

HB

281

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 20, 2008

FURTHER REFERRALS:

Date of Committee Action: 4/2/08

The FINANCE Committee considered:

HB 281

HOUSE BILL NO. 281

CAMPAIGN FINANCE COMPLAINTS

"An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns."

Recommends it be replaced with HCS or CS for HB 281 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u> *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAA				✓
LAW		✓		
ADM		✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Hauha	*			
	NELSON			✓	
	Thomas George	✓			
	Foulke	✓			
	STOUT			x	x
Chair:	Meyer			x	
Chair:	Chenuit				x

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB281 (JUD)
() Publish Date: _____

Identifier (file name): CSHB281(JUD)-LEG-ETH-04-01-08 Dept. Affected: Legislature
Title: _____ RDU: Legislative Council
Component: Select Committee on Leg Ethics
Sponsor: Representatives Lynn and Gallo
Requester: House Finance Committee Component Number: 2321

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
Division: Legislative Affairs Agency Date/Time 4/1/08 8:20 AM
Approved by: Pamela Varni, Executive Director Date 4/1/2008
Legislative Affairs Agency

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: HB281CS(JUD)-LAW-CIV-03-21-08
 Bill Version: CSHB281(JUD)
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act extending the statute of limitations for the filing of RDU CIVIL
complaints with the Alaska Public Offices Commission Component Labor and State Affairs
 Sponsor Representative(s) Lynn, Gatto
 Requester HOUSE FINANCE Component Number 2718

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	85.9	0.0	85.9	85.9	85.9	85.9	85.9	
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	85.9	0.0	85.9	85.9	85.9	85.9	85.9	

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	85.9	0.0	85.9	85.9	85.9	85.9	85.9
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	85.9	0.0	85.9	85.9	85.9	85.9	85.9

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0.5	0.00	0.5	0.5	0.5	0.5	0.5
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

By expanding the time period for the consideration of campaign finance law violations by the Alaska Public Offices Commission from one to five years, this legislation should increase significantly the number of complaints and investigations that the Commission handles. The resulting increase in Commission workload will significantly increase the Department's time advising the staff and the Commission. The Civil Division is requesting one-half attorney IV position to handle this increased case load. It is impossible to predict with any certainty how many complaints will actually result in criminal prosecutions. As a consequence costs for the Criminal Division must be considered indeterminate at this time but may also prove to be significant. Cost of 1/2 time attorney calculated at the Department's Statewide billing rate of \$116.50 per hour times billable hours of 1,475 per year per attorney and covers all associated operational overhead. $1/2 \times \$116.50 \times 1,475 = \$85,918$

Prepared by: Robert Meiners, Administrative Services Manager Phone 907-465-5427
 Division: Administrative Services Division Date/Time 3/21/08 1:52 PM
 Approved by: Talis Colberg, Attorney General Date 3/21/2008
Department of Law

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB281 (JUD)
() Publish Date: _____

Identifier (file name): HB281CS(JUD)-DOA-APOC-3-31-08 Dept. Affected: Administration
Title: "An Act extending the statute of limitations..." RDU: AK Public Offices Commission
Component: AK Public Offices Commission
Sponsor: Lynn and Gallo
Requester: House Finance Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	86.0	0.0	86.0	86.0	86.0	86.0	86.0	86.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	14.5	0.0	14.5	14.5	14.5	14.5	14.5	14.5
Supplies	0.7	0.0	0.7	0.7	0.7	0.7	0.7	0.7
Equipment	3.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	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	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	104.3	0.0	101.2	101.2	101.2	101.2	101.2	101.2

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	104.3	0.0	101.2	101.2	101.2	101.2	101.2	101.2
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	104.3	0.0	101.2	101.2	101.2	101.2	101.2	101.2

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time	1.0	0.0	1.0	1.0	1.0	1.0	1.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0
		0.0					

ANALYSIS: (Attach a separate page if necessary)

This bill will expand the statute of limitations for filing complaints under the campaign disclosure law.

Funds are requested for a paralegal position and associated costs to perform auditing and enforcement. This position is a support person to assist in investigations of complaints. Because investigation of complaints that have occurred in the past are more complex, there is a greater need for a support staff person to assist with the auditing and research necessary to find the facts.

Prepared by: Christina Ellingson
Division: Alaska Public Offices Commission
Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone: 907-334-1725
Date/Time: 3/31/08 2:00 P.M.
Date: 3/31/2008

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

April 3, 2008

SUBJECT: Constitutional issues of added conceptual amendments to amendment 25-LS1115/T.4 (CSHB 281(FIN); Work Order No. 25-LS1115\W)

TO: Representative Kevin Meyer
Co-Chair of the House Finance Committee
Attn: Suzanne Cunningham

FROM: Alpheus Bullard *AB*
Legislative Counsel

This memorandum accompanies the final of CSHB 281(FIN) that you requested.

The requested committee substitute incorporates a conceptually amended amendment that suffers from certain infirmities. These are listed in brief below.

1. The amendment now operates to require any poll mentioning (1) a candidate in a state or municipal election under AS 15.13 or (2) a political party in the sixty days before an election, to be followed by the statement "This poll is paid for by persons interested in the outcome of this election." The poll may relate to an election or it may not, consequently the provision's language implies a state of affairs that may or may not be true. A poll that mentions the Democratic or Republican party may have nothing to do with an upcoming state election. Without reaching the constitutional issues, this is problematic.

2. The disclosure requirement now operates to disclose all candidates, groups, nongroups, and persons paying for a poll without regard to amount donated. This creates a constitutional issue in addition to those that the original amendment posed.¹ In McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995) (court affirmed a plaintiff's right to disseminate an anonymous leaflet containing her views on a school tax referendum), the Supreme Court recognized an individual's right to a certain degree of anonymous speech. With the removal of the \$2000 threshold, or any monetary threshold

¹ The original amendment's inclusion could create a single-subject violation for the bill under the Alaska Constitution's art. XI, sec. 6 (the single-subject rule), and there is a constitutional question as to whether the state has a sufficient interest in the disclosure of speech (polling) that presents (1) little risk of quid pro quo corruption or the appearance of corruption and (2) is of limited informational value to the electorate.

Representative Kevin Meyer

April 3, 2008

Page 2

for that matter, the amendment denies an individual the right to any anonymity in conducting a poll, no matter how modest the poll may be.

