC would also be subject to the one-year restriction on lobbying after leaving state service. SB 19 has a similar provision.

MR. JONES said that Sections 12-14 are procedural. Section 12 limits application of the post state employment restrictions so they apply only to persons who leave the executive branch after the bill's effective date. Section 13 makes electronic filing provisions effective on July 1, 2007 and Section 14 makes the remainder of the bill effective immediately.

2:00:21 PM

CHAIR FRENCH referenced electronic filing in Section 4, page 3 and asked Mr. Jones to specify to which individuals this would apply. In particular he asked if this would apply to municipal races for assembly and school board as well as various borough positions.

MR. JONES explained that Section 4 applies to legislators, legislative directors and public members of the Select Committee on Legislative Ethics. Section 1, which also has an electronic filing requirement, applies to campaign groups, political parties, and candidates for state elective offices. Section 7 applies to the governor, the lieutenant governor and public officials including executive branch members who are currently required to file financial disclosures with the APOC. The APOC definition of public official also applies to judicial officers including judges and justices as well as certain elected officials such as assembly members.

CHAIR FRENCH asked if it would also apply to school board members.

MR. JONES said yes, it applies to borough or city mayors borough assembly members, city council members, school board members, elected utility board members, city or borough managers, members of a city or borough planning or zoning commission in a home rule or general law city or borough or unified municipality.

CHAIR FRENCH pointed out it would also apply to city councils.

MR. JONES agreed.

CHAIR FRENCH questioned if there is any organized form of government to which it would not apply.

MR. JONES replied, "None come to mind."

2:03:12 PM

CHAIR FRENCH noted that Tammy Kempton from APOC sent a letter correcting testimony she gave at the last hearing. During the hearing she indicated that about 50 percent of the people that file do so electronically. When she rechecked the data she discovered that in the last election cycle just 78 of the 511 candidates filed electronically. He emphasized that that represents 15 percent so it's important to keep in mind that this would impose a significant new requirement on 85 percent of the candidates for office.

CHAIR FRENCH questioned whether the administration had considered narrowing the requirement and focusing on just the governor and lieutenant governor. He asked Mr. Jones if, during deliberations on the preparation for the bill, any sort of stratifying had been done to determine which offices are the least important and which are the most important with regard to electronic filing.

MR. JONES replied the discussion focused on the fact that "this is an opportunity to allow technology to promote democracy." With electronic filing citizens can find out more about the interests of their public officials and candidates. This would help citizens make more informed decisions about contacting legislators and in the polling booth. "We didn't dissect it further to determine whether those same interests would apply in more localized elections, but the principle seems to be the same. The more you know about the people that are representing you, the more informed a decision you can make about whether you want them to represent you."

CHAIR FRENCH agreed with the principle, but suggested there needs to be some balance when 85 percent of the candidates have not taken advantage of the method. Noting that hand written documents can be scanned and posted online quickly, he asked if that avenue had been considered.

MR. JONES said scanned data is not searchable and scanners were not mentioned when the bill was discussed. It would be an improvement over going to APOC and looking at a handwritten document, but it's not as accessible as one that is filed electronically.

SENATOR HUGGINS asked about the exemption for not reporting.

MR. JONES said there is a \$5,000 low-budget campaign exception.

SENATOR HUGGINS said he would assume that would be removed at some point.

MR. JONES said he could not speak for the governor or the legislative director, but there is a pending bill that removes the exemption. That is not a governor's bill, he said.

CHAIR FRENCH asked if the Alaska Municipal League (AML) had taken a position on the bill.

MR. JONES said not to his knowledge.

SENATOR WIELECHOWSKI asked if the bill would sweep in new groups that would be required to file.

MR. JONES replied the intent is to address the method of filing and not to add new groups.

SENATOR THERRIAULT mentioned campaign disclosures and a successful initiative that rolled back language such that the source of contributions under \$100 didn't have to be disclosed. He noted that some candidates raise \$40,000 a year now under the wording of that initiative and there is no information as to where that money came from. He asked if the administration had considered adding the language back as part of the disclosure requirements.

MR. JONES replied that issue was not addressed.

SENATOR HUGGINS agreed that that is a large loophole.

CHAIR FRENCH clarified that the governor's bill does not propose to change that law.

MR. JONES stated that the only changes that are proposed with respect to campaign finance and legislative activity are disclosure requirements. For campaign financing the proposed change is electronic filing.

