

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

March 20, 2008

9:07 a.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Chair  
Senator Gary Stevens, Vice Chair  
Senator Hollis French  
Senator Lyda Green  
Senator Con Bunde

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 198

"An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns, reducing the period in which an elected candidate may continue to accept contributions; limiting the quantity of unused campaign contributions a candidate may transfer to a political party; increasing the penalty for a lobbyist or employer of a lobbyist who fails to properly register or file a report; and extending the statute of limitations for prosecutions of violations of the Alaska Election Code."

FAILED TO MOVE OUT OF COMMITTEE

SENATE BILL NO. 199

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

MOVED SB 199 OUT OF COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 12

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to voting.

HEARD AND HELD

SENATE BILL NO. 203

"An Act requiring a legislator to abstain from voting on questions affecting an enterprise if the legislator or member of the legislator's immediate family has a financial interest in

the enterprise that is substantial, and requiring a legislator to abstain from taking or withholding official action or exerting official influence in certain matters in which the legislator's action or influence could benefit another person; making the Act conditionally effective; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 213

"An Act relating to the audit authority of the legislative audit division."

MOVED CSSB 213(STA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 198

SHORT TITLE: CAMPAIGN FINANCE/ELECTION CODE VIOLATIONS

SPONSOR(S): SENATOR(S) WIELECHOWSKI, THOMAS

01/16/08	(S)	PREFILE RELEASED 1/4/08
01/16/08	(S)	READ THE FIRST TIME - REFERRALS
01/16/08	(S)	STA, JUD, FIN
03/20/08	(S)	STA AT 9:00 AM BELTZ 211

BILL: SB 199

SHORT TITLE: CAMPAIGN FINANCE COMPLAINTS

SPONSOR(S): SENATOR(S) THERRIALT

01/16/08	(S)	PREFILE RELEASED 1/4/08
01/16/08	(S)	READ THE FIRST TIME - REFERRALS
01/16/08	(S)	STA, FIN
03/20/08	(S)	STA AT 9:00 AM BELTZ 211

BILL: SCR 12

SHORT TITLE: AMEND UNIFORM RULES: ABSTAIN FROM VOTING

SPONSOR(S): SENATOR(S) WIELECHOWSKI

01/16/08	(S)	READ THE FIRST TIME - REFERRALS
01/16/08	(S)	STA, JUD
03/20/08	(S)	STA AT 9:00 AM BELTZ 211

BILL: SB 203

SHORT TITLE: LEGISLATIVE ETHICS: VOTING & CONFLICTS

SPONSOR(S): SENATOR(S) WIELECHOWSKI

01/16/08	(S)	PREFILE RELEASED 1/4/08
01/16/08	(S)	READ THE FIRST TIME - REFERRALS

01/16/08 (S) STA, JUD  
03/20/08 (S) STA AT 9:00 AM BELTZ 211

BILL: SB 213

SHORT TITLE: LEGISLATIVE AUDIT DIVISION POWERS

SPONSOR(S): SENATOR(S) DYSON

01/16/08 (S) PREFILE RELEASED 1/4/08  
01/16/08 (S) READ THE FIRST TIME - REFERRALS  
01/16/08 (S) STA, FIN  
03/20/08 (S) STA AT 9:00 AM BELTZ 211

**WITNESS REGISTER**

SENATOR BILL WIELECHOWSKI  
Alaska State Legislature  
Juneau AK

**POSITION STATEMENT:** Presented SB 198.

CHRIS ELLINGSON, Acting Executive Director  
Alaska Public Offices Commission  
Anchorage AK

**POSITION STATEMENT:** Answered questions about SB 198 and 199.

SENATOR GENE THERRIAULT  
Alaska State Legislature  
Juneau AK

**POSITION STATEMENT:** Presented SB 199.

MICHELLE SYDEMAN, Staff  
to Senator Bill Wielechowski  
Alaska State Legislature

**POSITION STATEMENT:** Presented SCR 12.

DAN WAYNE, Attorney  
Legal and Research Services Division  
Alaska Legislative Affairs  
Juneau AK

**POSITION STATEMENT:** Answered questions about SCR 12.

SENATOR FRED DYSON  
Alaska State Legislature  
Juneau AK

**POSITION STATEMENT:** Presented SB 21.

PAT DAVIDSON, Auditor  
Division of Legislative Audit

Juneau AK

**POSITION STATEMENT:** Answered questions about SB 21.

**ACTION NARRATIVE**

**CHAIR LESIL MCGUIRE** called the Senate State Affairs Standing Committee meeting to order at [9:07:41 AM](#). Senators French, Stevens, Bunde, and McGuire were present at the call to order. Senator Green arrived later.