3. The committee substitute now provides that the poll must "clearly identify the name of any candidate, group, nongroup entity, or person paying for the poll in whole or in part, followed by the words "This poll is paid for by persons interested in the outcome of this election." The "whole or part" of the clearly identified name of any candidate, group, nongroup entity, person paying for the poll? "[C]learly identified" and "in whole or in part" are not concepts that sit comfortably beside each other in this context. The intended purpose of this inclusion of "in whole or in part" is not clear to me. Does it modify "paying for"? If so, the "in whole or in part" would be better located after "paying." The amendment also requires the person conducting the poll to provide a "toll free or local phone number that can be called to obtain the information in this section." What information? The names that are already now required to be included in whole or in part in the poll? Is there other information? Whose telephone number? The Alaska Public Offices Commission, the pollster, or someone else? There may be constitutional issues here too, but it's hard to know because I don't understand what these changes are meant to do.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw

08-197.ljw

Enclosure

moved & withdrawn

3/31/08 82 ✓

3/31/08

AMENDMENT 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER

TO: CS HB 281 (JUD)

- 1 Page 2, line 2
- 2 Delete "six"
- 3 Insert "four"
- 4
- 5 Page 2, line 10
- 6 Delete "six"
- 7 Insert "four"
- 8
- 9 Page 2, line 16
- 10 Delete "five"
- 11 Insert "four"
- 12
- 13 Page 3, line 27
- 14 Delete "six"
- 15 Insert "four"
- 16
- 17 Page 3, line 23
- 18 Delete "five"
- 19 Insert "four"
- 20
- 21 Page 3, line 27
- 22 Delete "five"
- 23 Insert "four"
- 24

1 Page 4, line 8

2 Delete "five"

3 Insert "four"

4

5 Page 4, line 15

6 Delete "five"

7 Insert "four"

8

9 Page 4, line 23

10 Delete "five"

11 Insert "four"

12

13 Page 4, line 29

14 Delete "five"

15 Insert "four"

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

824

withdrawn
4/2/08

25-LS1115/T.1
Bullard
3/31/08

AMENDMENT 2

OFFERED IN THE HOUSE
TO: CSHB 281(JUD)

BY REPRESENTATIVE CHENAULT

- 1 Page 3, lines 15 - 18:
- 2 Delete all material.
- 3
- 4 Renumber the following bill sections accordingly.
- 5
- 6 Page 4, lines 17 - 19:
- 7 Delete all material.
- 8
- 9 Page 4, lines 25 - 27:
- 10 Delete all material.
- 11
- 12 Page 5, line 12:
- 13 Delete "sec. 6"
- 14 Insert "sec. 5"
- 15
- 16 Page 5, line 13:
- 17 Delete "sec. 6"
- 18 Insert "sec. 5"
- 19
- 20 Page 5, line 15:
- 21 Delete "sec. 7"
- 22 Insert "sec. 6"
- 23

- 1 Page 5, line 17:
- 2 Delete "sec. 7"
- 3 Insert "sec. 6"
- 4
- 5 Page 5, line 18:
- 6 Delete "sec. 7"
- 7 Insert "sec. 6"
- 8
- 9 Page 5, line 19:
- 10 Delete "sec. 8"
- 11 Insert "sec. 7"
- 12
- 13 Page 5, line 20:
- 14 Delete "sec. 8"
- 15 Insert "sec. 7"
- 16
- 17 Page 5, line 22:
- 18 Delete "sec. 9"
- 19 Insert "sec. 8"
- 20
- 21 Page 5, line 23:
- 22 Delete "sec. 9"
- 23 Insert "sec. 8"
- 24
- 25 Page 5, line 24:
- 26 Delete "sec. 10"
- 27 Insert "sec. 9"
- 28
- 29 Page 5, line 25:
- 30 Delete "sec. 10"
- 31 Insert "sec. 9"

1

2 Page 5, line 27:

3 Delete "sec. 11"

4 Insert "sec. 10"

5

6 Page 6, line 6:

7 Delete "Section 13"

8 Insert "Section 12"

9

10 Page 6, line 7:

11 Delete "sec. 14"

12 Insert "sec. 13"

Concept. Am #2 to Am #3

Hawker 2:51:16

adopted
4/2/00

any person paying for such a
poll wd be...

Passed as
Concept Am
A+

to Amend #3

Conceptual Amendment.

P.1 line 13, replace "contributes money to
pay for this poll."

" " this poll is paid for by
persons interested in the outcome of
this election."

~~If you would like~~
The person ~~conducting~~ conducting

the poll ~~will~~ must provide a toll free or
local phone number ~~to citizens~~ that
can be called to obtain the information
in this section."

Conceptual Amendment to AMENDMENT 3

50
Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: HB281

At Page 1, line 13,

Delete "contributed money to pay for this poll"

Insert

" "this poll is paid for by persons interested in the outcome of this election."

The person conducting the poll must provide a toll free or local phone number that can be called to obtain the information in this section."

501

Conceptual Amendment to AMENDMENT 3

Passed 20
Concept. Am #1 to
Am. #3 4/2/09

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: HB281

At Page 1, line 13,

Delete "contributed money to pay for this poll"

Insert

" "this poll is paid for by persons interested in the outcome of this election."

The person conducting the poll must provide a toll free or local phone number that can be called to obtain the information in this section."

SCV

Amended by
(Concept. Am #1 4/2/08)
+ Concept Am #2 moved

4/2/08

25-LS1115VT.4
Bullard
4/2/08

AMENDMENT 3

OFFERED IN THE HOUSE
TO: CSHB 281(JUD)

BY REPRESENTATIVES HAWKER,
THOMAS, AND GARA

1 Page 1, line 7, following "Code;":

2 insert "requiring the disclosure of the identity of certain candidates, groups,
3 nongroup entities, and persons paying for certain polls mentioning the name of a
4 political party or the names of certain candidates for state or municipal office;"

6 Page 1, following line 9:

7 Insert a new bill section to read:

8 "** Section 1. AS 15.13 is amended by adding a new section to read:

9 Sec. 15.13.092. Identification of certain polls. All opinion polls that mention
10 a candidate in an election occurring under this chapter or that mention a political party
11 in the 60 days preceding an election, must clearly identify the name of any candidate,
12 group, or nongroup entity paying for the poll and any person paying more than \$2,000
13 for the poll, followed by the words "contributed money to pay for this poll.""

15 Page 1, line 10:

16 Delete "Section 1"

17 Insert "Sec. 2"

19 Renumber the following bill sections accordingly.

21 Page 5, line 3:

22 Delete "sec. 2"

23 Insert "sec. 3"

- 1
- 2 Page 5, line 6:
 - 3 Delete "sec. 2"
 - 4 Insert "sec. 3"
 - 5
- 6 Page 5, line 7:
 - 7 Delete "sec. 2"
 - 8 Insert "sec. 3"
 - 9
- 10 Page 5, line 8:
 - 11 Delete "sec. 1"
 - 12 Insert "sec. 2"
 - 13
- 14 Page 5, line 9:
 - 15 Delete "sec. 1"
 - 16 Insert "sec. 2"
 - 17
- 18 Page 5, line 10:
 - 19 Delete "sec. 3"
 - 20 Insert "sec. 4"
 - 21
- 22 Page 5, line 11:
 - 23 Delete "sec. 3"
 - 24 Insert "sec. 4"
 - 25
- 26 Page 5, line 12:
 - 27 Delete "sec. 6"
 - 28 Insert "sec. 7"
 - 29
- 30 Page 5, line 13:
 - 31 Delete "sec. 6"

- 1 Insert "sec. 7"
- 2
- 3 Page 5, line 15:
- 4 Delete "sec. 7"
- 5 Insert "sec. 8"
- 6
- 7 Page 5, line 17:
- 8 Delete "sec. 7"
- 9 Insert "sec. 8"
- 10
- 11 Page 5, line 18:
- 12 Delete "sec. 7"
- 13 Insert "sec. 8"
- 14
- 15 Page 5, line 19:
- 16 Delete "sec. 8"
- 17 Insert "sec. 9"
- 18
- 19 Page 5, line 20:
- 20 Delete "sec. 8"
- 21 Insert "sec. 9"
- 22
- 23 Page 5, line 22:
- 24 Delete "sec. 9"
- 25 Insert "sec. 10"
- 26
- 27 Page 5, line 23:
- 28 Delete "sec. 9"
- 29 Insert "sec. 10"
- 30
- 31 Page 5, line 24:

