

**HB**

**38**



Dave Jones,  
The state ethics  
lawyer, won't be  
available to testify  
on HB 38 = HB 55.

It's need<sup>ed</sup> on-line  
for Senate State Affairs.  
Which starts in a few  
minutes.

# Alaska State Legislature

**Chairman**  
State Affairs Committee

**Vice-Chairman**  
Economic Development, Trade & Tourism  
Committee

**Member**  
Judiciary Committee  
Joint Armed Services Committee

**Finance Subcommittees**  
Corrections  
Labor and Workforce Development  
Military and Veterans' Affairs  
Public Safety



*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
**"Bob Lynn's Alaska Blog" RepBobLynnBlog.com**

**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

## FAX

To: Legal Services

Fax #: 2029

From: Nancy Manly x2794  
Alaska State Capitol, room 104  
Juneau, AK 99801-1182

# of Pages (including cover): 1

Phone: 907-465-4931  
Fax: 907-465-4316

Re: HB 38 Final CS

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Please draft a Final CS for HB 38. The State Affairs Committee passed Version K with no amendments. Thank you!

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*           TRANSACTION REPORT
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*           FOR: REP LYNN
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*           MAR-06-2007 04:37 AM
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25-LS0219K  
Luckhaupt  
3/5/07

**CS FOR HOUSE BILL NO. 38( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES GARA, CRAWFORD, GARDNER, DOLL, KAWASAKI, BUCH, DOOGAN AND GRUENBERG, Lynn, Roses**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to bribery, receiving unlawful gratuities, and campaign contributions."**

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

3 **\* Section 1.** AS 11.56.130 is amended to read:

4 **Sec. 11.56.130. Definition.** In AS 11.56.100 - 11.56.130, "benefit" has the  
5 meaning ascribed to it in AS 11.81.900 but does not include

6 (1) political campaign contributions reported in accordance with  
7 AS 15.13 unless the contribution is made or received in exchange for an  
8 agreement to alter an elected official's or candidate's vote or position on a  
9 legislative, statewide, or municipal matter;

10 (2) concurrence in official action in the cause of legitimate  
11 compromise between public servants; or

12 (3) support, including a vote, solicited by a public servant or offered by  
13 any person in an election.

14 **\* Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

1           APPLICABILITY. This Act applies to offenses occurring on or after the effective date  
2 of this Act.

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## Memorandum

**HB 38: "An Act relating to bribery, receiving unlawful gratuities, and campaign contributions."**

### Changes in CS

1. Title change
2. In 11.56.130(1). We replace the exemption allowing bribery through a campaign contribution. It is rewritten to prohibit campaign contributions made or received to "alter an elected official's or candidate's vote or position on a legislative, statewide, or municipal matter."
3. Applies only to offenses after the effective date of this legislation.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB038-DOA-APOC-1-29-07  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to legislators and candidates and RDU AK Public Offices Commission  
to candidates for the legislature and to certain... Component AK Public Offices Commission  
 Sponsor Reps. Gara, Crawford, Gardner, Doll, et al.  
 Requester House State Affairs Component No. 70

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES        | FY 2008    | FY 2009    | FY 2010    | FY 2011    | FY 2012    | FY 2013    |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services             | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 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                     | 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        |
| 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        |
| <b>TOTAL OPERATING</b>        | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
| <b>CAPITAL EXPENDITURES</b>   | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
| <b>CHANGE IN REVENUES ( )</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**FUND SOURCE** (Thousands of Dollars)

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   | 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        |
| 1004 GF                                 | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 1005 GF/Program Receipts                | 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        |
| Other (Specify Type--Do not abbreviate) | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2007) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |
|-----------|--|--|--|--|--|
| Full-time |  |  |  |  |  |
| Part-time |  |  |  |  |  |
| Temporary |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)  
 Nothing in this bill is connected directly with the statutes administered by the Alaska Public Offices Commission. It should have no fiscal impact on the Public Office Commission.

