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FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to the giving of cash by public officers." BRU: Prosc., Leg. Svcs., Oil & Gas, Exxon Valdez Litigation
 Sponsor: Representative Moyer Component: Prosc., All; Leg. Svcs., Opns.; Oil & Gas, Opns.; Exxon Valdez Litigation
 Requestor: House State Affairs COMPONENT SERIAL NO.

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85 through 91, 93, 97 and 1175

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	****	****	****	****	****	****
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	****	****	****	****	****	****
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services / FOI Date: January 28, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 28, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 288

This bill amends AS 39.90 by adding a new section that prohibits a public officer from giving, offering to give, agreeing to give, or authorizing the giving of cash to a person for the purpose of influencing the person to perform an act that would be useful to a state agency, or influencing the person to refrain from performing an act that would be detrimental to a state agency. A violation of these provisions would be a class A misdemeanor.

The bill provides that the definition of "cash" includes checks and money orders. And the bill defines "public officer" to mean a state agency employee, a state legislator, and a member of a state board or commission. "State Agency" is further defined to mean every function of the executive branch, including the University of Alaska and the Alaska Railroad Corporation, a committee, division or other unit of the legislature, and an administrative unit of the judicial branch, including the Alaska Judicial Council and the Commission on Judicial Conduct.

Because of the broad terms used in the bill, and our uncertainty as to how they may eventually be interpreted, it is not possible to determine the bill's fiscal impact, nor is it possible to determine what current state practices or programs might be affected. However, because of its broadness, the bill could be read to prohibit existing state-funded reward programs such as Fish and Wildlife Protection's Safeguard Program, or the reward program authorized by AS 18.65.085(c) for the apprehension and conviction of persons who violate AS 04.11.010. Likewise, use of narcotics "buy" and informant monies might be prohibited as an impermissible use of cash to influence a person to perform an act useful to a state agency. Other cash payments the state now makes that may also be found to be impermissible are honoraria and witness fees, including expert witnesses.

State rejects bribery

Korean PR firm sought payoffs

By HAL BERNTON
Daily News reporter

3/23/90

A Korean firm representing Alaska sought permission to bribe journalists to help drum up coverage for a 1990 Alaska trade fair in Seoul. Nara Communications, one of Korea's largest public relations firms, proposed offering journalists money in white envelopes, according to a memorandum released by the state Office of International Trade.

The bribes were proposed as part of an elaborate public relations strategy that also included news releases and placement of pro-Alaska opinion pieces in Korean newspapers. But the "white envelope" approach to press coverage was rejected, according to Bob Poe, who headed the international trade office under the Cowper administration.

The state does some things differently in Korea, Poe said, "but white envelopes, that's not one of them. ... We don't pay the press for coming."

Instead of money, the state passed out plastic alarm clocks to Korean journalists attending an Alaska press conference. Those gifts were considered a "must" alternative by Nara, according to a memorandum of the state trade office in Seoul.

The state's foray into Korean public relations illustrates some of the ethical decisions faced by Alaskans seeking to do business where white envelopes are a way

Please see Back Page, NEWS

NEWS COVERAGE: Korean PR firm sought payoffs for journalists

Continued from Page A-1

of life. The Journalists Association of Korea recently polled 700 reporters and found that 70 percent admitted to accepting these "chthonic" gifts of cash, according to The Associated Press.

Federal law bars U.S. companies from making cash gifts to foreign government officials, according to Peter Aronoff, a U.S. Commerce Department attorney. But the law does not ban cash gifts to foreign journalists and others in the private sector, and there appears to be no consensus among Alaska foreign trade officials about how to deal with such payments.

John Kim, director of the University of Alaska's Center for International Business, said it's often difficult to get the Korean press to cover events without resorting to white envelopes.

State officials should never make cash payments to the press, Kim said. But if they want to assure press coverage, they might consider funneling cash payments to journalists through a Ko-

rean contractor.

Bill Noll, new head of the state Office of International Trade, said he preferred cash payments. "If it's not illegal in that country, and it's not illegal here in Alaska, then you can look at it as part of the package, as part of the investment you are making," Noll said.

But Poe, Noll's predecessor at the trade office, said he drew the line at payments to journalists because such practices are deemed unacceptable in the United States. Some American journalists routinely accept free trips, free lunches and other perks, but many publications would fire reporters found to be taking money from those seeking coverage.

