

S B

8 5

HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: JUDICIARY

BILL: SB 85

CURRENT VERSION: CS SB 85 (SA)

SCHEDULED: W 4, 1988

SPONSOR: ABOOD

PHONE NO: 4522

CONTACT FILE: _____

BILL SUBJECT: POWER AND DUTIES OF THE ALASKA PUBLIC OFFICES COMMISSION

SPONSOR BACKUP: IN FILES AND BLACK BINDERS

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
ADMIN	PUSHPENDER DHILLON/2200	
APOC	CARLA FORSYTHE/276-4176	OFF-NET TELECONFERENCE

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
ADMIN/APOC		3/10/88	-0-	\$19,500
PREPARED BY (S) STATE AFFAIRS		3/10/88	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>
5/2/88	RESCHEDULED TO MAY 4
5/4/88	HCS ADOPTED AND PASSED FROM COMMITTEE

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/12/88

FURTHER REFERRALS:

Judiciary
Finance

DATE: 5-4-88

The State Affairs Committee has considered CSSB 85(SA)
CS FOR SENATE BILL NO. 85 (State Affairs)

"An Act relating to the power and duties of the Alaska Public Offices Commission; and providing for an effective date."

RECOMMENDS:

- replace with HCS (S SB 85(SA)) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]

[Signature]
[Signature]

[Signature]
 Chairman's signature

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

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

(1) hold or campaign for elective office;

(2) be an officer of a political party, political committee, or political group;

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

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

(5) lobby or employ or assist a lobbyist.

(f) Members of the commission are entitled to receive compensation of \$50 a day while attending commission meetings and are entitled to travel expenses and per diem authorized by law under AS 39.20.180.

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

(h) The commission may employ an executive director and other employees it considers necessary. The executive director and an 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
30

reports, registrations, and statements under AS 15.13 and otherwise assist candidates, groups, and individuals in complying with AS 15.13;

(3) receive and hold open for public inspection reports, registrations, and statements required to be filed under AS 15.13 and, upon request, furnish copies to an interested person at cost;

(4) compile and maintain a current list of each report, registration, and statement filed with the commission;

(5) prepare a summary of each report, registration, or statement filed under AS 15.13 and make a copy of the summary available to an interested person at cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing a report or statement required under AS 15.13;

(7) report to the office of the attorney general within 60 days after each election the names of all persons and groups who have failed to comply with a provision of AS 15.13;

(8) examine, investigate, and compare reports, statements, and actions required by AS 15.13, AS 24.45, and AS 39.50 and report to the attorney general the names of all persons or groups the commission has substantial reason to believe have violated AS 15.13, AS 24.45, or AS 39.50;

(9) prepare and publish an annual report to the legislature concerning the activities of the commission; the effectiveness of AS 15.13, AS 24.45, AS 39.50, and AS 44.21.450 - 44.21.500; their enforcement by the attorney general's office; and recommendations and proposals for change; and

(10) adopt regulations necessary to implement and clarify the provisions of and that are consistent with AS 15.13, AS 24.45, and AS 39.50, subject to the provisions of the Administrative Procedure

Act (AS 44.62).

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

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

(1) investigate the allegations of the complaint;

(2) require additional time to evaluate the complaint to determine whether it should be investigated and providing an appropriate explanation for the delay;

(3) refer the complaint to another agency;

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

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

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

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

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

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

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

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

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

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

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

Sec. 44.21.475. SUMMARY DISPOSITION OF VIOLATIONS. (a) Notwithstanding the provisions of AS 44.21.465 - 44.21.470, the commission may establish by regulation the violations described in AS 15.13, AS 24.45, or AS 39.50 that are amenable to summary disposition without formal accusation.

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

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

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

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

commission proceedings related to the complaint, and the records and information obtained by the commission during a preliminary investigation are confidential until a determination of no probable cause has been made by the commission and the investigation is terminated, or a determination of probable cause has been made and an accusation is filed or a notice of fine is mailed under AS 44.21.475, unless the person alleged to be in violation requests in writing that the proceedings be public.

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

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

Sec. 44.21.485. JUDICIAL REVIEW. Judicial review of a final order of the commission may be had by filing a notice of appeal under applicable rules of court governing appeals from administrative agencies.

Sec. 44.21.490. COMPELLING TESTIMONY; EXAMINATION OF RECORDS.

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

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

commission proceedings related to the complaint, and the records and information obtained by the commission during a preliminary investigation are confidential until a determination of no probable cause has been made by the commission and the investigation is terminated, or a determination of probable cause has been made and an accusation is filed or a notice of fine is mailed under AS 44.21.475, unless the person alleged to be in violation requests in writing that the proceedings be public.

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

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

Sec. 44.21.485. JUDICIAL REVIEW. Judicial review of a final order of the commission may be had by filing a notice of appeal under applicable rules of court governing appeals from administrative agencies.

Sec. 44.21.490. COMPELLING TESTIMONY; EXAMINATION OF RECORDS.

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

(b) The commission may examine the papers, books, records, accounts and documents of a person subject to AS 15.13, AS 24.45, or

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

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

Sec 44.21.500. DEFINITION. In AS 44.21.450 - 44.21.500 "commission" means the Alaska Public Offices Commission.

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

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

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

Sec. 24.45.091. PUBLICATION OF REPORTS. Copies of the statements and reports filed under this chapter shall be made available to the public at the commission's central office, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency, and at the commission's district offices [PRESCRIBED IN AS 15.13.020(j)] as soon as practicable after each reporting period.

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

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

* Sec. 5. AS 39.50.200(a)(2) is amended to read:

(3) "commission" means the Alaska Public Offices Commission established [CREATED] under AS 44.21.450 [AS 15.13.020(a)];

* Sec. 6. AS 39.50.200(b) is repealed and reenacted to read:

(b) In this chapter "state commission or board" means the

(1) Agricultural Revolving Loan Fund Board (created administratively to assist in administration of AS 03.10);

(2) Alaska Coastal Policy Council members and their alternates (AS 44.19.155);

(3) Alaska Commercial Fisheries Entry Commission (AS 16.-43.020);

(4) Alaska Commission on Postsecondary Education (AS 14.-42.015);

(5) Alaska Energy Center (AS 46.12);

(6) Alaska Housing Finance Corporation (AS 18.56.010 - 18.56.210);

(7) Alaska Judicial Council (art. IV, sec. 3, Alaska Constitution);

(8) Alaska Medical Facility Authority (AS 18.26.010 - 18.26.900);

(9) Alaska Municipal Bond Bank Authority (AS 44.85.020);

(10) Alaska Oil and Gas Conservation Commission (AS 31.05.-005 - 31.05.170);

(11) Alaska Power Authority public directors (AS 44.83.030);

(12) Alaska Public Broadcasting Commission (AS 44.21.256);

(13) Alaska Public Offices Commission, including the executive director and professional staff of the commission (AS 44.21.450);

(14) Alaska Public Utilities Commission (AS 42.05.010);

(15) Alaska Resources Corporation (AS 37.12.010);

(16) Alaska Petroleum Oil and Gas Development Authority

(AS 38.06.020);

- (17) Alaska Seafood Marketing Institute (AS 16.57.010);
- (18) Alaska State Building Authority (AS 18.55.020);
- (19) Alaska State Council on the Arts (AS 44.27.040);
- (20) Alaska Teachers' Retirement Board (AS 14.25.035);
- (21) Alcoholic Beverage Control Board (AS 04.06.010);
- (22) Board of Education (AS 14.07.075);
- (23) Board of Fisheries (AS 16.05.221(a));
- (24) Board of Game (AS 16.05.221(b));
- (25) Board of Parole (AS 33.16.020);
- (26) Board of Trustees and executive director of the Alaska Permanent Fund Corporation (AS 37.13.040);
- (27) Commission on Judicial Conduct (art. IV, sec. 10, Alaska Constitution);
- (28) Council on Domestic Violence and Sexual Assault (AS 18.66.010);
- (29) Employment Security Advisory Council (AS 23.20.025);
- (30) Fishermen's Fund Advisory and Appeals Council (AS 23.-35.010);
- (31) Governor's Commission on the Administration of Justice (AS 44.19.110);
- (32) Guide Board (AS 08.54.010);
- (33) Local Boundary Commission (AS 44.47.265);
- (34) Occupational Safety and Health Review Board (AS 18.60.-057);
- (35) Public Employees' Retirement Board (AS 39.35.020);
- (36) State Assessment Review Board (AS 43.56.040);
- (37) State Commission for Human Rights (AS 13.80.010);
- (38) State Personnel Board (AS 20.05.110);

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).
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HSA

5-3-88

3:00p.m.

Alaska State Legislature

INTERIM OFFICE
3111 'C' STREET, SUITE 535
ANCHORAGE, ALASKA 99503
(907) 561-7614

Senator Mitch Abood
CHAIRMAN

IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4714

Senate Committee on State Affairs

MEMORANDUM

TO: Representative Fran Ulmer, Chair
House Committee on State Affairs

FROM: Senator Mitch Abood, Chairman *MZA*
Senate Committee on State Affairs

DATE: May 4, 1988

SUBJECT: Comments on APOC amendments to CSSB 85 (SA)

1. No comment.

2. APOC's explanation of this provision is incorrect and very misleading. Subsection (d) pertains only to those infrequent cases when an individual who is not a respondent and who is not a party to any APOC action is identified by APOC as a potential violator of the law.

It provides that a person whose name is mentioned in a complaint or identified during an investigation or at a hearing as someone who may have violated the law, shall be notified by the executive director, so that the person is able to file a signed and sworn written statement of the facts or other evidence so that the commission can develop a full and fair record.

If the matter is not resolved and goes to a hearing, the person may appear and testify at the hearing. This provision was modeled after similar provisions in Florida, Nebraska and Hawaii. Although the narrative provided by the APOC states that it is modeled after Florida's provision it leaves out the critical fact that Florida's hearings (as well as the other states) are kept closed and confidential while those in SB 85 are open to the public.

The point being -- than an individual whose conduct is seen to rise to the level of possibly violating the law during proceedings which are confidential and hidden from public view, should be given the opportunity to incorporate his or her side of the story into the record, before being blind-sided by possibly damaging, defamatory and inaccurate staff accusations in a public hearing. This is precisely what has happened to people in the past and is the reason why the subsection was put in the bill.

If you will review the memo from the Senate Advisory Council you'll see that the states who have this provision on the books use it very infrequently and have no problems administering the provision. And although APOC staff thinks that people will destroy evidence, no other state had experienced this, but have experienced exactly the opposite -- with people providing documentation so that they can clear their name.

3. I strongly oppose the APOC amendment to the confidentiality section and would like to refer you to page 8 of the sectional analysis for a more detailed and comprehensive narrative on the provision.

APOC staff has opposed the provision because they think that complainants will leak information to the press. If you'll review the Senate Advisory Council memorandum you will see that states which have the same provision in SB 85 which makes a breach of confidentiality a crime, do not have a problem with leaks.

It must also be remembered that in the past, the APOC staff themselves were responsible for leaking information to the press.

Enclosures: Senate Advisory Council memo
CSSB 85 (SA) sectional analysis & narrative

Alaska State Legislature

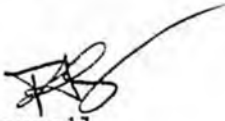
Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

TO: Senator Mitch Abood
Alaska State Senate

ATTN: Carol Horos

FROM: Paula d. Scavera 
Senate Advisory Council

DATE: April 19, 1988

SUBJECT: Campaign Violations IR # 88-003273

Per your request are the answers from the attached questions provided by your office. I have grouped the answers by state. As soon as I have received answers from the Federal Election Commission I will forward those answers to you.

FLORIDA

The General Counsel to the Department of State handles campaign violations in the State of Florida.

All complaints, proceedings, hearings and investigations are confidential until when a complaint is made public information at the time of a finding or at the time it is ruled "not probable cause". Usually a press release is issued by the Department of State.

The number of "leaks" of confidential information regarding complaints/investigations has dropped considerably due to provisions in Florida law which provide for the filing of criminal complaints against the responsible parties.

The State of Florida also has a provision that a criminal complaint is filed against a person if he or she files a complaint with false allegations or without merit. This provision seems to have drastically reduced the number of malicious complaints and "has cleaned up campaigns".

Senator Abood
April 19, 1988
Page 2

The State of Florida very rarely uses the provision in which a person is notified when he or she is mentioned during a proceeding, so that they may appear. What usually happens is that if a person is involved in someone else's case, then a complaint is filed against the second person, to insure that everyone is treated fairly and with all confidential rights contained within Florida laws.

Also as soon as a complaint appears to be criminal in nature rather than civil, the matter is turned over to the State Attorney's Office for action.

SOUTH CAROLINA

The South Carolina Ethics Commission handles specific complaints against public officials for campaign violations. The Ethics Commission meets every other month to handle complaints and cases. A complaint/cases along with all proceedings and hearings are confidential. If a complaint/case is leaked the Commission and their employees do not confirm or deny that an investigation is taking place. If a complaint/case is dismissed, all mention of the complaint is stricken from public record. If a complaint/case is upheld, the commission notifies the person and the press of the findings.

