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Referred: Judiciary and
Finance

5-0055P

Original sponsor: Abood

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 85 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the power and duties of the
7 Alaska Public Offices Commission; and providing for
8 an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 44.21 is amended by adding new sections to read:
11 ARTICLE 9. ALASKA PUBLIC OFFICES COMMISSION.
12 Sec. 44.21.450. ALASKA PUBLIC OFFICES COMMISSION. (a) There is
13 created in the Department of Administration the Alaska Public Offices
14 Commission consisting of five members. The governor shall appoint all
15 members of the commission in the manner prescribed in (b) and (c) of
16 this section, subject to confirmation by a majority of the legislature
17 in joint session.
18 (b) The governor shall appoint two members of each of the two
19 political parties whose candidate for governor received the highest
20 number of votes in the most recent preceding general election at which
21 a governor was elected. The two appointees from each of these two
22 parties shall be chosen from a list of four names to be submitted by
23 the central committee of each party.
24 (c) The four members selected under (b) of this section shall,
25 by a majority vote, nominate to the governor an individual to serve as
26 the fifth member of the commission. The governor shall either appoint
27 the nominee to the commission, or shall reject the nominee and request
28 the commission to nominate another individual to serve as the fifth
29 member of the commission.

1 (d) The term of office for each member of the commission is five
2 years and until a successor is appointed and qualifies. If a vacancy
3 occurs before the expiration of a member's term, the member appointed
4 to fill the vacancy serves for a full five-year term. A commission
5 member may not serve more than one term.

6 (e) A member of the commission, during tenure, may not

7 (1) hold or campaign for elective office;

8 (2) be an officer of a political party, political commit-
9 tee, or political group;

10 (3) permit the commissioner's name to be used, or make any
11 contributions whatsoever, in support of or in opposition to a candi-
12 date or proposition or question that appears on any ballot in the
13 state including that of a municipality; however, contributions may be
14 made to a candidate for the office of President of the United States;

15 (4) participate in an election campaign or participate in
16 or contribute to a political party; or

17 (5) lobby or employ or assist a lobbyist.

18 (f) Members of the commission are entitled to receive compen-
19 sation of \$50 a day while attending commission meetings and are enti-
20 tled to travel expenses and per diem authorized by law under AS 39.-
21 20.180.

22 (g) The members of the commission shall elect a chairman. A
23 majority of the commission constitutes a quorum. The affirmative vote
24 of at least three members is required to take official action. A
25 vacancy does not impair the power of the remaining members to exercise
26 the powers of the commission.

27 (h) The commission may employ an executive director and other
28 employees it considers necessary. The executive director and an
29 employee of the commission may not, during tenure,

1 (1) serve as a member of the commission;
2 (2) engage in an activity described in (e) of this section
3 except as necessary to carry out the purposes of AS 44.21.450 - 44.-
4 21.500.

5 (i) The commission shall establish a central office and shall
6 establish or designate a commission office in each election district
7 of the state for the filing and public inspection of the reports,
8 registrations, or statements required to be filed with the commission.
9 Only one commission office may be established or designated in a
10 municipality that contains more than one election district. A dis-
11 trict office designated under this subsection may be a municipal or
12 other public office.

13 (j) The forms and material required for compliance with AS 15.13
14 shall be made available in each commission office to candidates,
15 persons, and groups required to file reports under AS 15.13.

16 (k) The commission shall promptly forward a copy of each report
17 filed by a statewide candidate to each district office, and it shall
18 promptly forward a copy of each report filed by a legislative candi-
19 date to the district office in the election district where the candi-
20 date is seeking office.

21 (l) The commission shall ensure that copies of each report filed
22 by a candidate for municipal office are made available for public
23 inspection in the municipality in which the candidate is seeking
24 office.