In Korea, there also is a growing backlash among younger journalists who say that the cash bribes have corrupted their profession. Public attention recently focused on the issue after disclosure that dozens of Seoul city hall reporters received a total of \$75,000 from a major developer.

The state office of

launched its first major effort to woo the Korean press in 1989, when the agency worked with Alaska businesses to put on the first of two Korean-Alaska trade fairs. In 1989, the state coordinated its contract with Nara through the now defunct public relations firm of Holden, Hackney & Breeze.

Art Hackney, who served as the company's president, said he had no illusions about how the press was courted in Korea. Before his agency worked on the state contract, he said he went to Korea and was told by Nara officials how public relations firms bribed journalists.

"If you wanted to get in the press, you gave money," Hackney said.

In the winter of 1989, Hackney's company began to work with Nara on a \$20,000-plus public relations and advertising campaign for the first Alaska trade fair. A memorandum from Chan Hee Park, then Nara's Alaska account executive, offered a public relations budget that included such items as roughly \$700 for

television coverage and \$400 for 30 press "contacts." These items were listed separately from the cost of agency time spent on the public relations effort.

Hackney interpreted those and other Nara documents to mean the firm was guaranteeing press coverage. But Virginia Breeze, who handled the Nara account at Holden, Hackney & Breeze, said she never understood Nara to be guaranteeing coverage and wouldn't work on any project involving bribes.

Poe said he sought several times to learn more about Nara's activities. "I kept asking questions, trying to get to the bottom of it. As far as I could tell, things were on the up and up."

Park, reached this week in Seoul, said no white envelopes went to the Korean press.

In 1990, the state cut Holden Hackney & Breeze out of the second trade fair contract and dealt directly with Nara.

Kathryn Carrigan, a state trade official in Anchorage, said she learned of Nara's proposal to bribe the press

and immediately sought to quash the idea.

"As you know, our budget is tight, and it would be impossible for us to justify such an expense in Juneau," Carrigan wrote K.S. Yang of the state's Seoul office in a March 13, 1990 fax message. "Do you know if Nara has already taken this into account in the budget they have presented? Instead of the white envelopes, are we presenting gifts as indicated by Nara?"

Yang, in his response, said "White envelopes" are not needed ... this year."

Yang requested 50 gifts of press reporters. He added, however, that Nara "might still need a couple of white envelopes to the press for interviews, but Ms. C.H. Park ... confirmed that Nara would take care of it and will not send any further bill for this. In conclusion, you do not have to worry about justification of 'white envelope' expense to Juneau office."

Park said Nara did not follow through with any white envelopes for the 1990 trade fair.

CS FOR HOUSE BILL NO. 288 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES MOYER, Ellis, Boyer, Gruenberg, Finkelstein

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the giving of cash by public officers and contractors."

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

3 * Section 1. AS 11.56 is amended by adding a new section to article 1 to read:

4 Sec. 11.56.140. CASH PAYMENTS BY PUBLIC OFFICERS AND CONTRACTORS.

5 (a) While carrying out the functions of the public officer's position, a public officer may not
6 give, offer to give, agree to give, or authorize the giving of cash to a person for the purpose of
7 influencing the person to

8 (1) perform an act that would be useful to a state agency; or

9 (2) refrain from performing an act that would be detrimental to a state agency.

10 (b) While carrying out the terms of the person's contract with a state agency, a person
11 may not give, offer to give, agree to give, or authorize the giving of cash to a person for the
12 purpose of influencing the person to

13 (1) perform an act that would be useful to the state agency;

14 (2) refrain from performing an act that would be detrimental to the state agency.

1 (c) This section does not apply to incentive awards made under AS 39.51 or to
2 investigative operations by state troopers.

3 (d) The prohibitions of (a) and (b) of this section apply whether the acts that constitute
4 the violation are performed in the state or outside the state.

5 (e) A violation of (a) or (b) of this section is a class A misdemeanor. When sentencing
6 a person who has been convicted of violating (a) or (b) of this section, the court shall include
7 in the sentence an order that the person pay the state the amount of the cash involved.