Prepared by: Brooke Miles, Executive Director Phone 907-334-1726  
 Division: Alaska Public Offices Commission Date/Time 1/29/07 12:00 PM  
 Approved by: Kevin Brooks Date 1/29/2007  
 Agency: Department of Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB038-LAW-CJL-1-31-07  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title An Act relating to improper contributions to RDU Criminal  
legislators. Component Criminal Justice Litigation  
 Sponsor Representative Gara  
 Requester House Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008    | FY 2009    | FY 2010    | FY 2011    | FY 2012    | FY 2013    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
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|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2007) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

The bill makes it a class B felony for an individual to make or accept a campaign contribution that is explicitly intended to alter a legislator's or candidate's position on a legislative matter. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director Phone 465-5427  
 Division: Administrative Services Division Date/Time: 1/31/07 7:44 AM  
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date: 1/31/2007  
 Agency: Department of Law

25-LS0219\M  
Luckhaupt  
2/28/07

**CS FOR HOUSE BILL NO. 38( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES GARA, CRAWFORD, GARDNER, DOLL, KAWASAKI, BUCH,  
DOOGAN AND GRUENBERG, Lynn, Roses**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to bribery, receiving a bribe, and receiving unlawful gratuities."**

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

3 **\* Section 1.** AS 11.56.130(1) is repealed.

4 **\* Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

6 **APPLICABILITY.** This Act applies to offenses occurring on or after the effective date  
7 of this Act.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions. (AS 39.52.220, ch 87 SLA 1986)

#### NOTES TO DECISIONS

**Significance of personal or financial interest.** — Substantial evidence supported the hearing officer's findings that Department of Corrections' official had neither a personal nor a financial interest in the awarding of a contract concerning the housing of

minimum security prisoners to a bidder for whom she had served as vice-president of operations. *KILA, Inc. v. State, Dep't of Admin.*, 876 P.2d 1102 (Alaska 1994). Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

HB 38

**Sec. 39.52.120. Misuse of official position.** (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest;

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time; or

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of the communications equipment in the governor's residence so long as there is no special charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning.

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(e) Except for supplying information requested by the hearing officer or the entity with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a public officer may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer or individual, board, or commission with authority to make the final decision in the case assigned to the hearing officer unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the public officer to all parties to the hearing and the contact is made a part of the record. (§ 1 ch 87 SLA 1986; am § 5 ch 121 SLA 1992; am §§ 81, 82 ch 74 SLA 1998; am § 59 ch 163 SLA 2004)

**Cross references.** — For prohibition against nepotism, see AS 39.90.020.

**Effect of amendments.** — The 2004 amendment, effective July 1, 2005 added subsection (e).

#### NOTES TO DECISIONS

**Official action not required.** — The statute prohibiting use of official position for personal gain does not require "official action," but only that employees use their position for personal gain or to seek employment. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

**Solicitation of compensation sufficient.** — Since the ethics statute does not require that a viola-

tion involve actual or present receipt of money, solicitation of compensation, including prospective or contingent economic benefits, suffices. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

**Cited in** *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

**Sec. 39.52.130. Improper gifts.** (a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) Notice of the receipt by a public officer of a gift with a value in excess of \$150, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt

(1) if the public officer may take or withhold official action that affects the giver; or

(2) if the gift is connected to the public officer's governmental status.

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift is prohibited.

(d) The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure.

(e) A public officer who, on behalf of the state, accepts a gift from another government or from an official of another government shall, within 60 days after its receipt, notify the Office of the Governor in writing. The Office of the Governor shall determine the appropriate disposition of the gift. In this subsection, "another government" means a foreign government or the government of the United States, another state, a municipal-

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB038-DOA-APOC-1-29-07  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to legislators and candidates and RDU AK Public Offices Commission  
to candidates for the legislature and to certain... Component AK Public Offices Commission  
 Sponsor Reps. Gara, Crawford, Gardner, Doll, et al.  
 Requester House State Affairs Component No. 70