**SB 198-CAMPAIGN FINANCE/ELECTION CODE VIOLATIONS**

[9:07:52 AM](#)

CHAIR MCGUIRE announced the consideration of SB 198.

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, said SB 198 is based on recommendations by the Alaska Public Offices Commission (APOC) to restore the statute of limitations to four years for investigating and prosecuting violations of state campaign finance reforms. Alaska has only a single year now. Most states allow for more time for violations to come to light and be investigated. Georgia allows three to five years. Washington and California allow complaints to be filed within four years. Connecticut, Massachusetts, Hawaii, and New Jersey, have no time limits. Several states extend their statutes for fraud and misrepresentation for one year from the date of discovery. At the unanimous urging from APOC, SB 198 would reinstate the four-year statute of limitations that existed until 2003, providing sufficient time for a violation to be discovered and investigated. The bill will restrict post-election fundraising to ten days after an election. It also limits surplus campaign funds that can be given to a political party to \$5,000, in conformity with AS15.030.70, which limits individual donations to political parties. At the recommendation of the APOC commissioners, SB 198 will also increase the civil penalty for lobbyists who don't file required reports with the commission from \$10 to \$50 per day. It has not been increased since 1976, and APOC is concerned that it is not substantial enough to encourage timely filing.

[9:10:31 AM](#)

CHAIR MCGUIRE asked why 10 days instead of 45 for fundraising.

SENATOR WIELECHOWSKI said it was a recommendation by APOC, and the fundamental idea is that once someone wins an election he or she shouldn't fundraise.

SENATOR STEVENS asked if this has been a problem.

SENATOR WIELECHOWSKI said he is willing to take that provision out.

CHAIR MCGUIRE suggested that an underdog may win and then wants an opportunity to recover costs.

SENATOR BUNDE said it seems that some losers of federal campaigns have fundraisers to recoup personal funds. He understands that ten days may include money in the mail. But a winner may be able to lean on people and there may be more pressure than from a loser's fundraising activities.

[9:13:00 AM](#)

CHRIS ELLINGSON, Acting Executive Director, Alaska Public Offices Commission, said the rationale for the ten days is based on what has been happening since campaign finance reform. The winners usually get most of the money before and after the election. There seems to be a run of post-election fundraising to recoup some personal money and to pay off debts, but much of it is used to give away to others. APOC has looked at where this money is going. Some goes to charities that had a close relationship with the winner and some goes to the political party. APOC is considering reinstating the ten-day post-election report and changing the year-end report due date to December 31, which makes more sense. "That's why they were looking at the ten-day time frame. They were not wedded to it and if it is a problem, I'm sure that they would understand if it came out."

[9:15:19 AM](#)

SENATOR BUNDE said he supports limiting "the notion of harvesting money and then turning it around and passing it on to parties and charities and that sort of thing." The bill also contains a \$5,000 maximum contribution, and he asked if that would address those concerns. "The other thing is if it was limited to only people who lost the election, would that help? Because ... someone that has won the election and then has a fundraiser ... people may feel pressured to attend that."

MS. ELLINGSON said the \$5,000 would make a big difference. If that stays in, APOC would have no problem with the time period being up to the 45<sup>th</sup> day. Of importance is that the people who run and win are the ones who can have a fundraiser. A fundraiser for a loser doesn't really happen.

[9:17:18 AM](#)

SENATOR STEVENS asked if the money is really a problem. He would be lucky to have money left over after an election. How often has over \$5,000 been given to a political party?

MS. ELLINGSON said quite often because of the limits of rolling money forward to a new campaign. She has seen anywhere from \$10,000 to \$20,000, and it doesn't necessarily go to the central committee, it may go to different arms of the committees.

SENATOR STEVENS said he wants some facts before he would agree.

MS. ELLINGSON said she can get it to him, but there are between five and six candidates that distribute that much to parties after every election campaign. It is part of the disbursement process after the election is over.

[9:19:02 AM](#)

SENATOR FRENCH asked if a person could donate \$5,000 to the Republican Party and then give more to a subdivision of the party, like a candidate's fund. Will it all count toward the limit?

MS. ELLINGSON said yes. Everyone else in the state who wants to contribute to the party can only give \$5,000, so why shouldn't a candidate have the same limit?

