HB 109

LEGAL SERVICES

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

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

MEMORANDUM April 27, 2007

SUBJECT: Restrictions on campaign donations from the spouses or domestic partners of lobbyists (Work Order No. 25-LS0897)

TO: Senator Hollis French
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion as to the constitutionality of imposing statutory restrictions on campaign contributions from the spouses and domestic partners of lobbyists. It is my legal opinion that such restrictions in the context of our applicable current statutes would be found by a court to be unconstitutional.

First Amendment

The First Amendment provides that "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"; art. I, sec. 1 of the Alaska Constitution provides that ". . . all persons have a natural right to life, liberty, . . . equal rights, opportunities, and protection under the law . . ."; and art. I, sec. 5 of the Alaska Constitution provides that "[e]very person may freely speak, write, and publish on all subjects . . . ." While freedom of speech and association are not absolute, see Messerli v. State, 626 P.2d 81, 86 (Alaska 1981), "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

Regulation of Lobbyists

The United States Supreme Court has acknowledged that governments have a legitimate interest in regulating lobbyists, see McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption"), and the Court has held that governments have a "sufficiently important" interest in preventing political corruption and the appearance of corruption to justify limits on campaign contributions and a standard of review below that of strict scrutiny in some circumstances, see McConnell v. Federal Election Commission, 540 U.S. 93 (2003). Correspondingly the Alaska Supreme Court has held that a ban on out-of-district lobbyist contributions (AS 15.13.074(g)) is narrowly tailored to further a compelling interest, and

the restraint does not foreclose lobbyists from engaging in political speech, see State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S.Ct. 1156 (2000). However, restricting political campaign contributions from the spouses or domestic partners of lobbyists (who, needless to say, may be exercising their own independent judgment in choosing to whom they desire to contribute campaign funds) is further removed from the State's interest in preventing political corruption and the appearance of corruption.

The State's Burden

Given that the right to engage in political expression is fundamental and campaign contributions are a species of political expression, any contemplated statute restricting the rights of spouses and domestic partners of lobbyists would need to be justified by a compelling state interest and narrowly tailored to accomplish the purpose intended. California Medical Association v. F.E.C., 453 U.S. 182, 200. While any such restriction might be intended to promote public confidence in the integrity of legislators and to prevent corruption and any appearance of corruption, a court might easily conclude that such restrictions violate constitutional guarantees. The rationale for restrictions on campaign contributions from the spouses or domestic partners of lobbyists would be (1) that such contributions represent an end run around Alaskan laws prohibiting contributions from lobbyists (AS 15.13.074(g)), (2) an effort to augment a lobbyist's influence by increasing the amount a lobbyist (through the lobbyist's spouse or domestic partner) would be able to contribute to a candidate, and (3) a means through which a lobbyist could contribute to an candidate for the legislature outside the district in which the lobbyist is eligible to vote. Arguably these interests are already served under existing law.

Under AS 15.13.074(b) contributions made in the name of another are prohibited, so existing law serves to prohibit lobbyists from employing their spouses or domestic partners as conduits for their own contributions. Additionally, the identity of campaign contributors must be disclosed (AS 15.13.040(a)), contributions may only be made at certain times (AS 15.13.074(c)), and contributions are limited to donations of $500 a year to each candidate by AS 15.13.070(a). If the state desires to regulate the influence of lobbyists in an effort to address corruption or the appearance of corruption, regulating the exercise of the constitutional freedoms of lobbyists' spouses or domestic partners would not be the least restrictive alternative, nor narrowly tailored to a compelling interest not already served by existing statute.

It is my opinion that the state would be unable to meet its burden of demonstrating that no less restrictive alternatives exist to eliminate any impropriety or undue influence attributable to lobbyists, hence any contemplated restriction on the spouses or domestic partners of lobbyists is likely to be invalidated.