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008    | FY 2009    | FY 2010    | FY 2011    | FY 2012    | FY 2013    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 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              | 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        |
| 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        |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |     |     |     |     |     |     |
|-----------------------------|-----|-----|-----|-----|-----|-----|
| <b>CAPITAL EXPENDITURES</b> | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-----------------------------|-----|-----|-----|-----|-----|-----|

|                               |     |     |     |     |     |     |
|-------------------------------|-----|-----|-----|-----|-----|-----|
| <b>CHANGE IN REVENUES ( )</b> | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------------------------|-----|-----|-----|-----|-----|-----|

**FUND SOURCE** (Thousands of Dollars)

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   | 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        |
| 1004 GF                                 | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 1005 GF/Program Receipts                | 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        |
| Other (Specify Type--Do not abbreviate) | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

Nothing in this bill is connected directly with the statutes administered by the Alaska Public Offices Commission. It should have no fiscal impact on the Public Office Commission.

Prepared by: Brooke Miles, Executive Director  
 Division: Alaska Public Offices Commission  
 Approved by: Kevin Brooks  
 Agency: Department of Administration

Phone: 907-334-1726  
 Date/Time: 1/29/07 12:00 PM  
 Date: 1/29/2007

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB038-LAW-CJL-1-31-07  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title An Act relating to improper contributions to RDU Criminal  
legislators. Component Criminal Justice Litigation  
 Sponsor Representative Gara  
 Requester House Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008    | FY 2009    | FY 2010    | FY 2011    | FY 2012    | FY 2013    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

The bill makes it a class B felony for an individual to make or accept a campaign contribution that is explicitly intended to alter a legislator's or candidate's position on a legislative matter. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director  
 Division: Administrative Services Division  
 Approved by: Robert Meiners for Talis Colberg, Attorney General  
 Agency: Department of Law

Phone 465-5427  
 Date/Time 1/31/07 7:44 AM  
 Date 1/31/2007

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA  
REPRESENTATIVE HARRY CRAWFORD  
REPRESENTATIVE BERTA GARDNER  
REPRESENTATIVE ANDREA DOLL  
REPRESENTATIVE SCOTT KAWASAKI  
REPRESENTATIVE BOB BUCH  
REPRESENTATIVE MIKE DOOGAN

**HB 38: "An Act relating to legislators and candidates for the legislature and to certain campaign contributions made in exchange for certain agreements."**

## Sponsor Statement

A recent Legislative Research Services report reveals a loophole in Alaska's Ethics and Bribery laws. That report is attached.

Currently it is not a crime for a candidate or legislator to agree to change their vote on an issue in exchange for a campaign contribution. This loophole undermines the public's confidence in their elected representatives. Trading a vote for a campaign contribution is currently a federal crime, and constitutes a potential civil ethics code violation under state law. It should be a crime under state law. Trading a vote for money is among the most serious ethical breaches possible by a legislator, and should be punished accordingly.

This bill is narrowly drafted, to recognize that a candidate should not be prevented from accepting a legal campaign donation just because the candidate agrees on an issue with a donor. Under House Bill 38 (HB 38) the donor and candidate will only be held criminally liable if the prosecution proves, beyond a reasonable doubt, that the Legislator and donor had an express, specific agreement that the Legislator would change his or her position on a matter in exchange for a donation.

Please do not hesitate to contact us if you have any questions or if you need additional information.

# ALASKA STATE LEGISLATURE



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**HB 38: "An Act relating to legislators and candidates for the legislature and to certain campaign contributions made in exchange for certain agreements."**

## Sectional Analysis

A new section is added: AS 11.56

Sec. 11.56.135:

Section 1:

(a) Improper legislative campaign contribution: makes it a crime for a legislator or candidate for office to change or promise to change a position on an issue in exchange for a campaign contribution.

(b) Improper campaign contribution is a Class B Felony.

Section 2. Applicability. This Act applies to crimes occurring on or after the effective date.