SENATOR FRENCH asked if this bill will make \$5,000 the total limit and not allow giving \$5,000 to different subdivisions.

[9:20:37 AM](#)

MS. ELLINGSON said it will bring it in line with every other person that contributes. That is the total maximum.

SENATOR STEVENS asked if this is abused by both parties.

MS. ELLINGSON said, absolutely.

SENATOR BUNDE asked how often the lobbyist fine is imposed now, and how many days are they usually in arrears.

MS. ELLINGSON said at every APOC meeting there are five to fifteen lobbyists up for civil penalty review because they want to appeal them. Lobbyists have paid up to \$7,000 at \$10 per day.

SENATOR BUNDE asked if they are assessed the penalty when they are under appeal.

MS. ELLINGSON said lobbyists have to file a report and then they are assessed a penalty. The clock stops the day the report is filed. They can appeal it once they get the penalty letter.

SENATOR STEVENS said a \$7,000 fine could go up to \$35,000.

MS. ELLINGSON agreed.

[9:23:20 AM](#)

SENATOR STEVENS said he is not a great friend of lobbyists but the fine sounds high, but they do earn lots of money. He has a problem with the ten days and the \$5,000. He wants to know why it is so bad that the parties receive funds and disburse them to the candidates. What is so bad about the current system?

SENATOR WIELECHOWSKI said Ms. Ellingson had compelling testimony. APOC is unanimous on it. If a lobbyist is getting fined \$7,000 it means reports haven't been filed for over two years, and Ms. Ellingson said there were five to fifteen lobbyists per APOC meeting. It is a problem, and if the fine is increased it might solve it. The fine is so small lobbyists decide to pay the fine instead of disclosing information.

[9:26:09 AM](#)

SENATOR BUNDE said he understands the logic of not letting a candidate donate more than anyone else. He supports the \$5,000 limit. The ten-day timeframe wasn't as important to APOC. He heard Ms. Ellingson say there were ten to fifteen lobbyists appealing, not in arrears. A person files, meets the deadline, and then argues about it afterwards. He doesn't understand why a lobbyist wouldn't file on a timely basis, so he is not concerned about the \$50 a day. He doesn't understand why a winner "should be able to do the 45 days. I don't know if we want to be creative and say losers get 45 days and winners get 10." Maybe it isn't worth the effort because not many people go to a loser's fundraiser. There may be people who run with the idea of recouping some of their losses after the election. He asked Ms. Ellingson about differentiating between winners and losers.

[9:28:22 AM](#)

MS. ELLINGSON said it would be doable but prefers keeping it equal across the board. APOC is not wedded to the ten-day limit.

CHAIR MCGUIRE said if candidates are doing what they should be doing, they are out knocking on doors and campaigning. Fundraising is a burden, but the money helps get the message

out. She raises money after the deadline because she has no time during the election. She doesn't raise money to give to a party.

SENATOR FRENCH said the heart of this proposal is extending the statute of limitations. This is what the public wants. The bill has a long way to go, and he wants the committee to agree to let that provision go forward today. A one-year statute of limitation on campaign violations is insufficient given the meager resources of APOC. He wants to rally around that part of the bill. He doesn't know how much of a problem post-election fundraising is, but APOC thinks it is a problem. There should be some time limit on fundraising. He has seen some losers hold fundraisers, and maybe they are being encouraged to run again. "I've had to come deeply out of pocket to get through an election cycle, and so you try to get some of that back." He suggested changing the limit to 30 days, keeping the statute of limitations, and moving the bill.

[9:32:05 AM](#)

SENATOR BUNDE said there is another bill that addresses only the four-year statute of limitations. This bill could be set aside.

CHAIR MCGUIRE said she would like to let both bills move through the process. Thirty days seems like a compromise.

SENATOR FRENCH moved conceptual Amendment 1, as follows:

On page 2, line 8:  
Delete "ten"  
Insert "thirty"

Hearing no objection, conceptual Amendment 1 passed.

CHAIR MCGUIRE said she would like to hear how that plays out, and maybe with the limitation on the party donation, it will take care of the problem.

SENATOR STEVENS said he wants to know the reason for the \$5,000. He gets money from the Republican Party. He has never returned any to it, but it may be a good idea to return money to those coffers. What is wrong with it?

[9:34:11 AM](#)

SENATOR WIELECHOWSKI said APOC unanimously supported these changes, and it puts everyone in line with what any other individual in the state can donate. The meat of the bill is the

statute of limitation. If the committee is concerned, perhaps it can be taken up at another time.