- 1 Delete "sec. 10"
- 2 Insert "sec. 11"
- 3
- 4 Page 5, line 25:
 - 5 Delete "sec. 10"
 - 6 Insert "sec. 11"
 - 7
- 8 Page 5, line 27:
 - 9 Delete "sec. 11"
 - 10 Insert "sec. 12"
 - 11
- 12 Page 6, line 6:
 - 13 Delete "Section 13"
 - 14 Insert "Section 14"
 - 15
- 16 Page 6, line 7:
 - 17 Delete "sec. 14"
 - 18 Insert "sec. 15"

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(5) "electioneering communication" means a communication that

(A) directly or indirectly identifies a candidate;

(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and

(C) occurs within the 30 days preceding a general or municipal election;

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

(7) "express communication" means a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate;

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

(9) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(10) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate;

(11) "individual" means a natural person;

(12) "issues communication" means a communication that

(A) directly or indirectly identifies a candidate; and

(B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.

(13) "nongroup entity" means a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

(14) "person" has the meaning given in AS 01.10.060, and includes a labor union, nongroup entity, and a group;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

(16) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation. (§ 24 ch 48 SLA 1993; am § 39 ch 21 SLA 2000; am §§ 25, 26 ch 1 SLA 2002; am § 7 ch 3 SLA 2002; am §§ 8, 9 ch 1 TSSLA 2002; am §§ 18, 19 ch 10 SLA 2003; am § 2 ch 90 SLA 2006)

Revisor's notes. — Paragraph (13) was enacted as 12 and paragraphs (11), (5), (7), and (12) were re-enacted as (11)-(16) & re-numbered in 2002 to retain alphabetical order.

Effect of amendments. — The 2000 amendment, effective April 25, 2000, substituted "house district" for "election district" in subparagraph (10)(B).

The first 2002 amendment, effective April 16, 2002, added paragraph (13) and in paragraph (14) inserted "nongroup entity."

The second 2002 amendment, effective April 16, 2002, in subparagraph (1-B), in item (i) inserted "political party," and deleted "but it does not include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage." In the end, deleted former item (ii), which read "services provided by an accountant or other person to prepare reports and statements required by this chap-

ter; redesignated former item (iii) as item (ii); added paragraph (15) and (16) and made a stylistic change.

The third 2002 amendment, effective June 26, 2002, added subparagraph (6)(C) and paragraphs (6), (5), (7), and (12).

The 2003 amendment, effective September 14, 2003, rewrote paragraphs (7) and (15).

The 2006 amendment, effective October 11, 2006, added subparagraph (4)(B)(iv) and made related stylistic changes.

Opinions of attorney general. — The statutory limit under AS 15.13.079 as is applicable to "control groups" under former AS 15.13.130. Exempting such groups from the contribution limit would seriously undermine the statute's primary purpose of deterring the buying of elections and the undue influence of large contributors. June 15, 1987. Op. Atty Gen.

NOTES TO DECISIONS

Constitutionality. — Under the First Amendment, AS 15.13.100(5)(B) was unconstitutional to the extent that it limited the voluntary right of professional services by individuals, but the statute was constitutional as to the ban on the provision of professional services by corporations. *Laborers v. Alaska*, 401 F.3d 1097, 900 (9th Cir. 2004).

Applicable public finance law. AS 15.13.090(c) (corporations), AS 15.13.090(d) (associations). First Amendment rights of corporations are not unique situations by

virtue of overboard either facially or as applied and the reporting and disclosure provisions are reasonable and serve a significant state interest. *Alaska Right to Life v. Conroy*, 411 F.3d 772, 9th Cir. 2006.

Applied in *Laborers v. Alaska*, 401 F.3d 1097, 900 (9th Cir. 2004).

Quoted in *State v. Alaska Civil Liberties Union*, 975 P.2d 597, Alaska 1999, cert. denied, 528 U.S. 1151, 120 S. Ct. 1156, 175 L. Ed. 2d 1060, 2000.

Cited in *Laborers Party of Alaska v. State*, 201 P.3d 616, Alaska 2001.

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A Communication From
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Sponsor Statement for Version 25-LS115\T

CSHB 281(JUD): Campaign Finance Complaints

House Bill 281 strengthens oversight of Alaska's ethics laws by allowing the state's watchdog agencies more time to receive complaints and properly investigate alleged violations. It also establishes an adequate time period for the retention of records related to those complaints.

This act covers the four areas of oversight assigned to the Alaska Public Offices Commission and the Select Committee on Legislative Ethics: campaign disclosures (AS 15.13), lobbying (AS 24.45), legislative financial disclosure (AS 24.60) and public official financial disclosure (AS 39.50).

HB 281 creates a standard statute of limitations of five years for complaints that can be filed with APOC and the Select Committee. It also codifies a period of six years for the retention of records required under these sections.

By allowing a reasonable amount of time to receive complaints and conduct investigations, HB 281 helps APOC and the Select Committee accomplish their missions of ensuring the public's confidence in elected and appointed officials, and preserving the integrity of the legislative process.

This bill is an important follow-up to the recent efforts to shore up the Foundation of Trust between Alaskans and their government, which took a big step forward last year when the governor and the legislature passed a landmark ethics bill.

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MEMORANDUM

April 3, 2008

SUBJECT: Constitutional issues of added conceptual amendments to amendment 25-LS1115/T.4 (CSHB 281(FIN); Work Order No. 25-LS1115\W)

TO: Representative Kevin Meyer
Co-Chair of the House Finance Committee
Attn: Suzanne Cunningham

FROM: Alpheus Bullard *AB*
Legislative Counsel

This memorandum accompanies the final of CSHB 281(FIN) that you requested.

The requested committee substitute incorporates a conceptually amended amendment that suffers from certain infirmities. These are listed in brief below.

1. The amendment now operates to require any poll mentioning (1) a candidate in a state or municipal election under AS 15.13 or (2) a political party in the sixty days before an election, to be followed by the statement "This poll is paid for by persons interested in the outcome of this election." The poll may relate to an election or it may not, consequently the provision's language implies a state of affairs that may or may not be true. A poll that mentions the Democratic or Republican party may have nothing to do with an upcoming state election. Without reaching the constitutional issues, this is problematic.
2. The disclosure requirement now operates to disclose all candidates, groups, nongroups, and persons paying for a poll without regard to amount donated. This creates a constitutional issue in addition to those that the original amendment posed.¹ In McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995) (court affirmed a plaintiff's right to disseminate an anonymous leaflet containing her views on a school tax referendum), the Supreme Court recognized an individual's right to a certain degree of anonymous speech. With the removal of the \$2000 threshold, or any monetary threshold

¹ The original amendment's inclusion could create a single-subject violation for the bill under the Alaska Constitution's art. XI, sec. 6 (the single-subject rule), and there is a constitutional question as to whether the state has a sufficient interest in the disclosure of speech (polling) that presents (1) little risk of quid pro quo corruption or the appearance of corruption and (2) is of limited informational value to the electorate.

