

SB

89

Introduction of Senate Bill 89--Definition of Lobbying

Chapter 45 of Title 24—Regulation of Lobbying—leads off with a one sentence paragraph describing the Legislative Declaration of Purpose: "*The Legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch their opinions on pending legislation or administrative actions...*", (emphasis added).

The second half of this lengthy sentence goes on to say, "...and that the people are entitled to know the identity, income, expenditures, and activities of those persons who pay, are paid or reimbursed for expenses, or who make expenditures or other payments in an effort to influence legislative or administrative action."

The full Statute goes on to describe Reports, Records, Exemptions, and so on until finally arriving at the ubiquitous section pertaining to Definitions. Number eight defines the term "Lobbyist" in two ways. Clearly, definition "B" is applicable to the "professional" lobbyist. The sponsors of the proposed legislation fully recognize and appreciate the public interest which is well served by definition "B". Senate Bill 89 does *not* alter this in any way.

On the other hand, definition "A" is somewhat ambiguous to the extent that applicability rests on two terms: these being "substantial" and "regular". These terms were not defined in Statute. So we must look to the Administrative Code for guidance, specifically 50.545. There, under item "f", we see that "substantial" and "regular" mean that a person is considered to be a lobbyist if, "...within a 30-day period, he spends in excess of four hours in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action".

This definition amounts to *less* than 2.5% of a working month, given a standard eight-hour day. Webster's Dictionary tells us that substantial means "considerable" and that "considerable" means "large" and that "large" means "greater than average". Four hours out of 173 simply doesn't come close to fitting within any of these definitions.

Senate Bill 89 safeguards, as it should, the *second half* of the Declaration of Purpose by preserving definition (8)(B) pertaining to professional lobbyists. SB 89 seeks only to alter definition (8)(A) in the Statute by clearly defining the terms "substantial" and "regular". In so doing, this action accomplishes that which the legislature originally intended with respect to the Lobbying law. Specifically, by allowing the people the *fullest* opportunity to express their opinions freely to individual members of the legislature on matters regarding pending legislation.

Sec. 24.45.011. Purpose. The legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions; and that the people are entitled to know the identity, income, expenditures, and activities of those persons who pay, are paid or reimbursed for expenses, or who make expenditures or other payments in an effort to influence legislative or administrative action. (§ 2 ch 167 SLA 1976)

Sec. 24.45.020. [Repealed, § 1 ch 167 SLA 1976.]

Article 2. Administration.

Section

- 21. Administration
- 31. Powers and duties

Sec. 24.45.021. Administration. (a) This chapter shall be administered by the Alaska Public Offices Commission created under AS 15.13.020(a).

(b) The commission shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement the provisions of this chapter. (§ 2 ch 167 SLA 1976)

Sec. 24.45.030. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.031. Powers and duties. (a) In addition to its other duties under this chapter, the commission shall

(1) prescribe the forms for registration, reports, statements, notices, and other documents required by this chapter;

(2) prepare and publish instructions setting out the methods of accounting, bookkeeping, and preservation of records required to facilitate compliance with and enforcement of this chapter and explaining the duties of persons subject to the provisions of this chapter; the instructions shall be updated periodically;

(3) provide assistance to persons in complying with the provisions of this chapter;

(4) prepare and publish a biennial report of its activities, findings, and recommendations under this chapter, which shall be made available to the governor, legislature, and to the public by February 1 of each odd-numbered calendar year; the commission shall notify the legislature that the report is available;

(5) report suspected violations of this chapter to the attorney general.

(b) The commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents, or other items material to the commission's duties or powers under this chapter;

(3) prepare, publish, and make available to the public, periodic, but at least biannually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists and employers of lobbyists. (§ 2 ch 167 SLA 1976; am § 12 ch 126 SLA 1994; am § 50 ch 21 SLA 1995; am § 10 ch 6 SLA 1998)

Effect of amendments. — The 1998 amendment, effective June 28, 1998, substituted "biannually" for "quarterly and annually" in paragraph (b)(3).

(2) "agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars, or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation;

(4) "immediate family" means the spouse and dependent children of an individual;

(5) "individual" means a natural person;

(6) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, or analyses in written or oral form or format;

(7) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor;

(8) "lobbyist" means

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action; or

(B) a person who represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

(9) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift, or other rendering or tendering of money, property, goods, or services or anything else of value;

(10) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or the lobbyist's activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

Sponsor Statement

SB 89

“Proposing revisions to Alaska’s Regulation of Lobbying Act relating to regulations enacted by the Alaska Public Offices Commission defining who must register as a lobbyist.”

Regulations enacted by APOC defining a “lobbyist” unconstitutionally restrict business people from any meaningful contact with legislators or the administration. Currently, a person must register as a lobbyist if he or she spends in excess of four hours within a 30-day period in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action.

The revision provides a more reasonable level of access for Alaska businessmen and women to their elected representatives, their staffers, and state agency personnel. Traveling to Juneau, for most everyone in the state, is a significant event, both in cost and in time away from business. This revision would give business men and women the right to meet with legislators or the administration for a reasonable amount of time to discuss proposed legislation, regulations or permit applications that would directly affect business and not be required to become a registered lobbyist. Public employees are exempt from the statute and are therefore not held to the same restriction of their constitutional rights.

Registered lobbyists can only make personal contributions to political campaigns and are limited solely to contributions to candidates for the Legislature in a district in which the individual is eligible to vote. This revision gives businessmen and women access to state government without hampering their right of free association regarding political campaigns.

Currently social gatherings are included within the four-hour limitation, even where there is no discussion or attempt to influence legislation. For example, when APOC read in a newspaper that a prominent businessman was attending a golf tournament with legislators and legislative staffers, it contacted his company to verify that he was registered as a lobbyist. This revision would allow anyone to participate in social events with legislators or administrative staff.

The rules would remain the same as they are now for professional lobbyists.

This revision offers a simple fix to the current problem, which is consistent with the intent of the original lobbying legislation. It is supported by the over 700 members of the Alaska State Chamber of Commerce. The sponsors strongly urge you to support this revision.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 89
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Admin
 Title An act amending the definition of "lobt" BRU AK Public Offices Com.
 Component AK Public Offices Com.
 Sponsor Sen. Ralph Seekins
 Requester Senate Judiciary Component No. 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	92.0	63.0	63.0	63.0	63.0	63.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	2.7	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	94.7	63.0	63.0	63.0	63.0	63.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	129.7	98.0	98.0	98.0	98.0	98.0
1005 GF/Program Receipts	(35.0)	(35.0)	(35.0)	(35.0)	(35.0)	(35.0)
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	94.7	63.0	63.0	63.0	63.0	63.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time		1	1	1	1	1
Part-time	1	1	1	1	1	1
Temporary	1					

ANALYSIS: (Attach a separate page if necessary)
 This bill nullifies a 26-year old Commission regulation defining "substantial or regular" as it is used in the statutory definition of "lobbyist." The amendments in this bill will possibly result in no one being required to register and report under the lobbying law. Regulations will be required to implement how Commission staff monitor persons attempting to influence legislative or administrative action to determine when they meet either the 60 day or the 80 hour time requirement. Additional staff and an additional work station will be necessary in the Commission's Juneau office. In addition, it is likely that the Commission will lose \$35.0 in program receipts from lobbyist registration fees.
 35.0 Fund Source switch reflects general fund restoration of loss of program receipts for lobbyist registration fees.

Prepared by: Brooke Miles, Executive Director Phone 907-276-4176
 Division AK Public Offices Commission Date/Time 3/26/03 12:14 PM
 Approved by: _____ Date 3/26/2003
 Agency Administration

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 25, 2003

SUBJECT: Sectional Summary: definition of lobbyist
(Work Order No. 23-LS0396\A)

TO: Senator Ralph Seekins
Attn: Brian

FROM: Barbara R. Craver *BRC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Defines "substantial" and "regular" in AS 24.45.171(8). These terms are not otherwise defined in the statutes, and have been defined more restrictively in the regulations.¹ A person who lobbies as a part of their job will not have to register as a lobbyist if they conduct lobbying activities for 60 days or less while the legislature is in session, or for less than 80 hours in a 30 day period.

If I may be of further assistance, please advise.

BRC:med
03-188.med

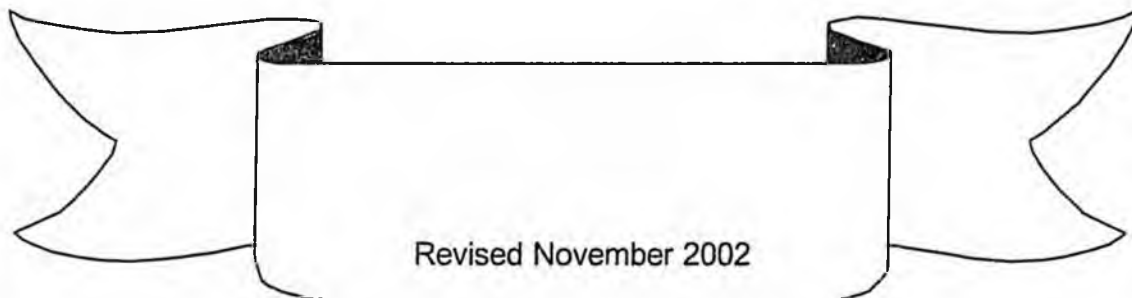
AS 24.45.171(1), (6), (7), and this chapter; when a person becomes a lobbyist upon meeting the tests of this section, he must register in accordance with AS 24.45.041 and must report in accordance with AS 24.45.051 and 2 AAC 50.