25 Sec. 44.21.455. DUTIES OF THE COMMISSION. The commission shall

26 (1) develop and provide forms for the reports, registra-
27 tions, and statements required under AS 15.13, AS 24.45, and AS 39.50;

28 (2) prepare and publish a manual setting out uniform meth-
29 ods of bookkeeping and reporting for use by persons required to make

1 reports, registrations, and statements under AS 15.13 and otherwise
2 assist candidates, groups, and individuals in complying with AS 15.13;
3 (3) receive and hold open for public inspection reports,
4 registrations, and statements required to be filed under AS 15.13 and,
5 upon request, furnish copies to an interested person at cost;
6 (4) compile and maintain a current list of each report,
7 registration, and statement filed with the commission;
8 (5) prepare a summary of each report, registration, or
9 statement filed under AS 15.13 and make a copy of the summary avail-
10 able to an interested person at cost;
11 (6) notify, by registered or certified mail, all persons
12 who are delinquent in filing a report or statement required under
13 AS 15.13;
14 (7) report to the office of the attorney general within 60
15 days after each election the names of all persons and groups who have
16 failed to comply with a provision of AS 15.13;
17 (8) examine, investigate, and compare reports, statements,
18 and actions required by AS 15.13, AS 24.45, and AS 39.50 and report to
19 the attorney general the names of all persons or groups the commission
20 has substantial reason to believe have violated AS 15.13, AS 24.45, or
21 AS 39.50;
22 (9) prepare and publish an annual report to the legislature
23 concerning the activities of the commission; the effectiveness of
24 AS 15.13, AS 24.45, AS 39.50, and AS 44.21.450 - 44.21.500; their
25 enforcement by the attorney general's office; and recommendations and
26 proposals for change; and
27 (10) adopt regulations necessary to implement and clarify
28 the provisions of and that are consistent with AS 15.13, AS 24.45, and
29 AS 39.50, subject to the provisions of the Administrative Procedure

1 Act (AS 44.62).

2 Sec. 44.21.460. PRELIMINARY INVESTIGATIONS. (a) The commission
3 shall investigate a violation of AS 15.13, AS 24.45, or AS 39.50 upon
4 receiving a signed and sworn complaint from any person. Upon receipt
5 of a properly signed and sworn complaint, the executive director shall
6 immediately acknowledge receipt of the complaint to the complainant
7 and to each person against whom the complaint was filed.

8 (b) The executive director shall, within 10 working days after
9 receiving the complaint under (a) of this section, provide an initial
10 response to the complaint stating that the commission will

11 (1) investigate the allegations of the complaint;

12 (2) require additional time to evaluate the complaint to
13 determine whether it should be investigated and providing an appropri-
14 ate explanation for the delay;

15 (3) refer the complaint to another agency;

16 (4) take no action because the commission does not have
17 jurisdiction to investigate the complaint; or

18 (5) take no action because the allegations of the complaint
19 do not warrant further action by the commission for reasons stated in
20 the response.

21 (c) The executive director may conduct a preliminary inves-
22 tigation of a violation of AS 15.13, AS 24.45, or AS 39.50 that comes
23 to the attention of the executive director in the normal course of
24 business. The executive director shall immediately notify a person
25 against whom the investigation is proceeding of the nature of the
26 alleged violation.

27 (d) A person whose name is mentioned in a complaint or identi-
28 fied during an investigation or at a hearing being conducted by the
29 commission and who may have violated a provision of AS 15.13,

1 AS 24.45, or AS 39.50 shall be advised by the executive director of
2 the information obtained by the commission. A person advised under
3 this subsection may appear personally at the hearing and testify or
4 may file a signed and sworn written statement of facts or other evi-
5 dence for the record.

6 (e) If, after a preliminary investigation under (a) or (c) of
7 this section, the commission determines that there is probable cause
8 to believe that the person named in the complaint has committed a
9 violation of AS 15.13, AS 24.45, or AS 39.50, the commission shall
10 commence violation proceedings by filing and serving an accusation on
11 the person alleged to have committed the violation. The commission
12 shall serve the accusation in the manner prescribed by court rules for
13 serving a complaint in a civil action.