TLAB:lmb
07-109.lmb

Cindy Smith

From: Meagan Foster
Sent: Thursday, May 03, 2007 12:45 PM
To: Cindy Smith
Cc: Rep. Les Gara
Subject: HB 109 Language

Cindy – Les feels more comfortable with the language that was in HB 109 as it passed the house – with one exception – delete the statutory reference for 39.52.960 and have the following language – "official action means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction;

Meagan Foster
Office of Representative Les Gara
907-465-2647
907-465-3518 (Fax)

Cindy Smith

From: Dave Jones [Dave_Jones@law.state.ak.us]
Sent: Friday, May 04, 2007 1:48 PM
To: Cindy Smith
Subject: Bribery Statutes * Definition of Benefit

Cindy,

I think current state law covers the situation, even without the amendment in the ethics bill.

The ethics bill's provision would amend AS 11.56.130, which incorporates the definition of "benefit" in AS 11.81.900, subject to the three listed exceptions. The definition of "benefit" in AS
11.81.900(b)(4) is "a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary."

Cindy Smith

From: Dave Jones [Dave_Jones@law.state.ak.us]
Sent: Tuesday, April 24, 2007 10:35 AM
To: Cindy Smith
Cc: Christopher Clark; Deborah Behr
Subject: CSHB 109(JUD) am

Attachments: HB 109, SB 19, and SB 20 language comparison chart.doc

HB 109, SB 19, and SB 20 langu...

Cindy,

I'm in Juneau and spoke with Allison after this morning's Senate State Affairs Committee s hearing on CSHB 109(JUD) am. I mentioned to Allison that I wanted to talk to you about two aspects of the bill. First, Section 1 probably needs an amendment to replace the reference to AS 39.52.960 in defining "official action." The definition of official action in AS 39.52.960 refers to "public officer," which only includes members of the executive branch. I think it would be more consistent with the intent of Section 1 to substitute "'official action' means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction" for the language on lines 8 and 9 of page 2, after "in this paragraph." Dan Wayne is already aware of this problem, I believe, because I learned of it from a draft he prepared for another bill. If you'd like me to put together an amendment, I'd be happy to do it.

Second, I want to fill you in on the other side of the nepotism issue that Tom Bryce of Local 71 addressed this morning in support of an amendment. We're concerned that the amendment would permit employees to promote, evaluate, give raises to, award overtime to, and take similar actions for their own immediate family members who are co-workers. The amendment would permit that because those actions don't fall within the definition of supervisory relationship that the amendment uses. The amendment would loosen existing ethics restrictions, while the other provisions of the bill tighten the ethics and reporting restrictions.

Do you have any idea when the Senate Judiciary Committee might take up the bill?

In case it might be helpful, I'm attaching a side-by-side language comparison of this bill and the two ethics bills that the Senate passed, CSSB 19(FIN) am and CSSB 20(STA) am(efd fld).

If you need to reach me, I'm at 465-6713.

Thanks!

Tom Brice

From: Ralph Maston [Ralph@local71.com]

Sent: Wednesday, May 02, 2007 10:00 AM

To: Tom Brice; Jim Ashton

Subject: affected by nepotism

Tom, Jim asked me to give you the names of members here abouts that have been affected by this Nepotism issue.

[redacted] – She was a flagger for several seasons on the Kenai Peninsula and used that money to support herself in the off season while she went to school. She was refused hire due to the fact that her father is an equipment operator in Soldotna, even though [redacted] never would have been her lead or foreman or supervisor in any way.

[redacted] – He is a WG 56 mechanics helper in the Light Duty Shop for SEF here at Tudor Road. He tested for an Operator position at M&O at Tudor Road (within the same duty station) and passed with the highest score ever and he was refused the transfer based on the fact that his father is an operator there even though he would never be on a crew with his dad and despite the fact that his dad wrote a letter (at the prompting of management at the time) saying that he would be retiring in about 18 months and that while he and his son were at the duty station he would not sign or ask for or accept a promotion to foreman.

[redacted] – He is a WG 53 Operator at Tudor Road M&O. signed a posting for a parts runner with the parts dept at Tudor Road SEF (within the same duty station) willing to accept a downgrade just to make his life a little less stressful from a 53 to a 55 and was refused based on the fact that his son works in the Light Duty shop there at the same duty station even though they already work in the same duty station!