CHAIR FRENCH asked for an explanation of the different purposes of the disclosures in Title 24 and Title 39 and whether the times that the disclosures are due fall on the same date.

MR. JONES replied he believes the purposes are the same. That is to provide information to the public about elected or appointed officials' financial interests that may affect their official

actions. He said he also believes that Title 24 and Title 39 disclosures are each due on March 15 every year.

Responding to further questions, Mr. Jones said it is his understanding that legislators are covered only through Title 24; Title 39, Chapter 50 does not apply to legislators.

SENATOR HUGGINS asked how this would affect people who were lobbyists before entering state service.

MR. JONES opined that it may be overreaching to prohibit the appointment of someone who had previous experience as a lobbyist. "There may be folks with lobbyist experience that have very special skills to bring to a position." Given the size of the state, he worries about tying the governor's hands to the point that the pool of available people is too stringently restricted. It seems that if the governor makes a poor choice and it reflects poorly and may create an appearance of conflict, then the public will hold the person accountable through election or public opinion messages. That's a better way to handle the issue than to establish a statutory prohibition, he stated.

SENATOR HUGGINS clarified his point is not about hiring lobbyists. "It's what you hire them for and what ... they can do once they are in a state service job in connection to whom or what they were doing as a lobbyist."

MR. JONES said the same analysis applies.

SENATOR THERRIault questioned whether this kind of prohibition had been litigated because it may have constitutional problems. The courts understand and allow some prohibition against trading on the public trust when moving from executive branch service into lobbying, but moving from the private sector into a public trust position is not the court's concern or latitude. Someone moving in this direction is not necessarily trading on knowledge, expertise or connections that were made previously, he stated.

MR. JONES said he was not aware of any litigation, but he agrees that there is potential for a constitutional argument to be made against such a prohibition.

SENATOR WIELECHOWSKI read part of Section 5 as follows:

Sec. 39.50.020. Report of financial and business interests. (a) A public official other than the governor or the lieutenant governor shall file a statement giving income sources and business interests, ...

He asked if a rationale still exists to exempt the governor and lieutenant governor or if they are covered in another provision.

MR. JONES said the governor and lieutenant governor are excepted from the initial requirement because they filed their initial disclosures as candidates for elective office. The March 15 deadline applies for every subsequent financial disclosure.

2:19:03 PM

CHAIR FRENCH found no further public testimony and closed public testimony. He stated his intention to prepare a committee substitute. It would capture the ethics provisions that were not in SB 19 or SB 20 as well as other cleanup suggestions from the administration and APOC. He asked members to comment particularly with regard to electronic filing.

2:20:15 PM

SENATOR WIELECHOWSKI stated the belief that there are advantages to electronic filing, but he questions the need for requiring it to "bleed down" to the lower levels such as school board and local city races. Although a lot of people in the Bush have Internet access, if they don't "this could be extremely onerous for many people in smaller races." For that reason he has questions at this point.

SENATOR THERRIAULT mentioned Sections 10 and 11 and questioned how they would be addressed relative to the current versions of SB 19. Those sections could be dropped, but we must keep in mind that the way the idea is achieved is different, he said. With regard to electronic filing he said he has concerns and perhaps it would be better to start slowly with a tiered system that over time expands to the lower level races. He noted that Ms. Kempton said the new system is quite different and he would be interested in receiving a demonstration. Perhaps that would help allay some of his concerns.

SENATOR HUGGINS said he is interested in knowing what the term "extraordinary" means. He expressed the opinion that if 85 percent of the people aren't filing electronically, there will be difficulties if it becomes mandatory. He agreed with Senator Therriault that phasing in the requirement is worth considering.

CHAIR FRENCH said that scanning the documents and using a PDF file may split the difference and he would contact APOC to learn what it would take to do that. It "is fairly cheap, fairly quick, and a fairly easy way to get instant or fairly instant access to a campaign disclosure form." Acknowledging that the PDF format is not searchable, he said that function could be incorporated over time as the data is entered into the system.

The public really wants access to the forms to see if there has been an influx of cash or a shifting of alliances, but in the governor's race, for example, it can take four or five days before APOC can enter all the last minute data. That means it takes that long before the public is able to see what is in that filing and "that's the missing gap in my view," he stated.