Informal disposition of complaints are usually between more than one party and based upon an agreement between the two parties. For instance, Candidate A may say something derogatory about Candidate B, so then Candidate B says something even more derogatory about Candidate A, so then this escalates until one candidate files a complaint with the Ethics Commission and the other candidate counter-files a complaint. This is when an informal disposition may come into play, with an agreement worked out between the two parties with the Ethics Commission.

The Ethics Attorney I talked to in South Carolina liked the Florida provision, specifically that criminal complaints be filed against parties responsible for leaks.

NEBRASKA

In the State of Nebraska, complaints are held confidential unless the respondent makes the information public or until a finding. They "very rarely" have a leak to the press about any of their investigations, and they don't know of any destruction of evidence.

When a finding of no probable cause is found, the records are kept confidential unless the respondent wants them made public information.

They also thought the Florida provision for prosecuting someone who discloses confidential information on complaints/cases was a good provision.

Senator Abood
April 19, 1988
Page 3

Nebraska never uses the provision to notify people whose name are mentioned and who might adversely affected. They, like Florida, when a second person is named in a case, will initiate the complaint process on the second person so that proper procedures are followed.

HAWAII

The Campaign Spending Commission is the entity that handles complaints in the State of Hawaii. This state has problems with cases being held confidential, but they do not have any specific sanctions against someone "leaking any information".

This state has no problem with any one providing documentation. "When we have documentation that says someone did something, nobody is going to destroy any information that shows that they didn't do it". "People want to clear their name".

One problem that Hawaii complained about, is that even if a case is found "no probable cause, no further investigation" the outcome is still confidential. Because of this, the Commission feels they are accused of "whitewashing" a lot of cases. The Spending Commission has for the last few years worked to change this section of the law in the Hawaii Legislature, but to no avail.

They also liked the Florida provision.

If you need additional assistance, please contact me.

FEDERAL ELECTIONS COMMISSION

1. Sec. 118.8 (reg) - provides for a 5 day interval for the initial processing of complaints.

Do they have any problems administering this provision?

Do they experience many situations when 5 days is insufficient for an initial determination? How do they handle it?

2. Sec. 111.21 - provides that complaints, notification by the commission, commission investigations and commission findings are confidential unless the respondent gives written permission to make them public.

Any problems with enforcement? In particular, do they experience cases where the complainant leaks the complaint to the press? How do they handle notifying the parties of the confidentiality provision?

If the commission determines that there is no probable cause and closes the file; is it kept confidential or is the file open to the public?

If the case goes to a hearing, is the hearing confidential or open to the public?

3. Sec. 111.18 - Conciliation agreements. Do they use conciliation agreements in cases where there is evidence of a willful, flagrant violation of the law?

What criteria do they use to employ conciliation instead of allowing a case to go to a hearing?

4. How do they handle cases when an individual who is not a party to an action, but whose name is mentioned during the investigation and the evidence raises that possibility that the individual may have violated the law. Do they notify that person and give them an opportunity to respond or offer evidence before a public accusation is made?

SOUTH CAROLINA

1. Sec. 52-3.7 - How long does it generally take to make the initial determination from the facts presented in the complaint if there is sufficient cause to investigate . Do they feel that 10 working days a reasonable timeframe to make this determination and to notify the parties?

1. Sec 52-3.9 - South C. keeps the complaint as well as the entire proceedings and hearing confidential.

Enforcement OK? Do they experience problems with complainants leaking complaints to the press?

They also have a provision for malicious filing of complaints. Do they use this provision often? How is enforcement?

Sec. 52-3.13 - Informal disposition of complaints. In cases where there is evidence of a flagrant, willful violation do they still dispose informally or send to a hearing?

HAWAII

1. Sec. 11-216 - complaints, investigations and hearings are confidential in Hawaii.

Any enforcement problems? What about complainant leaking complaint to press?

2. They also have the provision (Sec. 11-216(c)(2)) in which they notify any person whose name is mentioned during a proceeding and who may be adversely affected, so that the person may appear before the commission or submit written comments. Enforcement OK?

Is this a procedure that is used frequently or infrequently?

When do they actually notify someone? During the investigation/ whenever the evidence suggests that the person may be adversely affected ?

Have they ever had people destroy evidence when they're notified? Would they say that this provision has a "chilling effect" on their investigation?

Does the provision assist in developing a full and fair record?

3. If the commission does not find that there is probable cause to proceed against the person, the file is closed and kept confidential. Does this cause them any problems?

NEBRASKA

1. Is the complaint confidential? Do they have any problems with the confidentiality provision? Complainant leaking to press, etc.?

2. They also have the provision to notify people whose names are mentioned and who may be adversely affected.

(Pls. ask same questions on this as Hawaii)

3. If they find no probable cause to proceed against a person, the records are kept confidential. Any problem with this?

FLORIDA

1. Complaints et al are confidential. Enforcement OK? Complainant leaks to press?

2. They also have a provision which prohibits knowingly filing complaints with false allegations or without merit. Has this provision cut down on the malicious filing of complaints as a campaign strategy? Enforcement ok?

3. They have the notification if name is mentioned and if adversely affected - same as Hawaii and Nebraska.

Alaska State Legislature

INTERIM OFFICE
3111 'C' STREET, SUITE 535
ANCHORAGE, ALASKA 99503
(907) 561-7614

WHILE IN SESSION
PO BOX V
JUNEAU, ALASKA 99811
(907) 465-4747

Senator Mitch Abood
SENATE DISTRICT G-A

CHAIRMAN
STATE AFFAIRS
MAJORITY WHIP
MEMBER
TRANSPORTATION
COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
INTERNATIONAL TRADE

SECTIONAL ANALYSIS AND NARRATIVE

FOR

CSSB 85 (SA), "An Act relating to the powers and duties of the Alaska Public Offices Commission, and providing for an effective date."

Index of Sections

44.21.450	Alaska Public Offices Commission
44.21.455	Duties of the Commission
44.21.460	Preliminary Investigations
44.21.465	Hearings
44.21.470	Imposition of Penalty
44.21.475	Summary Disposition of Violations
44.21.480	Confidentiality
44.21.485	Judicial Review
44.21.490	Compelling Testimony; Examination of Records
44.21.495	Judicial Review
44.21.500	Definition
	Several conforming amendments
	Immediate effective date

** Section 44.21.450. ALASKA PUBLIC OFFICES COMMISSION.

This section corrects a serious constitutional problem with the manner in which the commission chooses its fifth member. Article II, Section 26 of the Alaska Constitution requires all members of regulatory or quasi-judicial boards or commissions to be appointed by the Governor and confirmed by the legislature. However, since the commission was established in 1974, the four members have

chosen the commission's fifth member themselves, without appointment by the Governor or confirmation by the legislature. This section sets out a procedure for the appointment and confirmation of the fifth member; the selection of successors; and deletes obsolete material relating to the initial terms of members.

Subsection (h) is a new provision 1/ which holds commission staff to the same standard as commission members by prohibiting staff from engaging in political activity while they are employed by the APOC.

** Section 44.21.455. DUTIES OF THE COMMISSION.

This section is identical to present law, AS 15.13.030, which describes the responsibilities of the commission to administer AS 15.13 (campaign disclosure), AS 24.45 (lobbying) and AS 39.50 (conflict of interest).

** Section 44.21.460. PRELIMINARY INVESTIGATIONS.

Existing statutes governing APOC investigations are hopelessly confused and raise serious questions about the lack of constitutional due process afforded individuals who are subjected to APOC staff investigations.

Subsection (a) is similar to present regulation 2 AAC 50.450 (c)(1), which sets out a procedure for handling complaints which are properly filed and sworn. However, this subsection sets out a new requirement for the executive director to notify each person against whom a complaint is filed. The present APOC regulation only requires staff to acknowledge receipt of a complaint to the complainant but not to the respondent. Subsection (a) also sets out a new requirement that both parties be notified immediately.

1/ The use of language such as "new provision" or "new requirement" means that similar language does not exist in present law.

Subsection (b) adds a new requirement for the executive director to make an initial determination whether a complaint sets out facts which, if true, would constitute a violation of the law, within 10 working days after first receiving the complaint, for purposes of notifying the complainant and the respondent.

Present APOC regulation 2 AAC 50.450 (c)(2), simply states that the staff must make this determination "promptly".

Subsection (c) provides that the staff may conduct a preliminary investigation of violations of the campaign disclosure, conflict of interest and lobbying laws on its own motion. Present APOC regulations (2 AAC 50.460 (a)(2), (b) and 2 AAC 50.450 (e)), which describe these procedures are poorly written and extremely confusing.

Subsection (c) also sets out a new requirement for an investigation which the staff begins on its own motion, that requires the executive director to immediately notify a person against whom a preliminary investigation is proceeding of the nature of the alleged violation. Present law and regulation do not require commission staff to notify a person that he or she is under investigation. It has happened in the past that individuals were not aware of the existence of an APOC investigation which involved them until after the staff terminated its investigation and made public charges in a report to the commission which recommended that action be taken against them.

Subsection (d) is a new provision which is modeled after similar provisions in Florida, Nebraska and Hawaii. The subsection provides that a person whose name is mentioned in a complaint or identified during an investigation or at a hearing as someone who may have violated AS 15.13, AS 24.45, or AS 39.50 shall be advised by the executive director of the information obtained by the commission. This person may appear personally and

testify at the hearing or may file a signed and sworn written statement of the facts or other evidence for incorporation into the record.

The intent of this subsection is to ensure that individuals who are identified as possible violators of the law, but who have not been formally made a party to an action, be allowed an opportunity to provide facts or other evidence so that an investigation or hearing can develop a full and fair record. This does not mean that everyone whose name merely comes up in a commission matter will be notified, as the APOC staff fears. It is hoped that professional staff will be able to distinguish between a casual, frivolous or malicious mention and the point at which the evidence raises a serious possibility that an individual may have violated the law.

Commission staff have also pointed to the Florida provision and argued that notification should be restricted to hearings only. While it is true that the Florida provision pertains to hearings, it is also true that the hearings in Florida are kept closed, while those in CSSB 85 (SA) are open to the public. The point being -- that an individual whose conduct is seen to rise to the level of possibly violating the law during proceedings which are confidential and hidden from public view, should be given the opportunity to incorporate his or her side of the story into the record, before being blind-sided by possibly damaging, defamatory and inaccurate staff accusations in a public hearing. This is precisely what has occurred to individuals in the past, and is the reason why the subsection was put in the bill.

*

*

When staff concludes the preliminary investigation and submits their report, the commission deliberates. The purpose of this initial deliberation is to elicit evidence on the question of whether or not the complaint was filed on justifiable grounds.

Subsection (e) is a new provision and provides that when a preliminary investigation is ended and the commission makes a determination that there is probable

cause to believe that the person named in the complaint has committed a violation of AS 15.13 (campaign disclosure), AS 24.45 (conflict of interest) or AS 39.50 (lobbying), the commission will then commence violation proceedings by filing and serving an accusation on the person who is alleged to have committed the violation.

Subsection (f) is a new requirement which provides that if a preliminary investigation is terminated and the commission finds that no probable cause exists that the person named in the complaint has committed a violation, the commission shall immediately inform the complainant and each person against whom the complaint was filed, of the information which was reviewed and that the commission will not be taking further action concerning the complaint. The commission will then close the file.

** Section 44.21.465. HEARINGS.

There is very little existing law governing the actual administrative procedures that the commission must follow in adjudicating violations and imposing penalties. In the absence of statutory provisions, the commission has filled the void with a large number of its own administrative regulations.

It is much better policy to include basic procedures in the law, rather than leaving such important matters to questionable regulations and staff interpretation.

Subsection (a) is new and provides that a hearing shall be conducted if a respondent requests a hearing on a contested accusation or under the conditions described in the "Summary Disposition of Violations". In the absence of a request, the commission in its discretion may decide to hold a hearing. The hearing shall be conducted under the provisions of the Administrative Procedures Act and will be open to the public.

Subsection (b) is a new requirement that when a

hearing officer submits a proposed decision to the commission, the respondent and the commission staff may, within 10 working days after receipt of a copy of the proposed decision, submit written comments on the proposed decision to the commission. This is to allow an opportunity for both sides to comment on the hearing officer's proposed decision. The commission is required to consider these written statements before adopting the hearing officer's decision.

*** Section 44.21.480 IMPOSITION OF PENALTY

This entire section contains new provisions and has no counterpart in existing law.

Subsection (a) provides that the commission may impose penalties only after a person has admitted or plead no contest to an accusation or after the commission holds a hearing at which certain due process rights have been afforded to the respondent, and at which the commission determines by substantial evidence that the person has actually committed the violation. Existing law does not address standards of proof in hearings before the commission.

Subsection (b) provides that in cases where there is evidence of a willful violation (emphasis added) of the law, the commission staff may not formally or informally make a recommendation to the commission members as to a particular penalty in a pending matter or make a commitment to the respondent to make a particular recommendation to the commission in the future until after the respondent has admitted or pleaded no contest to the accusation or until after a hearing and a final determination by the commission that the respondent has actually committed the acts charged in the accusation. This ban on plea bargaining by staff is restricted to instances where there is evidence of a flagrant, willful violation and does not in any way impair staff's ability to negotiate settlements in other cases.