2 AAC 50.545(f)

ALASKA PUBLIC OFFICES COMMISSION



**MANUAL OF INSTRUCTIONS
FOR
LOBBYISTS AND EMPLOYERS OF LOBBYISTS**



FRANK H. MURKOWSKI

Governor of Alaska

LOREN LEMAN

Lieutenant Governor

ALASKA PUBLIC OFFICES COMMISSION

Andrea Jacobson, Chair
Mark Handley, Commissioner
John Dapcevich, Commissioner
Sheila Gallagher, Commissioner
Larry Wood, Commissioner

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Connie Jeffers, Clerk, Juneau Office

Revised April 2002

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Introduction

About the Commission

The Alaska Public Offices Commission (APOC) administers four **disclosure laws**:

- AS 15.13 Campaign Disclosure
- AS 24.45 Lobbying
- AS 24.60 Legislative Financial Disclosure
- AS 39.50 Public Official Financial Disclosure (f/k/a Conflict of Interest)

These laws "follow the money" by requiring disclosure that permits citizens to trace the influence of private interests on public decision making. This disclosure, in turn, helps to limit privileged influence through revealing special interests.

Five Alaskan citizens serve as commissioners. They meet for two to three days, three or four times a year, to adjudicate complaints, hear civil penalty appeals, and decide policy matters.

The two political parties whose candidates for governor received the most votes at the last gubernatorial election each nominate two commission members. The four nominees nominate a fifth member from applicants from the general public. The governor appoints and the legislature confirms the nominations. Terms are for five years, with a different term expiring each year. The commission currently consists of two Republican Party members, two Democratic Party members, and one public member.

APOC Staff consists of ten full time employees and one part time employee; APOC has offices in Anchorage and Juneau.

Anchorage APOC Location and Mailing Address:

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Anchorage, AK 99508

Phone: 907/276-4176

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Fax: 907/276-7018

Juneau APOC Location:

240 Main. Street, Room 201

Juneau, AK 99801

Phone: 907/465-4864

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Mailing Address:

PO Box 110222

Juneau, AK 99811

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APOC's web address is <http://www.state.ak.us/apoc>.

About the Lobbying Law:

Alaska's lobbying law (AS 24.45) provides that the public has the right to know the identity, income, expenditures and activities of those who receive compensation or those who make payments in efforts to influence the actions of appointed or elected state officials. Under the law, lobbyists are required to disclose their name, address, employer(s), income and expenditures; those who retain or employ lobbyists must disclose their name, address, name(s) of their lobbyist(s), payments made to lobbyists, and payments made in support of lobbying activities.

The law authorizes APOC to administer the lobbying law and requires the Commission to publish instructions to facilitate compliance with the law. This manual is intended to fulfill that requirement and is made available to lobbyists, clients or employers of lobbyists, and members of the public. Throughout the manual specific sections of the statute (AS 24.45. __) and the administrative regulations (2 AAC 50. __) may be cited. Copies of the statute and regulations are available on our website; paper copies will be provided upon request.

Registration

Are you subject to the lobbying law?

Alaska law states that a lobbyist is a person who receives compensation for communicating directly with public officials in efforts to influence administrative or legislative action *if a substantial or regular portion of the activities for which the person receives compensation is for the purpose of attempting to influence administrative or legislative action.* AS 24.45.171(8).

"Substantial or regular" is defined in the Administrative Regulations of the Commission to mean that a person who is not employed or retained specifically as a lobbyist is subject to the lobbying law when he or she spends more than four hours in any 30-day period communicating directly with public officials in efforts to influence administrative or legislative action. 2 AAC 50.545(f).

"Communicate directly" means to talk in person, by telephone, or email with any public official or legislative employee. 2 AAC 50.545(c).

To determine whether you are subject to the lobbying law, consider the following:

(A) If you have a contractual agreement under which you receive compensation for communicating with public officials or legislative employees in efforts to influence legislative or administrative action;

or

you are employed primarily for communicating with state officials and legislative employees in efforts to influence legislative or administrative action:

You are a PROFESSIONAL LOBBYIST and you must file a lobbyist registration statement in accordance with AS 24.45.041 before engaging in lobbying activities.

(B) If you are employed and receive compensation and a part of your regular employment requires you to communicate with public officials and legislative employees in efforts to influence legislative or administrative action;

or

you have a contractual agreement under which you receive compensation and in the course of performing your services, you are required to communicate with public officials and legislative employees in efforts to influence legislative or administrative action in addition to performing other primary duties:

You are a PART-TIME LOBBYIST and you are subject to registration and reporting under the lobbying law if you spend more than four hours in any 30-day period engaging in lobbying activities. In calculating the four hours for purposes of registering, you need not include time spent attending public proceedings whether or not you give testimony or time spent providing professional services that do not include communicating with public officials or legislative employees. You must track the time spent in direct communication (outside of public proceedings) with public officials or legislative employees. Once you have exceeded four hours in any 30-day period, you must register in accordance with AS 24.45.041.

(C) If you participate in lobbying activities on behalf of a client without the benefit of compensation, other than reimbursement for travel and personal living expenses:

You are a REPRESENTATIONAL LOBBYIST under 2 AAC 50.511 and must file a registration statement under AS 24.45.041 and 2 AAC 50.511 before engaging in lobbying activities. You are not required to pay the registration fee or to file the monthly or quarterly lobbyist reports.

Note: A representational lobbyist is not employed by the entity that s/he has agreed to represent and may not receive a fee, retainer, or salary.

(D) If you participate in lobbying activities and receive no compensation whatsoever and accrue no expenses connected with lobbying activities other than for travel and personal living expenses that you pay from your personal resources:

You are a VOLUNTEER LOBBYIST and you are exempt from the lobbying law under AS 24.45.161(a)(1) and (2). You are not required to register as a lobbyist. You may submit a registration statement if you wish. Doing so will include your name in the published directory of lobbyists. Registering as a volunteer lobbyist does not subject you to the requirement to file lobbyist reports.

Exemptions from the Lobbying Law

AS 24.45.161. Exemptions. (a) This chapter does not apply to

(1) an individual

(A) who lobbies without payment of compensation or other consideration and makes no disbursement or expenditure for or on behalf of a public official to influence legislative or administrative action other than to pay the individual's reasonable personal travel and living expenses; and

(B) who limits lobbying activities to appearances before public sessions of the legislature . . . or proceedings of state agencies;

(2) an elected or appointed state or municipal public officer or an employee of the state or a municipality acting in an official capacity or within the scope of employment

Restrictions on political activities of registered lobbyists:

AS 15.13.074(a). An individual required to register as a lobbyist under AS 24.45 may not make a contribution to a candidate for the legislature at any time the individual is subject to the registration requirement under AS 24.45 and for one year after the date of the individual's initial registration or its renewal. However, the individual may make a contribution under this section to a candidate for the legislature in a district in which the individual is eligible to vote or will be eligible to vote on the date of the election. An individual who is subject to the restrictions of this subsection shall report to the commission, on a form provided by the commission, each contribution made while required to register as a lobbyist under AS 24.45. This subsection does not apply to a representational lobbyist as defined in regulations of the commission.

AS 24.45.121(a)(8). A lobbyist may not serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a fund-raising event, directly or indirectly collect contributions for or deliver contributions to a candidate, or otherwise engage in the fund-raising activity of a legislative campaign or a campaign for governor or lieutenant governor if the lobbyist has registered, or is required to register as a lobbyist under this chapter during the calendar year. This provision does not apply to a representational lobbyist as defined in the regulations of the Commission, and does not prohibit a lobbyist from making personal contributions to a candidate as authorized by AS 15.13, or personally advocating on behalf of a candidate.

Other Prohibitions

In addition to the restrictions on gifts and campaign activities and contributions, the lobbying law provides other prohibited acts under AS 24.45.121. These include:

- Lobbying before filing a registration statement.
- Taking any action with the intent of placing a public official under personal obligation to you or your employer.
- Intentionally deceiving a public official with regard to material facts pertinent to pending or proposed official state action.
- Causing or influencing the introduction of legislation for the purpose of being employed to secure its passage or defeat.
- Causing a communication to be sent to a public official in a fictitious name or in the name of any real person, except with the permission of that person.
- Accepting or agreeing to accept payment in any way contingent upon the outcome of any proposed official action.
- Serving as a member of a state board or commission if your client could economically benefit from such service.

Complete and File the Registration Statement

APOC Form 24-1

LOBBYIST INFORMATION

Prepare one Registration Statement for each client or employer. Type or print (in ink) your name, mailing address, phone number, fax number, email address, and voter registration district (must be included whether or not you are registered to vote) in the spaces provided. If your address or phone numbers change, the law requires that you inform the Commission of the change within ten days.

A lobbyist who is married to or is a spousal equivalent of a legislator, legislative employee, or public official is required to disclose the name and position of the public official. Space is provided on the Registration Statement for this disclosure. If you are not married to or the spousal equivalent of a public official, just leave this section blank.

For purposes of this requirement, **Public Official** means the governor or lieutenant governor, a commissioner or deputy commissioner of a department, a director or deputy director of a division, a special assistant to a commissioner, a departmental legislative liaison, an assistant to the governor or lieutenant governor, the chair or a member of a state board or commission, the chief procurement officer appointed under AS 39.30.010, and the executive director of the Alaska Human Resources Investment Council.

CLIENT / EMPLOYER INFORMATION

Type or print the name of the business or organization of your client or employer, including the name and title of the person who will serve as the contact for purposes of the lobbying law. Include the complete business mailing address, the phone and fax numbers, and an email address for the contact person.

LOBBYIST EMPLOYMENT INFORMATION

Indicate whether you perform other duties in addition to lobbying for your client or employer. If you perform other duties, describe the services you provide in addition to lobbying services. Be specific enough in your description so that the reader will know what it is you do for the employer or client.

Check the appropriate box to indicate whether you will engage in administrative lobbying or legislative lobbying or both.

Indicate the date (month/day) on which you will begin lobbying this calendar year.

Check the appropriate box or boxes to indicate the nature of your compensation:

- If you are a **salaried employee**, you should reduce your salary to an hourly amount and show that amount on the line provided.
- If you are a **contract lobbyist** disclose the annual or monthly amount of your fee, or in the event you work hourly, your hourly wage.
- If you receive any reimbursement of expenses for disbursements in connection with lobbying, check the reimbursement box.
- If you are a **representational lobbyist**, check the reimbursement of expenses box.
- If you are a **volunteer lobbyist**, check the no compensation box.
- If your compensation is other than cash payments or if you receive additional benefits (other than standard employment benefits as a regular employee), check the other compensation box and describe the compensation.