[redacted] – was dispatched out for a WG 53 operator position in Kalsin Bay, Kodiak, was told he was hired at which point he went to his current employer and notified him he was leaving, 4 days later he was contacted by the foreman who "hired" him that oops my bad we can't hire you due to the fact that your brother works for DOT at the Kodiak Airport (a completely different duty station) as an equipment operator. You can imagine the fallout from that! I got involved and got it worked out so that they could in fact hire him (provided there were no other qualified operators available on the island) but by that time he had already talked to his former boss and he gave him his job back complete with a raise. Boy the State was scrambling on that one [redacted] Even though it all worked out fine in the end there was such a potential for disaster for the State on that one.

I hope this helps...let me know if you have any questions about this. Regards, Ralph

****

Ralph Maston
Business Representative/Vice President
Public Employees Local 71
2510 Arctic Blvd
Anchorage, Alaska 99503
(907) 276-7211 wk
(907) 279-7171 fax

Tom Brice

From: Billy Meers [Billy@local71.com]

Sent: Wednesday, May 02, 2007 10:42 AM

To: Tom Brice

Hey Tommy,

The boss asked me to email you info on any members that were/are affected by the states interpretation of the nepotism clause. I know of two(2) at the airport in anchorage in the field maintenance dept. [redacted] was denied a foreman promotion due to his brother [redacted] also working at that duty station and [redacted] also do to his wife [redacted] also being an equipment operator at the time. Both were last summer not sure exactly when. I hope this helps. Good luck and keep up the good fight Tommy.

Billy

****

Billy Meers
Business Representative
Public Employees Local 71
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MEMORANDUM March 22, 2007

SUBJECT: Amendments relating to lobbying activities by a spouse or domestic partner of a legislator
CSHB 109(STA) (Work Order Nos. 25-GH1059\O.2 and \O.36)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard RAB
Legislative Counsel

You have requested a legal opinion as to the differences between proposed amendments 25-GH1059\O.2 and 25-GH1059\0.36. In an earlier memorandum, dated February 26, 2007, I expressed my belief that a court might interpret the former (O.2) as unconstitutional. That amendment read in relevant part:

> The spouse or domestic partner of a legislator may not engage in activity as a lobbyist. This subsection does not prohibit the spouse or domestic partner from acting as a volunteer lobbyist under AS 24.45.161(a)(1) or a representational lobbyist, as defined in regulation by the commission.

While the state has a legitimate interest in regulating lobbyists,[1] preventing corruption and any appearance of corruption, and while 25-GH1059\O.2 might be intended to promote public confidence in the integrity of legislators; "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

25-GH1059\O.2 is not narrowly tailored but disallows all paid lobbying by spouses and domestic partners of legislators; not lobbying on issues before committees on which a legislator's spouse or domestic partner might serve, a matter on which the legislator's spouse or domestic partner will vote, etc. In justifying any infringement on the personal liberty of legislators' spouses and domestic partners, the state would have to demonstrate a compelling interest in the purposes advanced by the restriction and an absence of less

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[1] See McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995).

restrictive alternatives in realizing these ends. It was my contention that there were less restrictive alternatives than the O.2 amendment.

The second amendment, 25-GH1059\O.36 reads in relevant part:

> A legislator or legislative employee may not [ ] co.nmunicate directly with a spouse or domestic partner of a legislator if the spouse or domestic partner is registered as a lobbyist under AS 24.45.041 and the communication concerns legislative action; in this paragraph, "legislative action" has the meaning given it in AS 24.45.171.

This second amendment does not operate to prohibit the spouse or domestic partner of a legislator from lobbying municipalities or the executive branch, and it does not deny them the opportunity to engage in an economic endeavor within a particular industry (lobbying).[2] The amendment is better directed at the locus of possible impropriety, undue influence, and conflicts of interest; the possibly suspect relationship between legislators and the lobbyist spouses or domestic partners of legislators. It is my opinion that this second amendment, 25-GH1059\O.36 is more "narrowly drawn and represent[s] a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, at 611 - 612.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-196.med

[2] See State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989) (The right to engage in an economic endeavor within a particular industry is an "important" right for state equal protection purposes) and Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003) (close scrutiny of enactments impairing the important right to engage in economic endeavor requires that the state's interest underlying the enactment be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close).