Subsection (c) states that before the executive director may make a recommendation to the commission for the imposition of a particular penalty in a matter, the respondent must first be given notice of the recommendation and afforded an opportunity to respond to the recommendation in person or in writing.

Subsection (d) contains specific guidelines for the commission to follow in imposing penalties. This subsection provides that the higher penalties should be reserved for egregious conduct where the violation has impeded public disclosure of information as to the amount and source of contributions; and the extent to which the respondent's conduct, including prior violations of AS 15.13, AS 24.50, or AS 39.50 shows a disregard for the law.

The intent of this section is for the legislature to provide clear guidelines to the commission in exercising its discretionary "sentencing" authority, so that the law is the determining factor in the commission's imposition of penalties and not the staff's interpretation; It is also intended to provide some standards for judicial review of commission actions.

*** Section 44.21.485. SUMMARY DISPOSITION OF VIOLATIONS

This section authorizes the commission to establish by regulation the less serious violations that are amenable to summary disposition without formal accusation. This category of violations makes up the vast majority of the commission's business and involves such transgressions as inadvertent mistakes and the late filing of reports.

The intent of this section is to permit the commission to continue to deal with relatively minor violations in a summary fashion, without having to employ the more detailed procedures of the Administrative Procedures Act. The concept of the "summary disposition of violations" by means of a schedule of fines, is modeled after the "mail-in-bail" provisions of the Motor Vehicle Code (AS 28).

Subsection (b) states that a notice of fine may be mailed to the person who is alleged to have committed a summary violation which indicates the circumstance of the violation and the amount of the fine. The person may then pay the fine within 30 days after receiving the notice, file a notice of defense disputing the facts and requesting a hearing, or file an affidavit stating facts in mitigation of the amount of the fine.

Subsection (c) provides that if a person does not properly respond under the requirements of the section, that the notice of fine constitutes an accusation and the commission shall proceed against the person under AS 44.21.465 - 44.21.470.

Subsection (d) provides that if the person files an affidavit stating facts in mitigation of the fine, the members of the commission shall hold a hearing limited to the amount of the fine. This is not an APA-type of hearing and does not require a hearing officer.

*** Section 44.21.490. CONFIDENTIALITY

This entire section contains new provisions and has no counterpart in existing law.

Most states, including the Federal Elections Commission provide for confidentiality. In drafting the confidentiality provision for CSSB 85, we reviewed the following states: South Carolina; Hawaii; Minnesota; Nebraska; Illinois; Florida; Kansas; Washington; Massachusetts and California.

In CSSB 85, the complaint, the commission proceedings related to the complaint, and the records and information obtained by the commission during a preliminary investigation are confidential until a determination of probable cause has been made by the commission and an accusation is filed under 44.21.465, unless the person alleged to be in violation requests in writing that the proceedings be public.

If the commission finds that there is no probable cause to believe an individual has committed an offense, the parties are notified, the file is closed and the matter remains confidential. This is the same procedure used by the Ombudsman.

It is no secret that complaints have been filed as a campaign strategy to inflict maximum damage upon an opponent. It is also no secret that prejudicial material has been leaked to the press by commission staff in order to bolster their "case" in front of the commission, with no regard for whether the information is true or false.

Whatever its source, this practice denies an individual his or her constitutional rights to privacy and due process and destroys any expectation to be treated fairly under the law. A person who is targeted for staff investigation should not be blind-sided by the dissemination of prejudicial and defamatory material before the commission even makes a determination that there is probable cause to proceed.

Sensational press accounts which are purposely timed to appear before commission decisions, make a mockery out of the common law doctrine of the "deliberative process privilege" which is intended to protect from public disclosure those pre-decisional documents that reflect the decision-making authority of an agency.

The rationale for the privilege was discussed in Ryan v. Department of Justice, 617 F. 2d 781 (D.C. Cir. 1980), in which the court stated:

The [privilege] was created to protect the deliberative process of the government, by ensuring that persons in an advisory role would be able to express their opinions freely to agency decision-makers without fear of publicity. In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit the frank discussions of policy matters and likely impair the quality of decisions.

The United States Supreme Court has emphasized that documents that are protected by the privilege remain privileged even after a final decision is reached in the matter, unless ideas expressed in the document(s) are incorporated in the final decision. The rationale for this is that "disclosure at any time could inhibit the free flow of advice, including analysis, reports, and expression of

opinion within the agency." Federal Open Market Committee of the Federal Reserve System v. Merrill, 443 U.S. 340, 360 (1979). 2/

Commentators Stone and Liebman discuss this privilege, as recognized by the federal courts, in part as follows:

...a document is protected if its disclosure would reveal "the methods by which a decision is reached, the matters considered, the contributing influences, or the role played by the work of others."

The ultimate purpose of the privilege is "to prevent injury to the quality of agency decisions." Its particular purposes are (1) to encourage open, frank discussions on policy matters between subordinates and their superiors by assuaging fear of public ridicule or criticism; (2) to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and (3) to protect against confusing the issues and misleading the public by disclosure of reasons that were not in fact the actual reasons for the agency's actions.

....The scope of the privilege is not so narrowly confined, however, it has been held to extend to "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinion of the writer rather than the policy of the agency."

2/ Index for Inspection or Discovery of Public Records, Dept. of Law, 1986.

S. Stone & R. Liebman, Testimonial Privileges (1983).

I think it is important not only to review the provisions of the confidentiality section in terms of the deliberative process privilege, but to weigh those provisions with the constitutional right to privacy in Alaska, which exceeds even that of the federal standard. According to a 1984 Attorney General's Opinion (1984 Inf. Op. Att'y Gen. Oct. 366-625-84):

"Regarding the (constitutional) right to privacy, first it must be determined whether the information is of the type that would be protected under Article I, Section. 22 of the Alaska Constitution, which provides that:

The right of the people to privacy is recognized and shall not be infringed.

In this regard, the issue is whether the information is "sensitive"; that is, information

. . . which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person.

Falcon v. Alaska Public Offices Commission, 570 P.2d 469, 479 (Alaska 1977). If the information is not "sensitive" it is not protected by the right to privacy.

If it is determined that the information is "sensitive", and thus protected by the constitutional amendment, then the second step in the analysis must be taken. This step involves a balancing process, in which the nature and extent of the harm to the individual that would be caused by public disclosure is balanced against the public interest furthered by disclosing the information."

At the Supreme Court's direction after the Falcon decision, the Public Offices Commission in 1978, adopted 2 AAC 50.100, a regulation which specifies the procedures to be

used when a person claims that information is exempt from disclosure under the right of privacy. The regulation reads in part:

(a) Disclosure of another person's name in a report is not required and should not be made where that disclosure alone would likely result in disclosing sensitive information which the person would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person....

The APOC narrowly restricted the application of this regulation to AS 39.50 (Conflict of Interest), in instances when a candidate for public office claims that disclosure of information to the commission, as required by statute, would violate someone's right to privacy. However, I think that it can be reasonably argued that the Falcon test which prompted this APOC regulation, is broader than APOC's interpretation and also extends to certain documents such as complaints, reports or other sensitive material obtained or produced prior to the hearing stage under 15.13, 24.45 and 35.50. These matters fall within the confidentiality provision contained in CSSB 85 (SA).

**

**

As far as the actual procedures specified in CSSB 85 for the handling of complaints on through the hearing phase, I would like to briefly discuss similar procedures used by South Carolina, which, like CSSB 85 (SA) allows the executive director to determine from the facts presented in a complaint if sufficient cause exists to conduct a preliminary investigation of the alleged violation or failure to file required statements. If it is determined that facts are not sufficient to constitute a violation, the complaint will be dismissed and all parties will be notified. If the executive director determines that facts are sufficient to constitute a violation, a preliminary investigation will be conducted by the staff.

When the preliminary investigation is terminated, the executive director reports the results of the preliminary investigation to the Commission for review, to determine if probable cause exists to support an alleged violation. If the commission determines that there is insufficient cause to support the violation, all parties will be notified, the complaint will be dismissed and the matter will remain confidential. When sufficient facts do exist to support the alleged violation, the commission shall file an accusation. It is the probable cause determination made by the commission, resulting in the filing of an accusation which ends the confidentiality and makes the matter public.

*** Section 44.21.495. JUDICIAL REVIEW

This section has no counterpart in existing law and is modeled after a similar section in the Administrative Procedures Act.

*** Section 44.21.500. POWERS OF THE COMMISSION

This section is, apart from minor editing, identical to existing AS 15.13.045, and provides the commission with the power to compel witnesses, issue subpoenas, etc. with respect to an investigation or hearings.

*** Section 6 (13)

A new provision that requires the executive director and the professional staff of the commission to submit conflict of interest reports under AS 39.50.200 (b).

*** Several conforming amendments follow.

*** Immediate effective date.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

May 4, 1988

Rep. Frances Ulmer
Chair, House State Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Ulmer:

Committee staff asked me to provide any language changes suggested by the Alaska Public Offices Commission to CSSB 85, which is scheduled for hearing before the committee today. The following changes are suggested:

- ✓ 1. Page 5, paragraph (b). Current language imposes a strict 10-day deadline for staff to determine whether facts alleged in a complaint constitute a violation of the law. The commission views this deadline as unworkable for staff. The committee could substitute the following language modeled on Regulation 18360 (e) of the California Fair Political Practices Commission:

* * * *

(b) The initial response to a complaint shall be made in writing to the complainant within 10 days by the Executive Director on behalf of the Commission and shall state that the Commission:

(1) will investigate the allegations of the complaint;
or

(2) will require additional time to evaluate the complaint to determine whether an investigation should ensue and provide an appropriate explanation for the delay; or

(3) will refer the complaint to another agency; or

(4) will take no action on the complaint because the Commission has no jurisdiction to investigate the complaint;
or

(5) will take no action on the complaint because the allegations of the complaint do not warrant further action the Commission for the reasons stated in the response.

* * * *

Although the commission has not specifically approved this language, I believe the commission would find it acceptable.

2. Page 5, Paragraph (d). It is the understanding of the commission that there is a concern that persons whose names have been identified during past commission proceedings have not always had the opportunity to rebut statements made about them. Rather than addressing this concern by requiring staff to notify all persons mentioned in an investigation and then giving them an automatic right to appear at the hearing, the committee could delete paragraph (b), and insert the following language at page 6, after line 15. This language is modeled on Florida's campaign financing law, and was drafted by legislative counsel at Senator Josephson's request:

* * * *

(b) A person who is required to appear at a hearing may, before or during the hearing, submit a sworn written statement for incorporation into the record if the person agrees to answer questions from the hearing officer or commission regarding the statement. A person who is identified during hearing and who, in the opinion of the hearing officer or the commission, may be adversely affected by the hearing shall be notified and may appear and testify or file a sworn written statement or other evidence for incorporation into the record if the person agrees to answer questions from the hearing officer or commission regarding the statement or evidence.

(c) Upon request the hearing officer or the commission may permit a person to appear and testify at a hearing or file a sworn written statement or other evidence for incorporation into the record of a hearing if the person agrees to answer questions from the hearing officer or commission regarding the statement or evidence. This subsection does not limit the subpoena power of the commission.

* * * *

Although the commission has not specifically approved this language, again, I believe the commission would find it workable.

middle ground?

3. Page 8, at line 20. Current language would prohibit acknowledgment by staff that a complaint has been filed with the commission, would provide for confidentiality during the investigation, and would also prohibit disclosure of the reasons why a complaint was dismissed unless the respondent authorized disclosure. The commission is on record as supporting a less restrictive provision. Language favored by the commission would permit acknowledgment of the fact that a complaint and response had been filed, and would then require confidentiality of the investigation until the commission decided whether or not complaint would proceed to further hearing. The approach recognizes the public's right to know which complaints have been dismissed and the reasons why.

The commission is on the record as supporting confidentiality language in SB 241, the Governor's campaign finance reform bill, currently in Senate State Affairs Committee. However, in a subsequent teleconferenced meeting, the commission authorized the following changes, which would be substituted for the current language:

* * * *

An investigation by the commission is confidential. A complaint filed with the commission is a public record. A written response to a complaint is available for public inspection if authorized by the respondent. All other documentary material, written or verbal information, and testimony of witnesses which is produced, obtained, recorded or compiled during an investigation by the commission may not be disclosed to anyone other than a commission member, an employee of the commission for use in the investigation, the attorney general, or the person or who produced the material or gave the testimony until such time as

- (1) an accusation is filed under AS 44.62,
- (2) the commission, by majority vote, closes an investigation without filing an accusation under AS 44.62; or
- (3) the superior court, for good cause shown, orders the information disclosed.

Violation of this section constitutes an abuse of public office under AS 11.56.

* * * *

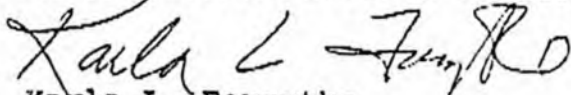
The commission, by its most recent vote of 3-2, favors this specific language, which is a less restrictive proposal than the provision in CSSB 85. However, at least one member supports the language in CSSB 85.