Describe the subject matters on which you will lobby on behalf of your client or employer. General descriptions, such as "oil & gas" or "environment" are sufficient. Descriptions such as "anything of interest to the client" are too general and are not acceptable.

LOBBYIST CERTIFICATION

You must sign and date the registration.

CLIENT OR EMPLOYER OF LOBBYIST VERIFICATION

Your client or employer must verify your representation and authorize you to lobby on their behalf by signing the registration statement. Type or print the name and title of the person signing on behalf of your employer.

The registration statement may be mailed, hand delivered, or faxed to the Juneau APOC office. Make your check payable to the State of Alaska. If you are faxing the registration statement, you should note that payment is being mailed.

Registration statements will not be processed until they are complete, including client or employer signature and payment of the registration fee. Faxed registrations will not be processed until the registration fee is received. Registration statements submitted without the verification of the client or employer, or without the required registration fee, will be returned to the filer.

REPORTS

Lobbyist Reports

Who must file reports?

Alaska law requires lobbyists who receive a contractual fee or who are regular salaried employees to file reports disclosing the amount of compensation received and expenditures accrued in connection with lobbying activities for each reporting period.

Lobbyist reports also include disclosures regarding gifts and exchanges between lobbyists and public officials or family members of public officials, as well as exchanges between lobbyists and business entities owned or controlled by public officials.

What are the reporting periods?

Under AS 24.45.081, lobbyists file monthly reports while the legislature is in session and quarterly reports after adjournment. Reports must be submitted for each reporting period during which the lobbyist is registered, even if there is no reportable activity.

Monthly reports are due on or before the last day of the month following the month that is the subject of the report. Quarterly reports are due on or before the last day of the month following the calendar quarter that is the subject of the report. If a report's due date falls on a weekend or state holiday, no civil penalty is assessed if the report is filed no later than the first regular work day following the actual due date.

Lobbyist reports may be faxed, mailed, or delivered. If mailed, the postmark is considered to be the date filed. Reports that are received after the due date are subject to a civil penalty assessment of \$10 per day for each day the report is outstanding.

Complete and File the Lobbyist Report & Schedule A

APOC Forms 24-3 & 24-3A

GENERAL INFORMATION

Provide your name on each lobbyist report you submit. If your mailing address, phone number or fax number have changed since your registration, complete that information also. If you have not changed your mailing address or phone/fax numbers, you do not need to include them on each lobbyist report. During the legislative session, provide your Juneau address and phone/fax numbers if those are different from your permanent information.

REPORTING PERIOD

Indicate the reporting period covered by your report by marking the appropriate box. You must file a report for each reporting period during which you are registered, even if you have no activity to report.

In the event of a special session requiring an additional report, APOC staff will notify you of the reporting requirement and the due date.

SHORT FORM FOR ZERO REPORTS

If you did not accrue either compensation or expenditures during a reporting period, you may file a zero report. You need not submit a Schedule A for the client or employer disclosed as a zero report. Just check the box for zero reports and (if you have more than one client or employer) print or type the name of the client(s) or employer(s) for whom you are submitting a zero report.

GIFTS AND EXCHANGES

Answer the questions regarding gifts and exchanges by checking the applicable boxes. If you answer "yes" to any of the questions, provide the specific information regarding the gift or exchange in the space provided. Disclosure of gifts and exchanges is required under AS 24.45.051(3), (4) and (5). A "gift" includes a loan; a loan guarantee; forgiveness of a loan; payment, or an enforceable promise to make payment, of a loan by a third party; travel; entertainment; granting of discounts not available to the general public; and any payment to the extent that consideration of equal or greater value is not received. If equal or greater value has been received, it is an exchange.

Food and beverage consumed in places of public accommodation are not gifts, but are reportable lobbying expenditures. Food and beverage consumed in other places are

permissible gifts, but must be disclosed if the value of the food and beverage aggregates more than \$100 per calendar year.

Gifts and legislative ethics

Under AS 24.45.121(9), during the legislative session, it is a criminal violation of law for a lobbyist to offer, solicit, or facilitate a gift, other than food or beverage for immediate consumption, to any person covered by the legislative ethics law.

Under AS 24.60.080(a), a legislator or legislative employee may not solicit, receive, or accept a gift or series of gifts that in a calendar year aggregate \$250 or more and **may not solicit, receive, or accept a gift of any monetary value, with the exception of food and beverage for immediate consumption, from a lobbyist or a person acting on behalf of a lobbyist during a legislative session.**

Lobbyists should address their questions regarding gifts to the Commission's staff at (907) 465-4864. Persons subject to AS 24.60 should address their questions regarding gifts to the Legislative Ethics Committee's staff at (907) 269-0150.

LOBBYIST CERTIFICATION

You must certify your report as true, complete, and correct by affixing an original signature.

If the report was prepared by someone other than the certifying lobbyist, the preparer must also sign the report and must provide her/his name, mailing address, and title.

Schedule A

APOC Form 24-3A

You are required to submit a separate Schedule A for each client or employer you represent who is not listed on the **short form for zero reports**. Schedule A summarizes your compensation and expenditure activity for the reporting period.

List your name and the complete business name of the employer who is the subject of the report.

Check the appropriate box for the reporting period.

If you are filing an **amended Schedule A**, check the box provided to show that the Schedule A is an amendment to a previously filed report.

Schedule A reporting is organized into four columns. The first column identifies the contents of each row. The second through the fourth columns are for your reported amounts. Put the figures you are disclosing for the current reporting period in the second column. Put the year-to-date (fourth column) totals from your previous report in the third column. If you are filing your first report for a calendar year, the third column is zero or blank. In the final column put the sum of the second and third columns; these fourth column figures are the total-to-date amounts for the current calendar year.

Disclose **all expenditures accrued in connection with lobbying activities**, whether or not your client or employer has reimbursed you. Show the expenditures in the categories provided on the form. If the expenditure is for something other than food and beverage, living accommodations, or travel, list it under "other expenses" and describe the expenditure in the space provided on the bottom of the form.

Disclose the total amount of compensation accrued on behalf of the client or employer whether or not you have received payment. The law requires you to report all compensation **accrued** during each reporting period. (2 AAC 50.530) If the nature of your compensation is other than fee or salary, indicate the fair market value of the compensation in the space for "other compensation" and describe the nature of the compensation at the bottom of the form.

Remember: Separate Schedule A forms must be submitted for each client or employer you represent.

Employer of Lobbyist Reports

Who must file reports?

Alaska law requires those who employ or retain the services of one or more lobbyists to file quarterly reports disclosing all expenditures **accrued** in connection with lobbying activities for each reporting period.

Employer of lobbyist reports also disclose gifts to public officials and all in-house expenses accrued in connection with lobbying.

What are the reporting periods?

Under AS 24.45.061, employers of lobbyists file quarterly reports based on the calendar quarters. For example, 1st quarter reports cover all activity during January, February and March. Reports must be submitted for each reporting period during which the employer or client retains or employs a lobbyist, even if there is no reportable activity.

Quarterly reports are due on or before the last day of the month following the calendar quarter that is the subject of the reports; thus, first quarter reports are due April 30. If a report's due date falls on a weekend or state holiday, no civil penalty is assessed if the report is filed no later than the first regular work day following the actual due date.

Employer of lobbyist reports may be faxed, mailed, or delivered. If mailed, the postmark is considered to be the date filed. Reports that are received after the due date are subject to a civil penalty assessment of \$10 per day for each day the report is outstanding.

Complete and File the Employer of Lobbyist Report.
Schedule A & Schedule B

APOC Forms 24-4, 24-4A & 24-4B

GENERAL INFORMATION

Provide the company or organization name on each employer of lobbyist report you submit. If your mailing address, phone number or fax number have changed since the lobbyist registration, complete that information also. If you have not changed your mailing address or phone/fax numbers, you do not need to include them on each employer of lobbyist report.

REPORTING PERIOD

Indicate the reporting period covered by your report by marking the appropriate box. You must file a report for each reporting period during which you employ or retain a lobbyist, even if you have no activity to report.

LOBBYISTS

On the lines provided, list the names of all lobbyists retained and/or employed.

SHORT FORM FOR ZERO REPORTS

If there are no **accrued** expenses to report for one or more of your lobbyists, check the left zero report box and list the name[s] of the lobbyist[s]. You do not need to file a Schedule A for the listed lobbyists. If there are no **accrued** Schedule B expenditures, check the right zero report box. If the zero report box for Schedule B expenditures is checked, you do not need to file Schedule B.

GIFTS AND EXCHANGES

The law requires those who employ or retain a lobbyist to disclose the date and nature of any gift exceeding \$100 in value made to any public official. The full name and official position of the gift's recipient must also be disclosed.

Food and beverage consumed in private places are permissible gifts, but must be disclosed if the aggregate value is more than \$100 per calendar year.

Food and beverage consumed in places of public accommodation are not gifts, but are reportable expenditures. If you host a reception or a dinner for public officials, you must report the costs of that activity on Schedule B.

GENERAL DESCRIPTION OF LOBBYING ACTIVITIES

Provide a general description of the official actions you attempted to influence during the reporting period. Include specific bill numbers when appropriate.

NATURE AND INTEREST OF LOBBYIST EMPLOYER

Describe generally the nature of the business or organization employing or retaining a lobbyist.

NOTICE OF TERMINATION

List the name and the last date of lobbying activities for any lobbyist who has terminated lobbying on your behalf during the reporting period. If a lobbyist has ceased all activities that required her or his registration under AS 24.45, you may report their termination. Thereafter, you will not be required to continue filing Employer of Lobbyist Reports on behalf of that lobbyist.

CERTIFICATION BY EMPLOYER OF LOBBYIST

The report must be signed by the person designated to certify it on behalf of the Employer of Lobbyist.

If the report was prepared by someone other than the certifying individual, the preparer must also sign the report and must provide her/his name, mailing address, and title.

Schedule A

APOC Form 24-4A

You are required to submit a separate Schedule A for each lobbyist you employ or retain during each reporting period, unless you file a zero report for that lobbyist. This schedule summarizes the payments accrued to and on behalf of your lobbyists.