SENATOR STEVENS said APOC has not presented a compelling argument. There is nothing wrong with returning funds to the party that supported him. He also questioned the 30-day limit.

SENATOR FRENCH said there should be some limit, and 30 days is enough time to wrap up a campaign and settle the debts. He is not sure any abuses have been centered on settling campaign accounts. He wouldn't oppose an amendment to strike Section 3.

SENATOR BUNDE objected. This is a package of recommendations from APOC and the committee is dissecting and picking among them. "If you want a clean bill, we've got one."

CHAIR MCGUIRE said she will oppose the amendment because she can see where a party is using candidates - who are propped up by the party -- to regenerate funds. It is outside the regular method for raising money for the party.

[9:37:09 AM](#)

SENATOR FRENCH he said he wouldn't oppose a motion, but did not move an amendment.

CHAIR MCGUIRE said Senator Stevens has made good points, and perhaps between now and the next committee, he can get more information.

SENATOR FRENCH moved to report SB 198, as amended, from committee with individual recommendations and attached fiscal note(s).

SENATOR BUNDE objected. There are two bills with the core provision, and this is more complicated. SB 198 shouldn't move out of committee when there are a lot of questions. "We should work on this bill, and I think these \$5,000 questions are important ones. Let the clean bill move forward, and we can let this one catch up after we get our questions answered."

[9:39:14 AM](#)

CHAIR MCGUIRE said she doesn't want politics to get in the way of what seems to be a good idea. "Good enough that you have two members out of 20 that have put it forward." She wants to put them both forward and see which one moves ahead.

A roll call vote was taken. Senators French and McGuire voted in favor of moving SB 198 from committee, and Senators Bunde and Stevens voted against. The bill failed to move out of committee on a vote of 2 to 2.

### **SB 199-CAMPAIGN FINANCE COMPLAINTS**

[9:40:50 AM](#)

CHAIR MCGUIRE announced the consideration of SB 199, which is similar to SB 198 but only addresses the statute of limitations.

SENATOR GENE THERRIAULT, Alaska State Legislature, said SB 199 increases the statute of limitations from one year to four years. Section 2 just clarifies that it will apply to any matter that has taken place within the past year and forward. It will not be retroactive to four years. The change to one year was in a bill that was introduced by the administration and intended to abolish APOC. There wasn't a lot of debate on the statute of limitations. He doesn't recall an objection from APOC, but it may have been focused on other aspects of the bill, like abolishing APOC. The fiscal note is not insignificant.

The committee took a brief at-ease at [9:43:15 AM](#).

[9:43:31 AM](#)

SENATOR THERRIAULT said APOC was struggling with its budget back then, and shortening the statute of limitations freed up some financial pressures. With the dynamics of the legislature in the last year and a half, it is prudent to revisit the issue. SB 199 is wholly contained in SB 198, and he would support moving SB 198 instead. There is an unwritten rule that the lower-numbered bill moves. That rule should be followed but was violated this week and he was disappointed. Parts of SB 198 are problematic to some members. His view on the \$5,000 limit is that the money would not be an individual personal donation. If there is a surplus after a campaign, it has to be given away. To say that it should be treated the same as a personal donation is not logical.

[9:46:17 AM](#)

SENATOR BUNDE asked if SB 199 addresses APOC's main concern.

CHRIS ELLINGSON, Acting Executive Director, Alaska Public Offices Commission, said the commission was open to four or five years, and would be delighted with four years. It puts it back to what it was before 2003.

SENATOR STEVENS asked how it compares with federal law.

MS. ELLINGSON said she doesn't know exactly, but she has seen investigations go back ten years.

[9:48:27 AM](#)

SENATOR BUNDE said it is obviously longer than four years.

SENATOR GREEN asked about the difficulty in building a case in that time frame and if there is lost information. She asked if things couldn't be substantiated after four years.

SENATOR THERRIAULT said following a paper trail will be more problematic, and that is what drives part of the fiscal note.

SENATOR BUNDE said the rule of thumb is keeping canceled checks for seven years. This may mean that people shouldn't clean out their files until after four years.

SENATOR THERRIAULT said he keeps his paperwork forever.

CHAIR MCGUIRE said it is difficult to retrace. It is a burden with expectations. There are many things to keep records of, including her son's dividend and college fund.

[9:51:21 AM](#)

SENATOR BUNDE said the four-year limitation is part of a concern on the lack of ethical behavior. He asked if APOC was not able to address some violations because of the short time limit.