May 4, 1988
Page 4

I hope these suggestions are helpful. I will be prepared to testify in greater detail about the rationale for these suggestions, as well as the basis for the commission's fiscal note on this measure.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC Members
Senator Abood
Jane Barcott, Assistant Director
Brooke Miles, Juneau Coordinator

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

April 14, 1988

Dear Legislators:

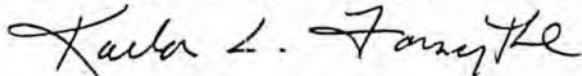
On behalf of the Alaska Public Offices Commission, I would like to extend an invitation to each of you to attend a public work session on current APOC regulations, which is scheduled for Friday, April 22, from 9:00-11:00 A.M. in the Department of Administration conference room, 10th floor, State Office Building. The session is being held as part of the commission's annual meeting, which will be taking place at the same location on April 21 and 22.

As noted in the attached flyer, the commission is interested in hearing comments about regulations which impact you. As an example, 2 AAC 50.015, a regulation under which the commission has required disclosure of gifts of travel to public officials, has been a source of discussion this past week in the Legislative Ethics Committee. The commission would be glad to devote a portion of the time allocated for the public work session to listening to concerns about the regulation and how it has been applied. Campaign disclosure regulations may also be an area of interest to those of you seeking reelection.

A complete copy of APOC regulations is available by calling Brooke Miles in the Juneau APOC office, at 465-4864. Please contact either Ms. Miles or myself if you have any general questions about the agenda for the commission's annual meeting, the public work session, or commission operations.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC Members
Jane Barcott, Assistant Director
Brooke Miles, Juneau office



PUBLIC WORK SESSION: APOC REGULATIONS

The Alaska Public Offices Commission will be meeting in Juneau on April 21 and 22. In addition to its regularly scheduled agenda, the commission will be holding a public work session on Friday, April 22, from 9:00 AM - 11:00 AM in the Department of Administration conference room, 10th floor, State Office Building. The purpose of the session is to listen to your suggestions for changes to current APOC regulations in the areas of campaign disclosure, conflict of interest and lobbying. The commission would like to hear your ideas for ways to improve regulations you find confusing or which cause problems as well as your general comments.

This is not a question-and-answer session, but a chance for people who must comply with the regulations to make the commission aware of the practical impact of regulations currently on the books.

All Alaskans in southeast who are subject to APOC regulations are invited to participate. Since we need to have a general idea of how many people will be speaking to the commission, please call Brooke Miles at 465-4864 and let her know you plan to attend. For persons located outside of Juneau, the work session may be teleconferenced. Please call Brooke Miles for teleconferencing arrangements.

ALASKA PUBLIC OFFICES COMMISSION
Karla Forsythe, Executive Director
2221 E. Northern Lights, Rm 128
Anchorage, AK 99508 (907) 276-4176

Brooke Miles, Juneau Office
P.O. Box CO, Juneau, AK 99811
(907) 465-4864

Alaska State Legislature

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4714



Senator Mitch Aboud
CHAIRMAN

Senate Committee on State Affairs

August 14, 1987

Representative Fran Ulmer, Chair
House Committee on State Affairs
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

This letter is to follow up our recent telephone conversation regarding legislation on the Alaska Public Offices Commission and campaign disclosure. I think it might be helpful to briefly restate some of my observations and ideas.

The Public Offices Commission presently administers three disclosure laws: Conflict of Interest, AS 15.13; Regulation of Lobbying, AS 24.45; and Campaign Disclosure, AS 15.13.

In February of 1985, the Senate State Affairs Committee engaged the law firm of Gross and Burke to review some of the fundamental policies underlying the operation of the Public Offices Commission and the laws relating to campaign disclosure. After numerous public hearings and extensive meetings with members of the APOC staff and the attorney general's office, Senate Bill 356 was introduced by the committee in January of 1986. The Senate State Affairs Committee devoted substantial committee time to hearings and work sessions on the bill, as did the Senate C & RA and Finance Committees. The bill was amended throughout the committee hearing process; the Senate adopted further amendments when the bill reached the floor. Because it was late in the session when the Senate passed the bill to the House, there was too little time for the House to give the bill sufficient attention before adjournment, and the bill died when the Fourteenth Legislature adjourned sine die.

The provisions of Senate Bill 85, which was introduced last session, reflect most closely the provisions of last year's bill in the final version which passed the Senate and which was sent to the House in the closing days of the 1986 session.

SB 85 is a comprehensive revision of two substantive issues:

- * The operation and duties of the Alaska Public Offices Commission and its employees, and the manner in which the commission administers the regulations of lobbying, campaign disclosure and conflict of interest laws and;

- * A major rewrite of the laws on campaign disclosure. More specifically, we concluded that the existing laws which have been virtually unchanged since 1974, left a number of major policy issues unanswered. These gaps in the law are presently filled by a plethora of regulations adopted by the APOC, but to the extent that they concern major policy matters, we believed they should be resolved by the legislature rather than an administrative agency. In addition, we found that a number of issues were not addressed either in the law or in regulations -- for example, using surplus campaign funds as personal income, soliciting contributions from public employees, and fundraising by incumbents to pay off past campaign debts.

It became apparent last session that extensive amounts of committee time were being devoted to SB 85, but the sheer weight of these two substantive issues folded into one Senate bill slowed the committee process. Added to this were a number of other equally substantive issues with which the committee had to face, and which were wrapped into a 120-day session.

In April of 1987, I proposed to the members of my committee, that these two issues be divided into two separate committee bills. The committee agreed and set out this task as an interim project.

Which brings me to why I called you the other day.

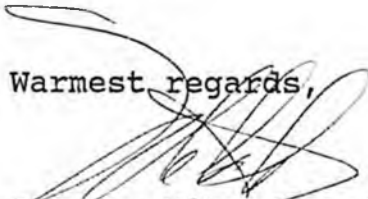
I'd like to offer you a proposal which I believe would allow both our State Affairs Committees to take the initiative on matters relating to campaign disclosure and the Public Offices Commission. I think that we can work in concert with one another to achieve fair and equitable legislation.

I propose that SB 85 be divided into two separate bills as outlined above and that the Senate State Affairs Committee assume responsibility for matters relating to the operation and duties of the Alaska Public Offices Commission, while the House State Affairs Committee assumes responsibility for matters relating to campaign disclosure. I believe that Senate Bill 85 is the best possible vehicle to use as a foundation for this legislation. No other committee bill has had as much public input as the bill which is now SB 85. It is also a great credit to the skills of Av Gross and Susan Burke who originally crafted and polished this legislation.

I think that a division of the responsibilities between our two committees will 'take the politics' out of the subject matter and allow both houses to work jointly for the benefit of the public. It is my fervent hope that we can establish a communications network and a sharing of information between us so that our State Affairs Committees spearhead the effort for election reform.

I am enclosing a copy of SB 85 with the materials relating to campaign disclosure highlighted in blue. Thank you for your consideration of my proposal, if you have any questions or if I can be of any assistance please don't hesitate to call on me.

Warmest regards,



Senator Mitch Abood
Chairman

Alaska State Legislature

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

WHILE IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4747



CHAIRMAN
STATE AFFAIRS
MEMBER
BUDGET & AUDIT
TRANSPORTATION

Senator Mitch Abood
SENATE DISTRICT G-A

SECTIONAL ANALYSIS OF SB 85

Article 1. ALASKA PUBLIC OFFICES COMMISSION

Section 15.14.101. APPLICABILITY. (Source: SB 356) This section is almost identical to existing AS 15.13.010. The only change from existing law is to specify the statute under which the Department of Community & Regional Affairs population certification will be made for the purpose of identifying those municipalities with populations of more than 1,000 to which the chapter applies. We have eliminated the existing AS 15.13.011, which exempts presidential primary elections from the provisions of the chapter, since the law providing for a presidential primary in Alaska has been repealed.

Section 15.14.020. ALASKA PUBLIC OFFICES COMMISSION. (Source: SB 356) This section is, in substance, the same as the AS 15.13.020. However, the original Act only provides for the initial appointment of commissioners; it contains no procedure for the appointment of successors.

AS 15.14.020 (d) establishes such procedures consistent with that used for initial appointments and establishes a period of 30 days after a vacancy within which the appointment must be made.

AS 15.14.020 (g) increases the amount of compensation received by the APOC commissioners. Presently, commissioners receive \$50 per diem, an amount which has remained the same since 1974, when the commission was established.

AS 15.14.020 (i) is a subsection which prohibits employees of the commission from engaging in political activity or in lobbying. This prohibition is identical to AS 15.14.020 (f), which applies to members of the commission.

Section 15.14.030. DUTIES OF THE COMMISSION.

(Source: SB 356) This section is identical to the present 15.13.030, which spells out the responsibilities of the APOC.

Article 2. REGISTRATION AND REPORTS

Section 15.14.040. REGISTRATION BY CANDIDATES

(Source: SB 356) This section establishes a point certain when an individual becomes a candidate for the purpose of filing the reports required by the law. A candidate must register with the APOC within 10 days after either accepting contributions from others of more than \$1,000 or the date when the individual files for elective office. There is no similar provision in present law; AS 15.13.100 does provide, however, that an individual may not make expenditures other than for travel or polls prior to filing for elective office.

It can be certainly argued that if a candidate never actually files for office, reports of contributions and expenditures which invade rights of privacy need never be filed since in such cases, the voters need no information since they never vote on the individual's candidacy. At the same time, it is a fact of political life that most campaigning -- certainly in the case of statewide office -- occurs prior to filing. If voters are to evaluate that campaign as it occurs, it will certainly assist them if they have disclosures as to the source of contributions. This section provides that once contributions are solicited from others, registration should occur and reports should be filed if necessary.

AS 15.14.040 (b) requires a candidate to designate the elective office and the year of the election for which the campaign will be conducted.

Section 15.14.050. REGISTRATION BY POLITICAL ACTION COMMITTEES

(Source: SB 356) AS 15.14.050 (a) is nearly identical to the present AS 15.13.050. It requires PAC's to register with the APOC within 10 days after the PAC accepts contributions of more than \$1,000 or when the PAC makes an expenditure in support of or in opposition to the election of an individual to public office, or in support of or in opposition to a ballot proposition or question.

AS 15.14.050 (b) requires PAC's which are exclusively formed to support or oppose ballot propositions or initiatives to register within 30 days after the PAC files a petition with the Lieutenant Governor or with the municipal

clerk, thus commencing the initiative or referendum process, regardless of whether contributions are solicited or expenditures made.

AS 15.14.050 (d) prohibits A PAC from using or filing a name with the APOC that is the same or materially similar to the name of a PAC whose registration is already on file with the APOC.

AS 15.14.050 (e). If A PAC intends to support or oppose one candidate or to contribute to or expend more than 50 percent of its funds for a candidate, the PAC is required to use the name of the candidate as a part of the name of the PAC.

AS 15.14.050 (f) clarifies that a PAC which contributes or expends funds with the authorization or consent of the candidate, is controlled by the candidate.

Section 15.14.060. REPORTS BY CANDIDATES OF CONTRIBUTIONS, LOANS AND EXPENDITURES. (Source: SB 356) This section describes the information which must be included in contribution reports and establishes the dates at which those reports must be filed. Presently, these requirements are set out in AS 15.13.110 and AS 15.13.040.

AS 15.14.060 (a) requires full reporting of all contributions, loans or expenditures including contributions or loans made by the candidate to his or her own campaign.

AS 15.14.060 (b) sets out the schedule of reporting. Reports must be filed 30 days before an election and seven days before an election. The 10-day report filed after the election, which is required under present law has been eliminated. There is little to be gained by filing the 10-day report, since AS 15.14.190 requires that campaign books be closed as of the date a candidate is sworn into office and the same information contained in the 10-day report would be included in the final report.

AS 15.14.060 (c) deals with the special reports required for contributions, loans or expenditures of more than \$250 which occur within the last 10 days of an election. This subsection requires a report to be filed within 24 hours after a contribution or loan is received or an expenditure is made.

Section 15.14.070. REPORTS BY POLITICAL ACTION COMMITTEES OF CONTRIBUTIONS AND EXPENDITURES.

(Source: SB 356) Requires PAC's to file a report for each contribution of more than \$250 in the aggregate received from an individual. Present law requires a report to be filed for contributions of more than \$100 in the aggregate. PAC's must also provide full information on all

expenditures, including independent expenditures.

AS 15.14.070 (c) and (d) set out a timeline for filing all reports, which is identical to the timeline set for candidates.

Section 15.14.080. STATEMENT BY PERSON MAKING CONTRIBUTION OR EXPENDITURE. (Source: SB 356) This section requires persons to file a report when a contribution of more than \$250 in the aggregate in goods, services, or money to a candidate or PAC is made, or when an independent expenditure which has a value of more than \$250 in the aggregate is made. A form must be filed within 10 days after the contribution or expenditure is made.

