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91

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
CS SB 91 (Jud)

Methods of Appointments to APOC

Received February 15, 1989
by the Judiciary Committee

Heard February 28, 1989

Passed Out of Committee February 28, 1989
3 Do Pass
1 No Recommendation

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STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1989

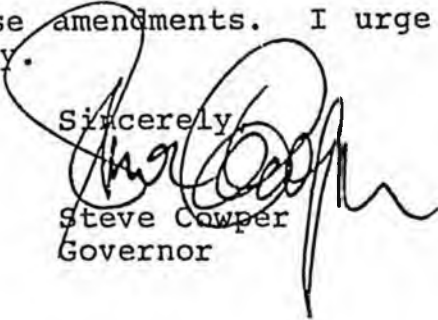
The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to methods of appointment of members of the Alaska Public Offices Commission (APOC).

The bill amends AS 15.13.020 to remedy technical problems with the present appointment process. The proposed amendments provide for legislative confirmation of all APOC members, and clarify the role of the governor in appointing the non-partisan, "fifth member" of the APOC. The bill includes a proposed conforming amendment to AS 15.13.020(h).

The APOC has endorsed these amendments. I urge that this bill be passed without delay.

Sincerely,

Steve Cowper
Governor

Item 2

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FISCAL NOTE

REQUEST:

Revision Date: 02/03/89 Agency Affected: APOC
 Title: An act relating to methods of appointment to APOC BRU: _____
 Sponsor: Governor Components: _____
 Requestor: Sen. Faiks/Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
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	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

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)

Prepared by: Karla Forsythe, Executive Director Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 02/02/89

Approved by Commissioner: Burke Riley, Acting Chairman Date: 02/02/89
 Agency: Alaska Public Offices Commission

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: 12/19/88
Title: An act relating to methods of appointment to the APOC
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Alaska Public Offices Commission
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
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	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

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)

Prepared by: Karla L. Forsythe, Executive Director Phone: 276-4176
Division: Alaska Public Offices Commission Date: 1/03/89

Approved by Commissioner: Daniel Patrick O'Tierney Date: 1/03/89
Agency: Alaska Public Offices Commission

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Transcript of testimony
Karla Forsythe, Executive Director
Alaska Public Officers Commission

TESTIMONY ON SB 91:

APPOINTMENT PROCEDURES FOR APOC MEMBERS

This measure proposes a straightforward, noncontroversial change in procedures for appointing APOC members.

As you know, the commission administers three laws - campaign disclosure, conflict of interest and lobbying.

The commission by law exercises regulatory and quasi-judicial powers. Its enabling legislation specifically authorizes it to adopt regulations. It adjudicates penalty assessments and the disposition of complaints as well as recommendations for removal from office.

Under Article III, Section 26, of the Alaska Constitution, when a commission heads a regulatory or quasi-judicial agency, the Governor appoints its members and the legislature confirms them.

Current law is at variance with this provision. Under AS 15.13.020(b) and (c), four members are appointed through the two parties receiving the most votes at the most recent election, and are then appointed by the Governor. The statute is silent regarding legislative confirmation.

The law also currently provides that the fifth member is selected by the other four. There is no mention of the need for gubernatorial or legislative confirmation. The fifth member sometimes is considered a nonpartisan appointment, but there is nothing in the statute which establishes this as a nonpartisan position, and there is no reason the person can't be affiliated with a political party.

The actual practice regarding commission appointments has varied. Sometimes gubernatorial confirmation of the fifth member has not occurred, sometimes legislative confirmation has not occurred. The commission is in the process of selecting a fifth member, and the procedure set forth in the proposed bill will be followed. Additionally, the recent Democratic appointment will be subject to legislative confirmation.

This is a procedural problem but it is an important one. It has been raised over the years in challenges to commission action. The argument is that the commission is

unconstitutionally constituted. This has been a problem since 1980. At that point in time a bill was passed which would have amended the appointment procedure but was vetoed by Governor Hammond for unrelated reasons.

The bill would change existing language to clarify that for all members, the Governor appoints and the legislature confirms. For the party designees, the Governor would appoint from four names given to him by the party. For the fifth member, the Governor either selects the person nominated by the other four members, or rejects that person and asks for another name.

The language in this measure recognizes the Governor's constitutional authority but also the need for balance. The Governor is a party member and is also subject to regulation by the commission both as a candidate and a public official. The composition of the commission is meant to preserve a workable balance given that it regulates partisan activity.

The commission favors this change in the law. The Department of Law indicates that this change would withstand legal challenge.

* * *

Examples of challenges to the law:

1. In 1974 commission member Abramczyk filed suit arguing that selection through the partisan process violates the equal protection rights of nonparty members. The Anchorage Superior Court in a summary judgment motion upheld the constitutionality of the law on this ground, (Judge Eben Lewis issuing the order).
2. In 1985 the commission's ability to act was challenged in the McConkey case, with Mr. McConkey through his counsel filing a motion to dismiss. This motion was not granted by the hearing officer.
3. In the Lewis Dischner lobbying complaint, in 1987 Douglas Pope on behalf of Mr. Dischner challenged the commission's right to act because it has been improperly constituted.