List the complete business name of the employer and the complete name of the lobbyist who is the subject of the Schedule A.

Check the appropriate box to indicate the reporting period.

Schedule A reporting is organized into four columns. The first column identifies the contents of each row. The second through the fourth columns are for your reported amounts. Put the figures you are reporting for the current period in the second column. Put the year-to-date totals from your previous report in the third column. If you are filing your first report for a calendar year, the third column is zero or blank. In the final column put the sum of the second and third columns; these fourth column figures are the total-to-date amounts for the current calendar year. These year-to-date amounts in the fourth column are the figures that, on your next report, you will show in column three.

Disclose **all expenditures accrued in connection with lobbying activities**, whether or not you have paid your lobbyist or a vendor on your lobbyist's behalf. Show the expenditures in the categories provided on the form. If the expenditure is for something other than food and beverage, living accommodations or travel, show it under "other expenses" and describe the expenditure in the space provided at the bottom of the form.

Disclose the **total amount of compensation accrued** to the lobbyist whether or not you have paid her or him. The law requires you to report all compensation **accrued** during each reporting period. (2 AAC 50.536) If the nature of the compensation is other than a fee or salary, indicate the fair market value of the compensation in the space for "other compensation" and describe the nature of the compensation in the space provided.

Show the total amounts reported on your last report in the third column. Show the total year-to-date amounts in the fourth column.

Separate Schedule A forms must be submitted for each lobbyist you employ or retain.

Schedule B

APOC Form 24-4B

Schedule B is designed for reporting the information required under AS 24.45.061(b)(3): the total amount of payments, not paid or accrued to lobbyists, made to influence legislative or administrative action during the reporting period.

Schedule B expenditures are all activities that assist or promote the lobbying effort, but that are not paid directly to or on behalf of your registered lobbyist(s). Examples include:

- 1) In-house support for lobbying activities, such as salary and expenses of employees who assist in research, drafting and preparation of materials that further lobbying goals.
- 2) Travel for employees who communicate with or make appearances before public officials concerning administrative or legislative matters connected with lobbying, but who do not meet the four-hour test requiring their registration as lobbyists.
- 3) Promotional activities sponsored in support of lobbying activities, such as advertising campaigns or legislative receptions.
- 4) Entertaining public officials, whether in public or private. If the entertaining is not related to lobbying efforts, then it must be reported on the first page of the report under "Gifts and Exchanges."
- 5) The cost of media support to express your position on issues.
- 6) The cost of conducting surveys or polls related to lobbying efforts.

List the date on which the expenditure was accrued, the complete business name and mailing address of the payee, a general description of the purpose of the expenditure, and the amount of the expenditure. You may attach additional sheets if necessary.

Total all Schedule B expenditures for the current reporting period, show the total from previous reporting periods (the first quarter report each year will not have a figure from previous reporting periods), and give the cumulative total to date for the reporting year.

POSITION PAPER

In October of this year the Alaska State Chamber of Commerce ("ASCC") filed a complaint on behalf of its members in the State Superior Court against the State of Alaska and the Alaska Public Offices Commission ("APOC") asking that the court declare portions of Alaska's Regulation of Lobbying Act (the "Act") and its implementing regulations unconstitutional. As outlined more fully below, certain portions of that Act, and the way in which APOC is implementing them in particular, have proven to unconstitutionally restrict business people from any meaningful contact with legislators or the administration in order to express their support or concern about pending issues. Although we are confident that the lawsuit will be successful, we believe that those portions of the Act and the regulations that are unconstitutional can be more easily remedied in accordance with the original intent of the Act, through the Legislature making revisions to the Act.

We are convinced that APOC is wrong in its interpretation of the lobbyist statutes in that it does not follow legislative intent, and we believe that the position that APOC is taking regarding what activities require someone to register as a lobbyist, unconstitutionally impact a business owner's right to meet with legislators or the administration to discuss proposed legislation, regulations or other administrative action that could dramatically impact his or her business.

Background

Currently, under Alaska Statute 24.45.171(8), a "lobbyist" is defined to mean:

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agent with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action; . . . [emphasis added.]

The lobbying statutes were enacted in 1976 and the definition of "lobbyist" has never been revised. Unfortunately, the Legislature did not specifically define "substantial or regular."

Following the enactment of the lobbyist statutes, APOC enacted regulations to implement the statutes. APOC defined several of the terms or phrases contained in the statutes. For instance, "substantial or regular" is defined at 2 AAC 50.545(f) as follows:

“Substantial or regular.” as used in AS 24.45.171(8)(A), means that a person who is not employed specifically for the purpose of influencing legislative or administrative action, or a person whose contractual services are not specifically for the purpose of influencing legislative or administrative action, is considered to be a lobbyist if, within a 30-day period, he spends in excess of four hours in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action as defined in AS 24.45.171(1), (6), (7), and this chapter; when a person becomes a lobbyist upon meeting the tests of this section, he must register in accordance with AS 24.45.041 and must report in accordance with AS 24.45.051 and 2AAC 50. [Emphasis added.]

Assuming a business person works an average of 40 hours a week, or 160 hours a month, four hours in a 30-day period represents only 3% of that person’s time. Under common definitions and understanding, 3% of something would be defined as nominal or incidental rather than meeting any reasonable definition of “substantial.” Further disturbing, however, is that APOC has broadened the interpretation of what activities are included in “influencing legislative or administrative action” to create an even more limiting environment.

A business person, who does not represent him/herself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession (A.S. 24.45.171(8)(B)) can only then be a lobbyist if he/she is employed or receives compensation to communicate with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action. So the question is, “What constitutes a substantial or regular portion of one’s work activities that might trigger one being considered a lobbyist?”

Based on our experience, APOC’s interpretation of the statutory definition of “lobbyist” as contained in these regulations is extremely strained. For instance, APOC considers a social gathering that includes legislators or staffers, to be included within the four-hour limitation, even where there is no discussion or attempt to influence legislation. For example, when APOC read in the newspaper that a prominent businessman was attending a golf tournament with legislators and legislative staffers, it contacted his company, a member of ASCC, to verify that he was registered as a lobbyist. He was not registered as a lobbyist because his company did not believe that his work activities met the definition of a lobbyist. After discussions with APOC about this golf tournament, APOC sent a letter setting out its position in which it states:

Note that the regulations do not require that the activities influence legislative or administration action; they merely have to be directed toward influencing such action. The [golf tournament] was designed by lobbyists and their clients/employers. It may have been a social event, but it was certainly directed towards influencing legislative action. By spending time with legislators and their staffers, lobbyists hope to establish a rapport with them that will help the lobbyists when they later meet with legislators and/or staffers to influence action on legislation of interest to the lobbyists' clients. Sam Kito stated in an interview with a reporter about the purpose of the trip: "You interact with them, you get to know people . . . " See Anchorage Daily News article dated March 8, 2002. . . . participation in the [golf tournament] means that he spent more than four hours in a 30-day period in activities directed toward influencing legislative action.

Under its theory, APOC would likely find that merely accompanying a governor and his/her cabinet on a trade mission constitutes lobbying. More importantly, a business owner or executive talking with agency officials about proposed legislation, regulations or permit applications that would directly affect his/her business could cause a business person to be deemed a lobbyist even though only a nominal amount of the business person's time is spent on activities directed toward influencing such action. Is four hours a month, with all of the other activities that any business person engages in to advance his/her business, a "substantial or regular" portion of what the business pays him/her to do? These examples show that APOC has an extremely strained, incorrect interpretation of the statute and that it was never the intent of the Legislature for the lobbying laws to make such a broad sweep. APOC's application of its regulations makes it virtually impossible, without being deemed a lobbyist, for many business leaders to meet with and to discuss legislative or regulatory activity that would dramatically impact their companies.

Importantly, being deemed a lobbyist by APOC has very burdensome consequences that, as they are being currently applied, violates the constitutional rights of those impacted. Once someone is determined to be a lobbyist, in addition to the requirement to register; pay a fee; provide personal financial information; and make and file periodic reports; the lobbyist is prohibited from several activities outlined in A.S. 24.45.121. Most notably, someone who has been deemed a lobbyist because he/she has spent more than four hours in a 30 day period engaged in what APOC considers lobbying may not;

serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a fund-raising event, directly or indirectly collect contributions for, or deliver contributions to, a candidate or otherwise engage in the fund-raising activity of a legislative campaign or a campaign for governor or lieutenant governor if the lobbyist has registered, or is required to register as a lobbyist under this chapter, during the calendar year; this paragraph . . . does not prohibit a lobbyist from making

personal contributions to a candidate as authorized by AS 15.13 or personally advocating on behalf of a candidate.

Although A.S. 15.13.074(g) allows a registered lobbyist to make personal contributions, they are limited solely to contributions to candidates for the Legislature in a district in which the individual is eligible to vote and the lobbyist must report each contribution to APOC. A legislative candidate could be seriously hampered in his/her fund-raising if many of his/her supporters are found by APOC to be lobbyists under the current regulatory framework.

Notably exempted from the statute set out above by A.S. 24.45.161(a)(2) is an elected or appointed state or municipal public officer or an employee of the state or a municipality acting in an official capacity or within the scope of employment.

These state and municipal employees, who are exempt from the Act, are, at least partially, evaluated in their job performance by their success in getting funding for various projects that are important to the agency or governmental entity by whom they are employed. Why should these state employees be exempt when a private business owner essentially doing the same thing is not? Precluding someone who spends as little as four hours in one month in activities which APOC deems to be lobbying from serving as campaign manager or hosting a fund raiser, while at the same time allowing a state employee who is doing the same thing to so act, violates the First Amendment and the equal protection provisions of the Constitution.