14 (f) If the commission terminates an investigation without filing
15 an accusation, the commission shall, immediately after terminating the
16 investigation, inform the complainant and each person against whom the
17 complaint was filed of the information reviewed and that the commis-
18 sion will not be taking further action concerning the complaint.

19 Sec. 44.21.465. HEARINGS. (a) A hearing shall be conducted if
20 a respondent requests a hearing on a contested accusation or under
21 AS 44.21.475. In the absence of a request, the commission in its
22 discretion may decide to hold a hearing. A hearing under this section
23 shall be conducted under AS 44.62.330 - 44.62.630 and shall be open to
24 the public.

25 (b) When a hearing officer submits a proposed decision to the
26 commission under AS 44.62.500, the respondent and commission staff
27 may, within 10 working days after receipt of a copy of the proposed
28 decision, submit written comments on the proposed decision to the
29 commission. Before adopting the proposed decision the commission

1 shall consider the written comments.

2 Sec. 44.21.470. IMPOSITION OF PENALTY. (a) The commission may
3 impose the penalty provided by law for the violation only if the
4 respondent, having been advised of the right to a hearing, admits or
5 pleads no contest to the allegations contained in the accusation, or
6 if the commission

7 (1) holds a hearing at which the respondent is afforded the
8 right to appear, with or without counsel, the right to present wit-
9 nesses or other evidence, and the right to cross examine witnesses;
10 and

11 (2) following the hearing, determines by substantial evi-
12 dence that the respondent has committed the violation of which the
13 respondent was accused.

14 (b) Except when there is no evidence of a wilful violation, the
15 executive director of the commission may not formally or informally
16 make a recommendation to the commission as to a particular penalty in
17 a pending matter or make a commitment to the respondent to make a
18 particular recommendation to the commission in the future until after
19 the respondent has admitted or pleaded no contest to the accusation or
20 until after a hearing and a final determination by the commission that
21 the respondent has committed the acts charged in the accusation.

22 (c) Before the executive director of the commission may make a
23 recommendation to the commission for the imposition of a particular
24 penalty in a matter, the respondent shall be given notice of the
25 recommendation and afforded an opportunity to respond to the recom-
26 mendation in person or in writing.

27 (d) In imposing a penalty, the commission shall consider

28 (1) the seriousness of the violation in terms of the extent
29 to which the violation has impeded public disclosure of information

1 required to be filed with the commission as to the amount and source
2 of contributions; and

3 (2) the extent to which the respondent's conduct, including
4 prior violations of AS 15.13, AS 24.45, or AS 39.50 shows a continuing
5 disregard for the law.

6 Sec. 44.21.475. SUMMARY DISPOSITION OF VIOLATIONS. (a) Not-
7 withstanding the provisions of AS 44.21.465 - 44.21.470, the commis-
8 sion may establish by regulation the violations described in AS 15.13,
9 AS 24.45, or AS 39.50 that are amenable to summary disposition without
10 formal accusation.

11 (b) If the commission discovers that a person has committed a
12 violation that is amenable to summary disposition, the commission may,
13 in lieu of serving an accusation on the person, mail a notice of fine
14 to the person indicating the circumstances of the violation and the
15 amount of the fine. The person to whom the notice is directed may pay
16 the fine within 30 days after receiving the notice, file a notice of
17 defense disputing the facts and requesting a hearing under AS 44.21.-
18 465, or file an affidavit stating facts in mitigation of the amount of
19 the fine.

20 (c) If the person does not properly respond under (b) of this
21 section, the notice of fine constitutes an accusation and the commis-
22 sion shall proceed against the person under AS 44.21.465 - 44.21.470.

23 (d) If the person files an affidavit stating facts in mitigation
24 of the amount of the fine under (b) of this section, the commission
25 shall hold a hearing limited to the amount of the fine. A hearing
26 under this subsection shall be held in accordance with procedures
27 adopted by regulation of the commission and is not subject to AS 44.-
28 62.330 - 44.62.630.