MS. ELLINGSON said yes, and some may have been minor.

SENATOR BUNDE said, "Then it isn't just a PR thing." SB 199 is the guts of the matter and not just a feel-good thing. It is necessary, and he moved SB 199 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 199 passed out of committee.

**SCR 12-AMEND UNIFORM RULES: ABSTAIN FROM VOTING**  
**SB 203-LEGISLATIVE ETHICS: VOTING & CONFLICTS**

[9:53:28 AM](#)

CHAIR MCGUIRE announced the consideration of SCR 12 and SB 203.

MICHELLE SYDEMAN, Staff to Senator Bill Wielechowski, said SCR 12 will bring Alaska in line with most other states prohibiting legislators who have a substantial financial stake from voting

on a bill. She said 65 percent of states do this, including Colorado, Florida, Maine, Texas and Washington. An additional 35 percent allow legislators with substantial conflicts to request permission to abstain. Most of these states permit abstention if a majority of legislators vote to grant it. Alaska is the only state that requires unanimous consent before a legislator with a conflict can abstain from a vote. The Center for Ethics in Government knows of no other states. The House Clerk and the Senate Secretary do not recall a single time when permission to abstain was granted. Alaska is at the far end of the spectrum, even among states with small citizen legislatures. Existing statutes go to lengths to insure that conflicts are substantial before a legislator would be required to abstain. Any benefit a legislator might receive from supporting a particular piece of legislation would have to be greater than the benefit a large group of Alaskans would receive in order to require abstention. A legislator who teaches during the interim could vote on the salary of teachers, because the gain is shared among many.

[9:56:47 AM](#)

MS. SYDEMAN said SCR 12 would require legislators to declare their conflict, identify the provision of the ethics act that would be violated, and abstain from voting. A request to abstain due to anything other than ethical concerns would still require unanimous consent. There will be few instances that a member will be able to demonstrate direct and substantial economic benefit that is greater than that received by the substantial class of persons to which that legislator belongs as a member of a profession, industry or region. This is the existing language of AS24.60.030. In those rare instances, this change in the uniform rules would provide assurance that decisions are made in the public interest. It would also protect legislators from allegations that a vote was influenced by personal concerns.

SENATOR BUNDE said "a large or substantial number" is squishy. He would like a better definition.

MS. SYDEMAN said it is terminology used across the country. She couldn't find a state with a good definition. She believes it is left to the discretion of the ethics committees. It is also the existing language in Alaska's statutes right now.

[9:58:38 AM](#)

SENATOR BUNDE said that Ms. Sydeman mentioned that teachers would be a substantial group, and he asked about fishers, crab fishers, hair crab fisher, and how to determine substantial.

MS. SYDEMAN said she has this discussion with many people across the country and she hasn't gotten a clear answer. The decision must be made on a case-by-case basis.

SENATOR BUNDE said he applauds the goal but questions the mechanism for getting there.

9:59:36 AM

SENATOR STEVENS said there are conflicts of interest when voting on the floor. There are also conflicts elsewhere. For example, he retired from the university and was asked him to come back to teach a class. Legislative attorneys said he can't work at the university because he votes on the university budget. What is the connection with that conflict and a voting one?

10:00:38 AM

MS. SYDEMAN said those are separate parts of state statutes.

DAN WAYNE, Legal and Research Services Division, said there is a specific statute keeping legislators from taking certain jobs. The concern, he believes, was about exerting influence to get a job -- being hired because of legislative status.

SENATOR BUNDE said he had the same experience. The constitution says a person cannot have two positions of profit with the state. A public school teacher can be a legislator because schools are "not directly a facet of the state" as the university is. There was a legislator from Juneau who taught at the university, and no one challenged it.

10:03:00 AM

SENATOR FRENCH said he couldn't work as a prosecutor in the off season for the state but he could for a municipality.

CHAIR MCGUIRE said many lawmakers have been talking about this and it has been awkward. It would be helpful to see how other states handle it. For this small community everyone knows everyone, and a large number of people may get conflicted out.

SENATOR STEVENS said legislators don't want to take a position on an issue where their constituents are split, and it might be convenient not to vote. Now, a person has to vote. He questioned how the legislature operates when people can weasel out on a vote. It might be difficult to get anything done if there were a narrow majority.

SENATOR FRENCH asked if this would change the tally of votes required to pass a bill.

MS. SYDEMAN said those requirements are in the constitution.

SENATOR FRENCH asked about a difficult issue, like a phone war, where members would skip out on the vote by declaring a false conflict of interest. He asked what happens in that instance.

