

HB

396

# STATE OF ALASKA

## ALASKA PUBLIC OFFICES COMMISSION

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April 13, 1978

The Honorable Terry Gardiner  
Chairman  
House Judiciary Committee  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Representative Gardiner:

On behalf of the Alaska Public Offices Commission, I wish to submit additional recommendations to CSHB 396, along with the Commission's rationale for these proposals.

There are three areas of the committee substitute which the Commission feels need further consideration:

1. Sec. 11 AS 24.45.161

In the original draft prepared in conjunction with House State Affairs, the Commission recommended that 161(A)(1)(B) be deleted. If this language is allowed to remain, the effect would be as follows: An individual (private citizen) would be exempt from registering and reporting as a lobbyist only if they met the criteria listed below:

- A. Have received no compensation, whatsoever, for attempts made to influence legislative or administrative action;
- B. Have made no disbursements or expenditures in excess of ~~\$100~~ <sup>\$250</sup> in the aggregate a year for, or on behalf of, a public official, or on behalf of a member of the immediate family of a public official; and
- C. Limit their lobbying activities to appearances before legislative or administrative hearings.

As you may well surmise, the inclusion of 161(A)(1)(B) could be interpreted to mean that individuals would not be allowed to address public officials outside of public hearings. This appears incongruent with the recommended change in 161(A)(1)(A), which in no way curtails open access to public officials and asks for

disclosure only if the individual spends in excess of \$100 in the aggregate a year for, or on behalf of, a public official or a member of his family.

The Commission, as always, in its attempts to administer this law, has taken great pains to avoid language which would create conflict with an individual's rights provided by the First Amendment of the Constitution of the United States. If this language is allowed to remain, they feel such conflicts would occur.

Therefore, the Commission recommends that AS 24.45.161 be amended as follows:

(1) an individual [A] who lobbies without receipt of payment, [OF] compensation or any economic [OTHER] consideration and makes no disbursement or expenditure in excess of \$100 in the aggregate a year for or on behalf of a public official, or member of the immediate family of a public official, to influence legislative or administrative action. [OTHER THAN TO PAY HIS REASONABLE PERSONAL TRAVEL AND LIVING EXPENSES: AND (B) WHO LIMITS HIS LOBBYING ACTIVITIES TO APPEARANCES BEFORE PUBLIC SESSIONS OF THE LEGISLATURE, OR ITS SOMMITTEES OR SUBCOMMITTEES, OR TO PUBLIC HEARINGS OR OTHER PUBLIC PROCEEDINGS OF STATE AGENCIES;]

2. Sec. 15 .AS 24.45.171(1)

As presently written, the definition of "administrative action" is unclear. During the 1977 session, the Commission recommended to the Legislature a suspension be imposed on the administrative portion of the law. They felt changes focusing particularly on clearly defining "administrative action" and narrowing the scope of its applicability should be developed. No action was taken by the Legislature in 1977. Therefore, in September of that year the Commission made the following decision:

It is the decision of the Alaska Public Offices Commission to take no further action in its attempt to administer the administrative lobbying portion of AS 24.45, the regulation of lobbying law, until such time as the law is changed or amended by the Legislature in such a manner as to serve the public interest in a meaningful and realistically workable manner.

The Commission feels the proposed changes in CSHB 396 would make the definition meaningful, realistic and workable for the general public. However, they also feel that further limitation should be included to insure that abuses of this type of lobbying do not occur. Therefore, the Commission recommends AS 24.45.171(1) be amended as follows:

(1) "Administrative action" means a decision made or action taken by a public official or a state agency; "administrative action" does not include: [A PROCEEDING]

(A) proceeding or action to determine the rights or duties of a person under existing laws, regulations or policies;

(B) proceeding involving the issuance, amendment or revocation of a permit, license or other entitlement for use;

(C) proceeding or action to enforce compliance with existing law or to impose sanctions for violations of existing law;

(D) proceeding at which an action is taken involving the policy, purchase or sale of property, goods or services by the agencies.

(E) [AT WHICH AN ACTION IS TAKEN WHICH IS MINISTERIAL IN NATURE]

(F) proceeding at which an action is taken awarding a grant or contract;

(G) proceeding or action involving the issuance of a legal opinion.