SENATOR WIELECHOWSKI asked if the candidates or APOC would scan the forms. He noted that current APOC law says disclosure forms must be postmarked by the due date and that might need to be changed to say that the form must be received by the due date.

SENATOR THERRIAULT commented on mail service in remote areas and questioned whether that is reasonable.

2:27:58 PM

CHAIR FRENCH asked Ms. Miles if the APOC report is presumed to be timely if it is postmarked by a certain date or in APOC's possession by the date.

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), advised that it's the postmark.

SENATOR WIELECHOWSKI asked if APOC receives campaign documents well after the filing deadlines.

MS. MILES said absolutely; it is fairly common. Sometimes it's inadvertent and due to unreliable mail service "and sometimes when campaign documents are mailed from the East Coast with an expectation that they would get here bulk mail in two days, one wonders how the filer could have that expectation." Regulation states that a postmark is the determining factor and she thought that was adopted after a court case.

SENATOR THERRIAULT commented that it can be difficult to capture all the data for a particular reporting window and get it postmarked by the deadline, which is two or three days later.

CHAIR FRENCH suggested that the seven-day report before an election is only report for which it is a serious issue. That's when "everyone's blood is up and the disclosures are coming faster," he said.

SENATOR HUGGINS asked what sort of corrective measures APOC takes when reporting is noncompliant.

MS. MILES explained the penalties are different under campaign disclosure law and financial disclosure law, but for noncompliance - when a report is late or missing information there is always a \$50 per day civil penalty. If information is missing the report is considered to be late until the information is received. She continued to say:

The commission staff looks at this in a somewhat fair-minded way. For example, when a candidate files a report and lists 300 contributors at X dollars amount. As you're aware, you're filing a report that is telling ... your constituents and the Alaskan public all of the money you have received from \$1 up. And you're also required to give that person's name and address. Under current guidelines when that person has given you more than \$250 you're required to give occupation and employer.

So case at hand, Mr. Chairman, were we to receive a report that disclosed some 300 contributors at X dollars amount and say three or four that might have required occupation and employer are missing, we usually try to handle with a phone call to the candidate or the candidate's chair and ask that they do their best to obtain that information and get it to us. And when that happens cooperatively, no civil penalty is assessed.

CHAIR FRENCH asked if the seven day report is the last comprehensive report that is due preceding an election cycle.

MS. MILES said under current guidelines that is correct.

CHAIR FRENCH asked the time span between when the reporting period closes and when the report is actually due.

MS. MILES replied the end of the reporting period is always three days before the filing day.

CHAIR FRENCH asked if the seven day report is due seven days before the election.

MS. MILES said yes; the report is due on a Tuesday and the last day for which a candidate reports contributions is the preceding Friday.

CHAIR FRENCH asked if there has ever been an instance where a seven day report didn't reach APOC because of a mail service delay.

MS. MILES said she is sure there has been such an instance, but there have also been instances where the person was a day late in mailing the report. "We don't always receive all of the reports on time to get them published before Election Day." This year all were published, but this is the first year that ever happened.

CHAIR FRENCH asked if APOC employs extra staff to help enter data at election time.

MS. MILES said yes and she also offers overtime to existing staff. Sometimes it's more helpful to use experienced staff to enter data from handwritten campaign disclosure reports because they may be more familiar with the names, she stated.

SENATOR THERRIAULT asked what the motivation is for filing electronically. Is it so the public has immediate access to the information or so that APOC can run a more efficient operation, he asked.

MS. MILES said the purpose is to provide better public service and to establish long-term technology efficiencies for the agency. Remember, she said, APOC is asking for not only the information on campaign disclosure reports, but also on all the financial disclosure reports that all commissioners and governor's assistants file, which is not available online in any format.

With regard to scanning reports and putting the information into a PDF file she advised that the Department of Administration has said that scanning the thousands of pages that come in every year is not affordable in terms of bandwidth.

[2:39:09 PM](#)

SENATOR WIELECHOWSKI referenced the APOC zero fiscal note and suggested that there will be efficiencies and cost savings over time.

MS. MILES agreed and said she though she indicated that "we would of course be seeking efficiencies once it is established."

CHAIR FRENCH read the last sentence of the APOC fiscal note which says: "It is not anticipated that this measure will add to the costs of the Public Offices Commission." It doesn't mention saving money or relieving any of the current burdens, he said.

MS. MILES replied, "But it will."

CHAIR FRENCH held SB 64 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:40:34 PM](#).