Representative Kevin Meyer

April 3, 2008

Page 2

for that matter, the amendment denies an individual the right to any anonymity in conducting a poll, no matter how modest the poll may be.

3. The committee substitute now provides that the poll must "clearly identify the name of any candidate, group, nongroup entity, or person paying for the poll in whole or in part, followed by the words "This poll is paid for by persons interested in the outcome of this election." The "whole or part" of the clearly identified name of any candidate, group, nongroup entity, person paying for the poll? "[C]learly identified" and "in whole or in part" are not concepts that sit comfortably beside each other in this context. The intended purpose of this inclusion of "in whole or in part" is not clear to me. Does it modify "paying for"? If so, the "in whole or in part" would be better located after "paying." The amendment also requires the person conducting the poll to provide a "toll free or local phone number that can be called to obtain the information in this section." What information? The names that are already now required to be included in whole or in part in the poll? Is there other information? Whose telephone number? The Alaska Public Offices Commission, the pollster, or someone else? There may be constitutional issues here too, but it's hard to know because I don't understand what these changes are meant to do.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw

08-197.ljw

Enclosure

FISCAL NOTE

Replaced

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 281(STA)
(H) Publish Date: 1/22/08

Identifier (file name): HB281-DOA-APOC-1-11-08
Title: "An Act extending the statute of limitations"

Dept. Affected: Administration
RDU: AK Public Offices Commission
Component: AK Public Offices Commission

Sponsor: Lynn and Galto
Requestor: House State Affairs

Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	156.0	0.0	156.0	156.0	156.0	156.0	156.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	14.5	0.0	14.5	14.5	14.5	14.5	14.5
Supplies	0.7	0.0	0.7	0.7	0.7	0.7	0.7
Equipment	3.1	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	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	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	174.3	0.0	171.2	171.2	171.2	171.2	171.2

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

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

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	174.3	0.0	156.0	156.0	156.0	156.0	156.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	174.3	0.0	156.0	156.0	156.0	156.0	156.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time	2.0	0.0	2.0	2.0	2.0	2.0	2.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

This bill will expand the statute of limitations for filing complaints under the campaign disclosure law.

We are requesting funding for an additional investigator position, a paralegal position, and associated costs that will be dedicated to auditing and enforcement. Investigations into allegations of violations that occurred years ago are more complex. It is more difficult to establish facts and find and question witnesses.

Prepared by: Brooke Miles
Division: Alaska Public Offices Commission
Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone 907-334-1726
Date/Time 1/11/2008 3:05 p.m.
Date 1/11/2008

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A Communication From
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Sectional Analysis for CSHB 281(JUD) Campaign Finance Complaints, Version 25-LS1115T

- Section 1** Adds a new section, **Sec. 15.15.111**, creating a retention period of six years for records to be kept by each candidate, group, nongroup entity, or person required to report under this chapter.
- Section 2** Amends **AS 15.13.380(b)**, increasing the time period allowed for filing a complaint for an alleged campaign finance violation from one year to five years. It also eliminates the time limitations of this subsection on proceedings against a person who "intentionally prevents discovery" of a violation of this chapter.
- Section 3** Amends **AS 24.45.111(a)**, requiring that "an employer, retainer, or contractor of a lobbyist," in addition to a lobbyist, retain records required under this section. It also increases the retention period from one year to six years.
- Section 4** Amends **AS 24.45.131(a)(2)**, allowing any "person," not just a "qualified voter," to file a complaint with the commission under this chapter.
- Section 5** Adds a new section, **AS 24.45.131(d)**, prohibiting commission members and staff who file complaints from participating in any commission proceeding related to the complaint.
- Section 6** Adds a new section, **AS 24.45.135**, allowing "a person," as well as a commission member or staffer, to file a complaint alleging a violation of **AS 24.45.121-24.45.171** has occurred or is occurring. The complaint must be filed within five years after the date of the alleged violation.

(more)

Sectional Analysis for CSHB 281(JUD)
Campaign Finance Complaints, Version 25-LS1115VT

- Section 7** Amends AS 24.60.170(a), increasing the time limitation on complaints alleging a violation of this section from two years to five years. It also increases the time limitation for investigation of complaints against a former legislator from one year to five years.
- Section 8** Adds a new section, Sec. 24.60.255, allowing a person, as well as a member of the Alaska Public Office Commission or a member of its staff, to file a written complaint alleging a violation of AS 24.60.200-24.60.260 has occurred or is occurring . The complaint must be filed within five years after the date of the alleged violation.
- Section 9** Adds a new section, AS 39.50.055, allowing a person, as well as a member of the Alaska Public Office Commission or a member of its staff, to file a written complaint alleging a violation of this chapter has occurred or is occurring . The complaint must be filed within five years after the date of the alleged violation. An APOC member or staffer who files the complaint may not participate in any proceeding of the commission relating to the complaint.
- Section 10** Amends AS 39.50.100, creating a statute of limitation of five years from the date of the alleged violation for a complaint to be filed under this section.
- Section 11** Repeals AS 15.56.130 to create a statute of limitation of five years for alleged violations that could be prosecuted as a criminal offense.
- Section 12** Establishes applicability for the sections that have been amended and created in this act.
- Section 13** Allows the Alaska Public Offices Commission to immediately adopt regulations necessary to implement changes made by this act, in accordance with the Administrative Procedure Act, but not before Jan. 1, 2009.
- Section 15** Allows Section 14 to take effect immediately.
- Section 16** Except as provided in Section 15, allows this Act to take effect on Jan. 1, 2009.

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A Communication From
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HB 281 Brief Explanation of Changes From original version E to (STA) version K to (JUD) version T

Title Changes

The original title in version E referred to extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission under Title 15; the House State Affairs Committee version K expanded the title to also include records retention (as well as the statute of limitations) and complaints with the Select Committee on Legislative Ethics (as well as APOC) under titles 15, 24 and 39; the House Judiciary Committee version T tightened the title to the specific sections of the Act (as opposed to simply referring to APOC and the Select Committee).

Section Changes

The original version E included only one section (other than an applicability section) extending the statute of limitations from one year to five years for filing an administrative complaint with the Alaska Public Offices Commission.

The latest version T now includes many sections creating a uniform standard of five years for the statute of limitations for campaign finance and ethics complaints that fall under the jurisdiction of APOC and the Select Committee on Legislative Ethics: campaign disclosures (AS 15.13), lobbying (AS 24.45), legislative financial disclosure (AS 24.60) and public official financial disclosure (AS 39.50).

A more detailed explanation of changes is available, if necessary.

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HB 281 Explanation of Changes

From CSHB 281 (STA) (25-LS1115\K) to CSHB (JUD) (25-LS1115\T)

Title Change: The title was changed in Version T to make it tighter.