**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

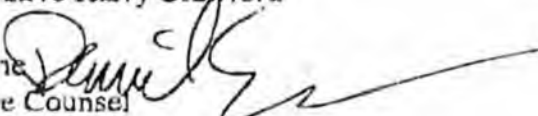
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

**MEMORANDUM**

October 12, 2006

**SUBJECT:** Campaign Contributions as Bribes (Work Order No. 25-LS0112)

**TO:** Representative Les Gara  
Representative Harry Crawford

**FROM:** Dan Wayne   
Legislative Counsel

There is nothing in current criminal law that prohibits a legislator from changing a vote in exchange for a campaign contribution. As requested, here is a summary of how accepting a campaign donation as a bribe would be treated under current Alaska criminal statutes and the legislative ethics code.

Alaska has strict bribery statutes that treat giving, offering to give, or accepting a bribe (a benefit given or received in exchange for influence of a public servant) as class B felonies.<sup>1</sup> A companion misdemeanor statute prohibits a public servant from soliciting, receiving, or agreeing to receive a benefit for the performance of an official duty.<sup>2</sup> The term "public servant" as used in these statutes includes legislators and legislative candidates, among others.<sup>3</sup> The term "benefit," as used in these statutes, means "a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary."<sup>4</sup> *All three statutes exempt campaign contributions, by definition.*<sup>5</sup> Therefore, persons giving, offering to give, soliciting, accepting, or agreeing

<sup>1</sup> AS 11.56.100 and 11.56.110. (See Appendix A of this memo).

<sup>2</sup> AS 11.56.120. (See Appendix A of this memo).

<sup>3</sup> AS 11.81.900(b)(54). (See Appendix A of this memo).

<sup>4</sup> AS 11.81.900(b)(4).

<sup>5</sup> AS 11.56.130 (with emphasis added) reads:

Definition. In AS 11.56.100 - 11.56.130, "benefit" has the meaning ascribed to it in AS 11.81.900 but *does not include*

(1) *political campaign contributions reported in accordance with AS 15.13;*

(2) *concurrence in official action in the cause of legitimate compromise between public servants; or*

Representative Les Gara  
Representative Harry Crawford  
October 12, 2006  
Page 2

to accept a campaign contribution in exchange for influence of a legislator, for example, may not be charged by the state with bribery, receiving a bribe, or receiving an unlawful gratuity -- as long as the campaign contribution is disclosed to the Alaska Public Offices Commission under AS 15.13.<sup>6</sup>

It is interesting to look at the evolution of the bribery and receiving unlawful gratuity statutes in Alaska.<sup>7</sup> In 1899, a criminal code based mostly on Oregon law was adopted for Alaska. Most of that criminal code was still in effect in 1975 when the legislature called for the formation of a commission, which was formed and later became a subcommission, to revise it. In January 1978, an Act containing the subcommission's recommendations was introduced in the House, and after many public hearings and further revision, a new criminal code was signed by Governor Hammond in July of that year. A commentary on the new code was revised throughout the legislative process and published in final draft in Senate Journal Supplements 47 and 48 and reprinted by the Legislative Affairs Agency in July of 1978.

I have enclosed a copy of the reprinted commentary.

Regarding the bribery statutes, an excerpt from page 68 and 69 says:

In using the broad term "benefit" the bribery statutes insure coverage in all appropriate cases. However, benefits which serve only to provide a "climate for discussion" with a public servant (i.e., picking up a dinner tab or golfing fee) are beyond the scope of the statutes because the granting of the "benefit" is not in itself intended or expected to influence an official

---

(3) support, including a vote, solicited by a public servant or offered by any person in an election.

<sup>6</sup> This may be because a statute criminalizing campaign contributions that are intended to influence a public servant would be difficult to enforce, since it would be a prosecutor's burden to prove "intent" beyond a reasonable doubt. There is also a possible constitutional issue. The first amendment of the Constitution of the United States protects freedom of speech and freedom of association. The freedom of speech is not absolute, *Messerli v. State*, 626 P.2d 81, 86 (Alaska 1981), but any content-based restriction on speech must serve a "compelling" state interest, *Mickens v. City of Kodiak*, 640 P.2d 818, 821 (Alaska 1982). Political campaign contributions and expenditures fall within the protections of the first amendment. *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>7</sup> I summarize the history of the revised criminal code with help from the introduction to the August 1985 Criminal Law Manual published by the Department of Law, a manual that provides an in-depth comparison of the original code and the revised code through 1985, with source material including the Commentary on the Alaska Revised Criminal Code cited in this memo.