29 Sec. 44.21.480. CONFIDENTIALITY. (a) A complaint, the

1 commission proceedings related to the complaint, and the records and
2 information obtained by the commission during a preliminary investi-
3 gation are confidential until a determination of no probable cause has
4 been made by the commission and the investigation is terminated, or a
5 determination of probable cause has been made and an accusation is
6 filed or a notice of fine is mailed under AS 44.21.475, unless the
7 person alleged to be in violation requests in writing that the pro-
8 ceedings be public.

9 (b) A person, including a member or employee of the commission,
10 may not disclose a matter made confidential under (a) of this section
11 unless a court orders the disclosure or the disclosure is authorized
12 under AS 44.21.460 - 44.21.500.

13 (c) A knowing violation of the provisions of this section is a
14 class A misdemeanor.

15 Sec. 44.21.485. JUDICIAL REVIEW. Judicial review of a final
16 order of the commission may be had by filing a notice of appeal under
17 applicable rules of court governing appeals from administrative agen-
18 cies.

19 Sec. 44.21.490. COMPELLING TESTIMONY; EXAMINATION OF RECORDS.

20 (a) In connection with an investigation or hearing involving a vio-
21 lation of AS 15.13, AS 24.45, or AS 39.50, the commission may compel
22 the attendance of witnesses and production of papers, books, records,
23 accounts, documents, and testimony, and may have the depositions of
24 witnesses taken in a manner prescribed by court rule or law for the
25 taking of depositions in civil actions when consistent with the powers
26 and duties assigned to the commission by law.

27 (b) The commission may examine the papers, books, records,
28 accounts and documents of a person subject to AS 15.13, AS 24.45, or
29 AS 39.50 to determine the correctness of a report filed with the

1 commission or in conjunction with an investigation or inspection
2 conducted under (a) of this section.

3 (c) Subpoenas may be issued and shall be served in the manner
4 prescribed by AS 44.62.430 and court rule. The failure, refusal, or
5 neglect to obey a subpoena is punishable as contempt in the manner
6 prescribed by law or court rule. The superior court may compel obedi-
7 ence to the commission's subpoena in the same manner as prescribed for
8 obedience to a subpoena issued by the court.

9 Sec 44.21.500. DEFINITION. In AS 44.21.450 - 44.21.500 "commis-
10 sion" means the Alaska Public Offices Commission.

11 * Sec. 2. AS 24.45.021(a) is amended to read:

12 (a) This chapter shall be administered by the Alaska Public
13 Offices Commission established [CREATED] under AS 44.21.450 [AS 15.-
14 13.020(a)].

15 * Sec. 3. AS 24.45.091 is amended to read:

16 Sec. 24.45.091. PUBLICATION OF REPORTS. Copies of the state-
17 ments and reports filed under this chapter shall be made available to
18 the public at the commission's central office, the office of the
19 lieutenant governor, the legislative reference library of the Legisla-
20 tive Affairs Agency, and at the commission's district offices [PRE-
21 SCRIBED IN AS 15.13.020(j)] as soon as practicable after each re-
22 porting period.

23 * Sec. 4. AS 39.50.050(a) is amended to read:

24 (a) The Alaska Public Offices Commission established [CREATED]
25 under AS 44.21.450 [AS 15.13.020(a)] shall administer the provisions
26 of this chapter. The commission shall prepare and keep available for
27 distribution, standardized forms on which the reports required by this
28 chapter shall be filed.