[10:06:42 AM](#)

MS. SYDEMAN said that is an important question. The ethics committee could make a determination. There could be a mechanism for the body to determine if a conflict is real. It could be rulings by a presiding officer or a vote by the body. The uniform rules once called for a majority vote to determine whether a member did have a substantial conflict, and then it went to a two-thirds vote, and now it is unanimous consent.

SENATOR BUNDE said if SCR 12 becomes law, "and I declare a conflict, then whether I had one or not and was prohibited from voting would be a matter of a majority vote in the body."

MS. SYDEMAN said that is not the intent of this bill. It relies on the judgment of the individual legislator, so that no other members have to judge. "This bill leaves that completely up to the determination of individual legislators." People thought there could be political maneuvering if one member were to be judged by a majority. A member with a conflict must go on record and make the determination. If there is abuse, the ethics committee is there.

[10:09:17 AM](#)

SENATOR BUNDE said the bill creates a huge opportunity for a member not to vote on tough issues. He has a friend who lost an election because he stood up and took the tough vote, "and he could've ducked it." He asked how the ethics committee can consider someone unethical who thinks there is some personal financial impact. They may have to do a polygraph.

SENATOR STEVENS said one option is having the rules committee or legislative council decide. But that would throw sand in the wheels, and some may take advantage of that. The legislature, now, is not as bad as some options being considered.

SENATOR BUNDE asked about another member deciding someone else shouldn't vote.

MS. SYDEMAN said that is why the bill leaves it up to the member - we didn't want other members pointing fingers.

10:12:27 AM

SENATOR GREEN asked, "How many other instances has the legislature amended the uniform rules in statute?"

MS. SYDEMAN said this would not amend the uniform rules through statute; it is a concurrent resolution. This particular rule has been amended twice.

SENATOR GREEN asked if it was amended by the adoption of new uniform rules or by direction in statute.

10:13:10 AM

MS. SYDEMAN said she believes it was done in a joint session of the legislature, but she is not sure.

SENATOR GREEN said the uniform rules and the adoption of Mason's current manual were really big issues when she was newly elected. She hasn't heard that conversation as much recently, but the uniform rules are considered powerful in order to keep the legislature in charge of its business. The court has recognized that. It makes her nervous to amend them without the adoption of a whole new set of uniform rules.

CHAIR MCGUIRE said she will set the bill aside, but it is good for bringing up this discussion. Members have been struggling with how to handle conflicts. The body may want to consider looking at the uniform rules. The Anchorage assembly deals with conflicts of interest through its own internal rules, which seems to work well. The discussion needs to continue.

SENATOR GREEN asked if for an example of someone being conflicted from a vote.

SENATOR BUNDE asked if a three-quarters vote would be better than the unanimous consent as a middle ground.

CHAIR MCGUIRE said members get cut off when they discuss why they have a conflict. Maybe they should be in the public record.

SENATOR FRENCH said this is a difficult and fascinating issue - ethically, politically, and philosophically. "We all know that something has to happen." He suggested looking at examples in other states where it works. Perhaps it only happens every four or five years. Apparently the other states can get their work

done with some rule that prevents voting in some circumstances. It seems like the Alaska legislature works, but it also seems like a dinosaur. "We need to be open to the idea that there are methods out there for dealing with what may be a circumstance which is far more rare than most of us perceive."

[10:18:50 AM](#)

SENATOR STEVENS said the public knows where a politician stands when elected. Citizens know what they are getting and want their elected representatives to vote.

MS. SYDEMAN said there are many facets to the debate. The committee could establish a small task force.

SENATOR BUNDE noted the disenfranchisement of the citizens who elected someone who won't vote.

CHAIR MCGUIRE set aside SCR 12 as well as SB 203.

[10:21:37 AM](#)

MS. SYDEMAN said she has a separate presentation for SB 203. It makes changes to the statute governing conflicts of interest.

CHAIR MCGUIRE set SCR 12 and SB 203 aside.

The committee took a brief at-ease at [10:22:21 AM](#).

#### **SB 213-LEGISLATIVE AUDIT DIVISION POWERS**

[10:23:42 AM](#)

CHAIR MCGUIRE announced the consideration of SB 213.