The Current Legislation is Not Constitutional

First, the definition of "substantial or regular" in 2 AAC 50.545(f) is inconsistent with the legislative intent of the statute. Substantial or regular could not have been intended to apply to someone who has so little contact and who spends such an insignificant portion of his or her work hours with legislators in a 30 day period and could not have been intended to be applied so broadly to such activities as social gatherings where legislative action is not even discussed. For example, the Alaska State Chamber of Commerce, the Resource Development Council, AOGA, the Alliance and others, have a "fly-in" every year in which board members travel to Juneau and spend a day talking to legislators and administration members about issues. The activities usually include a lunch, reception, dinner or other "social" activities, all of which total more than 4 hours. The isolation of Juneau, in fact, usually requires that a business leader from any other region of the state visiting the capital must spend a day there. Obviously, it is economically more efficient for his/her employer if the employee sees as many legislators and/or administration officials as he/she can in the day spent in Juneau. Certainly that day spent in Juneau does not constitute a "substantial or regular" portion of his/her work activities for that month. Similarly meetings by a business leader with regulators over proposed regulations or other administrative action could take several days, but still not be a "substantial or regular" portion of his/her work activities in a 30-day period. Other examples of the possible application of the current framework includes:

- John Doe, an Alaska business owner, engages in Lobbying Activities with a member of the Alaska Legislature for four (4) hours and one (1) minute on January 1, 2002. The Lobbying Activities occur during Mr. Doe's regular work day. Except as stated above, John Doe does not engage in any other Lobbying Activities during 2002. Under the current framework, APOC would consider John Doe to be a lobbyist. However, Jane Smith, another Alaska business owner, engages in Lobbying Activities with an Alaskan Legislator for three (3) hours and fifty-nine (59) minutes on January 1, 2002, three (3) hours and fifty-nine (59) minutes on February 1, 2002, three (3) hours and fifty-nine (59) minutes on March 1, 2002, and on the first (1st) day of each succeeding month throughout the year of 2002. The Lobbying Activities occur during Ms. Smith's regular work day. Pursuant to APOC's interpretation of the applicable statutes and regulations, Ms. Smith would not be required to register as a lobbyist, even though she spent considerably more time lobbying than did Mr. Doe.

- Susan Jones, an Alaska business owner, earns a salary of \$125,000 per year, based on a requirement that she work 2,500 hours per year. On a per hour basis, Susan Smith earns \$50 per hour. On January 1, 2002, Susan Smith engages in Lobbying Activities with an Alaskan Legislator for four (4) hours and one (1) minute during working hours. For the time spent engaged in Lobbying Activities, Susan Smith earned a salary of \$200 (equaling 0.16% of her annual salary). Except as stated above, Susan Smith does not engage in any other Lobbying Activities during 2002. Nevertheless, pursuant to APOC's interpretation of the applicable statutes and regulations, Susan Smith would be required to register as a lobbyist. On the other hand, Michael Thomas, an Alaska business owner, earns \$125,000 per year and is required to work 2,500 hours per year. Mr. Thomas' per hour salary is also \$50. On January 1, 2002, Mr. Thomas engages in lobbying activities with an Alaskan Legislator for three (3) hours. On February 1, 2002, Mr. Thomas engages in lobbying activities with an Alaskan Legislator for three (3) hours. On March 4, 2002, Mr. Thomas engages in lobbying activities with an Alaskan Legislator for three (3) hours. Mr. Thomas engages in the same lobbying activities on the first day of each month for the remainder of the year making a total of 36 hours of lobbying activities during the year which would equate to 1.4% of Mr. Thomas' salary. Under this scenario, based on APOC's interpretation of the relevant statutes and regulations, even though a larger percentage of Mr. Thomas' compensation is being paid to him for the purpose of performing activities aimed at influencing legislation, Mr. Thomas would not be required to register as a lobbyist.

- Rebecca Dole is an employee of the Municipality of Anchorage. Ms. Dole's principal job is to lobby for increased funding for the Anchorage School District. During the course of 2002, Ms. Dole spends eighty (80%) percent of her work time engaged in lobbying activities with Alaska legislators and their staffs. Ms. Dole's annual salary is \$75,000. For her lobbying activities, Ms. Dole receives compensation of \$60,000, plus an additional \$20,000 as payment for expenses incurred for her lobbying activities. Based on APOC's interpretation of the applicable statutes and regulations, Ms. Dole would not be required to register as a lobbyist.

Since one who is deemed a lobbyist is precluded from the political activities outlined above, we believe this regulation is unconstitutional because it impacts the right of free speech and the right of political expression and association. In Sweezy v. State of New Hampshire, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957), the United States Supreme Court emphasized the importance of these freedoms:

Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.

Sweezy, 77 S.Ct. at 1211.

Similarly, the U.S. District Court of Alaska has held that:

the right of association is a basic constitutional freedom, that is closely allied to freedom of speech and a right which, like free speech, lies at the foundation of free society. Buckley v. Valeo, 424 U.S. 1, 25, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)(internal quotations and citations omitted). The First and Fourteenth Amendments to the United States Constitution protect the rights of political expression and association . . . In view of the fundamental nature of the right to associate, governmental action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny . . . Id. at 25, 96 S.Ct. 612 (internal quotations and citations omitted).

Jacobus v. Alaska, 182 F.Supp.2d 881 (D.Alaska 2001). In reaching its conclusion in Jacobus that, (among other things) the restriction on donating volunteer professional services was unconstitutional, the U.S. District Court of Alaska relied on a case from Wisconsin entitled Barker v. State of Wisconsin Ethics Board, 841 F.Supp. 255 (W.D. Wisc. 1993). In Barker, six lobbyists contested a Wisconsin regulation that precluded them from providing volunteer services to political campaigns as violative of their First Amendment right of association and expression. The lobbyists argued that the statute imposed an unconstitutional burden on their First Amendment right of association and expression because it was overbroad and not narrowly drawn to advance a compelling state interest. The State Ethics Board did not dispute that the

statute burdened plaintiffs' First Amendment rights, but argued that the statute should be upheld because it was narrowly drawn to prevent corruption while interfering only marginally with rights under the First Amendment.

In addressing these issues, the Wisconsin court first stated the following:

There is no question but that [the statute] implicates a fundamental right: 'Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association,' which 'right was enshrined in the First Amendment of the Bill of Rights.' Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S.Ct. 1203, 1212, 1 L.Ed.2d 1311 (1957). Associational rights include activities pursued in the cause of a campaign for public office. Elrod v. Burns 427 U.S. 347, 370-71, 96 S.Ct. 2673, 2688, 49 L.Ed.2d 547 (1976). The freedom of political association 'is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it. . . . ' Griswold v. Connecticut, 381 U.S. 479, 483, 85 S.Ct. 1678, 1681, 14 L.Ed.2d 510 (1965). The United States Supreme Court has long recognized that when government regulates political expression and association 'the importance of First Amendment protections is 'at its zenith.' Meyer v. Grant 486 U.S. 414, 425, 108 S.Ct. 1886, 1894, 100 L.Ed.2d 796 (1973). An interference with association rights may be constitutional if the statutory infringement is no broader than it needs to be to accomplish its purpose or, in other words, if it is narrowly tailored. See, e.g., Austin v. Michigan State Chamber of Commerce, 494 U.S. 652, 657, 110 S.Ct. 1391, 1396, 108 L.Ed.2d 652 (1990)(citing Buckley v. Valeo, 424 U.S. 1, 44-45, 96 S.Ct. 612, 647, 46 L.Ed.2d 659 (1976).

Barker, 841 F.Supp at 258; see also Shrink Missouri Government PAC v. Maupin, 922 F.Supp 1413 (E.D.Mo 1996) (It is well established that the right to free speech (including political speech) and the right to free association (including political association) are fundamental activities protected by the First Amendment. Discussion of public issues and debate on qualifications of candidates are integral to the operation of the system of government established by our Constitution . . . the First Amendment protects political association as well as political expression.)

The lobbyists in Barker argued that the "narrowly tailored" standard outlined in Buckley required the state to demonstrate a compelling state interest and that it must employ means closely drawn to avoid unnecessary abridgement of associational freedoms. The State Ethics Board, on the other hand, argued that the statute should be upheld so long as the regulations promote a substantial government interest that would be achieved less effectively absent the regulation. The State Board asserted that the state had a compelling interest in avoiding the specter of corruption that would arise from the sight of lobbyists participating in political campaigns.

The Wisconsin Supreme Court rejected the Board's arguments and ruled that the statute at issue was unconstitutional. In dicta, the court also made another important statement. In Wisconsin the statute defining who is a lobbyist is seemingly even broader than the statute in Alaska. Under Wisconsin law, a "lobbyist" is any person "employed by a principal . . . who makes lobbying communications on each of at least 5 days within a reporting period of 6 months." Plaintiffs argued that this statute was overly broad because it took fewer than one lobbying communication a month to transform an ordinary citizen into a lobbyist under Wisconsin law. Although the defendants did not address this argument and it was not an issue for the court to decide, the court noted that, "an independent review of the statute suggests that plaintiffs' portrayal of the prohibition's extensive reach is accurate." Barker, 841 F.Supp. At 261.

Finally, the Barker court concluded that:

Wisconsin's lobby law overreaches insofar as it prohibits lobbyists from volunteering personal services to political campaigns because it does not provide an answer that relates sufficiently to the elimination of the dangers of corruption and the appearance of corruption.

Barker, 841 F.Supp. at 263.

The Alaska lobbying statute states as its purpose at A.S. 24.45.011 as follows:

The Legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions; and that the people are entitled to know the identity; income, expenditures and activities of those persons who pay, are paid or reimbursed for expenses, or who make expenditures or other payments in an effort to influence legislative or administrative action. (Emphasis added.)

The definition of "substantial or regular" is not narrowly tailored to meet this purpose and improperly imposes an unconstitutional burden on many citizens' First Amendment rights as outlined by the courts in Jacobus and Barker.

Second, the definition of "substantial or regular" is overly broad because anyone who spends 4 hours and 1 second on January 1 in communication with legislators or staffers, and has no further communication for the rest of the year, would nonetheless be considered a lobbyist for the entire year and precluded from making certain contributions, hosting political fundraisers, etc., for the remainder of the calendar year. Again, this restriction is not narrowly tailored to fit the purposes of the statutes.