29 * Sec. 5. AS 39.50.200(a)(3) is amended to read:

- 1 (3) "commission" means the Alaska Public Offices Commis-
2 sion established [CREATED] under AS 44.21.450 [AS 15.13.020(a)];
- 3 * Sec. 6. AS 39.50.200(b) is repealed and reenacted to read:
- 4 (b) In this chapter "state commission or board" means the
- 5 (1) Agricultural Revolving Loan Fund Board (created admin-
6 istratively to assist in administration of AS 03.10);
- 7 (2) Alaska Coastal Policy Council members and their alter-
8 nates (AS 44.19.155);
- 9 (3) Alaska Commercial Fisheries Entry Commission (AS 16.-
10 43.020);
- 11 (4) Alaska Commission on Postsecondary Education (AS 14.-
12 42.015);
- 13 (5) Alaska Energy Center (AS 46.12);
- 14 (6) Alaska Housing Finance Corporation (AS 18.56.010 -
15 18.56.210);
- 16 (7) Alaska Judicial Council (art. IV, sec. 8, Alaska Con-
17 stitution);
- 18 (8) Alaska Medical Facility Authority (AS 18.26.010 -
19 18.26.900);
- 20 (9) Alaska Municipal Bond Bank Authority (AS 44.85.020);
- 21 (10) Alaska Oil and Gas Conservation Commission (AS 31.05.-
22 005 - 31.05.170);
- 23 (11) Alaska Power Authority public directors (AS 44.83.030);
- 24 (12) Alaska Public Broadcasting Commission (AS 44.21.256);
- 25 (13) Alaska Public Offices Commission, including the execu-
26 tive director and professional staff of the commission (AS 44.21.450);
- 27 (14) Alaska Public Utilities Commission (AS 42.05.010);
- 28 (15) Alaska Resources Corporation (AS 37.12.010);
- 29 (16) Alaska Royalty Oil and Gas Development Advisory Board

- 1 (AS 38.06.020);
- 2 (17) Alaska Seafood Marketing Institute (AS 16.51.010);
- 3 (18) Alaska State Building Authority (AS 18.55.020);
- 4 (19) Alaska State Council on the Arts (AS 44.27.040);
- 5 (20) Alaska Teachers' Retirement Board (AS 14.25.035);
- 6 (21) Alcoholic Beverage Control Board (AS 04.06.010);
- 7 (22) Board of Education (AS 14.07.075);
- 8 (23) Board of Fisheries (AS 16.05.221(a));
- 9 (24) Board of Game (AS 16.05.221(b));
- 10 (25) Board of Parole (AS 33.16.020);
- 11 (26) Board of Trustees and executive director of the Alaska
- 12 Permanent Fund Corporation (AS 37.13.040);
- 13 (27) Commission on Judicial Conduct (art. IV, sec. 10,
- 14 Alaska Constitution);
- 15 (28) Council on Domestic Violence and Sexual Assault
- 16 (AS 18.66.010);
- 17 (29) Employment Security Advisory Council (AS 23.20.025);
- 18 (30) Fishermen's Fund Advisory and Appeals Council (AS 23.-
- 19 35.010);
- 20 (31) Governor's Commission on the Administration of Justice
- 21 (AS 44.19.110);
- 22 (32) Guide Board (AS 08.54.010);
- 23 (33) Local Boundary Commission (AS 44.47.565);
- 24 (34) Occupational Safety and Health Review Board (AS 18.60.-
- 25 057);
- 26 (35) Public Employees' Retirement Board (AS 39.35.030);
- 27 (36) State Assessment Review Board (AS 43.56.040);
- 28 (37) State Commission for Human Rights (AS 18.80.010);
- 29 (38) State Personnel Board (AS 39.25.060);

1 (39) University of Alaska Board of Regents (AS 14.40.120);
2 (40) Workers' Compensation Board (AS 23.30.005).
3 * Sec. 7. AS 15.13.020, 15.13.030, 15.13.045, and 15.13.120(d) are
4 repealed.
5 * Sec. 8. Alaska Public Office Commission members serving on the effec-
6 tive date of this Act continue to serve out their terms as provided under
7 AS 15.13.020, repealed in sec. 7 of this Act. Vacancies occurring on or
8 after the effective date of this Act shall be filled in accordance with
9 AS 44.21.450 as enacted in sec. 1 of this Act.
10 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).