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MEMORANDUM February 28, 2007

SUBJECT: Constitutionality of statutes similar to sec. 5 of CSHB 109( ), draft version "K" (Work Order No. 25-GH1059\K)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

In a response to an earlier memorandum, you have requested that I augment my efforts by searching for and examining any existing judicial interpretation of statutes similar to sec. 5 of the proposed Committee Substitute for House Bill 109, draft version "K."

My research for the earlier memorandum began with such an effort, but I did not, and have not, unearthed any judicial examination of a statutory prohibitions on lobbying by a legislative spouse or domestic partner as broad as that found in sec. 5.

While decidedly second best, what I was able to find, was circumstantial evidence of state legislative and congressional consideration of similar provisions. The common thread or denominator discovered, is that while such broad prohibitions have been considered, they are absent from the final enactments of the legislation in which the provisions were to be included. For one example, see the ethics opinion draft concerning the history of Kentucky Senate Bill No. 7, 1993 at "www.lrc.ky.gov/ethics/Opinions/02-04.doc."

The most similar provision to sec. 5 that I found, is "S.1, Commission to Strengthen Confidence in Congress Act of 2007" passed by the United States Senate on January 18, 2007. The bill addresses statutory changes affecting lobbyists under the federal Lobbying Disclosure Act and other laws. The bill includes a prohibition on "official contacts" by a senator's spouse or immediate family member with the personal, committee, and leadership staff of that senator if the spouse or immediate family member is a registered lobbyist or retained or employed by a registered lobbyist. If it becomes law, a provision in the bill also would prohibit a senator's spouse from having any "official contacts" with any senator or staff if the spouse is a registered lobbyist or retained or employed by a registered lobbyist. The provision in full reads:

SEC. 113. PROHIBIT OFFICIAL CONTACT WITH SPOUSE OR IMMEDIATE FAMILY MEMBER OF MEMBER WHO IS A REGISTERED LOBBYIST.

Rule XXXVII of the Standing Rules of the Senate is amended by--

(1) redesignating paragraphs 10 through 12 as paragraphs 11 through 13, respectively; and

(2) inserting after paragraph 9, the following:

10. (a) If a Member's spouse or immediate family member is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, the Member shall prohibit all staff employed by that Member (including staff in personal, committee, and leadership offices) from having any official contact with the Member's spouse or immediate family member.

(b) Members and employees on the staff of a Member (including staff in personal, committee, and leadership offices) shall be prohibited from having any official contact with any spouse of a Member who is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist.

(c) The prohibition in subparagraph (a) shall not apply to the spouse of a Member who was serving as a registered lobbyist at least 1 year prior to the election of that Member to office or at least 1 year prior to their marriage to that Member.

(d) In this paragraph, the term 'immediate family member' means the son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, or stepsister of the Member. (www.govtrack.us/congress/billtext.xpd?bill=s110-1)

This is as similar a provision as I have been able to find.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-0132.med

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MEMORANDUM February 26, 2007

SUBJECT: Prohibition on lobbying by legislator spouses and domestic partners in CSHB 109( )(Work Order No. 25-GH1059\K)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion as to the constitutionality of the proposed statutory change that would prohibit the spouse or domestic partner of a legislator from being a lobbyist as is proposed in sec. 5 of the Committee Substitute for House Bill 109, draft version "K". It is my opinion that the prohibition as it is currently structured may be interpreted by a court as unconstitutional.

The First Amendment provides that "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances", art. I, sec. 1 of the Alaska Constitution provides that ". . . all persons have a natural right to life, liberty, . . . equal rights, opportunities, and protection under the law . . .", and art. I, sec. 5 of the Alaska Constitution provides that "[e]very person may freely speak, write, and publish on all subjects . . . ." Lobbying involves both the petitioning of government agencies and core political speech concerns that "implicates First Amendment guarantees of petition, expression, and assembly." Kimball v. Hooper, 665 A.2d 44, 46 (Vt. 1995); United States v. Sawyer, 85 F.3d 713, 731 n. 15 (1st Cir. 1996) (paid lobbyist's employment goal of attempting to persuade and influence legislators was guaranteed by the First Amendment); Findanque v. Oregon Government Standards and Practices Commission, 969 P.2d 376, 379 (Ore. 1998) ("Lobbying is political speech, and being a lobbyist is the act of being a communicator to the legislature on political subjects."); Liberty Lobby, Inc. v. Person, 390 F.2d 489, 491 (D.C. Cir. 1968) ("While the term 'lobbyist' has become encrusted with invidious connotations, every person or group engaged . . . in trying to persuade Congressional action is exercising the First Amendment right of petition."); and United States v. Harris, 347 U.S. 612, 625 (1954).