8 (f) In this section,

9 (1) "cash" includes checks and money orders;

10 (2) "public officer" means a state agency employee, a state legislator, and a
11 member of a state board or commission, and includes the head of a state agency;

12 (3) "state agency" means

13 (A) a department, institution, board, commission, division, authority,
14 public corporation, or other administrative unit of the executive branch, including the
15 University of Alaska and the Alaska Railroad Corporation;

16 (B) a committee, division, or administrative unit of the legislative branch,
17 including the Alaska Legislative Council, the leadership of each house, and the office of
18 the ombudsman;

19 (C) an administrative unit of the judicial branch, including the Alaska
20 Judicial Council and the Commission on Judicial Conduct.

7-LS1153D
Bannister
5/10/91

**CS FOR HOUSE BILL NO. 288 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MOYER, Ellis, Boyer, Gruenberg, Finkelstein

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the giving of cash by public officers and contractors."**

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12 purpose of influencing the person to

13 (1) perform an act that would be useful to the state agency;

14 (2) refrain from performing an act that would be detrimental to the state agency.

1 (c) This section does not apply to incentive awards made under AS 39.51.

2 (d) A violation of (a) or (b) of this section is a class A misdemeanor. When sentencing
3 a person who has been convicted of violating (a) or (b) of this section, the court shall include
4 in the sentence an order that the person pay the state the amount of the cash involved.

5 (e) In this section,

6 (1) "cash" includes checks and money orders;

7 (2) "public officer" means a state agency employee, a state legislator, and a
8 member of a state board or commission;

9 (3) "state agency" means

10 (A) a department, institution, board, commission, division, authority,
11 public corporation, or other administrative unit of the executive branch, including the
12 University of Alaska and the Alaska Railroad Corporation;

13 (B) a committee, division, or administrative unit of the legislative branch,
14 including the Alaska Legislative Council, the leadership of each house, and the office of
15 the ombudsman;

16 (C) an administrative unit of the judicial branch, including the Alaska
17 Judicial Council and the Commission on Judicial Conduct.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 10, 1991

SUBJECT: Criminal jurisdiction question in CSHB 288 (State Affairs)
(Work Order No. 7-LS1153\D)

TO: Representative Gene Kubina
Chair, House State Affairs Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the committee substitute that you requested for HB 288 relating to the giving of cash by public officers and contractors.

Please be aware that there is an issue whether AS 12.05.010 prevents this bill from being applied to acts committed outside the state. That section reads as follows:

Sec. 12.05.010. CRIME COMMENCED OUTSIDE STATE BUT CONSUMMATED INSIDE. When the commission of a crime commenced outside the state is consummated inside the state, the defendant is liable to punishment in this state even though out of the state at the time of the commission of the crime charged, if the defendant consummated the crime through the intervention of an innocent or guilty agent, or by other means proceeding directly from the defendant.

The question is whether the crime would be considered to be consummated in the state if the cash were given, etc. outside the state. The appellate court in Alaska has interpreted "consummated" very broadly. See Wheat v. State, 735 P.2d 1007, 1008 - 1010 (Alaska 1987). That court has interpreted "consummated" to include custodial interference, where a parent keeps a child out of Alaska and away from the other parent in Alaska. One could argue that the elements of the crime in this bill include results in this state, since the result of the cash giving is to cause or prevent acts affecting a state agency. However, I do not know whether this argument would be successful.

Representative Gene Kubina

May 10, 1991

Page 2

In order to improve the odds in this matter, you may want to consider including in the new section language that expressly states that the crime is committed in the state even though the cash is given, etc. outside the state.

If I can be of further assistance, please advise.

TLB:lmb

91-174.lmb

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date: May 8, 1991 Department Affected: LAA

Title: Giving of Cash by Public Officers BRU: _____

Component: _____

Sponsor: Rep. Moyer

Requestor: House State Affairs Committee COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact

Prepared By: House State Affairs Committee Phone: 465-4859

Division: _____ Date: May 8, 1991

Approved by Commissioner: Representative Gene Kubina, Chair

Agency: House State Affairs Committee Date: May 8, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161
International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

MEMORANDUM

To: Representative Gene Kubina
Chairman, State Affairs Committee

April 19, 1991

From: Representative Tom Moyer



Re: HB288, relating to the giving of cash by public officials.

With this memo, I would like to request a hearing at your earliest convenience on this bill. It would prohibit state officials from giving cash in order to garner favors abroad.

At issue is a practice in some Pacific Rim countries known as "white envelopes," in which journalists and others expect cash "gifts" in a white envelope in exchange for positive news coverage or other favors. While the practice may be tolerated abroad, I do not believe officials of the state should be involved in it.