Representative Les Gara  
Representative Harry Crawford  
October 12, 2006  
Page 3

decision. The giving and receiving of such insignificant benefits, though not covered by the Code, is, however, an appropriate topic to be addressed in conflict of interest statutes and ethical conflict regulations and standards.

Insofar as they are reported in accordance with AS 15.13 (State Elections Campaigns), political campaign contributions have been specifically excluded from the definition of "benefit". This qualification is intended to make it clear that legitimate, reported political campaign contributions made with an intent to advance a political viewpoint, are not to be punished as bribery.

Regarding the statute that prohibits a public servant from soliciting or receiving an unlawful gratuity, language excerpted from page 71 says:

... when the public servant accepts a benefit (under the statute), without soliciting it, the benefit must have a value of \$50.00 or more for the crime to have occurred.

It must be emphasized that the Judiciary Committees do not approve the practice of public servants accepting tips. However, the Committees concluded that regulation of such activity is more properly left to personnel regulations and ethical guidelines rather than to criminal law.

AS 11.56.850, prohibiting official misconduct, is the exception in that it does *not* exempt campaign contributions from the definition of "benefit." The statute reads:

(a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor.

This statute does not prohibit quid pro quo campaign contributions.

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Representative Harry Crawford  
October 12, 2006  
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Alaska's code of legislative ethics has a provision similar to the criminal "receiving a bribe" statute.<sup>4</sup> AS 24.60.030(a)(1) says:

A legislator . . . may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions or the acceptance of a lawful gratuity under AS 24.60.080;

This subsection prohibits legislators from soliciting, accepting or agreeing to accept quid pro quo campaign contributions, because under another subsection, AS 24.60.030(e)(1), a legislator may not even *imply*, personally or through a third-party, that a campaign contribution will cause the legislator to take or withhold official action of any kind. It says:

(e) A legislator may not directly, or by authorizing another to act on the legislator's behalf,

(1) agree to, threaten to, or state or imply that the legislator will take or withhold a legislative, administrative, or political action, including support or opposition to a bill, employment, nominations, and appointments, as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value;

Other statutes limit the *opportunity* for quid pro quo campaign contributions. For example, AS 15.13.072(d) says:

(d) A candidate or an individual who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100 for election or reelection to the state legislature may not solicit or accept a contribution while the legislature is convened in a regular or special legislative session unless the solicitation or acceptance occurs

(1) during the 90 days immediately preceding an election in which the candidate or individual is a candidate; and

(2) in a place other than the capital city.

In summary, a solicitation or acceptance of a campaign contribution disclosed under AS 15.13, and solicited or accepted with an understanding there will be a quid pro quo, is not punishable under our criminal bribery or unlawful gratuity statutes. Under the code

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<sup>4</sup> Also note that AS 15.13.112(a) provides that campaign contributions can only be used for election campaign expenses, and AS 15.13.112(b)(1) states that "campaign contributions held by a candidate or group may not be . . . used to give a personal benefit to the candidate or to another person."

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Representative Harry Crawford  
October 12, 2006  
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of legislative ethics, solicitation or acceptance of a campaign contribution with an understanding there will be a quid pro quo is prohibited by AS 24.60.030(a)(1) and 24.60.030(e)(1).

If I may be of further assistance, please advise.

DCW:ljw  
06-339.ljw

Representative Les Gara  
Representative Harr' Crawford  
October 12, 2006  
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(Work Order No. 25-LS0112)  
Appendix A -- Relevant Alaska Statutes

**AS 11.56.100. Bribery.**

(a) A person commits the crime of bribery if the person confers, offers to confer, or agrees to confer a benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision, or exercise of official discretion.

(b) In a prosecution under this section, it is not a defense that the person sought to be influenced was not qualified to act in the desired way, whether because that person had not assumed office, lacked jurisdiction, or for any other reason.