Subsections (A), (C) & (G) are decisions of a legal nature. Action taken by an administrative agency cannot be easily influenced due to the scope of existing laws regulations and policies.

Subsections (B), (D) & (F) are issues which involve the awarding of contracts, grants, sale of property, permits and licenses to the public. Although these decisions are, in fact, bound by certain criteria, the Commission feels that any attempts to influence this type of action, unless the individual chooses to register, should be limited to proceedings where all records are

part of public documents.

Subsection (E) has been deleted due to vagueness and the broad scope which it covers. The phrase "ministerial in nature" would only lead to the development of further definitions. Also, the amendment offered in 171(6) covers what are to be considered simple inquiries and routine actions.

3. Sec. 23

The final change which the Commission would recommend in CSHB 396 concerns the "effective date." The Commission respectfully requests the effective date of these amendments be advanced until January 1, 1979. The reason for this request is twofold. First, if CSHB 396 passes in its entirety, this will require the development of new forms and manuals for both the lobbyist and the employers. The staff of the APOC would appreciate a January 1, 1979 effective date so they may be assured their work is serving the public interest in the most effective manner possible.

As you are aware, 1978 is an election year. With forty House seats, 10 Senate seats, as well as the approaching Gubernatorial race, both the Anchorage office and the Juneau Branch Office will have full work loads at the end of this session.

Secondly, lobbyists and employers are required to register annually. To impose new requirements during the middle of a calendar year would only cause confusion for those that are now registered and reporting.

We would like to take this opportunity to thank you for your time and consideration not only in the committee hearing, but also in reviewing these additional recommendations. The Commission, in its attempts over the past two years, has put much thought and energy into what they feel can be a realistic lobbying law. CSHB 396, along with the above changes can accomplish just that: a law which is not burdensome to those that fall within its scope and yet still provides the public with the information they have the right to know.

I would also like to apologize for not having this information available for you at the time of the hearing. However, our office was not notified in advance that this bill was to be considered on that day. We were made aware of the hearing late Monday, leaving very little time for preparation.

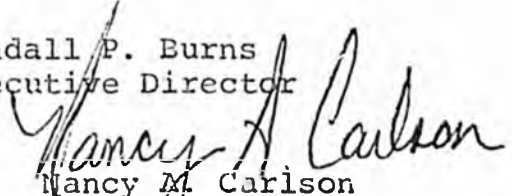
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Once again, thank you for your time. If you should require additional information, please contact me in the Juneau office or feel free to call Randall Burns, Executive Director, in the Anchorage Central Office.

Respectfully submitted,

ALASKA PUBLIC OFFICES COMMISSION

Randall P. Burns  
Executive Director

  
BY: Nancy M. Carlson  
Administrative Assistant  
Juneau Branch Office

cc: All Commission Members  
APOC Anchorage Office

NCC:baw

# ALASKA OIL AND GAS ASSOCIATION

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Anchorage, Alaska 99503  
Area 907 272-1481

April 26, 1978

Representative Terry Gardiner, Chairman  
Judiciary Committee  
House of Representatives  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

Subject: 1978 Alaska Legislation  
CSHB 396 (Lobbying)

Dear Representative Gardiner:

Although the narrowing of the definition of "administrative action" found in Sec. 15 of this bill (which excludes ministerial and other described proceedings) is highly desirable AOGA is opposed to the bill in its present 4/3/78 form and urges that strong effort be made to amend Sec. 18 of the bill to read as follows in order to avoid inadvertent violation by employees having infrequent or trivial lobbying contacts with State agencies:

" \* Sec. 18. AS 24.45.171(8) is amended to read:

(8) "lobbyist" means [(A)] a person who is employed and receives direct or indirect payments, or who contracts for economic consideration, including reimbursement for /REASONABLE TRAVEL AND LIVING/ expenses, or makes disbursements or expenditures for or on behalf of a public official, or a member of the immediate family of a public official, to communicate directly or through his agent with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action; unless otherwise exempt under sec. 161 of this chapter; /OR (B) A PERSON WHO REPRESENTS HIMSELF AS ENGAGING IN THE INFLUENCING OF LEGISLATIVE OR ADMINISTRATIVE ACTION AS A BUSINESS, OCCUPATION OR PROFESSION;]"

This assumes, of course, that reasonable regulations will be adopted defining "substantial or regular."