Deleted the Title for HB 281 (STA), Version K, which states:

"An Act relating to the Alaska Public Offices Commission; relating to the Select Committee on Legislative Ethics; relating to public officials' financial disclosure; relating to certain records required to be kept by businesses, persons, or groups that provide certain services, facilities, or supplies to a candidate or group involved in a state election; relating to records of the reports required of candidates, groups, nongroup entities, or persons under AS 15.13; relating to records required to be kept by certain lobbyists and persons who employ, retain, or contract for services of lobbyists; and providing for an effective date."

Inserted new Title for HB 281 (JUD), Version T, which states:

"An Act relating to the preservation of records required to be kept by candidates, groups, nongroup entities, or persons under AS 15.13; relating to records required to be kept by certain lobbyists and persons who employ, retain, or contract for services of lobbyists; relating to complaints filed with the Select Committee on Legislative Ethics; relating to administrative complaints filed with the Alaska Public Offices Commission; relating to the statute of limitations for civil actions brought under AS 39.50; extending the statute of limitations for prosecutions of violations of the Alaska Election Code; and providing for an effective date."

Version T deleted Sec. 1 from Version K, AS 15.13.040.

Other Changes in Version T:

Sec. 1: Changed AS 15.13.111, on page 2, lines 7-11, to add a new subsection (c).

(more)

Sec. 2: Changed AS 15.13.380(b) on page 2, lines 13-14 to delete "member of the commission, the commission's executive director, or a registered voter" and insert "person."

Sec. 4: Changed AS 24.45.131(a)(2) on page 3, line 10 to delete "registered voter" and insert "person."

Sec. 5: Changed AS 24.45.131(d) on page 3, lines 16-17 to delete "or a member of its staff" and "or member of its staff."

Sec 6: Changed AS 24.45.135(a) on Page 3, line 20 to delete "registered voter, including a member of the commission or the commission's executive director," and insert "person."

Sec. 8: Changed AS 24.60.255(a) on page 4, line 12 to delete "registered voter, including a member of the commission or the commission's executive director," and insert "person."

Sec. 8: Changed AS 24.60.255(c) on page 4, lines 17-18 to delete "or a member of its staff" and "or member of its staff."

Sec. 9: Changed AS 39.50.055(a) on page 4, line 21 to delete "registered voter, including a member of the commission or the commission's executive director," and insert "person."

Sec. 9: Changed AS 39.50.055(c) on page 4, lines 25-26 to delete "or a member of its staff" and "or member of its staff."

Sec. 11: Added a new section on page 4, line 31 repealing AS 15.56.130.

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HB 281 Explanation of Changes From CSHB 281 (25-LS1115\E) to CSHB (STA) (25-LS1115\K)

Title Change: The title was expanded from Version E.

Deleted the title for HB 281, Version E, which states:

"An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns."

Inserted the Title for HB 281 (STA), Version K, which states:

"An Act relating to the Alaska Public Offices Commission; relating to the Select Committee on Legislative Ethics; relating to public officials' financial disclosure; relating to certain records required to be kept by businesses, persons, or groups that provide certain services, facilities, or supplies to a candidate or group involved in a state election; relating to records of the reports required of candidates, groups, nongroup entities, or persons under AS 15.13; relating to records required to be kept by certain lobbyists and persons who employ, retain, or contract for services of lobbyists; and providing for an effective date."

Other Changes in Version K:

Sec. 1: Added a section on page 1, lines 10-12 and page 2, lines 1-7, to amend AS 15.13.040(f) codifying a period of six years for retention of records by those covered under this chapter.

Sec. 2: Added a section on page 2, lines 8-15, to create AS 15.13.111 to codify a period of six years for retention of records for candidates for office covered under this chapter.

Sec. 3: Changed AS 15.13.380(b) on page 2, line 18 to delete "person" and insert "registered voter."

(more)

Sec. 3: Changed AS 15.13.380(b) on page 2, lines 24-26 to insert: "The time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter."

Sec. 4: Added a section to amend AS 24.45.111(a) on page 2, lines 28-29, to insert "or as a person who employs, retains, or contracts for services of a lobbyist."

Sec. 5: Added a section to amend AS 24.45.131(a)(2) on page 3, line 14, to delete "qualified" and insert "registered."

Sec. 6: Added a section to create AS 24.45.131(d) on page 3, lines 19-22, to prohibit APOC staff or commissioners who file complaints from participating in any proceeding before the commission relating to that complaint.

Sec. 7: Added a section to create AS 24.45.135 on page 3, lines 23-29, to codify who can file a complaint under this chapter. It also includes conforming language on the five-year statute of limitation.

Sec. 8: Added a section to amend AS 24.60.170(a) on page 4, lines 1 and 13, to delete "two" and insert "five" years as the statute of limitation for complaints of alleged violations under this chapter.

Sec. 9: Added a section to create 24.60.255 on page 4, lines 16-25, to codify who can file a complaint under this chapter. It also includes conforming language on the five-year statute of limitations and prohibits APOC members or staff who file complaints from participating in any proceeding before the commission relating to that complaint.

Sec. 10: Added a section to create 39.50.055 on page 4, lines 26-31, and page 5, lines 1-4, to codify who can file a complaint under this chapter. It also includes conforming language on the five-year statute of limitations and prohibits APOC members or staff who file complaints from participating in any proceeding before the commission relating to that complaint.

Sec 11: Added a section to amend AS 39.50.100 on page 5, line 6, to delete "qualified" and insert "registered."

Sec 12: Added a section to create AS 39.50.100(b) on page 5, lines 9-11, to create a five-year statute of limitations under this chapter.

Sec. 13: Added a section on applicability of various sections of this act.

Sec. 14-16: Added these sections to cover implementation and effective dates.

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MEMORANDUM

January 24, 2008

SUBJECT: Statute of Limitations for Election Offenses (amendment K.2 to CSHB 281(STA) (Work Order No. 25-LS1115\K.2)

TO: Representative Bob Lynn

FROM: Gerald P. Luckhaupt
Legislative Counsel *ERL*

I was requested to take a look at Amendment K.2 dealing with the statute of limitations for election offenses as the amendment deals with general issues of criminal law. The amendment changes AS 15.56.130 by expanding the statute of limitations for election offenses from one year after the date of the election to five years after the commission of the offense. Five years is also the general statute of limitations for offenses contained in AS 12.10.010(b)(2). AS 12.10 also contains other provisions dealing with when the statute of limitation begins¹ and how the statute of limitation runs,² and provisions that stay the running of the limitation period when the offender has fled the jurisdiction³ and expand the limitation period when the offender is a public officer or employee who has committed misconduct in office.⁴

Because the amendment makes the statute of limitation for AS 15 offenses the same as the general criminal statute of limitation in AS 12.10.010 there is no need for AS 15.56.130 and the provision should be repealed if the legislature wants a general five year statute of limitations to apply. Allowing the provision to remain will only engender uncertainty and encourage litigation about how and whether the other provisions of AS 12.10 apply to AS 15 offenses.

GPL:lmb
08-001.lmb

¹ AS 12.10.030(a)

² AS 12.10.030(b)

³ AS 12.10.040

⁴ AS 12.10.020(b) expands the statute of limitation in such cases by up to three years by allowing prosecution up to one year after discovery of the offense.