The fact that the proposed prohibition applies only to paid lobbyists ("volunteer" and "representational" lobbyists being excluded, see 25-GH1059\K p. 4. lines 5 - 7) does not shield the proposed prohibition from constitutional analysis. "The mere fact . . . that one earns a living by exercising First Amendment rights does not vitiate the ability to assert those rights." Moffett v. Killian, 360 F. Supp. 228, 231 (D. Conn. 1973) citing Follett v.

McCormick, 321 U.S. 573 (1944). Additionally, the individual rights afforded by the Alaska Constitution, art. I, sec. 1, include the right to make certain contracts for personal employment. see State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989) (The right to engage in an economic endeavor within a particular industry is an "important" right for state equal protection purposes) and Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003) (close scrutiny of enactments impairing the important right to engage in economic endeavor requires that the state's interest underlying the enactment be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close.) In justifying such an infringement on the personal liberty of legislators' spouses and domestic partners, the state would have to demonstrate a compelling interest in the purposes advanced by the restriction and an absence of less restrictive alternatives in realizing these ends. While the United States Supreme Court has acknowledged that governments have a legitimate interest in regulating lobbyists, see McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption"), "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

While the United States Supreme Court has recognized that governments have a "sufficiently important" interest in preventing political corruption and the appearance of corruption that justifies limits on campaign contributions and a standard of review below that of strict scrutiny, see McConnell v. Federal Election Commission, 540 U.S. 93 (2003), I am not aware of any court that has recognized this rationale as a basis for such a broad prohibition on paid lobbying. While the ban may be intended to promote public confidence in the integrity of legislators and to prevent corruption and any appearance of corruption, the prohibition as it is currently structured disallows all paid lobbying by spouses and domestic partners of legislators; not lobbying on issues before committees on which a legislator spouse or domestic partner might serve, a matter on which the legislator spouse or domestic partner will vote, etc. Therefore, a court might conclude that the ban as structured is not sufficiently narrow to further a compelling state interest and is an unconstitutional infringement on the First Amendment rights of the spouses and domestic partners to whom it applies.

It is my opinion that the state may be unable to meet its burden of demonstrating that no less restrictive alternatives exist to eliminate impropriety, undue influence, and conflicts-of-interest, and that this restriction might be invalidated.

TLAB:med
07-127.med

Cindy Smith

From: Dave Jones [Dave_Jones@law.state.ak.us]
Sent: Tuesday, April 24, 2007 10:35 AM
To: Cindy Smith
Cc: Christopher Clark; Deborah Behr
Subject: CSHB 109(JUD) am

Attachments: HB 109, SB 19, and SB 20 language comparison chart.doc

HB 109, SB 19, and SB 20 langu...

Cindy,

I'm in Juneau and spoke with Allison after this morning's Senate State Affairs Committee's hearing on CSHB 109(JUD) am. I mentioned to Allison that I wanted to talk to you about two aspects of the bill. First, Section 1 probably needs an amendment to replace the reference to AS 39.52.960 in defining "official action." The definition of official action in AS 39.52.960 refers to "public officer," which only includes members of the executive branch. I think it would be more consistent with the intent of Section 1 to substitute "'official action' means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction" for the language on lines 8 and 9 of page 2, after "in this paragraph." Dan Wayne is already aware of this problem, I believe, because I learned of it from a draft he prepared for another bill. If you'd like me to put together an amendment, I'd be happy to do it.

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Do you have any idea when the Senate Judiciary Committee might take up the bill?

In case it might be helpful, I'm attaching a side-by-side language comparison of this bill and the two ethics bills that the Senate passed, CSSB 19(FIN) am and CSSB 20(STA) am(efd fld).

If you need to reach me, I'm at 465-6713.

Thanks!