(c) Bribery is a class B felony.

**AS 11.56.110. Receiving a bribe.**

(a) A public servant commits the crime of receiving a bribe if the public servant

(1) solicits a benefit with the intent that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced; or

(2) accepts or agrees to accept a benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced.

(b) Receiving a bribe is a class B felony.

**AS 11.56.120. Receiving unlawful gratuities.**

(a) A public servant commits the crime of receiving unlawful gratuities if, for having engaged in an official act which was required or authorized and for which the public servant was not entitled to any special or additional compensation, the public servant

(1) solicits a benefit, regardless of value; or

(2) accepts or agrees to accept a benefit having a value of \$50 or more.

(b) Receiving unlawful gratuities is a class A misdemeanor.

**AS 11.81.900(b)(54), "public servant"** means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person acting as an advisor, consultant, or assistant at the request of, the direction of, or under contract with the state, a municipality or other political subdivision of the state, or another governmental instrumentality; in this subparagraph "person" includes an employee of the person;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

Representative Les Gara  
Representative Harry Crawford  
October 12, 2006  
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(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) - (C) of this paragraph, but who does not occupy the position;

**AS 15.13.112. Uses of campaign contributions held by candidate or group.**

(a) Except as otherwise provided, campaign contributions held by a candidate or group may be used only to pay the expenses of the candidate or group, and the campaign expenses incurred by the candidate or group, that reasonably relate to election campaign activities, and in those cases only as authorized by this chapter.

(b) Campaign contributions held by a candidate or group may not be

(1) used to give a personal benefit to the candidate or to another person;

(2) converted to personal income of the candidate;

(3) loaned to a person;

(4) knowingly used to pay more than the fair market value for goods or services purchased for the campaign;

(5) used to pay a criminal fine;

(6) used to pay civil penalties; however, campaign contributions held by a candidate or group may be used to pay a civil penalty assessed under this chapter if authorized by the commission or a court after it first determines that

(A) the candidate, campaign treasurer, and deputy campaign treasurer did not cause or participate in the violation for which the civil penalty is imposed and exercised a reasonable level of oversight over the campaign; and

(B) the candidate, campaign treasurer, and deputy campaign treasurer cooperated in the revelation of the violation and in its immediate correction; or

(7) used to make contributions to another candidate or to a group.

(c) A candidate may use up to a total of \$1,000 in campaign contributions in a year to pay the cost of

(1) attending, or paying the cost for guests of the candidate to attend, an event or other function sponsored by a political party or subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; and

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.



# AKPIRG

**A ALASKA LASKA PUBLIC INTEREST RES ALASKA PUBLIC INTEREST RESEARCH**  
PO Box 101093 ♦ Anchorage, Alaska 99510-1093 ♦ Ph: (907) 278-3661 ♦ Fax: (907) 278-9300 ♦ email: akpirg@akpirg.org

## AkPIRG Supports HB 38

AkPIRG urges support for HB 38. This is common sense. Candidates and legislators should not be able to sell or exchange their vote for campaign contributions. It's that simple. Money should not be allowed to buy votes in Alaska. This bill would also make it illegal for person to attempt to bribe elected officials as well. It is important that both of sides of this equation know that Alaska State law prohibits such behavior and that there are consequences for breaking that law.

Thank you for your support of this legislation.  
Sincerely,

Steve Cleary  
AkPIRG Director

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Founded in 1974, the Alaska Public Interest Research Group (AkPIRG) is a non-profit, non-partisan, citizen-oriented statewide organization researching, educating and advocating on behalf of the public interest. AkPIRG has 2,000 Alaskan members.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARDNER

TO: HB 38

1 Page 1, line 1:

2 Delete "legislators and candidates for the legislature"

3 Insert "state and municipal elected officials and candidates for state and  
4 municipal elected office"

5

6 Page 1, line 5:

7 Delete "legislative"

8

9 Page 1, line 6:

10 Delete "legislative"

11

12 Page 1, lines 8 - 9:

13 Delete "member of the legislature or a candidate for the legislature"

14 Insert "state or municipal elected official or a candidate for a state or municipal elected  
15 office"

16

17 Page 1, lines 10 - 11:

18 Delete "legislator or the candidate to alter the legislator's or candidate's position on a  
19 legislative matter"

20 Insert "lected official or candidate to alter the official's or candidate's position on a  
21 matter or issue related to the official duties of the statewide or municipal elected office held or  
22 sought"

23

1 Page 1, line 12:

2 Delete "member of the legislature or a candidate for the legislature"

3 Insert "state or municipal elected official or a candidate for state or municipal elected  
4 office"

5

6 Page 1, line 14:

7 Delete "legislator's or candidate's position on a legislative matter"

8 Insert "official's or candidate's position on a matter or issue related to the official  
9 duties of the statewide or municipal elective office held or sought"

10

11 Page 2, line 1:

12 Delete "legislative"

AMENDMENT

OFFERED IN THE HOUSE

TO:

1 Page \_\_\_\_\_, line \_\_\_\_\_:

2 Insert "relating to state and municipal elected officials and candidates for state  
3 and municipal elective office; relating to certain campaign contributions made in  
4 exchange for certain agreements;"

5

6 Page \_\_\_\_\_, line \_\_\_\_\_:

7 Insert a new bill section to read:

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

9 **Sec. 11.56.135. Improper campaign contribution and agreement.** (a) A  
10 person commits the crime of improper campaign contribution and agreement if the  
11 person

12 (1) explicitly agrees to make a campaign contribution to a state or  
13 municipal elected official or a candidate for a state or municipal elective office, and  
14 makes that contribution, in exchange for an agreement by the elected official or  
15 candidate to alter the official's or candidate's position on a matter or issue related to  
16 the official duties of the statewide or municipal elective office held or sought; or

17 (2) as a state or municipal elected official or a candidate for state or  
18 municipal elective office, accepts a campaign contribution and explicitly agrees, in  
19 exchange for that contribution, to alter the official's or candidate's position on a matter  
20 or issue related to the official duties of the statewide or municipal elective office held  
21 or sought.

22 (b) Improper campaign contribution and agreement is a class B felony."  
23

1 Page \_\_\_\_\_, line \_\_\_\_\_:

2 Insert a new bill section to read:

3 **\*\* Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 **APPLICABILITY.** Section 1 of this Act applies to offenses occurring on or after the  
6 effective date of sec. 1 of this Act."

**Nancy Manly**

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**To:** Londi Ensor

**Subject:** STA fiscal notes

**Attachments:** HB006-DOA-APOC-2-1-07.pdf; HB003-DOA-DMV-2-23-07.pdf; HB038-DOA-APOC-1-29-07.pdf; HB038-LAW-CJL-1-31-07.pdf; HB109-DOA-APOC-1-29-07.pdf

Londi: Attached are fiscal notes for bills that have passed out of the House State Affairs Committee.

HB 6 (1 fiscal note)

HB 3 (1 fiscal note)

HB 38 (two fiscal notes)

HB 109 (1 revised note - you have the others)

3/6/2007

# ALASKA STATE LEGISLATURE




REPRESENTATIVE LES GARA  
REPRESENTATIVE HARRY CRAWFORD  
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REPRESENTATIVE BOB BUCH  
REPRESENTATIVE MIKE DOOGAN

## MEMORANDUM

DATE: January 16, 2007

TO: Rep. Bob Lynn, Chair  
Rep. Bob Roses, Vice-Chair  
House State Affairs Committee

FROM: Rep. Les Gara 

RE: Hearing Request for House Bill 38, Campaign Contributions

I respectfully request that House Bill 38, relating to campaign contributions, be scheduled for a hearing in the House State Affairs Committee. Please feel free to contact me, or my aide Meagan Foster, with questions or thoughts at 465-2647.

Attached you will find a background packet for House Bill 38. This includes the current version of the bill, a sponsor's statement, and backup materials.

Thank you for your consideration.