Table 1: Selected States' Statutes of Limitations for Filing Complaints Related to Campaign Finance Violations

State	Citation	Time Limit for Filing Complaint
Alaska	AS § 15.13.380	One year from the date of the violation.
Colorado	CRS § 16-5-401	Three years from the date of the election in which the violation took place.
Florida	FS § 105.25	Two years from the date of the violation.
Georgia	OCGA § 21-5-13	Within three years of a violation involving any person elected to serve for a term of two years; within five years of a alleged violation involving any person elected to serve for a term of four or more years.
Minnesota	MS § 211B.32	Within one year of the violation, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the office within one year after the violation was discovered.
Ohio	ORC § 3517.157	Within two years of the violation, except that if the act or failure to act involves fraud, concealment, or misrepresentation and was not discovered during that two-year period, a complaint may be filed within one year after discovery of such act or failure to act.
Texas	Texas Ethics Comm. Rule § 12.5	Violation must have occurred within three years of the date the complaint is filed or the date the commission votes to initiate a preliminary review of a matter.
Washington	RCWA § 42.17.410	Five years from the date of the violation occurred.
<p>Notes: With the exception of Texas, the states listed are those with statutory time limitations for filing complaints that we were readily able to locate. We located the rules of the Texas Ethics Commission through a statutory reference. We believe this table is best interpreted as a sample of states' positions on the topic.</p> <p>Sources: Lexis online database of state statutes. Texas Ethics Commission website, http://www.ethics.state.tx.us/legal/rules.htm</p>		

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Definitions related to who can file a complaint regarding alleged violations under sections 15.13, 24.45, 24.60 and 39.50

REGISTERED VOTER

Chapter 15.07. REGISTRATION OF VOTERS

Sec. 15.07.010. Who may vote.

The precinct election officials at any election shall allow a person to vote whose name is on the official registration list for that precinct and who is qualified under AS 15.05. A person whose name is not on the official registration list shall be allowed to vote a questioned ballot.

Sec. 15.07.020. Registration as a prerequisite. [Repealed, Sec. 231 ch 100 SLA 1980].

Repealed or Renumbered

Sec. 15.07.030. Who may register.

(a) A person who has the qualifications of a voter as set out in AS 15.05.010 (1) - (3) or who will have the qualifications at the succeeding primary or general election is entitled to be registered as a voter in the precinct in which the person resides.

(b) A person qualified under AS 15.05.011 to vote by absentee ballot in a federal election is entitled to be registered as a voter in the house district in which the person resided immediately before departure from the United States.

QUALIFIED VOTER

Sec. 15.60.010. Definitions.

In this title, unless the context otherwise requires,

(30) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, Sec. 2, of the state constitution and AS 15.05.030 ;

(continued on next page)

Sec. 15.05.030. Loss and restoration of voting rights.

(a) A person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote in a state, federal, or municipal election from the date of the conviction through the date of the unconditional discharge of the person. Upon the unconditional discharge, the person may register under AS 15.07.

(b) The commissioner of corrections shall establish procedures by which a person unconditionally discharged is advised of the voter registration requirements and procedures.

Chapter 15.05. QUALIFICATION OF VOTERS

Sec. 15.05.010. Voter qualification.

A person may vote at any election who

(1) is a citizen of the United States;

(2) is 18 years of age or older;

(3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and

(4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.

PERSON

Sec. 15.13.400. Definitions.

In this chapter,

(14) "person" has the meaning given in AS 01.10.060, and includes a labor union, nongroup entity, and a group;

Sec. 01.10.060. Definitions.

(a) In the laws of the state, unless the context otherwise requires,

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

LEGAL SERVICES

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MEMORANDUM

January 18, 2008

SUBJECT: CSHB 281(STA) - Drafting issues

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the State Affairs Committee Substitute for House Bill 281 you requested.

The substitute you requested contained a provision amending AS 24.60.170(a). The amendment requires the committee to consider a complaint alleging a violation of AS 24.60 if the alleged violation occurred within five years before the date the complaint is filed. AS 24.60.170(n) requires that the committee dismiss a complaint filed against a person employed by the legislative branch if the person terminates legislative service. Members of the legislature may also not be in office when the complaint is filed.

You have asked that I add the sentence "[t]he time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter" (from AS 24.60.170(a) to AS 15.13.380(b)). As noted above, AS 24.60.170(a) governs complaints filed with the Select Committee on Legislative Ethics while AS 15.13.380(b) speaks to administrative complaints filed with the Alaska Public Offices Commission. I have added the sentence, but please be aware that it is unclear what the legal effect of its addition to AS 15.13.380(b) might be. The history of AS 24.60.170(a) is silent as to any previous interpretation and the sentence does not invoke any legal standard of proof, creating the possibility that any person who filed incorrectly could be held to have "*intentionally prevent[ed] discovery of a violation of th[e] chapter.*" Such an interpretation would operate to dispense with the statute of limitations for the filing of administrative complaints altogether. You might consider amending the sentence to read "*[t]he time limitations of this subsection do not bar proceedings against a person who the commission finds willfully prevents discovery of a violation of this chapter, such a finding by the commissioner must be based on clear and convincing evidence.*"

Representative Bob Lynn
January 18, 2008
Page 2

The provisions of the substitute you requested would have become retrospectively applicable to alleged violations and records required to be retained. In this draft the applicability of these provisions is not retroactive.

Your draft serves to increase the statute of limitations for the filing of administrative complaints with the Alaska Public Offices Commission. Please be aware that these extended statutes of limitation for the filing of complaints alleging violations of AS 15.13 do not serve to amend the existing law pertaining to criminal prosecution of related election law violations. AS 15.56.130 provides:

A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within *one year* after the date of the election in connection with which the offense is alleged to have been committed (emphasis added).

If you would like this provision amended in a subsequent draft, or if you have any questions, please do not hesitate to contact me.

TLAB:med
08-021.med

Enclosure

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol, Juneau, AK 99801
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January 16, 2008

Memorandum

TO: Senator Bill Wielechowski

FROM: Daniel Lesh
Legislative Analyst

RE: States with Filing Limits of Four Years or Greater Regarding Campaign Finance Violations
LRS 08-104

You asked for examples of states that allow campaign finance complaints regarding state election campaigns to be filed up to four years or greater after the violation has taken place. A previous report by this agency identified the following examples:

- 1) Georgia – OCGA § 21-5-13 – Within three years of a violation involving any person elected to serve for a term of two years; within five years of a alleged violation involving any person elected to serve for a term of four or more years.
- 2) Washington – RCWA § 42.17.410 – Five years from the date of the violation.

In the time allotted, we identified an additional six examples by speaking with staff attorneys at the relevant elections commissions in the following states:

- 3) Arkansas – Four years.
- 4) California – Five years for administrative sanctions and four years for civil sanctions.
- 5) Connecticut – No limit; however, by practice, the Connecticut Elections Enforcement Commission generally limits their investigations to complaints regarding violations that occurred within the previous two election cycles.
- 6) Hawaii – No limit.
- 7) Massachusetts – No limit.
- 8) New Jersey – No limit in statute; however, after four years, candidates and committees are not required to maintain records and investigations are not generally conducted.

I hope this is useful. Please contact us if you require additional information.