AS 15.14.080 (c) provides that the report must include a certification by the person making the statement that the contribution or expenditure has not been furnished by another person or political action committee.

Section 15.14.090. INDEPENDENT EXPENDITURE. (Source: SB 356) This section defines an independent expenditure as one that is made without arrangement, coordination, or direction with or by the candidate or the agent of the candidate before the expenditure is made.

Clarifies that an expenditure is not made independently if it is made by or in consultation with a person who, within one year of the expenditure, was authorized by the candidate or by a campaign officer to raise or expend funds on behalf of the candidate; who has been an officer of a campaign committee of the candidate; or who has been receiving any form of compensation or reimbursement from the candidate or from campaign funds for professional services that require the exercise of discretion or judgement relating to the conduct of the campaign.

Section 15.14.100. CERTIFICATION OF REPORTS (Source: SB 356) Present law requires in numerous sections that reports made to the commission be certified. The proposed section states that requirement is applicable to all reports and adds a specific form for the certification.

Article 3. CONTRIBUTIONS AND EXPENDITURES

Section 15.14.110. CONTRIBUTIONS BY A PERSON (Source: SB 356) AS 15.14.110 (b) and (c) prohibit an individual from contributing more than \$1,000 in the aggregate in a calendar year to a candidate or to a PAC.

AS 15.14.110 (d) permits a person to contribute any amount

to: (1) a political party; or (2) to a PAC formed solely for the purpose of sponsoring or opposing an initiative or referendum.

AS 15.14.110 (e) prohibits contributions in any amount to a candidate, PAC or political party in the form of a loan or a loan guarantee. This prohibition does not apply to: loans to a candidate from spouses, parents or children of the candidate; an extension of credit for goods or services to a candidate or the candidate's campaign in the normal course of business; or loans from a regulated lending institution in the ordinary course of business.

Section 15.14.120. CONTRIBUTIONS BY A POLITICAL ACTION COMMITTEE AND BY A POLITICAL PARTY. This section prohibits a PAC and a political party from making contributions in the form of a cash payment to a candidate, PAC or political party. The section also prohibits a PAC and a political party from making a loan or a loan guarantee to a candidate or to another PAC.

Section 15.14.130. LIMITATIONS ON ACCEPTING CONTRIBUTIONS. Prohibits cash contributions by PAC's and political parties, except for the fundraiser exemption in AS 15.14.160.

AS 15.14.130 (a) permits a candidate to accept a contribution of not more than \$1,000 from an individual.

AS 15.14.130 (b) establishes no limit on the amount of contributions which a political party or a PAC which is formed solely for the purpose of influencing a ballot proposition or question may accept. Prohibits cash payments except for the fundraiser exemption in AS 15.14.160.

Section 15.14.140. EXPENDITURES. (Source: SB 356) This section permits a political party to make unlimited contributions and expenditures of money, goods or services. The section also allows a candidate to make unlimited expenditures on behalf of his or her own campaign, providing that those expenditures are consistent with new provisions regulating the use of campaign funds in AS 15.14.180.

AS 15.14.140 (c) permits a person or a PAC to make independent expenditures without limitation as to amount or value on behalf or in opposition to a candidate or ballot proposition.

Section 15.14.150. PROHIBITED CONTRIBUTIONS. (Source: SB 356) This section continues the prohibition contained in present law, AS 15.13.070 (d), against anonymous contributions or expenditures and clarifies the point at

which a contribution is accepted as 10 days after the candidate or PAC knows or should have known that the contribution is prohibited under this section.

AS 15.14.150 (d) provides that a candidate may accept a contribution only from an individual or a political party. This subsection prohibits a PAC from donating to a candidate.

AS 15.14.150 (e) provides that a PAC may only receive a contribution from an individual. This prohibition does not apply to PAC's which are formed solely for the purpose of influencing the outcome of a ballot proposition or question.

AS 15.14.150 (f) stipulates that a political party may only accept a contribution from an individual.

AS 15.14.150 (g) prohibits a PAC from making a contribution to a candidate, to another PAC or to a political party.

Section 15.14.160. PERMITTED CASH CONTRIBUTIONS. (Source: SB 356) Permits an individual to contribute in cash at a fundraiser for a candidate, PAC or a political party if the contribution does not exceed \$25 per person for admission to the fundraiser, and if there are 25 or more paying participants.

ARTICLE 4. CAMPAIGN CONDUCT AND ADMINISTRATION

Section 15.14.170. CAMPAIGN OFFICERS. (Source: SB 356) This section is similar to the existing provisions of AS 15.13.060. The new section retains the requirement of existing law that candidates and PAC's must appoint a campaign chairman. The existing statute requires candidates for state offices to file the name of their campaign treasurers with the director of the Division of Elections, who then files it with the commission. This section deletes the requirement of filing with the Division of Elections and instead provides for filing the names of campaign officers directly with the commission. The section also requires individuals who are requested to solicit contributions for political action committees to be appointed as deputy campaign treasurers.

Section 15.14.180. USE OF CAMPAIGN FUNDS. (Source: SB 356) This section prohibits the personal use of campaign funds by a candidate. Under existing law, candidates have used campaign funds to pay their American Express bills, bank loans, and have taken funds from their campaign accounts as personal loans made to themselves.

Section 15.14.190. TERMINATION OF CAMPAIGN ACTIVITY AND CLOSING OF CAMPAIGN ACCOUNTS. (Source: SB 356) This section is one of the major changes made in existing law. Existing law permits office holders to continue to solicit and accept contributions to pay off campaign debts during their term in office. Not only does this give the winner in an election an enormous advantage over the losers in terms of the ability to raise post-election contributions, but it also encourages candidates to run up large debts in their campaigns, since they can always hope that they will be successful and through subsequent fundraisers, be able to reduce or pay the debt.

This section requires successful statewide candidates to close all accounts no later than the date on which they are sworn into office. Legislative candidates in the general election must close their campaign accounts by December 31st of that year. Candidates who lose in the primary, municipal candidates, and candidates who withdraw before an election must close their accounts within a brief period after the election or withdrawal from the race.

The section also prohibits candidates from soliciting or accepting contributions and from making expenditures other than disposing of surplus funds after the date on which accounts must be closed.

Section 15.14.200. SURPLUS CAMPAIGN FUNDS. (Source: SB 356) Under existing law, a candidate may use surplus campaign funds for any purpose, including as personal income; the only requirement being that it be declared as income for tax purposes. This section defines six specific purposes for which surplus funds can be used.

Section 15.14.210. SOLICITATION OF CONTRIBUTIONS. (Source: SB 356) There are currently no statutory restrictions concerning the manner in which contributions may be solicited.

AS 15.14.210 (a) prohibits state or municipal officers and employees from soliciting contributions while on state or municipal premises.

AS 15.14.210 (b) prohibits the solicitation of public officers or employees for contributions while the public officer or employee is on the premises of a state or municipal office.

AS 15.14.210 (c) provides that a candidate and his or her officers, and a political action committee and its officers may not knowingly accept a contribution which violates this

section.

AS 15.14.210 (d) exempts a scheduled meeting held by a labor union representing public employees of the state or of a municipality from subsections (a) and (b), if the meeting is held with the permission of the employer.

Section 15.14.220. COMMUNICATIONS. Subsection (a) of section 220 is identical to existing AS 15.13.090, and requires that all advertisements and other political communications be identified by a "paid for by" statement.

AS 15.14.220 (b) was contained in SB 356, and requires a person or a PAC making an independent expenditure to include a statement that the communication was not authorized by any candidate.

AS 15.14.220 (d) is a new provision which is based on an Oregon law. It prohibits a candidate, agents of the candidate, PAC's, political parties, newspapers, TV and broadcast media from publishing, circulating, disseminating or broadcasting a matter with the knowledge that the matter contains a false statement of material fact relating to a candidate, PAC, political party, ballot proposition or question.

This provision tries to accomplish several things: 1) prohibit the intentional use of false statements of material fact as a campaign strategy against an opponent; 2) prohibit the intentional use of false statements of material fact to unjustly enrich a candidate's record ; 3) allow for the frank and open discussion of matters of fact relating to a candidate or issue; and 4) to make those who knowingly report false statements of material fact accountable, on the administrative level, for their actions and for the damage which is done to a candidate or to an issue.

An increasingly disturbing characteristic of the past several campaigns is the widespread use as a campaign strategy of the following scenario:

A candidate, individual or political group communicates a matter of fact or a matter of record pertaining to a candidate for public office. The candidate responds by labeling the action as a "smear attack". Instead of reporting the facts as they appear on the record, the media often chooses to perpetuate the more sensational and confrontational "smear attack" response of the candidate.

This action unfairly punishes an individual who attempts a frank and open discussion of legitimate matters, by portraying that individual as someone who has smeared the

poor candidate. The individual is penalized for being a good citizen, and thanks to the media, the public is prevented from judging the facts as they actually appear. Actions such as these, can influence the outcome of elections. It is dirty campaigning at its worst and the people who participate in such actions should be exposed and held accountable.

The civil penalty provisions for disseminating false statements of material fact are structured so as to have the greatest severity against those who make false statements about a candidate close to the date of the election. The civil penalty is not less than \$1,000 nor more than \$5,000 for each false statement of material fact relating to the candidate. If the matter containing a false statement of a material fact concerning a candidate is disseminated within 21 days before the date of a primary, general or special election, the fine is not less than \$5,000 nor more than \$10,000 (AS 15.14.230 (o)).

The penalty for knowingly disseminating a false statement of material fact about a PAC, ballot proposition or question is subject to a civil penalty of not less than \$500 nor more than \$1,000 for each false statement. If the false matter is disseminated within 21 days before the date of the primary, general or special election, the fine is not less than \$1,000 nor more than \$5,000 (AS 15.14.230 (p)).

ARTICLE 5. VIOLATIONS, CIVIL PENALTIES, AND PROCEDURES.

As originally introduced, SB 356 contained three levels of penalties for violations of the provisions of Chapter 14 -- Class C felonies for knowing and intentional violations of the most important requirements of the law; Class A misdemeanors for knowing and intentional violations of less critical requirements, and civil penalties to be administered by the commission for inadvertent violations of the law. However, after the Attorney General testified before the Senate State Affairs Committee in 1986, that the Dept. of Law did not want to be involved in prosecuting any violations of the Act as crimes, the Committee totally revised the penalty provisions. Both SB 356 and the present SB 85, contain only civil penalties -- all to be administered by the APOC. The bill continues to make a distinction between intentional or knowing violations of the more important provisions of the law and those violations for which penalties may be imposed without proof of knowledge or intent.

The structuring of these provisions is intended to be used by the APOC staff in its prioritization of handling citizen

complaints, so as to correct the selective enforcement problems which plague the commission.

Section 15.14.230. CAMPAIGN FINANCING VIOLATIONS IN THE FIRST DEGREE. This section deals with the more serious violations of the Act that are committed either knowingly or with intent to avoid public disclosure. The heaviest potential penalty under this section is provided for a person, PAC or political party that, with intent to avoid disclosure, fails to file a report due in 30 days or seven days before the election or within 24 hours after receiving a contribution. They would be subject to a penalty of not less than \$500 nor more than \$2,000 for each day the report was due but not filed, up to a maximum of \$25,000 for each report.

The following are examples of the types of fines provided under this section for intentional violations of the law. A person, PAC or political party that, with intent to avoid disclosure, files a 30 day, seven day, or 24 hour report containing false or misleading information would be subject to a fine of not less than \$500 nor more than \$5,000 plus an additional fine not to exceed twice the amount of the contribution or expenditure involving the false or misleading statement.

Knowingly accepting or making contributions in excess of the dollar limitations would carry a fine of not less than \$1,000 nor more than \$5,000, plus an additional fine not to exceed the limit. Knowingly accepting or making contributions in excess of the \$100 cash limitation would carry a fine of not less than \$100 nor more than \$1,000 if the cash contribution is less than \$500; if the cash contribution is \$500 or more; the commission would be authorized to assess an additional penalty not to exceed twice the amount of the cash contribution. Knowingly making or accepting a contribution made anonymously or in the name of another would carry a penalty of not less than \$500 nor more than \$5,000; if the contribution is \$500 or more, the commission would be authorized to assess an additional penalty not to exceed twice the amount of the contribution.

Section 15.14.240. CAMPAIGN FINANCING VIOLATIONS IN THE SECOND DEGREE. This section provides for lesser civil penalties for acts and omissions included under the previous section for which knowledge or intent to avoid public disclosure need not be proven. These would be inadvertent violations. These violations in the second degree carry maximum fines ranging from \$2,000 to \$5,000. This section also provides for civil penalties for less serious violations of the law, those that do not impede pre-election disclosure of the sources and amounts of

campaign contributions. Maximum penalties for these violations range between \$500 and \$2,000.

Under existing law, any violation of the law is a misdemeanor. As the Attorney General noted in his 1986 testimony before the Senate State Affairs Committee, there never has been a criminal case brought under this Act in its 12 years of existence. By the same token, the only penalties that the commission is authorized to assess under the current statutes are daily fines for late reports. The penalty provisions in SB 85 will ensure that for the first time, persons who violate other provisions of the law -- not just those who file reports late -- will receive some penalty.