In order to eliminate registration and reporting for those whose only lobbying activities are limited to appearances before or

Representative Terry Gardiner  
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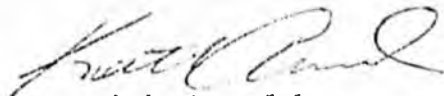
submissions to public sessions, hearings or other public proceedings, Sec. 11 of this bill should be amended to read as follows:

" \* Sec. 11 AS 24.45.161(a)(1) is amended to read:

(1) an individual (A) who lobbies without receipt of payment, /OF/ compensation or any economic /OTHER/ consideration and makes no disbursement or expenditure in excess of \$100 in the aggregate a year for or on behalf of a public official, or a member of the immediate family of a public official, to influence legislative or administrative action /OTHER THAN TO PAY HIS REASONABLE PERSONAL TRAVEL AND LIVING EXPENSES/; or /AND/ (B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies or to the preparation or submission of written statements for incorporation in the record of such public sessions, hearings or other public proceedings."

This latter change is consistent with the disclosure purpose of a lobbying law because the public has access to such public proceedings.

Very truly yours,



Keith Arnold  
Public Affairs Manager

*Alaska*  
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*League*

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JUNEAU, ALASKA 99801

TESTIMONY GIVEN BY  
JIM ROLLE  
FOR  
THE ALASKA MUNICIPAL LEAGUE

BEFORE  
HOUSE JUDICIARY  
CSHB 396

APRIL 11, 1978

# Alaska MUNICIPAL League

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204 N. FRANKLIN ST.  
JUNEAU, ALASKA 99801

Mr. Chairman:

Our concern with CSHB 396 is on page 11, section 22. We note that 24.45.161 (a)(2) is repealed.

Mr. Chairman, Alaska statutes define a lobbyist as a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses to communicate directly with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action, or a person who represents himself as engaging in the influencing of legislative or administrative action as a business, occupation or profession.

The section which is to be repealed is an exemption for an elected or appointed state or municipal official, or an employee of the state or a municipality acting in his or her official capacity or within the scope of his or her employment.

Mr. Chairman, in the case of our municipal officials coming to the Capital, or speaking to the administration in their own area, it is to the benefit of the state. Many of the actions taken by the legislature and the administration directly effect municipal government and it would be the state's loss for an official to be reluctant to speak because he or she was not registered. On the other hand, we feel it would be absurd for 1500 or 2000 local officials to register and report.

We look back at the statute's definition of a lobbyist and we feel that none of our members fit that description.

Mr. Chairman, we would like to have 24.45.161 (a)(2) remain in the Act.

Thank You.

*Amendment #1*

Introduced: 3/17/78  
Referred: State Affairs and  
Judiciary

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE  
BY REQUEST

2

HOUSE BILL NO. 895

3

~~IN THE LEGISLATURE OF THE STATE OF ALASKA~~

4

~~TENTH LEGISLATURE - SECOND SESSION~~

5

~~A BILL~~

6

~~For an Act entitled: "An Act relating to lobbying; and providing for an  
effective date."~~

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8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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\* Section 1. AS 24.45 is amended by adding new sections to read:

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Sec. 24.45.200. PROHIBITIONS AND PENALTIES. (a) No lobbyist may

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offer a gift to a public official or employee in connection with an

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attempt to influence legislative or administrative action.

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(b) No public official or employee may accept a gift from a lob-

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byist in connection with an attempt to influence legislative or admini-

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strative action.

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(c) A person who knowingly violates a provision of this section

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is, upon conviction, punishable by a fine of not more than \$5,000 or by

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imprisonment for not more than one year, or by both.

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Sec. 24.45.210. REGISTRATION OF LOBBYISTS. (a) A lobbyist shall

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register before engaging in lobbying. A registration is effective for

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the remainder of the calendar year; if the information as to the iden-

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tity of the person for whom the lobbyist is employed or retained or the

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person who will benefit from the lobbying changes, a new registration is

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required within 10 days of the change.

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(b) No charge or fee may be collected in connection with a regis-

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tration under this section.

