

HB

40

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 40

Revision Date: 01/14/92
Title: False Information in Election Pamphlet
Sponsor: Representative Bruckman
Requestor: House State Affairs

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: _____

COMPONENT SERIAL NO.

0	0	0	0
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	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 FUND SOURCE:	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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4511
Date: 01/14/92

Approved by Commissioner: *Charles E. Bruckman*
Agency: Office of the Governor

Date: 01/14/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7) Date Referred: January 21, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3-18-91

The STATE AFFAIRS Committee considered: HB 40

HOUSE BILL NO. 40 FALSE INFORMATION IN ELECTION PAMPHLET

"An Act relating to the providing of false information in an election pamphlet."

- RECOMMENDATIONS: the same title
 be replaced with CSHB 40 a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact _____ fiscal note(s) _____
 zero fiscal note Division of Elections zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>Gene Kubera</i>				
<i>Tom Meyer</i>				
<i>W. H. ...</i>	<i>David ...</i>		<input checked="" type="checkbox"/>	
<i>...</i>	<i>Jay ...</i>		<input checked="" type="checkbox"/>	

Gene Kubera

 Chairman's Signature

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 40

House Bill No. 40 amends AS 15.56.010(a) by adding a new offense to the crime of campaign misconduct in the first degree to include a person who submits, or causes to be submitted, factual information that the person knows is false for inclusion in the election pamphlet under AS 15.68. Campaign misconduct in the first degree is a class A misdemeanor. Although there have been past incidents of false information being submitted for inclusion in the state's official election pamphlet, the number of such incidents has not been great enough to warrant fiscal note costs.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 40

Revision Date: _____ Department Affected: Office of the Governor-Elections
 Title: An Act relating to the providing of false info. in an election pamphlet BRU: Division of Elections
 Component: _____
 Sponsor: Representative Bruckman
 Requestor: State Affairs 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	-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						
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REVENUE						
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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:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Elizabeth Ziegler, Deputy Director Phone: 465-4611
 Division: Division of Elections Date: 2-8-91
 Approved by Commissioner: *Barbara L. Richardson*
 Agency: Division of Elections Date: 2-8-91

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



Official Business

Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: Rep. Gene Kubina
Chair
House State Affairs

DATE: January 23, 1991

FROM: Rep. Betty Bruckman

SUBJECT: Request for
Hearing HB 40

HB 40, an act relating to the providing of false information in an election pamphlet, has been referred to your committee.

I respectfully request that you schedule House Bill 40 for a hearing as early as possible.

HB 40, amends current statute to make it a "crime of campaign misconduct" if a person submits information that is false for inclusion in the election pamphlet under AS 15.58.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT HB 40

AN ACT RELATING TO THE PROVIDING OF FALSE INFORMATION IN AN ELECTION PAMPHLET

The public relies on the information provided by the Division of Elections as "official" information and we have a responsibility to insure that the information provided by the candidates is as accurate as possible.

It was my intent when I filed this legislation to create a mechanism whereby candidates are notified that they are accountable for the information that they provide.

CS FOR HOUSE BILL NO. 40 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BRUCKMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the offense of election misconduct in the first degree."

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

3 * Section 1. AS 15.56.010(a) is repealed and reenacted to read:

4 (a) A person commits the crime of campaign misconduct in the first degree if the person
5 knowingly publishes or causes publication of

6 (1) material that appears in print that relates to an election, to a candidate at an
7 election, or an election proposition or question, and that does not have the name and address of
8 the author appearing on its face;

9 (2) material that appears in print or on an electronic medium that is intended to
10 influence the election of a candidate or outcome of a ballot proposition or question and that lacks
11 the words "paid for by" followed by the name and address of the candidate, group, or individual
12 paying for the advertising or communication and, if a candidate or group, the name of the
13 campaign chair, or *prepared*

14 (3) [^]factual information that appears in print or on an electronic medium and that

1
2
3

(A) is known to the person to be false; and
(B) relates to a candidate's reputation for honesty or integrity, or
qualifications for office.

HOUSE BILL NO. 40
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE BRUCKMAN

Introduced: 1/21/91

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the providing of false information in an election pamphlet."