These provisions are also more likely to bring about a fair and consistent manner by which complaints can be prioritized by commission employees, thus avoiding accusations of selective enforcement and selection based on staff's personal agenda. It is poor public policy to leave it to commission employees to decide what is or is not in the public interest.

Section 15.14.250. PAYMENT OF FINES. (Source: SB 356) Provides that civil fines imposed by the commission may not be paid with campaign funds.

Section 15.14.250. REMOVAL FROM OFFICE. (Source: SB 356) Subsection (a) is similar to existing AS 15.14.120 (f), and outlines the procedures to be followed for removing a successful candidate from office. This section provides that these procedures be initiated only if a successful candidate is found to have committed an intentional or knowing violation in the first degree under AS 15.14.230.

Section 15.14.270. LIMITATION ON ACTIONS. (Source: SB 356) Existing law contains a four year statute of limitations for both crimes and violations. This section adopts a series of statutes of limitations -- four years for first degree violations and two years for second degree violations. Subsection (c) makes it clear that for violations involving late reports, the violation is considered to have been committed on the day after the report was due.

Section 15.14.280. INVESTIGATIONS. (Source: SB 356, Existing statutes governing commission investigations and procedures are hopelessly confused. This section retains the provision of existing law (AS 15.14.120 (d)), which permits the commission to begin an investigation upon receiving a citizen's complaint. This section, however, incorporates into the law the commission's current regulation that requires these complaints to be signed and verified.

Subsection (b) requires the commission to send a copy of a citizen's complaint to the person charged in the complaint, and to inform both the complainant and the person being investigated if and when the investigation is closed or an accusation has been filed. Existing law provides only that the complainant be informed of the closing of an investigation. Existing law permits the complainant to appeal a decision to terminate an investigation to the superior court. In light of Alaska's Supreme Court decisions involving similar issues, a judicial order requiring the commission to prosecute a matter would be a violation of separation of powers. This bill therefore deletes that provision of existing law.

Section 15.14.290. ACCUSATIONS. (Source: SB 356)
Existing law contains very few provisions governing the actual administrative procedures that the commission must follow in adjudicating contested violations and imposing penalties. The commission has generally followed the provisions contained in AS 44.62, the Administrative Procedure Act. It is better policy to include the basic procedures in the law rather than leaving such an important matter to regulations and staff interpretation. This section is taken from the Administrative Procedure Act provisions which are applicable to the initiation of proceedings by nearly every other administrative agency in State government.

Section 15.14.300. NOTICE OF DEFENSE. (Source: SB 356)
This section is also almost verbatim from the Administrative Procedures Act, and describes the "answering" document that the respondent to an accusation files with the commission.

Section 15.14.310. HEARINGS. (Source: SB 356, except for 15.14.310 (b)(3))

AS 15.14.310 (a) requires the commission to provide notice of contested hearings. This is a requirement which is contained in the Administrative Procedures Act.

AS 15.14.310 (b) adopts by reference for the commission the general hearing procedures contained in the Administrative Procedures Act for other agencies' hearings. In contrast to the Administrative Procedures Act, however, this section provides that the commission does not have to appoint hearing officers to preside at its hearings. Requiring them in every case in place of the commissioners, along with the transcripts of the proceedings, would be extremely costly and it could be effectively argued that this duty should be performed by the commissioner's themselves. This subsection does require, however, that an assistant attorney general must be present to advise the commission on legal matters during a hearing if a hearing officer is not appointed.

In its sweeping 1986 amendments and repeal of its regulations, the commission deleted every reference to the 'commission chairman' and the 'designee of the chairman,' and substituted 'hearing officer.' In the last several years, the APOC has increasingly relied on hearing officers to conduct selected commission business. Unlike other State agencies who use hearing officers only in disputed cases, the APOC uses hearing officers in place of the commissioners at the hearing which follows staff's preliminary investigation. This is a relatively recent occurrence and was not a common commission practice at the APOC until three or four years ago.

The commissioners, for the most part, do not participate or even attend the proceedings with the hearing officer. This is left to commission staff. In at least one case, the commissioners didn't even review the tape or transcript of the proceedings before voting on the matter, when requested by the attorney of record for the respondent to do so.

The commission bases its final decision solely on the recommendation of its staff and on the hearing officer. It can also be argued that the commission is influenced by the banner-headline stories on staff's recommendations to the commission which are conveniently timed to appear within 24 hours before the commission is due to make a decision.

Since the commissioners choose not to participate at the hearing and do not review the tapes or have at their disposal the transcript of testimony given under oath at the proceeding, the commission makes no independent judgement on the matter, but accepts or rejects the recommendations of the hearing officer as an invisible "third party", who is entirely absent until the end.

AS 15.14.310 (b) (3) is a new subsection which stipulates that a hearing may not proceed except with a quorum of the commission being present. This is to apply whether or not a hearing officer is appointed.

Section 15.14.320. IMPOSITION OF PENALTY. (Source: SB 356) This section has no counterpart in existing law. It provides that the commission may impose penalties only after a person has admitted or pled no contest to an accusation or after the commission holds a hearing at which certain rights have been afforded to the respondent, and at which the commission determines that the person has committed the violation.

This section also proposes that violations must be proven

by clear and convincing evidence. The existing law does not address standards of proof in hearings before the commission. Most agencies are governed by what the court terms 'substantial evidence.' For violations resulting from inadvertent errors where a report is late or contains inaccuracies, proof of the violation will be simple even under a heightened standard of proof such as "clear and convincing." But a determination that someone deliberately attempted to deceive the public has obvious and major implications for one's life, to say nothing of one's political career. For these reasons, this section requires proof by "clear and convincing" evidence.

AS 15.14.320 (b) and (d) contain what in essence is a ban on plea bargaining. The purpose is to prohibit the policy of commission staff from striking a bargain with a respondent in a pending matter, so that the respondent agrees to admit guilt in order to pay a lesser fine and put an end to the commission proceedings and to the media which accompanies them. Commission staff are also prohibited from making formal or informal recommendations to the commission as to a particular penalty in a pending matter or from making such a recommendation until after the respondent has admitted or plead no contest to the accusation or until after a hearing and a final determination by the commission that the respondent has committed the acts charged in the accusation.

AS 15.14.320 (d) contains broad guidelines for the commission to follow in imposing penalties in particular cases. This section suggests that the higher penalties should be reserved for egregious conduct involving relatively large contributions. Including a section like this will provide some guidance to the commission in exercising its discretionary "sentencing" authority, as well as provide some standards for judicial review of commission actions.

Section 15.14.330. SUMMARY DISPOSITION OF VIOLATIONS.
(Source: SB 356) This section authorizes the commission to adopt a schedule of fines for the least serious violations -- with maximum penalties of up to \$500 for a single violation. The vast majority of violations that have come or will come before the commission involve reports that are filed a few days late.

This section will permit the commission to continue to deal with those minor violations in a summary fashion, without having to employ the more elaborate procedures of the Administrative Procedures Act. The concept of summary disposition of violations by means of a schedule of fines is modeled after the mail-in-bail provisions of the Motor Vehicle Code (AS 28).

Section 15.14.340. CONFIDENTIALITY. (Source: SB 356)
This section requires that all commission investigations must remain confidential until such time as an accusation is filed. The Federal Elections Commission, as well as some other state commissions and agencies abide by a confidentiality rule. The APOC staff was vehemently opposed to this provision in 1986. This opposition in great part, was responsible for the APOC's wholesale disapproval of SB 356.

AS 15.14.340 (b) & (c) are modeled after the confidentiality requirements governing employees of the Department of Revenue with respect to tax matters. Like the Revenue statute and the Federal Elections Commission provision, this proposed section makes it a misdemeanor for a current or former commission employee to divulge confidential information about a past, pending, or contemplated investigation.

Section 15.14.350. JUDICIAL REVIEW. (Source: SB 356)
This section has no counterpart in existing statute and is modeled after a similar section in the Administrative Procedure Act.

Section 15.14.360. POWERS OF THE COMMISSION. (Source: SB 356)
This section is, apart from minor editing, identical to existing AS 15.13.045, and provides the commission with the power to compel witnesses, issue subpoenas, and so forth, with respect to an investigation or hearing.

Section 15.14.370. LEGAL COUNSEL. (Source: SB 356)
This section is modeled after existing AS 15.13.122. It provides that the Attorney General is the legal counsel for the commission. The existing statute allows the commission to request the Chief Justice of the Supreme Court to appoint a special prosecutor "if the public interest warrants." Because the bill has removed criminal penalties for violations of the Act, this provision was deleted from the bill.

The existing law also permits the commission, without the concurrence of any official, to employ temporary legal counsel. With the exception of the APOC, all of the other State agencies are required to seek the concurrence of the Attorney General before legal counsel outside the Department of Law may be employed, because the Attorney General must be in charge of all State legal policy.

AS 15.14.370 (b) requires concurrence by the Attorney General before the commission may employ its own legal counsel.

ARTICLE 6. GENERAL PROVISIONS

Section 15.14.900. DEFINITIONS. The definition section is similar to Sec. 15.13.130 in the present law with the following major changes:

(3) Expenditure. The existing definition of "expenditure" is confusing primarily because it is poorly drafted. The new definition attempts to clarify the meaning of the term without changing the substance of the existing law.

(8) Political Action Committee. A definition of "political action committee" replaces the present definition of "group". A political action committee is not simply a combination of persons who act "jointly" for political purposes, but instead is defined as a person or combination of persons that accepts contributions for the purpose of influencing elections. It does not include a political party and its state, regional or local subdivisions.

A PAC includes individuals who raise money and use their own discretion as to how that money is spent; present law does not specifically cover such individuals. Individuals who do not use the contributions of others but simply spend their own funds are not a PAC -- the expenditures must be reported, however, under 15.14.080.

(9) Political Party. There is no current definition in present statute of a political party in Alaska. The previous definition contained in AS 15.60.010 (20) defined a political party as a group of organized voters representing a political program and that nominated a candidate for governor who received at least 10 percent of the vote at the preceding general election. This definition was struck down in Vogler v. Miller, 660 P.2d 1192 (Alaska 1983) as unduly restrictive. Three members of the court indicated through reference to definitions from other states that replacing the 10 percent figure with a five percent requirement would be sufficient to restore the validity of the definition. While two justices stated that their decision on a new definition would depend on the interplay between the rights of a political party to receive unlimited donations and the restriction on contributions to candidates who might not be supported by established political parties, it is nonetheless reasonable to believe that the court would approve the definition proposed in this section, based on a five percent support figure from the 1982 gubernatorial election.

OTHER SECTIONS OF THE BILL

Sections 2,4,5,6,7,8,9,10 and 11 amend other statutes that refer to "AS 15.13." These references have been changed to "AS 15.14."

Section 3. Adds a section to the criminal penalties for election code violations under AS 15.56. Under the original version of SB 356, it was a crime to solicit a contribution by threats of physical force, job discrimination or financial reprisal. The 1986 Senate State Affairs Committee believed that this was one type of campaign financing activity -- in essence extortion -- that should be a crime, regardless of the way other violations were treated. This section would make such a crime a Class C felony.

Section 11. (Page 46, lines 10 & 11) - The conflict of interest statute is amended to require the executive director and employees of the APOC to file conflict of interest statements as well as commission members.

Section 12. Contains a technical amendment to the Administrative Procedure Act that makes it clear that the procedures contained in SB 85 will govern APOC investigations and hearings rather than any inconsistent provisions in the Administrative Procedure Act.

Section 13. Repeals the existing campaign financing laws (AS 15.13.), and the two subsections of AS 15.56.010 that make it a misdemeanor to knowingly fail to include the "paid for by" information in campaign communications and to knowingly print, publish or broadcast a communication without that information. These two provisions have been relocated to the civil penalty provisions of this bill.

Section 14. Clarifies that members of the commission appointed under the existing statutes continue in office under the new law.

Section 15. Provides that any municipality that has voted to exempt its elections from the provisions of AS 15.13 need not hold a new election after the effective date of this bill in order to maintain the exemption.

Section 16. Provides that the provisions of this bill relating to the closing of campaign accounts do not require the closing of campaign accounts that were used during an election held before the effective date of the Act. This section further provides that all campaign accounts from prior elections must be closed by January 1, 1989.

Section 17. Provides that this bill applies to election campaign activities that take place after January 1, 1988.

Section 18. Provides for a general effective date of January 1, 1988.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 1
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

April 8, 1988

Nancy Lord
Office of Sen. Joe Josephson
PO Box V
Juneau, AK 99811

Dear Nancy:

On behalf of Sen. Josephson you asked me to provide any suggestions from the Alaska Public Offices Commission for language changes to CSSB 85.

Please be aware that I have not had the opportunity to review all of these specific changes with the commission. However, I believe that the commission would find this language preferable to existing language in the bill.