Attached is a news article detailing the problem. You will note that previous state trade officials have condemned the practice, but that the new head of the office of international trade is quoted as saying he would consider it under some circumstances. However, he told the House Special Committee on International Trade and Tourism he did not favor the practice.

This bill would make the giving of cash in such circumstances a class A misdemeanor, punishable by up to a year in jail and a fine of up to \$5,000. An exception is included in the bill for cash awards that may be given to state employees for suggesting cost-saving measures, under a program created by the legislature recently.

In addition to making the practice illegal, the bill also provides a good excuse to state officials who are pressured into making such cash gifts.

I am available to testify about this measure at your convenience.

ALASKA STATE LEGISLATURE • P.O. BOX V • JUNEAU, AK 99811 • (907) 465-4930

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REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161
International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

FOR IMMEDIATE RELEASE
April 19, 1991

Contact:
David Ramseur, 465-4930

CASH "GIFTS" OUTLAWED BY NEW LEGISLATION

JUNEAU--The practice of giving cash in some foreign countries to garner positive news stories or otherwise obtain special favors would be illegal for Alaska public officials, under legislation introduced today by Rep. Tom Moyer, D-Fairbanks.

The bill (HB288) would make the giving of cash or authorizing someone else to give it, a class A misdemeanor, punishable by up to a year in a jail and a fine of up to \$5,000. "Cash" under the legislation includes checks or money orders and public official means any state agency employee, legislator or member of a state board or commission.

"In some countries Alaska does business with, it may be accepted practice to discreetly hand over an envelope of cash with a wink or nod to garner certain favors," said Moyer, chairman of the House Special Committee on International Trade and Tourism. "But I don't think that's an acceptable practice for state officials. This bill also would give state officials a legitimate excuse if they're pressured for cash when doing business abroad."

-MORE-

ALASKA STATE LEGISLATURE • P.O. Box V • JUNEAU, AK 99811 • (907) 465-4930

Steele Creek/Gilmore • Steese East • Steese West • Goldstream • Ester • Ft. Worthington • Two Rivers • Fox • Central • Livengood • Circle • Chotomka

State rejects bribery

Korean PR firm sought payoffs

By HAL BERNTON
Daily News reporter

3/23/

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The bribes were proposed as part of an elaborate public relations strategy that also included news releases and placement of pro-Alaska opinion pieces in Korean newspapers. But the "white envelope" approach to press coverage was rejected, according to Bob Poe, who headed the international trade office under the Cooper administration.

The state does some things differently in Korea, Poe said, "but white envelopes, that's not one of them. ... We don't pay the press for coming."

Instead of money, the state passed out plastic alarm clocks to Korean journalists attending an Alaska press conference. Those gifts were considered a "must" alternative by Nara, according to a memorandum of the state trade office in Seoul.

The state's foray into Korean public relations illustrates some of the ethical decisions faced by Alaskans seeking to do business where white envelopes are a way

Please see Back Page, NEWS

NEWS COVERAGE: Korean PR firm sought payoffs for journalists

Continued from Page A-1

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rean contractor.

Bill Noll, new head of the state Office of International Trade, said he preferred gifts, but did not rule out cash payments. "If it's not illegal in that country, and it's not illegal here in Alaska, then you can look at it as part of the package, as part of the investment you are making," Noll said.

But Poe, Noll's predecessor at the trade office, said he drew the line at payments to journalists because such practices are deemed unacceptable in the United States. Some American journalists routinely accept free trips, free lunches and other perks, but many publications would fire reporters found to be taking money from those seeking coverage.

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Yang, in his response, said "White envelopes" are not needed "this year." Yang requested 50 gifts for press reporters. He added, however, that Nara "might still need a couple of white envelopes to the press for interviews, but Ms. C.H. Park ... confirmed that Nara would take care of it and will not send any further bill for this. In conclusion, you do not have to worry about justification of 'white envelope' expense to Juneau office."

Park said Nara did not follow through with any white envelopes for the 1990 trade fair.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO: HB 288

Revision Date: _____
Title: "An Act relating to the giving of cash
by public officers."
Sponsor: Rep. Moyer
Requestor: House State Affairs

Department Affected: Legislative Affairs Agency
BRU: All
Component: _____

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
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						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE						
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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director
Division: Administrative Services

Pamela A. Stoops

Phone: 465-3850
Date: 1/21/92

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren W. Endicott

Date: 1/21/92

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).