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

3 * Section 1. AS 15.56.010(a) is amended to read:

4 (a) A person commits the crime of campaign misconduct in the first degree if the person

5 (1) knowingly circulates or has written, printed, or circulated a letter, circular, or
6 publication relating to an election, to a candidate at an election, or an election proposition or
7 question without the name and address of the author appearing on its face;

8 (2) knowingly prints or publishes an advertisement, billboard, placard, poster,
9 handbill, paid-for television or radio announcement or other communication intended to influence
10 the election of a candidate or outcome of a ballot proposition or question without the words "paid
11 for by" followed by the name and address of the candidate, group, or individual paying for the
12 advertising or communication and, if a candidate or group, with the name of the campaign chair
13 [CHAIRMAN]; [OR]

14 (3) knowingly writes or prints and circulates, or has written, printed, and

1 circulated, a letter, circular, bill, placard, poster, or advertisement in a newspaper, on radio or
2 television

3 (A) containing false factual information relating to a candidate for an
4 election;

5 (B) that [WHICH] the person knows to be false; and *or submits w/reckless disregard*

6 (C) that [WHICH] would provoke a reasonable person under the
7 circumstances to a breach of the peace or damages the candidate's reputation for honesty,
8 integrity, or the candidate's qualifications to serve if elected to office; or

9 (4) submits, or causes to be submitted, factual information that the person
10 knows is false for inclusion in the election pamphlet under AS 15.58.
or submits with reckless dioregard

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

February 15, 1991

SUBJECT: Election misconduct bill (CSHB 40 ())

TO: Representative Max F. Gruenberg, Jr.
Attn: Michael Plunkett

FROM: John B. Gaguine *JBG*
Legislative Counsel

Enclosed is a bill that I hope addresses the constitutional infirmities in AS 15.56.010-(a) (election misconduct in the first degree). The bill repeals paragraph (1), prohibiting anonymous publications about an election. A similar Los Angeles ordinance was held unconstitutional in Talley v. California, 362 U.S. 60, 4 L.Ed.2d 559 (1960). Paragraph (2) (renumbered as (1)) is retained; even though it is virtually identical to AS 15.13.090, it was enacted by the same Act that amended 15.13.090, so I am assuming that there was a specific purpose for having parallel provisions (possibly to avoid the cumbersome enforcement process that APOC must use to enforce AS 15.13).

Paragraph (3) (renumbered as (2)) is also retained. I have concluded that my initial opinion about the constitutionality of this paragraph was wrong; after reviewing the extensive memorandum of the Washington attorney general's office (included in the materials compiled by the Legislative Research Agency) and the lead case cited therein (Vanasco v. Schwartz, 401 F.Supp. 87 (S.D.N.Y. 1975), aff'd mem., 423 U.S. 1041 (1976)), I believe that the paragraph does comport with the First Amendment. "False factual information" appears clear, "which the person knows to be false" goes beyond the constitutionally required actual malice standard, and, because this is a criminal statute whose violation must be proven beyond a reasonable doubt, the standard of proof problem does not exist. (It is possible that the Alaska Supreme Court would rule that Article I, Section 5 of the Alaska constitution protects ever-knowing falsehoods in political speech, but that seems unlikely.)

Indeed, the paragraph could probably be expanded beyond "fighting words" and damage to reputation and still be constitutional. It is my understanding, though, that you do not desire to expand the paragraph beyond its present scope.

Representative Max F. Gruenberg, Jr.

February 15, 1991

Page 2

Paragraph (4) (renumbered as (3)), Representative Bruckman's amendment, is also retained. This too could probably be broadened beyond the election pamphlet, and I will be happy to broaden it if you or Representative Bruckman so desires.

If I may be of further assistance, please advise.

JBG:pl
91-089.plm

Enclosure

STATE OF ALASKA

WALTER J. HICKEL, 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

February 11, 1991

FEB 13 1991

Representative Betty Bruckman
P.O. Box V
Juneau, Ak 99811

Dear Representative Bruckman:

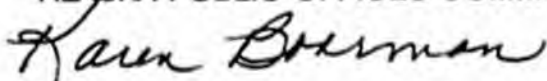
The Alaska Public Offices Commission discussed HB 40 "An act relating to the providing of false information in an election pamphlet" at your request during their meeting on February 8, 1991.

The Commission would like to convey its' appreciation for the opportunity to comment. However, they did not feel commenting on this bill would be appropriate since AS 15.56 is not within their jurisdiction.

If I can be of further assistance, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karen Boorman
Executive Director

cc: APOC Members
Barbara Prichart, Department of Administration



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 11, 1991

PLACE: Capitol, Room 101
C

SUBJECT OF MEETING:
 HB 73 - Relating to Approp: Salmon for Operation Desert Storm
 *HB 40 - Relating to False Information in Election Pamphlet
 *HJR 14 - Relating to Emergency Firefighters Income Tax

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Marge Odland	AGU	Box K	98111	5-3600 →		<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 40
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	