CSHB 281(STA)

Relevant Statutes

Campaign Finance Complaints

Sec. 15.14.040(f) Contributions, expenditures, and supplying of services to be reported.

Sec. 15.13.380(b) Violations; limitations on actions.

Sec. 24.60.170(a) Proceedings before the committee; limitations.
Recommendation to add to Sec. 15.13.380(b)

Sec. 24.45.111(a) Preservation of records.

Sec. 24.45.131 Examination of statements, reports.

Sec. 24.60.170 Proceedings before the committee. Limitations.

Sec. 39.50.100 Enforcement by private citizens.

Sec. 15.56.130 Time limitation.

Definitions related to who can file a complaint (registered voter, qualified voter and person) regarding alleged violations under sections AS 15.13, AS 24.45, AS 24.60 and AS 39.50.

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

Sec. 15.13.380. Violations; limitations on actions.

(a) Promptly after the final date for filing statements and reports under this chapter, the commission shall notify all persons who have become delinquent in filing them, including contributors who failed to file a statement in accordance with AS 15.13.040, and shall make available a list of those delinquent filers for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(b) A member of the commission, the commission's executive director, or a person who believes a violation of this chapter or a regulation adopted under this chapter has occurred or is occurring may file an administrative complaint with the commission within one year after the date of the alleged violation. If a member of the commission has filed the complaint, that member may not participate as a commissioner in any proceeding of the commission with respect to the complaint. The commission may consider a complaint on an expedited basis or a regular basis.

Sec. 15.56.130. Time limitation.

A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed.

To incorporate at the end of 15.13.380(b):

Sec. 24.60.170. Proceedings before the committee; limitations.

(a) The committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within two years before the date that the complaint is filed with the committee and, when the subject of the complaint is a former member of the legislature, the complaint is filed within one year after the subject's departure from the legislature. The committee may not consider a complaint filed against all members of the legislature, against all members of one house of the legislature, or against a person employed by the legislative branch of government after the person has terminated legislative service. However, the committee may reinstitute proceedings concerning a complaint that was closed because a former employee terminated legislative service or because a legislator left the legislature if the former employee or legislator resumes legislative service, whether as an employee or a legislator, within two years after the alleged violation. The time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter.

Sec. 24.45.111. Preservation of records.

(a) A person required to register or report as a lobbyist shall preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the reports required to be made and filed under this chapter for a period of at least one year from the date of the filing of the report containing these items. These accounts, bills, receipts, books, papers, and other documents shall be made available for inspection by the commission, or members of its staff, at any time. If a lobbyist is required under the terms of the lobbyist's employment contract to turn any records over to the employer, responsibility for the preservation of these records under this section rests with the employer.

Sec. 24.45.131. Examination of statements, reports.

(a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may thereafter conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

Sec. 24.60.170. Proceedings before the committee; limitations.

(a) The committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within two years before the date that the complaint is filed with the committee and, when the subject of the complaint is a former member of the legislature, the complaint is filed within one year after the subject's departure from the legislature. The committee may not consider a complaint filed against all members of the legislature, against all members of one house of the legislature, or against a person employed by the legislative branch of government after the person has terminated legislative service. However, the committee may reinstitute proceedings concerning a complaint that was closed because a former employee terminated legislative service or because a legislator left the legislature if the former employee or legislator resumes legislative service, whether as an employee or a legislator, within two years after the alleged violation. The time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter.

Sec. 39.50.100. Enforcement by private citizens.

A qualified Alaska voter may bring a civil action to enforce any of the sections of this chapter.

Sec. 15.56.130. Time limitation.

A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed.



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Campaign law violations past APOC's scope

FBI investigations show state agency needs more authority, legislators say

An FBI investigation into corruption in the Alaska Legislature has turned up numerous instances of violations of the state's campaign finance laws that will not be prosecuted.

Those implicated, including former VECO Corp. owner Bill Allen, won't even be investigated, said Brooke Miles, executive director of the Alaska Public Offices Commission.

The Alaska Legislature shortened the statute of limitations for pursuing such campaign finance violations to one year, according to Miles.



"The bundling of campaign donations, the giving of illegal campaign contributions ... all those things are beyond our scope because of the statute of limitations," Miles said.


Miles said she plans to seek more authority for the commission to go back and prosecute violations.

"By the time I read them (in the federal indictment) they were already beyond the statute of limitations," she said.

One allegation made in court filings so far was that contributions were made to one person to be passed on to another to mislead APOC about where the money was coming from. Another was that VECO reimbursed a top executive's campaign donations made at Allen's behest.

Former House Minority Leader Ethan Berkowitz, D-Anchorage, an outspoken critic of the ethical standards of the Legislature, said he didn't know how the statute of limitations was shortened, but said there were efforts at about that time to weaken oversight of campaign finance laws.

"I know there were efforts around then to gut APOC," he said.



Miles said when the commission meets in Anchorage on Thursday and Friday, she'll request a longer time to go after violations.

"I intend to recommend the commission seek to revise that statutory language to four years," she said.

She said she would only ask for four years because memories faltered and obtaining documents becomes more difficult as time passes.

House Rules Committee Chairman Rep. John Coghill, R-North Pole, was one of the leaders in ethics reform in the Legislature last year. He said he's be open to that request, after what the public has learned from the FBI investigation.

"I think we should be able to give a good rational answer about why it is so short," Coghill said of the statute of limitations.

He said it initially appeared to him that the minimum time period should be a two-year election cycle, and perhaps longer.

Berkowitz said he'll support a longer statute of limitations, but APOC may need more done to it than that.

"I think there needs to be an audit of APOC's functions," he said. "I think we need to see if they have the statutory authority and the resources to do their job."

Coghill said the ongoing corruption trials indicate that enforcement of campaign finance rules in the state need to be more proactive, but said the commission could do that.

"Brooke (Miles) has said 'give me the tools and I'll be proactive,'" Coghill said.

Gov. Sarah Palin included money for an APOC investigator in her first budget as governor, and the Legislature approved the expenditure.

Miles recently announced that former Alaska journalist Jeff Berliner had been hired to fill that job.

Berkowitz said that was not enough.

"I know people are touting the fact that they've added an investigator, but all they've done is put an investigator back in after they took it out," he said.

• Contact Pat Forgey at 523-2250 or patrick.forgey@juneauempire.com.

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APOC investigating VECO



by Steve MacDonald
Monday, Sept. 24, 2007

ANCHORAGE, Alaska -- The Alaska Public Offices Commission, the agency that enforces state campaign finance laws, says it will investigate a claim by the former owner of VECO Corp. that it bought dozens of public opinion polls for political candidates.

APOC says it will investigate a claim by the former owner of VECO Corp. that it bought dozens of public opinion polls for political candidates. (KTUU-TV)

VECO apparently paid for the polls but never reported the transactions on campaign disclosure forms, a violation of state regulations.



APOC Director Brooke Miles said it's the commission's goal to investigate the facts surrounding the allegations. (Scott Jensen/KTUU-TV)

During the Pete Kott bribery trial, former VECO owner Bill Allen claimed his company bought a public opinion poll for Kott's re-election campaign.

That revelation prompted a question from political watchdog Ray Metcalfe as to how many other candidates received the gift of a free poll.