Section 44.21.460(d) (page 5, line 18) is a provision of major concern to the commission. At a teleconference with the commission several weeks ago at which I reviewed a work draft of CSSB 85, the commission indicated its preference that this language be deleted from the bill. However, I believe the commission would not oppose the following language, which is taken almost verbatim from Florida's campaign financing law:

* * *

Before or during a hearing, any person noticed to appear before the commission may file with the commission for incorporation into the record of the hearing, sworn written statements relevant to the purpose, subject matter, and scope of the commission's investigation or inquiry. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the commission and who, in the opinion of the hearing officer, may be adversely affected thereby, may, upon the person's request or the request of any member of the commission, appear personally before the commission and testify on the person's own behalf or file a sworn written statement of facts or other documentary evidence for incorporation into the record of the hearing. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

Nancy Lord
April 8, 1988
Page 2

The hearing officer may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record. No request to appear, appearance or submission shall limit in any way the commission's power of subpoena. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

* * *

I realize this language is lengthy. However, it addresses fully the problem alleged to have occurred in the past. The allegation is that the commission has heard testimony from witnesses about persons who were not parties, and the testimony was false, but that the persons were not allowed to rebut the testimony. The foregoing language squarely addresses this problem. Also, although in Florida the commission's hearings are closed to the public, I believe it is useful to rely on language developed by another jurisdiction to address the problem of adversely affected persons. Finally, the language addresses any scenarios I can envision under which a problem of this nature would arise.

[The language fully protects the rights of persons who are not parties but could be harmed by testimony at a hearing, keeps control of the hearing with the commission rather than witnesses, and has no chilling effect whatsoever on the investigation.]

I have attached an annotated copy of the Florida law so you can see the changes.

A second major area of concern is confidentiality. The commission, by its most recent vote of 3-2, favors a less restrictive proposal than the provision in CSSB 85. However, at least one member supports the language in CSSB 85.

The commission is on the record as supporting confidentiality language in SB 241, the Governor's campaign finance reform bill, still in Senate State Affairs and unlikely to move. However, in a subsequent teleconferenced meeting, the commission authorized me to suggest language changes to the provision in the Governor's bill, with a view toward addressing some concerns about the language expressed by Sen. Abood. The language set forth below is taken from the Governor's bill, with amending language approved by the commission. This language would be substituted for section 44.21.480 of CSSB 85 (page 8, line 20).

Nancy Lord
April 8, 1988
Page 3

This language was given to Senate State Affairs committee staff in conjunction with SB 241, but not specifically debated since the bill has not received a full hearing.

* * *

An investigation by the commission is confidential. A complaint filed with the commission is a public record. A written response to a complaint is available for public inspection if authorized by the respondent. All other documentary material, written or verbal information, and testimony of witnesses which is produced, obtained, recorded or compiled during an investigation by the commission may not be disclosed to anyone other than a commission member, an employee of the commission for use in the investigation, the attorney general, or the person or group who produced the material or gave the testimony until such time as

- (1) an accusation is filed under AS 44.62,
- (2) the commission, by majority vote, closes an investigation without filing an accusation under AS 44.62; or
- (3) the superior court, for good cause shown, orders the information disclosed.

Violation of this section constitutes an abuse of public office under AS 11.56.

* * *

In plain language, this means that a complaint and response would be open, but an investigation would be closed. However, once the commission decided either to go forward or to dismiss, then the entire investigatory file would be open, so the public would have a chance to know what was dismissed and why. The only change from current commission procedure is that under this language the staff preliminary investigation report would be closed until the commission's deliberation, whereas now it is a public record once it is transmitted to the commission. The language in CSSB 85 would keep complaints, responses and investigations closed until a formal accusation by the commission. If the commission dismissed the complaint, all materials would remain closed.


Although there are other minor problems with the bill, the provisions about notice to affected persons and confidentiality are of greatest concern.

Nancy Lord
April 8, 1988
Page 4

I hope this information is helpful. Please feel free to call me either at the office or at home this weekend if you have questions.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

A handwritten signature in cursive script, reading "Karla L. Forsythe".

Karla L. Forsythe
Executive Director

cc: APOC Members
Dick Monkman, Department of Law

or persons under investigation shall have the right to waive the confidentiality of the case, thereby opening up the proceedings and records to the public. Any person who discloses any information or matter made confidential by the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any person who files a complaint pursuant to this section while knowing that the allegations contained in such complaint are false or without merit is guilty of a misdemeanor of the first degree punishable as provided in s. 775.082 or s. 775.083.

*History.—*s. 25, ch. 73-128; s. 11, ch. 74-200; s. 60, ch. 77-175; s. 3, ch. 78-403; s. 1, ch. 82-46; s. 2, ch. 83-265; s. 39, ch. 84-202.

*Note.—*Repealed effective October 1, 1990, by s. 1, ch. 82-46, as amended by s. 2, ch. 83-265 and scheduled for review pursuant to s. 11.611 in advance of that date.

106.28 Powers of commission; rights and responsibilities of parties; findings by commission.—

(1) The commission shall, pursuant to rules adopted and published in accordance with chapter 120, consider all matters reported to it by the Division of Elections or otherwise coming to its attention. In order to carry out its duties, the commission may, whenever required, issue subpoenas and other necessary process to compel the attendance of witnesses before it. The chairman thereof shall issue said process on behalf of the commission. The chairman or any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before the commission for the purpose of testifying in any matter about which the commission may desire evidence. The commission, whenever required, may also compel by subpoena the production of any books, letters, or other documentary evidence it may desire to examine in reference to any matter before it. The sheriffs in the several counties shall make such service and execute all process or orders when required by the commission. Sheriffs shall be paid for these services by the commission as provided for in s. 30.231. Any person who is served with a subpoena to attend a hearing of the commission also shall be served with a general statement informing him of the subject matter of the commission's investigation or inquiry and a notice that he may be accompanied at the hearing by counsel of his own choosing.

(2) Should any witness fail to respond to the lawful subpoena of the commission or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, the commission may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and direct the witness to respond to all lawful questions and to produce all documentary evidence in his possession which is lawfully demanded. The failure of any witness to comply with such

order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly.

(3) All witnesses summoned before the commission, other than on the request of the subject of a hearing, shall receive reimbursement for travel expenses and per diem at the rates provided in s. 112.061. However, the fact that such reimbursement is not tendered at the time the subpoena is served shall not excuse the witness from appearing as directed therein.

(4) Upon request of any person having business before the commission, and with the approval of a majority of the commission, the chairman or, in his absence, the vice chairman shall instruct all witnesses to leave the hearing room and retire to a designated place. The witness will be instructed by the chairman or, in his absence, the vice chairman not to discuss his testimony or the testimony of any other person with anyone until the hearing has been adjourned and the witness discharged by the chairman. The witness shall be further instructed that should any person discuss or attempt to discuss the matter under investigation with him after receiving such instructions he shall bring such matter to the attention of the commission. No member of the commission or representative thereof may discuss any matter or matters pertinent to the subject matter under investigation with witnesses to be called before the commission from the time that these instructions are given until the hearing has been adjourned and the witness discharged by the chairman.

(5) The commission, when interrogating witnesses as provided herein, shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced. The record shall include rulings of the chair, questions of the commission and its counsel, testimony or responses of witnesses, sworn written statements submitted to the commission, and all other pertinent matters. A witness at a hearing, upon his advance request and at his own expense, shall be furnished a certified transcript of all testimony taken at the hearing.

(6) Before or during a hearing, any person noticed to appear before the commission, or his counsel, may file with the commission, for incorporation into the record of the hearing, sworn written statements relevant to the purpose, subject matter, and scope of the commission's investigation or inquiry. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

* (7) Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the commission and who, in the opinion of the commission, may be adversely affected thereby may, upon his request or upon the request of any member of the commission, appear personally before the commission and testify on his own behalf or, with the commission's consent, file a sworn written statement of facts or other documentary evidence

for incorporation into the record of the hearing. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(8) Upon the consent of a majority of its members, the commission may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance, or submission shall limit in any way the commission's power of subpoena. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(9) Any person who appears before the commission pursuant to this section shall have all the rights, privileges, and responsibilities of a witness appearing before a court of competent jurisdiction.

(10) If the commission fails in any material respect to comply with the requirements of this section, any person subject to subpoena or subpoena duces tecum who is injured by such failure shall be relieved of any requirement to attend the hearing for which the subpoena was issued or, if present, to testify or produce evidence therein; and such failure shall be a complete defense in any proceeding against such person for contempt or other punishment.

(11) Whoever willfully affirms or swears falsely in regard to any material matter or thing before the commission shall be guilty of a felony in the third degree and punished as provided by s. 775.082, s. 775.083, or s. 775.084.

(12) At the conclusion of its hearings concerning an alleged violation, the commission shall immediately begin deliberations on the evidence presented at such hearings and shall proceed to determine by affirmative vote of four of the members present whether a violation of this chapter has occurred. Such determination shall promptly be made public. The order shall contain a finding of violation or no violation, together with brief findings of pertinent facts, and the assessment of such civil penalties as are permitted by this chapter or no such assessment and shall bear the signature or facsimile signature of the chairman or vice chairman.

History.—s. 26, ch. 73-128; s. 12, ch. 74-200; s. 60, ch. 77-175; s. 4, ch. 78-403; s. 64, ch. 79-400.

106.265 Civil penalties.—

(1) The commission is authorized upon finding of violation of this chapter to impose civil penalties in the form of fines not to exceed \$1,000 per count. In determining the amount of such civil penalties, the commission shall consider, among other mitigating and aggravating circumstances:

- (a) The gravity of the act or omission;
- (b) Any previous history of similar acts or omissions;
- (c) The appropriateness of such penalty to the financial resources of the person, political committee, or committee of continuous existence; and

(d) Whether the person, political committee, or committee of continuous existence has shown good faith in attempting to comply with the provisions of this chapter.

(2) If any person, political committee, or committee of continuous existence fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission may bring an action in any circuit court of this state to enforce such penalty.

(3) Any civil penalty collected pursuant to the provisions of this section shall be deposited into the General Revenue Fund.

History.—s. 61, ch. 77-175.

106.27 Determinations by commission; legal disposition.—

(1) Criminal proceedings for violations of this chapter may be brought in the appropriate court of competent jurisdiction. Any such action brought under this chapter shall be advanced on the docket of the court in which filed and put ahead of all other actions.

(2) Civil actions may be brought for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate order for the imposition of civil penalties provided by this chapter. Such civil actions shall be brought in the appropriate court of competent jurisdiction, and the venue shall be in the county in which the alleged violation occurred or in which the alleged violator or violators are found, reside, or transact business. Upon a proper showing that such person or political committee has engaged, or is about to engage, in prohibited acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court, and the civil fines provided by this chapter may be imposed.

(3) Civil actions may be brought to enjoin temporarily the issuance of certificates of election to successful candidates who are alleged to have violated the provisions of this chapter. Such injunctions shall issue upon a showing of probable cause that such violation has occurred. Such actions shall be brought in the circuit court for the circuit in which is located the officer before whom the candidate qualified for office.

History.—s. 27, ch. 73-128; s. 13, ch. 74-200; s. 62, ch. 77-175.

106.28 Limitation of actions.—Actions for violation of this chapter may be commenced before 2 years have elapsed from the date of the violation.

History.—s. 28, ch. 73-128.

106.29 Reports by political parties.—

(1) The state executive committee and each county executive committee of each political party regulated by chapter 103 shall file regular reports of all contributions received and all expenditures made by such committee. Such reports shall contain the same information as do reports required of candidates by s. 106.07 and shall be filed

Senate OKs bill making APOC inquiries secret

By SUE CROSS

The Associated Press

JUNEAU — In a move to protect politicians from bad publicity, the Senate voted Monday to make preliminary investigations by the Alaska Public Office Commission secret unless they result in formal accusations by the watchdog agency.

Sen. Mitch Abood said the current system of making complaints public as soon as they are filed allows politicians to attack their enemies by filing unwarranted complaints.

"A person who is targeted for staff investigation should not be blind-sided by the dissemination of prejudicial and defamatory material before the commission even makes a determination that there is probable cause to proceed," the Anchorage Republican said.

Another key portion of the

bill would require notification of anyone whose name is mentioned to the APOC in connection with a possible violation of the law. The person named would have the right to rebut whatever the APOC was told.

Opponents said the provision would send officials who have done wrong running for their paper shredders as soon as they learn they are under investigation.

"We wouldn't countenance that for a minute in police investigations. We wouldn't hamstring the law enforcement agencies," Sen. Joe Josephson said.

Because proof of the type of crime investigated by the APOC usually is found in documents that are easily destroyed, telling people they were under investigation would undercut the APOC's

See Back Page, APOC

APOC: Senate approves bill to keep preliminary investigations confidential

Continued from Page A-1

ability to do its job, the Anchorage Democrat said.

Commission Director Karla Forsythe agreed.

"It's going to get unwieldy. It's going to chill the investigation. People are going to stop saying anything," Forsythe said.

The director said aside from the two confidentiality provisions, she generally supports Abood's bill.

Opponents also said the provision would keep the public from knowing what kind of cases the APOC decides to drop, and why.

"After all, it's a public

body. There's got to be accountability," said Josephson, who voted for the measure despite arguing against its confidentiality portions.