Finally, while the statute prohibits business owners, for instance, from spending more than 4 hours per month in contact with legislators for fear of being deemed a lobbyist, employees of the state are not similarly precluded. A state employee, acting in his/her official capacity or within the scope of his/her employment has no restriction on the amount of time he/she can spend influencing legislation and is not limited by any of the lobbyist prohibitions. This unequal treatment clearly violates the equal protection provisions of the constitution.

A similar issue was addressed by the District Court in New York. In Commission on Independent Colleges and Universities v. The New York Temporary State Commission on Regulation of Lobbying, 534 F.Supp. 489 (N.D.N.Y. 1982), one of the issues addressed was the plaintiffs' claim that New York's lobbying law violated the equal protection clause of the Fourteenth Amendment because it classified independent colleges who engaged in direct contact with legislators and administrative agencies as lobbyists while exempting their counterparts at SUNY and CUNY because they are state universities. In addressing this issue, the New York court noted that:

The Fourteenth Amendment guarantee of equal protection is designed to ensure that persons similarly situated are treated equally in terms of benefits conferred or duties imposed . . . Village of Belle Terre v. Borass, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974) . . . The traditional standard of review employed by the courts is whether the law in question is wholly arbitrary or without a rational basis. [citations omitted.] When fundamental constitutional rights are involved, however, it is necessary to find a compelling state interest to validate the law making the classification. [citations omitted.]

Commission, 534 F.Supp. at 503. We cannot think of any compelling state interest that would support the discrimination between state and non-state employees.

These are important issues that dramatically effect the rights and interests of Alaska businesses. For business owners, or CEO's of businesses to be precluded from discussing legislation or a regulation that directly impacts their companies without the risk of being deemed a lobbyist and losing their right of free association regarding political campaigns is inappropriate. While some companies may be financially able to hire professional lobbyists, many others are not. Moreover, many company owners and management level employees know and understand better than a hired lobbyist, the impact of proposed legislation on his/her company.

Before closing, we want to emphasize a few important points. First, our proposed legislation would provide a more reasonable level of access for Alaska business men and women to their elected representatives, their staffers, and state agency personnel. Our proposal would not change the rules for professional lobbyists. Those individuals who are in the business of lobbying on behalf of clients and those who hold themselves out to be professional lobbyists would not have a reduced level of scrutiny under our proposed legislation.

Second, the principal problem with the current system is APOC's definition of the terms "substantial or regular" which are found in the definition of "lobbying" at A.S. 25.45.171. It was the Legislature which enacted the statutory definition of the term "lobbying", including the use of the terms "substantial or regular". Therefore, the Legislature should define those terms in order to protect its intent. Essentially, by allowing APOC to define those terms, we believe that the Legislature has allowed APOC to subvert the original intent of the legislation. Given the fact that the Legislature convenes in Juneau, it has historically worked hard to increase access by ordinary citizens, including Alaska's business men and women. The APOC definition of the terms "substantial or regular" flies in the face of the Legislature's efforts to increase, rather than restrict, access to state government.

Finally, our proposed legislation offers a simple fix to the current problem which we believe is absolutely consistent with the intent of the original lobbying legislation. Alaska's business men and women should not be branded as lobbyists based merely on four hours of communications with legislators, staffers, members of the administration, or personnel of state agencies.

The current system not only harms Alaska businesses, but it also harms the Legislature, the administration and state agencies by denying them access to important information which is available from business men and women. In short, the current system simply can't work.

Attached are proposed amendments to the current lobbying statute which would resolve this issue.

Enclosures

AS 24.45.171(8)(A) is amended as follows [amendment underlined]:

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action where "substantial" means in excess of 80 hours in a 30 day period and "regular" means more than 60 days while the legislature is in session; or

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The Alaska State Chamber of Commerce Supports House Bill 106

The Alaska State Chamber of Commerce, representing approximately 700 business members and 35 chambers of commerce throughout Alaska, is convinced that the Alaska Public Offices Commission (APOC) is wrong in its interpretation of the lobbyist statutes. We believe their interpretation does not follow legislative intent and that it unconstitutionally impacts a business owner's right to meet with legislators or the administration to discuss proposed legislation, regulations or other administrative action that could dramatically impact his or her business.

What the Law Says

"Lobbyist" is defined in Alaska Statute 24.25.171(8):

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agent with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action;...[emphasis added.]

What APOC Says

"Substantial or regular" as defined by APOC regulation in 2 AAC 50.545(f):

"Substantial or regular," as used in AS 24.45.171(8)(A), means that a person who is not employed specifically for the purpose of influencing legislative or administrative action, or a person whose contractual services are not specifically for the purpose of influencing legislative or administrative action, is considered to be a lobbyist if, within a 30-day period, he spends in excess of four hours in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action as defined in AS 24.45.171(1), (6), (7), and this chapter; when a person becomes a lobbyist upon meeting the tests of this section, he must register in accordance with AS 24.45.041 and must report in accordance with AS 24.24.052 and 2 AAC 50.

The Change Proposed by House Bill 106

HB 106, as proposed by the House Judiciary Committee, establishes the definition of "regular" and "substantial" in the law, thereby clarifying legislative intent. The new language says:

"in this subparagraph,

- (i) "regular" means, as to legislative action, more than 30 days while the legislature is in regular or special session; and
- (ii) "substantial" means, as to legislative or administrative action, or both, more than 40 hours in a 30 day period; ..."

FACTS TO CONSIDER REGARDING HB 106:

- 2½ percent of something is ordinarily defined as nominal or incidental, rather than substantial. Assuming a businessperson works an average of 40 hours a week, or 160 hours a month, 4 hours in a 30-day period represents 2½ percent of that person's time. HB 106 establishes "substantial" as 25 percent of a person's time.
- Per Webster's Dictionary:
Substantial means "of ample or considerable amount, quantity, size, etc."
Regular means "usual; normal; customary" or "recurring at fixed or uniform intervals."
- Business people are the only ones limited to 4 hours of contact a month with public officials or legislative employees. Public employees are exempt from this provision of the law, so they and registered lobbyists have unlimited access to the legislature and the administrative agencies. Business people do not.
- Social gatherings that include legislators or staffers, even where there is no discussion or attempt to influence legislation, are included within the four-hour limitation. APOC's position is that "...the regulations do not require that the activities influence legislative or administration action; they merely have to be directed toward influencing such action." Dinners, receptions, and golf tournaments fall within the strict time limitation set by APOC.
- Being deemed a lobbyist has burdensome consequences that, as applied by APOC, violate the constitutional rights of those impacted.

Lobbyists must:

1. Pay a registration fee;
2. Provide personal financial information for public scrutiny;
3. Make and file regular reports and be subject to significant fines for failure to do so in a timely manner.

Lobbyist may not:

1. Serve as a campaign manager or director;
2. Serve as a campaign treasurer on a finance or fund-raising committee;
3. Host a fund-raising event;
4. Directly or indirectly collect contributions for, or deliver contributions to, a candidate or otherwise engage in the fund-raising activity of a legislative campaign or a campaign for governor or lieutenant governor;
5. Contribute to legislative candidates in any district other than the one in which the lobbyist is eligible to vote.

Precluding someone who spends as little as four hours in one month in activities which APOC deems to be lobbying from serving as a campaign manager or hosting a fund raiser, while at the same time allowing a state employee who is doing the same thing to so act, violates the First Amendment and equal protection provisions of the Constitution.

Looking Out For Business...

A report from the Alaska State Chamber of Commerce - The Voice of Alaska Business

The laws and regulations enacted by Alaska's public policy makers have significant impact on how businesses operate in Alaska and what their costs of operation will be.

It is not uncommon for business people to travel to Juneau for a few days during the legislative session to talk with legislators or administration officials about issues affecting their business. Nor is it uncommon for them to accompany administration officials or legislators on trade missions, or talk to them at conferences and other events.

The Alaska Public Offices Commission (APOC) has determined that these activities, which may be a very small part of what an individual does for his business or company, make a businessperson a lobbyist.

Alaska law requires that anyone for whom a substantial or regular portion of their job is to influence legislation or administrative action, or anyone who contracts or is in the profession of lobbying, must register as a lobbyist. The Alaska State Chamber of Commerce recognizes the importance of regulating lobbying so the public knows the identity, income, expenditures and activities of professional lobbyists, and the Chamber has no problem with the current law.

However, in the regulations APOC has defined "substantial or regular" as just four hours in a 30-day period. The State Chamber believes this unjustly restricts business people who are not paid as lobbyists

"The State Chamber believes our state will benefit by providing business owners greater access to state government, not by further limiting their access."

from talking freely with the government. The State Chamber has requested that the legislature develop a new definition that, while continuing to regulate professional paid lobbyists, will not restrict business people who are not in the business of

"The APOC regulation unjustly restricts business people who are not paid as lobbyists from talking freely with the government."

lobbying and for whom lobbying is not part of their job.

If a businessperson exceeds the four-hour limit, they must pay a \$100 fee to register and then file

monthly, quarterly, and annual reports, and there are

stiff penalties associated with the reporting requirements. The businessperson must also disclose the source and amount of their income. They are also precluded from engaging in many political activities, such as active participation in political

campaigns and contributing to the candidates of their choice, which is a restriction of their first amendment rights.

This is an important issue to business and particularly troublesome for small businesses who can't afford paid lobbyists. It leaves them the choice of hiring someone to speak on their behalf or giving up some of their constitutional rights.

The media and state or municipal employees, by the way, are exempt from the law. News editors and columnists can write unlimited opinion pieces, with the intent of influencing legislative or administrative action, and not have to register or lose any personal rights. Public officials or employees can lobby unlimited hours, day in and day out, for laws and regulations that increase the cost of government, for which business pays, or increase the cost of doing business.

House Bill 106, which has the support of the State Chamber, defines "substantial" as 40 hours in a 30-day period, (one-quarter of a full-time employee's 160 hours a month) and "regular" as 30 days, or one quarter, of a 120-day legislative session.

The State Chamber believes our state will benefit by providing business owners greater access to state government, not by further limiting their access.