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(c) The commission shall prescribe the form for registration under

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this section to include the following information:

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(1) the lobbyist's full name, permanent business address, and

1 any temporary business address;

2 (2) the name and address of each person by whom the lobbyist  
3 is employed or retained and the person who will benefit from the  
4 lobbying, if different;

5 (3) a description of the subjects or matters on which the  
6 lobbyist expects to attempt to influence legislative or administrative  
7 action;

8 (4) the expected compensation or reimbursement for expenses  
9 for lobbying.

10 (d) A person who ceases to lobby before the end of the calendar  
11 year shall file a statement with the commission advising when his ser-  
12 vices terminated.

13 (e) A person who fails to register within the time required by  
14 this section is subject to a civil penalty of not more than \$10 for each  
15 day the delinquency continues as determined by the commission. The  
16 determination of the commission is subject to a right of appeal to the  
17 superior court; a person subject to the civil penalty may submit facts  
18 in mitigation of the penalty. Imposition of penalties does not excuse  
19 a failure to register.

20 (f) The commission shall publish a report 45 days after the end  
21 of each quarter containing the information reported under this section.

22 Sec. 24.45.220. REPORT BY LOBBYISTS. (a) A lobbyist who receives  
23 no compensation or reimbursement for expenses for lobbying need file  
24 no reports under this section and sec. 210(c)(4) of this chapter.

25 (b) A lobbyist who receives or earns compensation or reimburse-  
26 ment for expenses for work as a lobbyist during any calendar quarter  
27 shall report the amounts to the commission within 15 days after the end  
28 of the calendar quarter in which the compensation or reimbursement for  
29 expenses is received or earned.

1           Sec. 24.45.230. REGULATIONS. The commission may adopt regulations  
2 to implement secs. 200 - 250 of this chapter.

3           Sec. 24.45.240. DEFINITIONS. In secs. 200 - 250 of this chapter

4           (1) "an attempt to influence administrative action" means  
5 efforts by the lobbyist concerned with the approval, disapproval, modi-  
6 fication, or postponement by a state agency of state action;

7           (2) "an attempt to influence legislative action" means  
8 efforts by the lobbyist concerned with the approval, disapproval, modi-  
9 fication, or postponement by the legislature, a committee of the legis-  
10 lature, or a legislator of a bill, resolution, or other legislative  
11 action;

12           (3) "agency" means a state department, commission, board or  
13 other entity, including the University of Alaska, in the executive  
14 branch;

15           (4) "commission" means the Public Offices Commission;

16           (5) "gift" means an act or forbearance for which equal or  
17 greater value is not received in return; "gift" does not mean food or  
18 beverages actually and promptly consumed in places of public or private  
19 accommodation;

20           (6) "lobbyist" means a person who seeks to influence legis-  
21 lative or administrative action which will benefit another person;  
22 "lobbyist" does not include a person whose attempt to influence legis-  
23 lative or administrative action

24           (A) will benefit only himself or members of his imme-  
25 diate family;

26           (B) is limited to appearances before public sessions of  
27 the legislature, its committees or subcommittees, or to public  
28 hearings or public proceedings of state agencies;

29           (C) occurs within the scope of his responsibilities as

1 an elected or appointed state or municipal officer;

2 (D) results from an invitation to testify from the  
3 legislature or an administrative agency;

4 (E) is limited to representations by attorneys on behalf  
5 of clients before executive agencies; or

6 (F) involves contact between an elected officer of the  
7 state and a constituent on the responsibilities of the elected  
8 officer;

9 (7) "person" includes a labor union in addition to the terms  
10 set out in AS 01.10.060(7);

11 (8) "public official or employee" means a public official as  
12 defined in AS 39.50.200(1) or an employee of the executive or legis-  
13 lative branch of the state government; it does not include a judicial  
14 officer or employee or an elected or appointed municipal officer or  
15 employee.

16 Sec. 24.45.250. CAMPAIGN CONTRIBUTIONS. Nothing in secs. 200 -  
17 250 of this chapter prohibits contributions which comply with the re-  
18 quirements of AS 15.13.

19 \* Sec. 2. AS 24.45.011 - 24.45.181 are repealed.

20 \* Sec. 3. This Act takes effect July 1, 1978.