"I think that our goal is to establish as many facts as we can regarding the polls that have been alleged that VECO undertook on behalf of candidates," APOC Director Brooke Miles said.



The claim prompted a question from political watchdog Ray Metcalfe as to how many other candidates received the gift of a free poll. (KTUU-TV)

This morning, the Alaska Public Offices Commission held an emergency meeting.

It has decided to investigate whether any other candidates got the same kind of help from VECO or any other company.

But the commission's investigation will have its limits.

"We can't go back further than a year for the purpose of imposing a civil penalty, but for the purpose of determining what may have gone wrong with this whole polling information issue, I think we are free to go back further than that if we wish," Miles said.



Jeff Berliner is APOC's new investigator, hired by the Palin Administration. (Scott Jensen/KTUU-TV)

That's because in 2003 the Legislature, at the urging of then Gov. Frank Murkowski, reduced the statute of limitations for how far back APOC could go when investigating a campaign violation. It was slashed from four years to one.

During his time in office, Murkowski made APOC a prime target for cutbacks.

He got rid of the agency's lone investigator, along with a paralegal and another staffer, but that now has begun to change.



Assistant Attorney General Dave Jones says stricter regulations for candidates will make contributions more transparent. (Scott Jensen/KTUU-TV)

Jeff Berliner is APOC's new investigator, hired by the Palin Administration.

"Everybody is suspicious now. Alaska is even in the national spotlight and there is a climate of distrust and I hope we can turn that around," Berliner said.

And that will take time, but the Palin Administration believes beefing up APOC and the new ethics regulations put into place this summer will help.

Assistant Attorney General Dave Jones says stricter regulations for candidates will make contributions more transparent.

"I think the electronic filing requirement will help members of the public identify when there are potential problems and bring those to the attention of the APOC and perhaps push for some additional investigations," Jones said.

It's an agency that now has some teeth behind the regulations it's supposed to enforce.

He says he's "delighted to hear that APOC is investigating," but is questioning the statute of limitations.

Metcalfe wants to know if the statute of limitations begins when a violation is committed or when it's discovered.

He believes the clock starts ticking when a violation is uncovered.

Contact Steve MacDonald at stevem@ktuu.com



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OPINION

Anchorage Daily News (AK) - September 25, 2007

Author: Staff

Only 1 year? Short limit on campaign law cases lets violators off easily

The Veco corruption scandal has revealed a stunning loophole in Alaska's political integrity laws. Candidates, corporations and others who violate state campaign laws apparently get a free pass if they can hide their offenses for a year and a day.

That's because the state's campaign watchdog agency is saddled with an almost microscopic **statute of limitations** -- just one year from the illegal act.

Even if the illegal act is detected within a year, the Alaska Public Offices Commission can pursue only civil fines. It's unclear whether the state can pursue criminal penalties against a corporation that makes illegal donations or a candidate who accepts them. APOC executive director Brooke Miles says she has asked the state attorney general's office if there are any criminal law enforcement options.

With Veco's illegal donations, APOC's short **statute of limitations** has been a non-issue. Veco and its executives will avoid civil penalties for the firm's illegal contributions, but its two top lobbyists will go to prison for bribery. Several of the legislators who benefited from Veco's illegal contributions face trial or investigation for similar influence-peddling offenses. Veco itself is dead, sold to a firm that couldn't wait to dispose of the tarnished name.

But what about other lawmakers and candidates who got Veco's illegal campaign help? The company routinely did polling about its favored candidates. If Veco shared poll results directly with a campaign, it was an illegal corporate contribution. As long as the candidates took the illegal aid more than a year ago, though, they're home free as far as the Alaska Public Offices Commission is concerned.

And what if the illegal corporate donor is, unlike Veco, still in business? Without any criminal penalties, APOC's one-year **statute of limitations** leaves enormous room to flout the ban on corporate campaign contributions.

Campaign law violations used to have a four-year **statute of limitations** -- until the Republican-dominated Legislature and Frank Murkowski

combined forces on a concerted effort to loosen state campaign financing rules.

The Veco scandal shows that Alaska's campaign laws need more backbone. Restoring the original **statute of limitations** is one obvious and urgent fix. Ensuring the state can impose criminal penalties for large-scale or widespread campaign law violations is another.

When the Legislature convenes next year, tightening up campaign law enforcement should be an early order of business.

BOTTOM LINE: Here's a loophole that needs closing, fast.



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VECO polling assistance comes under scrutiny

Statute of limitations may preclude violations from being pursued

The Alaska Public Offices Commission decided Monday to investigate whether VECO Corp. may have violated campaign finance rules by providing poll results to favored candidates without reporting the cost of the poll.

Such contributions could be either illegal corporate contributions or reporting violations on the part of candidates.

The practice is one of the ways the formerly powerful player in Alaska politics asserted its influence in the state, according to a federal indictment. VECO, an oil field services company, is now part of Colorado-based CH2M-Hill.

It's questionable whether APOC can pursue penalties due to the commission's one-year statute of limitations on such investigations, but the investigation may be valuable anyway, said one commissioner, Elizabeth Hickerson.

"I am less concerned about the statute of limitations as I am about getting at the facts," said Hickerson, an attorney and a Democratic commission member from Anchorage.

The commission's authority over campaign finance violations goes back for only one year from the dates of violations. Sen. Bill Wielechowski, D-Anchorage, said he intends to introduce legislation extending that to four years.

Hickerson said an investigation may highlight the need for a longer statute of limitations for the Legislature.

A little more than a year ago, FBI agents revealed to top VECO executives that they were under investigation as part of a widespread probe into influence buying in Alaska politics.

Any violation that could be pursued would have to have occurred after the FBI investigation was revealed.

"I don't think we have a violation within one year before us," said Roger Holl,

Commission chairman and a public member of the commission from Anchorage. He also is an attorney.

The allegation that VECO has paid for polls used by numerous candidates over the years was made by former VECO executive Rick Smith in testimony during the federal bribery trial of former Rep. Pete Kott, R-Eagle River, in Anchorage.

Among the federal charges against Kott is that a poll VECO provided for his campaign constituted a bribe.

Former state legislator and APOC critic Ray Metcalfe had earlier urged the commission to investigate all 60 legislators, but had not filed a formal complaint as of the commission's special Monday morning meeting.

Commission members weren't clear on whether Metcalfe wanted unsuccessful candidates to be investigated as well.

Department of Law attorney Margaret Paton-Walsh called Metcalfe's accusations "incredibly vague and general."

The commission, however, decided to investigate the matter on its own.

Sen. Kim Elton, D-Juneau, said he could say that VECO never provided him with any poll results.

"That's probably not a surprise to anyone," he said.

Elton was pushing for a higher oil tax rate than that which VECO executives sought.

One of the first steps taken in the investigation may be to simply call up Smith and see if he'll say who VECO provided the polling data to, commissioners said. Others cautioned that he may not be able to talk, because of the ongoing federal investigation.

Smith has already pleaded guilty, and Hickerson said his testimony against his own interests should be considered reliable.

"If his testimony is correct, and I have no reason to doubt it, there were violations," Hickerson said.

• Contact Pat Forgey at 523-2250 or patrick.forgey@juneauempire.com.
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