ConocoPhillips

Proud to be the 2003 Diamond Partner of the Alaska State Chamber of Commerce



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COPIES

GREATER * FAIRBANKS CHAMBER OF COMMERCE

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e-mail: staff@fairbankschamber.org
website: www.fairbankschamber.org

Introduced by: Governmental Affairs
Date Introduced: March 11, 2003
Date Passed: March 11, 2003
Date Transmitted: March 11, 2003

RESOLUTION 03-05112

A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE SUPPORTING AN AMENDMENT IN ALASKA STATE LAW CLARIFYING THE DEFINITION OF LOBBYIST AND SUCH TERMS THAT DESCRIBE LOBBYIST ACTIVITY

WHEREAS In the definition of the term "Lobbyist" in Alaska Statute 24.25.171(8), it states that a lobbyist is a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, who communicates directly or through the person's agent with any public official for the purpose of influencing legislative or administrative action if a *substantial or regular* portion of the activities for which the person receives consideration; and

WHEREAS the Alaska Public Offices Commission (APOC) had defined in 2 AAC 50.545(f) "substantial or regular" to mean that a person is considered a lobbyist if, within a 30-day period, the person spends in excess of four hours in direct communication with a public official or legislative employee in activities directed toward influencing legislative or administrative action; and

WHEREAS this strict interpretation could require anyone who travels to Juneau during the legislative session for one day to discuss legislative issues, and is reimbursed by their company or business, to register as a lobbyist; and

WHEREAS public employees are exempt from this provision; and

WHEREAS registering as a lobbyist is burdensome and contains many stipulations; and

WHEREAS this interpretation would hamper the volunteer members of the Greater Fairbanks Chamber of Commerce, and other non-profit agencies, from engaging in regular communication with our local legislators; and



GREATER * FAIRBANKS CHAMBER OF COMMERCE

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website: www.fairbankschamber.org

WHEREAS many annual "fly-ins" to Juneau would not take place as most participants would be required to register as a lobbyist; and

WHEREAS the Greater Fairbanks Chamber of Commerce does not believe the APOC interpretation follows legislative intent; and

WHEREAS the Greater Fairbanks Chamber of Commerce supports fair and reasonable regulations governing lobbyists.

NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce strongly supports passage of an an amendment in Alaska State Law clarifying the definition of lobbyist and broaden such terms that describe lobbyist activity to allow business owners and other non-profits agencies to communicate with our elected officials.

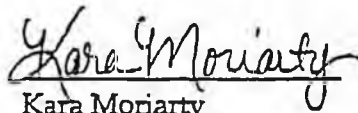
BE IT FURTHER RESOLVED that this resolution be distributed to:

Senator Ralph Seekins
Interior Delegation
Governor Frank Murkowski

PASSED in Fairbanks, Alaska this 11th day of March, 2003 by the Greater Fairbanks Chamber of Commerce Board of Directors.



Terry Aldridge
Board Chairman



Kara Moriarty
President/CEO





Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on SB 89 Date March 5, 2003
bill # / subject

I OPPOSE SB 89.

This Legislation clearly benefits both lobbyists and Legislators at the expense of Alaskan citizens. Any citizen wishing to lobby as a private citizen has never been restricted from doing so. Only people receiving compensation from a corporation or another individual are restricted in any way.

The current restrictions are clearly designed to put lobbyists on a more level playing field with private citizens and to make information available to the citizens regarding lobbying efforts. This legislation will make the remaining regulations ineffective.

The proposed change simply accomplishes two goals:

1. It limits the information available to Alaskan citizens regarding the lobbying efforts of corporate and special interest lobbyists.
2. It allows lobbyists to give campaign contributions to legislative candidates (which will most likely benefit "their" favored incumbent benefactor) following the legislative session.

If you support this legislation you should simply strike down all the laws relating to election contributions, lobbyists, and corporate contribution restrictions. This legislation effectively does much the same, while allowing the system to remain in place, thus promoting the false pretense that there's been no major change....

This current legislation favors incumbents and restricts information currently available to the people relating to the lobbying efforts in Juneau. This legislation transfers more power and influence to special interests, while diminishing the influence of the private citizens within the state. Please uphold the current regulations and oppose SB 89!

Signed: Laurie Churchill Laurie Churchill
Testifier

Private citizen

Representing (optional)

PO Box 7043, Nikiski, AK 99635

Address

907-776-3499

Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on SB 89 Date March 5, 2003
bill # / subject

SB-89 represents special interest legislation of the worst kind. It clearly favor lobbyists over Alaskans, and will enable politicians to accept campaign contributions from most of them, which is currently prohibited. This promotes special interest legislation for the highest bidder. This is a very a BAD deal for the majority of Alaskans!

State law should not be relaxed, making it easier for lobbyists to influence our legislators. Every boondoggle that gets funded through the efforts of lobbyists, municipal representatives, or special interest groups takes limited resources away from essential government services. The public has a right to know the truth about everyone paying to obtain our legislators' favor. Alaskan laws should protect the public's interest, not give the trail of influence that rewards cooperation between lobbyists and politicians.

Our legislature intentionally limited public debate to a minimum number of committee hearings. Few people outside of the government/lobbyist circle will have the opportunity to testify in opposition to this legislation. While this may be a clever maneuver on the part of legislators and lobbyists pushing this bill, it has not gone unnoticed by the public.

This is clearly BAD legislation favoring a few privileged players in Juneau, at the expense of every Alaskan. Putting special interest groups and big campaign contributors before our citizen's best interests is bad public policy. The Legislature's focus must shift toward public NEEDS, instead of special interest wants.

Please vote against SB-89.

Signed: James Price James Price
Testifier

Self

Representing (optional)

PO Box 7043, Nikiski, AK 99635

Address

907-776-3481

Phone number



MAR 25 2003

ALASKA PUBLIC OFFICE COMMISSION

AKPIRG

PO Box 101093 • Anchorage, Alaska 99510-1093 • Ph: (907) 278-3661 • Fax: (907) 278-9300 • email: akpirg@akpirg.org

Testimony on SB 89 – Amending Lobbying Regulations

AkPIRG wishes to express its opposition to SB 89 which will gut the Regulation of Lobbying Act. This bill will allow many professional lobbyists to avoid registering as lobbyists, which will allow them to continue lobbying and more importantly to back that lobbying up with campaign contributions. In addition, the overly broad definitions of lobbyists in this bill will allow both professional and in-house lobbyist to spend one half of the entire legislative session as a lobbyist without having to register as a lobbyist. This will ultimately mean that lobbying activities will be divided up among individuals who will back up their speech with cash.

This bill is bad public policy and will further erode the public's trust in the political system by increasing the influence of lobbyists on Alaska lawmakers by shielding them from public view. This bill would erode the great work that the Alaska Public Office Commission has done since it was charged with monitoring lobbyist in 1976.

There appears to be substantial misunderstanding about what constitutes lobbying. We believe that small businesses are being misinformed about what is lobbying and the regulations of the lobbying industry. These frequent misunderstandings form the basis of most support for the bill. Further testimony cited the onerous and draconian burdens placed on small businesses, but after reviewing the 33 pages of employers with lobbyists, I find few if any small businesses. Fines for breaking the law were also deemed "significant," though they are \$10 a day.

Since statehood, Alaska has had a law regulating lobbyists, and this bill will put large loopholes in that regulation through which many lobbyists will jump. This current legislation would override a 26 year-old regulation. To be able to transparently see who is attempting to influence our legislators is something the public has come to depend on. This bill will greatly decrease that transparency and expand the power of special interests over our political system.

Since this bill addresses a law that has been extant since 1978, one needs to wonder why this sudden call for a change in definition. Currently, registered lobbyists are not able to host fundraisers, nor are they able to donate to candidates outside their legislative district. There are two ways to attempt to get around that. First, one could attempt to directly remove the prohibition on such fundraisers or donations. Second, one could attempt to alter who is considered a lobbyist, and by so doing eliminate the effect of the fundraiser and donation ban. This legislation appears to be an attempt at the latter, that is, an effort to exempt certain people from having to register as a lobbyist, thus exempting them from the fundraiser and donation ban.

The threshold of who is and who is not a lobbyist is adequate and should not be changed. Alaska has an inordinate amount of lobbyists for its population, many of whom are from outside the state. Alaskans need all the information on lobbyists that APOC can continue to provide.

SB 89 is bad public policy and AkPIRG urges your strong opposition to its passage.

Steve Cleary
Executive Director, AkPIRG

Please enter into the record the following testimony to the Senate Judiciary Committee
on SB 89 / Definition of Lobbying Date: March 19, 2003

ALASKA VOTERS ORGANIZATION

RESOLUTION 2003-05

A Resolution to the 23rd Alaska State Legislature in OPPOSITION to significant changes to, or elimination of, the Alaska Public Offices Commission (APOC).

WHEREAS, the Alaska Public Offices Commission began as the Alaska Election Campaign Commission (AECC) in 1974; and

WHEREAS, the incentive for campaign disclosure resulted from the Watergate scandal and a successful citizen initiative effort, which convinced our State Legislature to pass the Alaska Campaign Disclosure Law; and

WHEREAS, that same year, another initiative effort succeeded in placing Alaska's Public Official Financial Disclosure Law on the ballot, where it was approved by over 71% of the voters and became law in January 1975; and

WHEREAS, in 1976, the legislature revised state lobbying reporting by passing Alaska's Lobbying Law, with responsibility for its enforcement assigned to the AECC, which was renamed the Alaska Public Offices Commission (APOC), to reflect its newly expanded mission; and

WHEREAS, in 1990, the legislature responded to an increased demand for ethics regulation and disclosure by expanding its previous reporting requirements under the Conflict of Interest Law in the form of a new act, Alaska's Legislative Ethics Disclosure Law, which created the Select Committee on Legislative Ethics to hear ethics violations; and

WHEREAS, the 1997 Alaska Campaign Disclosure Law was a response by the legislature to a citizens' initiative effort in 1996, which revised Alaska's 20 year-old campaign disclosure law to include stricter limitation and disclosure measures, including the prohibition of corporate and out-of-state group contributions to state and local candidates; and

WHEREAS, in 2003, legislation proposed by Governor Murkowski and members of the State Legislature, have put party politics ahead of good honest public policy; and

WHEREAS, attempts to significantly reduce lobbyists reporting requirements or to eliminate the non-partisan Alaska Public Offices Commission (APOC), violates the will of Alaskan voters, who spoke out on three separate occasions to create the very agency and regulations currently being threatened with elimination; and

WHEREAS, the unfettered access to information is the foundation of a democratic society; and

WHEREAS, the public has a right to know the truth about all funds paid to influence Alaska's legislature; and

WHEREAS, Governor Murkowski and the legislature's attempts to weaken or eliminate APOC, promote bad public policy that will further erode the public's trust in our government; and

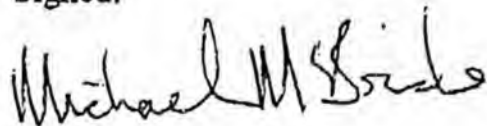
WHEREAS, the citizens of Alaska have spoken loud and clear, "state laws should not be relaxed to make it easier for lobbyist to influence our elected officials";

NOW, THEREFORE, BE IT RESOLVED by the Alaska Voters Organization, Board of Directors, that we support existing Alaska statutes governing campaign disclosure and registration of lobbyists; and be it

FURTHER RESOLVED, that we oppose all efforts to reduce the effectiveness or existence of the Alaska Public Offices Commission (APOC).