The bill passed the Senate 15-2. Josephson said he voted for it only in the expectation the House will cut or rewrite two confidentiality clauses.

The commission regulates election campaigns. Its investigations concentrate on three areas of law: campaign financing, conflicts of interest and lobbying.

The measure would revise many aspects of APOC operations. It would set legal deadlines for action and put in statute guidelines now set

by regulation.

Abood cut campaign reform provisions from the bill, choosing to focus on the APOC itself. Campaign reforms — such as limits on fund raising — can be handled separately, he said.

Rep. Kay Brown, D-Anchorage, has drafted a House bill that would set caps and time limits for campaign fund raising.

Her measure, now in the House Rules Committee, overlaps Abood's on one key point that the APOC is anxious to see passed this session.

The measure would change the selection process for the commission's fifth member.

Forsythe said the commis-

sion has been told the current appointment process may be unconstitutional. People are beginning to raise that argument when they appeal APOC decisions, she said.

The Democratic and Republican parties now get to nominate two commission members each. The nominees are appointed by the governor and confirmed by the legislature.

The fifth is appointed by the other four with no confirmation.

Both the Abood and Brown bills would leave nomination of the fifth member to the other four, but make the nominee subject to the governor's

appointment and legislative confirmation.

Brown said it's possible some parts of her bill might be incorporated in Abood's measure.

But Rep. Fran Ulmer said she cannot foresee any marriage of the two measures. The Juneau Democrat chairs the House State Affairs Committee, which is expected to hear the Senate bill once it is sent to the House.

Ulmer said she can't predict what kind of reception the Senate bill will get in the House because the measure has been changed often and she has not read the latest version.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

CSSB 85 (State Affairs)

Position Paper
April 5, 1988

The Alaska Public Offices Commission supports one provision of this measure, but opposes two other provisions. Other sections of the bill also raise concerns.

The commission supports proposed sections 44.21.450 (a)-(c), dealing with appointment procedures for commission members. This language makes it clear that all commission appointments are made by the governor, subject to legislative confirmation, in accordance with Article III, Section 26 of the Alaska Constitution. The bill retains existing procedures which provide for four appointees recommended by the two major political parties, and one appointee recommended by the other four.

Section 44.21.480 makes a major change in confidentiality provisions covering commission investigations into allegations of violations of the laws which APOC administers. Under this section, complaints, responses, and staff investigatory reports to the commission would be confidential unless the commission decides to issue a formal accusation and proceed to hearing. The commission favors language under which complaints and responses would be public record, as is currently the case, but which would provide statutorily for confidentiality of investigations and the subsequent staff report until the commission determines whether or not to issue a formal accusation. The commission believes the public has a right to know the subject of complaints under investigation, and also the right to know which complaints have been dismissed and the reasons why.

The commission opposes language in section 44.21.460 (d) which requires notice to all persons mentioned in an investigation who may have violated a law the commission administers. Although the commission agrees that all persons under investigation are entitled to respond fully to allegations against them, language in this section is far broader, and will have a chilling effect on the investigatory process.

The commission is also concerned about possible adverse impacts arising from restrictions on staff's ability to settle matters prior to issuance of a formal accusation (proposed Section 44.21.470) and from requirements that various staff action be undertaken immediately or within strict time frames, such as ten days.

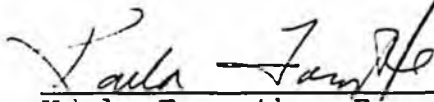
CSSB 85
Position Paper
April 5, 1988
Page 2

Other provisions of the bill either restate existing law with minor changes; or establish procedures similar to current practices.

The fiscal note submitted by the commission reflects costs of holding additional hearings anticipated if this measure is enacted.

 4/5/88

Daniel Patrick O'Tierney, Chairman



Karla Forsythe, Executive Director

ALASKA STATE SENATE

JOE P. JOSEPHSON
DISTRICT H ANCHORAGE
3111 C STREET, SUITE 550
ANCHORAGE, ALASKA 99503
(907) 561-7611



WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4525

April 16, 1988

TO: Representative Fran Ulmer, Chair
House State Affairs Committee

FROM: Senator Joe Josephson *J.P.J.*

RE: CSSB 85 -- Power and Duties of the APOC

Although I generally support this bill, there are two provisions in particular that disturb me. These are the issues of confidentiality and the notification of people mentioned during an investigation.

I had prepared floor amendments to address these issues, but because I didn't have a chance to consult with the sponsor, I decided not to offer them. Instead, I mentioned my concerns to the body and told members I would recommend further consideration of the amendments by the House.

Please find attached the two amendments. I encourage your committee to discuss them.

The first amendment would delete the confidentiality provision of the bill and replace it with a new section, disclosure of records. In CSSB 85 the confidentiality provision would keep the complaint and investigation confidential until and unless an accusation is filed by the commission. The problem with this is that nothing can prevent any complainant from taking his or her case to the press and "trying" it there. I believe a better solution, as provided for in the amendment, would be to have the complaint and response open and the staff investigation closed. Once the commission decides to either go forward or to dismiss the complaint, the file would be opened. In the case of a dismissal, the public would have a chance to know what was dismissed and why. This proposed procedure differs from current procedure in that the staff preliminary investigation would be closed until the commission's deliberation.

The second amendment would revise the subsection regarding notification of a person identified in an investigation. As approved by the Senate, subsection 44.21.460(d) is overly broad. Notifying a person mentioned during an investigation of details of a case would certainly chill the investigation and perhaps result in the destruction of evidence. The amendment's alternative language would serve to protect the rights of a person identified in an investigation by allowing him or her to appear and testify before the commission.

These two amendments are supported by APOC staff. Please feel free to contact me to discuss the issues further.

A M E N D M E N T

Offered in the SENATE

By Josephson

TO: CSSB 85(State Affairs)

Page 5, lines 18 - 25:

Delete all material:

Reletter the following subsections accordingly.

Page 6, after line 15:

Insert the following new subsections to read:

"(b) A person who is required to appear at a hearing may, before or during the hearing, submit a sworn written statement for incorporation into the record if the person agrees to answer questions from the hearing officer or commission regarding the statement. A person who is identified during a hearing and who, in the opinion of the hearing officer or the commission, may be adversely affected by the hearing shall be notified and may appear and testify or file a sworn written statement or other evidence for incorporation into the record if the person agrees to answer questions from the hearing officer or commission regarding the statement or evidence.

(c) Upon request the hearing officer or the commission may permit a person to appear and testify at a hearing or file a sworn written statement or other evidence for incorporation into the record of a hearing if the person agrees to answer questions from the hearing officer or commission regarding the statement or evidence. This subsection does not limit the subpoena power of the commission."

Reletter the following subsection accordingly.

A M E N D M E N T

Offered in the SENATE

By Josephson

TO: CSSB 85(State Affairs)

Page 8, line 20, through page 9, line 8:

Delete all material.

Insert a new section to read:

"Sec. 44.21.480. DISCLOSURE OF RECORDS. (a) A complaint filed with the commission is a public record. Notice of the termination of an investigation under AS 44.21.460(f) shall be made public only at the request of each person against whom the complaint was filed. Unless the disclosure is authorized under AS 44.21.460 - 44.21.500, information and material obtained during an investigation by the commission may not be disclosed to anyone other than a commission member, a commission employee, the attorney general, or the person or group that produced the information or material until

(1) an accusation is filed as a result of the investigation;

(2) the disclosure is approved by the commission by majority vote; or

(3) a court, for good cause shown, orders the disclosure.

(b) Violation of this section constitutes misuse of confidential information under AS 11.56.860."

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 12
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

April 8, 1988

Senator Rick Uehling
P.O. Box V
Juneau, AK 99811

Dear Senator Uehling:

You asked me to provide a breakdown of hearing costs for the Alaska Public Offices Commission.

A one-day hearing involves six hours of testimony, and costs are figured accordingly:

Hearing officer costs:

One day of preparation, \$75/hr, 7 hours billed	\$525
One day of hearing, \$75/hr, 6 hours billed	\$450
One day of post-hearing work (reviewing the testimony and preparing a recommended decision) \$75/hr, 7 hours billed	\$525
Two hours meeting with the commission in deliberation	\$150

TOTAL HEARING OFFICER COSTS \$1,650

Transcription and Recording costs

Recording costs of \$35/hr, for 6 hours of testimony	\$210
Transcription costs of \$160/hr, for 6 hours of testimony	\$960

TOTAL TRANSCRIPTION COSTS \$1,170

Associated Costs

Subpoena service	\$25/subpoena
Witness fees	\$20/witness per/day
Witness travel	\$10/day per witness
Copies of transcribed testimony	.15/page

Aggregated costs \$180

TOTAL COSTS \$3000

Senator Uehling
April 8, 1988
Page 2

As you can see, the costs of a hearing add up quickly, even for hearings of relatively short duration. However, hearings are even more costly when commissioners sit with the hearing officer, which adds to this figure expenses for travel, per diem and \$50 daily honorarium for each commissioner.

I hope this information is helpful. I regret that it was not in front of me at the time you raised your question.

If you have additional questions or comments, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Karla L. Forsythe /jb

Karla L. Forsythe
Executive Director

cc: Senator Halford, Chairman Senate Finance Committee
Senator Abood
APOC Members

FISCAL NOTE

REQUEST:

Revision Date: 3/8/88
Title: "An Act Relating to the
Alaska Public Offices Commission"
Sponsor: Sen. Abood
Requestor: Senate State Affairs

Agency Affected: Alaska Public Offices Comm.
BRU: A.P.O.C.

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	19.5	19.5	19.5	19.5	19.5
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	19.5	19.5	19.5	19.5	19.5

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	19.5	19.5	19.5	19.5	19.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	19.5	19.5	19.5	19.5	19.5

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

see attachments

Prepared by: Karla Forsythe, Executive Director Phone: 376 4176

Division: Alaska Public Offices Commission Date: 3/10/88

Approved by Commissioner: Daniel Patrick O'Tierney, Chairman Date: 3/10/88

Agency: Alaska Public Offices Commission

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CS SB 85: State Affairs

Detail:

Personal Services		0
Travel		0
Contractual Services		19.5
legal services (hearing officer contracts @ \$75/hr), transcription and witness fees, @ \$3.0/day aggregate cost:		
3 hearings (cases in which respondent will not settle with no contest plea)		
- 2 cases @ 1 day ea x 3.0 day =	6.0	
- 1 case @ 3 days x 3.0 day =	9.0	
5 hearings on factual disputes for late reports 3.0/day x 1.5 days total =	4.5	
Supplies		0
Equipment		0
	total:	<u>19.5</u>

CSSB 85 (State Affairs)

Fiscal Analysis

Although many of the provisions contained in this measure would codify existing commission procedures, two sections would change current practice in ways which would create a fiscal impact for the agency.

Proposed Section 44.21.470(a) states that the commission may impose a penalty only if the respondent either admits or pleads no contest to allegations, or if the commission holds a hearing. This language has the effect of prohibiting the commission from settling a matter unless the terms of the settlement agreement contain an admission or a statement of no contest to factual allegations of wrongdoing.

In FY 87 the commission settled three matters. None of the settlement documents contain an admission or a plea of no contest; two of the documents expressly indicate that the respondent does not admit to the allegations. It is assumed for purposes of this fiscal note that these respondents would have chosen to proceed to hearing rather than to enter into a settlement which required an admission of wrongdoing or a statement of no contest.

Two of the settled matters involved simple factual allegations, and each hearing could have been concluded within one day. One of the matters involved more complex facts as well as a large number of respondents, and would have required a minimum of three hearing days. Costs for a hearing officer, witness fees and transcription total \$3000 per hearing day. Since it is difficult to quantify additional time spent by commission members in deliberation over these matters and additional staff time devoted to hearing preparation, these costs are not reflected in the fiscal note.

Proposed Section 44.21.475 will have a minor fiscal impact on the agency. This section provides that in matters amenable to summary disposition, the commission may follow less formal due process standards unless respondents wish to dispute the facts. In FY 87 150 matters subject to summary disposition were appealed to the commission. Of these, five matters appear to have involved factual disputes (focusing primarily on controverted facts about mailing of reports). Since these matters center on very simple facts, and it is unlikely that respondents will raise complicated issues through legal counsel, it is assumed that these five matters would have required a total of one and one-half days of hearings. Staff would endeavor to schedule these matters at one time to avoid any hearing officer costs attributable to five separate appearances at commission offices. Based on costs of \$3000 per day, one and one-half days of hearing would require an additional expenditure of \$4500 to fund the more formal due process procedures warranted when factual disputes arise.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 85 (SA)
PUBLISH DATE: Senate 3/10/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: _____
Tide: "An Act relating to the powers and BRU: _____
duties of the Alaska Public Offices Commission; etd"
Sponsor: Abood Components: _____
Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

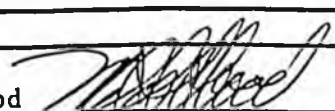
FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Senate State Affairs Committee Phone: 465-4522
Division: _____ Date: _____
Approved by ~~Commissioner~~ Senator Mitch Abood  Date: 3/9/88
Agency: Senate State Affairs Committee

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)