[10:23:56 AM](#)

SENATOR FRED DYSON, Alaska State Legislature, said he has had interesting discussions on the scope of auditors' authority. Page 1 of SB 213 notes that: "Audit has authority to look at the books and accounts of all custodians of public funds and all disbursing officers of the state." Senator Dyson wants the division to have authority, if directed by Legislative Budget and Audit Committee (LBA), to audit any organization that has public funds. Pat [Davidson] said she only has authority to audit state organizations. The bill makes it clear that she has authority to audit any organization that gets money from or through the state, including federal money.

[10:26:17 AM](#)

SENATOR BUNDE said line 13, page 1, is current law, and he asked if the difference of opinion is what constitutes a custodian.

SENATOR DYSON said yes. "Paragraph 2 doesn't quite go where we would want, because it seems to mandate that that be done every three years, and I wouldn't want Pat and her organization to have to audit every group that receives money every three years." So the new paragraph is necessary.

[10:27:12 AM](#)

SENATOR STEVENS said senior citizen organizations are funded by the state, including the one in Kodiak, which pays for and performs its own audit. That duty will now go to the state. Is that what would happen?

SENATOR DYSON said he would hope not. His goal is giving LBA the authority to order an audit, "at their discretion and for their reasons," on any organization that gets money through the state. "It wouldn't be anything that they would be required to do, only that they would have the authority to do."

SENATOR FRENCH said the bill says "shall ... perform an audit of an organization that receives money from or through the state." He asked how many organizations that entails.

SENATOR DYSON said he missed that.

[10:28:38 AM](#)

CHAIR MCGUIRE moved conceptual Amendment 1 to replace "shall" with "may" on line 4 of page 1.

SENATOR FRENCH objected and said, "Don't we want them to keep doing what they have been doing?"

CHAIR MCGUIRE apologized.

SENATOR FRENCH suggested adding "as necessary" after "shall".

SENATOR GREEN suggested putting "may" at the end of line 22.

CHAIR MCGUIRE said conceptual Amendment 1 will change page 2, line 22 or 23, adding "and may" or "or may".

SENATOR GREEN said the drafter might want to rewrite the paragraph.

CHAIR MCGUIRE said that is conceptual Amendment 1. Hearing no objections, conceptual Amendment 1 was adopted.

SENATOR GREEN said the legislature can't audit or require an audit of a school district. It is up to the school board or the borough assembly to order the audit. "I think we are making a mighty reach here to think that we can go to nonprofits and funders that happen to receive state money that they can come under our authority." She doesn't object to it, but there needs to be legal consideration. There are audits in the department that are required for school districts, but they aren't necessarily legislative audits.

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SENATOR DYSON said some states have this wording so they can be a watch dog for public funds. Several states are allowed to audit schools. He asked what can be done if there is a rogue school district that the state pours money into. The legislature has the responsibility to watch public funds. He said there was some scandal with money that was distributed to nonprofits out of health and human services. There was a cozy relationship between the department and the grantees. Currently the audit division can only audit health and human services and its process, not how the money was used. He wants the division to see how the public money was used.

SENATOR BUNDE noted that the Adak School District had no students for a year or more, and the superintendent kept getting money and the school board kept hiring him because he kept hiring them. He thinks the education department finally shut them down. He asked if the bill refers to federal money passed through the state and funded directly.

SENATOR DYSON said, "From or through the state, that's line 23 and 24 on page 2." The federal government trusts the legislature to be stewards of the money it gives.

[10:34:12 AM](#)

SENATOR GREEN said the federal government sometimes does an audit, taking a cue from the state. She noted an audit on sewer wastewater.

SENATOR DYSON said he has seen some past federal audits, and if the state is not conforming in several areas there will be some draconian things that happen. He wants to catch them before the federal government does.

[10:35:14 AM](#)

PAT DAVIDSON, Auditor, Division of Legislative Audit, said her ability to go beyond state agencies is limited. "Legislative audit has very broad but very vague authority." Legislative auditors have been around prior to statehood. Auditing other than a state agency depends upon the grant agreement, and some allow audits and some don't. If, for example, the Department of Health and Social Services gave money to an entity to build a health facility and LBA required Davis-Bacon wages, unless it is in the grant agreement that they will comply with that, she doesn't have a basis for an audit. The intent of the bill is to open up the scope of inquires that could follow state money or federal money flowing through the state. It would broaden her ability to look at financially and, possibly, performance-based issues. If the legislature wanted legislative audit to evaluate a school district's policies, procedures, and how well it is achieving goals, the bill will allow it.

[10:38:39 AM](#)

SENATOR BUNDE asked if Ms. Davidson wants this authority.

MS. DAVIDSON said anything that will help the legislature make decisions is something that her group should do.