Adopted by the Alaska Voters Organization Board of Directors,
This 19th Day of March 2003.

Signed:



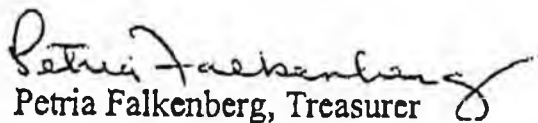
Michael McBride, President



Barbara Mullin, Vice President



Laurie Churchill, Secretary



Petria Falkenberg, Treasurer

Alaska Voters Organization, Inc.

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LOAN FOR USE

is the gratuitous grant of an article to another for use, to be returned *in specie*, and may be either for a certain time or indefinitely, and at the will of the grantor.

Loan for use (called "*commodatum*" in the civil law) differs from a loan for consumption (called "*mutuum*" in the civil law), in this: that the *commodatum* must be specifically returned; the *mutuum* is to be returned in kind. In the case of a *commodatum*, the property in the thing remains in the lender; in a *mutuum*, the property passes to the borrower.

Loan participation. Loan provided by a group of lenders to a single borrower, which spreads the default risk of the loan among all lenders in the group.

Loan ratio. The ratio, expressed as a percentage, of the amount of a loan to the value or selling price of real property. Usually, the higher the percentage, the greater the interest charged. Maximum percentages for banks, savings and loan, or government insured loans, is set by statute. See also Loan-to-value ratio.

Loansharking. Practice of lending money at excessive and usurious interest rates, with the threat or employment of extortionate means to enforce repayment of the loan. Such activities are termed "extortionate credit transactions" under Federal Criminal Code. 18 U.S.C.A. § 891 *et seq.*

Loan societies. In English law, a kind of club formed for the purpose of advancing money on loan to the industrial classes.

Loan-to-value ratio. The percentage of purchase price to be financed with a mortgage. Common ratios are 80 and 90 percent. A down payment covers the rest of the purchase price.

Loan value. The maximum amount which can be safely lent on property or life insurance consistent with the lender's rights to protection in the event of the borrower's default.

Lobbying. All attempts including personal solicitation to induce legislators to vote in a certain way or to introduce legislation. It includes scrutiny of all pending bills which affect one's interest or the interests of one's clients, with a view towards influencing the passage or defeat of such legislation. *Thiles v. County Board of Sarpy County*, 189 Neb. 1, 200 N.W.2d 13, 18. Federal, and most state, statutes require that lobbyists be registered. See Lobbying acts.

Lobbying acts. Federal and state statutes governing conduct of lobbyists; e.g. Federal Regulation of Lobbying Act requires that lobbyists register with House and Senate and file quarterly reports of amount and source of payments received for lobbying activities. See 12 U.S.C.A. § 261 *et seq.*

Lobbyist. One who makes it a business to procure the passage or defeat of bills pending before a legislative body. See also Lobbying; Lobbying acts.

L'obligation sans cause, ou sur une fausse cause, ou sur cause illicite, ne peut avoir aucun effet /lõwbligasyõwn sõn kõwz, ùw sår (y)ùwn fõws kõwz, ùw sår

kõwz ilisyt nã pyùwt õvwår owkyùwn afëy/. An obligation without consideration, or upon a false consideration (which fails), or upon unlawful consideration, cannot have any effect.

Local. Relating to place, expressive of place; belonging or confined to a particular place. Distinguished from "general," "personal," "widespread" and "transitory."

As to *local* Allegiance; Customs; Government; Tax and Venue, see those titles.

Local act. See Local law.

Local actions. Term embraces all actions in which the subject or thing sought to be recovered is in its nature local. Action which must be brought in jurisdiction of act or subject matter, as opposed to transitory action. Actions are "local" when the transactions on which they are based could not occur except in some particular place. One wherein all principal facts on which it is founded are of a local nature; as where possession of land is to be recovered, or damages for an actual trespass, or for waste affecting land, because in such case the cause of action relates to some particular locality, which usually also constitutes the venue of the action. A "transitory action" may be brought in any court of general jurisdiction in any district wherein defendant can be found and served with process, whereas in a "local action" the plaintiff must bring suit in the court designated, if not statutorily required to do otherwise. *Moreland v. Rucker Pharmacal Co.*, D.C.La., 59 F.R.D. 537, 540. Compare Transitory action.

Local affairs. The "local affairs" over which regulation, management and control are delegated to cities are affairs within the jurisdiction of the city by the law of its being. *Robia Holding Corporation v. Walker*, 136 Misc. 358, 239 N.Y.S. 659, 662.

Local agent. An agent at a given place or within a definite district. *Sharp & Dohme v. Waybourne, Tex. Civ.App.*, 74 S.W.2d 413. An agent may be a general agent as to his powers, although he represents the company only in a particular locality or within a limited territory, and in the latter aspect is called a "local agent". *Prudential Ins. Co. of America v. Jenkins*, 290 Ky. 802, 162 S.W.2d 791, 795. An agent placed in charge of corporation's local business for purpose of winding it up. One appointed to act as the representative of a corporation and transact its business generally (or business of a particular character) at a given place or within a defined district. One who represents corporation in promotion of business for which it was incorporated, in county in which suit is filed. *National Hardware & Stove Co. v. Walters, Tex.Civ.App.*, 58 S.W.2d 146. One who stands in shoes of corporation in relation to particular matters committed to his care and represents corporation in its business in either a general or limited capacity. A "local agent" to receive and collect money means an agent residing either permanently or temporarily within the state for purpose of his agency. *McDonald Service Co. v. Peoples Nat. Bank of Rock Hill, S.C.*, 218 N.C. 533, 11 S.E.2d 556, 558. By statute or court rule in most states, service of process on a foreign

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CS FOR SENATE BILL NO. 89(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as
2 it applies in the act setting standards of conduct for legislators and legislative
3 employees."

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

5 * Section 1. AS 24.45.171(8) is amended to read:

6 (8) "lobbyist" means

7 (A) a person who is employed and receives payments, or who
8 contracts for economic consideration, including reimbursement for reasonable
9 travel and living expenses, to communicate directly [OR THROUGH THE
10 PERSON'S AGENTS] with any public official for the express purpose of
11 introducing new legislation or administrative action or for influencing
12 pending or existing legislation or administrative action for more than 40
13 hours in any calendar month; in this subparagraph, "communicate
14 directly" means speaking on the telephone or meeting face-to-face with a

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legislator, legislative employee, or public official [LEGISLATIVE OR ADMINISTRATIVE ACTION IF A SUBSTANTIAL OR REGULAR PORTION OF THE ACTIVITIES FOR WHICH THE PERSON RECEIVES CONSIDERATION IS FOR THE PURPOSE OF INFLUENCING LEGISLATIVE OR ADMINISTRATIVE ACTION]; or

(B) a person who represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

Amendment # 1

Add:

^{with} () "communicate directly" means to speak on the telephone with or face-to-face or to communicate electronically with a legislator, legislative employee or public official;

Change:

(6) "Influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action.

(8) "lobbyist" means

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly with any public official for the express purpose of influencing legislative or administrative action for more than 40 hours in any calendar month; or

(B) a person who represents oneself as engaging in the business, occupation, or profession of influencing legislative or administrative action.

SENATE BILL NO. 89

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR SEEKINS

Introduced: 2/28/03

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as
 2 ~~it applies in the act setting standards of conduct for legislators and legislative employees,~~
 3 to define 'regular' and 'substantial' as those terms describe activities for which a person
 4 receives consideration for the purpose of influencing legislative or administrative
 5 action."

??
 MUST BE
 [law
 error]

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

7 * Section 1. AS 24.45.171(8) is amended to read:

8 (8) "lobbyist" means

9 (A) a person who is employed and receives payments, in whole or in part ^{income} ~~or who~~
 10 ~~contracts for~~ ^{other} economic consideration, including reimbursement for reasonable
 11 travel and living expenses, to communicate directly or through the person's
 12 agents with any public official for the purpose of influencing legislative or
 13 administrative action if a substantial or regular portion of the activities for

1 which the person receives consideration is for the purpose of influencing
2 legislative or administrative action; in this subparagraph.

3 ~~(i) "regular" means, as to legislative action, more~~
4 ~~than 60 days while the legislature is in regular or special session;~~
5 ~~and~~

6 ~~(ii) "substantial"~~ ^{or "regular"} means, as to legislative or
7 administrative action, or both, more than ¹⁶ ~~24~~ hours in a 30-day
8 period, ^{or} ~~or~~ ^{in direct communication with a public official or legislative} ~~or~~ ^{employee;}

9 (B) a person who ^{engages} ~~represents~~ ^{as} ~~engaging~~ in the ^{service}
10 influencing of legislative or administrative action as a business, occupation, or
11 profession;