SENATOR BUNDE said he served on LBA and has seen some audits with personal and political agendas, and audits aren't cheap. How much does it cost to conduct an audit?

MS. DAVIDSON said from \$10,000 to over \$100,000. "We do bill out under federal at a complete billing rate at about \$50 an hour for the division." Professionals do the work. "Whether or not you want that section to be able to be done at my direction as legislative auditor or you want to invest that authority only in the budget and audit committee to authorize that ... is an important distinction." Now the legislative auditor is required to do certain things, and the way it is written is permissive for the division to start a financial-related audit. But a performance audit needs to be approved by LBA. The LBA is a gatekeeper of her work load.

[10:41:23 AM](#)

SENATOR BUNDE suggested that the cost of an audit should be put forward so the LBA knows what it will cost, particularly if an audit is not motivated by altruist reasons.

MS. DAVIDSON said financial audits can be estimated, but performance audits can't. "You don't know what you're going to

get into. You don't know what sort of records are available." The LBA asks if an audit will be big or small or go smoothly.

[10:43:01 AM](#)

SENATOR BUNDE said the number of audits will blossom if the committee isn't extremely thoughtful.

SENATOR STEVENS said the custodians perform their own audits, and asked if the division has access to those. It would be duplication unless the organization's audit was respected.

MS. DAVIDSON said she would not duplicate any audits, and she would not assume the responsibility for audits of any entity. That model already exists. The division is required, by law, to audit the state's financial statements; however, organizations such as the Alaska Housing Finance Corporation and the permanent fund contract with CPA firms to do their audits. There is a way the division can rely on the work of others.

[10:45:38 AM](#)

SENATOR STEVENS asked if the division can use the school districts' audits.

MS. DAVIDSON said she believes that is true. She has been asked to audit school busses. There are a number of statutes governing how school districts deal with bussing. The statutes are referred to when the money is given to the districts, so she has done those audits. The division doesn't repeat financial audits. The bill authorizes something beyond that, like performance audits or something very specific.

CHAIR MCGUIRE asked if anything needs to be added to the bill regarding duplication.

MS. DAVIDSON said conceptual Amendment 1 may do that. The other policy is to let the legislative auditor initiate the audit or require direction from LBA. It is the practice of the profession to work with other auditors instead of duplicating work.

CHAIR MCGUIRE said SB 213 is a good idea and will keep everyone on their toes, but she wants legal advice.

[10:48:18 AM](#)

SENATOR BUNDE asked Ms. Davidson's opinion if the additional audits allowed by the bill should be originated by the LBA.

MS. DAVIDSON said that is a policy call. She has seen issues come up where she approached the chair of LBA. Not being able to initiate audits wouldn't create any substantial barriers. The legislature needs to decide who to give the authority to.

SENATOR BUNDE said he agrees with the goal of the bill. But he is concerned about political motives from the people on LBA to intimidate people or cause trouble.

SENATOR FRENCH asked how many extra audits can actually be done. There are 2,000 groups that receive grants through the state.

[10:50:52 AM](#)

MS. DAVIDSON said audits with statutory deadlines are a priority. Everything else just gets done as it comes up. The delay can be several months. There have been informal discussions about creating a priority process. She doesn't know how many audits will be generated by SB 213. As legislators understand that these organizations can be audited, there will be more requests coming to LBA.

[10:52:22 AM](#)

SENATOR DYSON said there may be some additional costs at the discretion of LBA, but fraud and wasting money has a cost. The legislature has an innate responsibility to be stewards of public money. There is no downside to SB 213. It may be misused, but he trusts those on the LBA. On page 2, line 23, he has thought about adding "when approved by LBA" after "perform".

[10:54:31 AM](#)

SENATOR BUNDE moved conceptual Amendments 1 and 2.

CHAIR MCGUIRE said conceptual Amendment 1 has been addressed. The committee can offer conceptual Amendment 2, as follows:

Page 2, line 23, following "perform"  
Insert: "when approved by the Legislative Budget  
and Audit Committee"

SENATOR BUNDE said there may be some problems, but there is more good to this bill than negatives. A positive unintended consequence will be more forethought.

Hearing no objection, conceptual Amendment 2 was adopted.

SENATOR BUNDE moved to report SB 213 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 213(STA) passed out of committee.

SENATOR DYSON said he will get legal advice to ensure that the statutes do not preclude this, "and if there is, we'll deal with it."

There being no further business to come before the committee, Chair McGuire adjourned the meeting at [10:57:29 AM](#).