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Tom Brice, Business Representative
Alaska District Council of Laborers

Date: April 24, 2007

Re: HB 109

Thank you for the opportunity to provide comments on HB 109.

Alaska has a long-standing nepotism statute, AS 39.90.020, and regulations, 2 AAC 07.950, which prohibit family members from working together in a *supervisory* relationship.

But in August 2005, the Department of Administration promulgated a new policy, Alaska Administrative Manual (AAM) 100.050, which prohibits employees from being in an "*employment relationship*" with an immediate family member, including conjugal relationships, up to the second degree of kindred.

This provision was enacted in response to a Department of Law memorandum issued in March 2005 on how the Executive Branch Ethics Act (Ethics Act) applies when a supervisor and a subordinate are in a conjugal relationship. The AG's opinion was that the relationship violated the Ethics Act.

But the AG's opinion was just that--- the Ethics Act would prevent a **supervisor** and another employee from working together if they were family members or living in a conjugal relationship. The Dept. of Administration, in promulgating AAM 100.050, has taken that opinion and dramatically expanded its scope.

In defining an "*employment relationship*," the Department expanded it to include a vast number of actions typically completed by non-supervisory employees. As it stands, the Department's new policy, based on its interpretation of the Ethics Act and the March 2005 AG memorandum, has had devastating effects on Alaska's public employees, especially those living and working in rural and Native communities. The policy prohibits one family member from being hired, promoted, or transferred if it results in an employment relationship with another family member. This is true even if neither one of them is a supervisor, based solely on the minutest possibility that one family member may be promoted to a lead or foreman position even if only for a day. As most of you know, many Alaskan communities are so small that most individuals *are* related in some way. The impact on non-supervisory employees is substantial and unnecessary, as it

essentially prohibits both supervisory and non-supervisory relationships between family members.

The Department of Administration's policy is affecting everyday working Alaskans in such a way that was never intended by this legislation. Family members who seek to work together in a non-supervisory employment relationship are held to an even stricter standard than legislative branch employees.

Under long-standing state regulations promulgated by the Alaska Labor Relations Agency, a "supervisory employee" is essentially defined as an individual who has authority to act on behalf of the public employer in carrying out supervisory functions, if the exercise of that authority is not just routine but requires the exercise of independent judgment. "Supervisory functions" are defined as the ability to take action in the area of:

> -**Employment** (hiring, transfers, lay offs, recall),
> -**Discipline** (suspension, discharge, demotion, issuance of written warnings) or
> -**Grievance adjudication** (response to a first level grievance under a collective bargaining agreement)

The Department's new nepotism policy, however, prohibits far more than just supervisory relationships.

It bears mentioning that the Ethics Act, in AS 39.52.110(a)(3), was meant to "*distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.*"

It is noteworthy that AS 39.52.910(b) of the Ethics Act states: "*The provisions of this chapter supersede the common law on conflicts of interest that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, **excluding nepotism**, adopted under AS 39.25.*" It is the Union's position that this means the Ethics Act does not and should not supersede the long-standing nepotism statute and regulations, which is the result of the Department of Administration's policy. However, the Union concedes that AS 39.52.910(b) is ambiguous.

The Union suggests an amendment which would limit the affect of the Ethics Act to what the legislature likely intended: to clarify that Ethics Act issues arise in ***supervisory*** relationships between family members.

This amendment would add a section "(d)" to the Ethics Act provision AS 39.52.910 which would read as follows:

> "Nothing in this Act shall supersede the provisions of AS 39.90.020, nor preclude individuals from being in an employment relationship with an immediate family member where neither family member is a supervisor who has authority to act or to effectively recommend action in the interest of the public employer in one of the following

supervisory functions, if the exercise of that authority is not merely routine but requires the exercise of independent judgment:

(a) employing, including hiring, transferring, laying off, or recalling;

(b) discipline, including suspension, discharge, demotion, or issuance of written warnings; or

(c) grievance adjudication, including responding to a first level grievance under a collective bargaining agreement."

We believe that such an amendment would clarify the scope of the Ethics Act and protect working Alaskans, especially those working in small rural and native communities, yet also strike a balance by highlighting the ethical issues involved in familial supervisory relationships.

Thank you.

An Amendment to add a new section to AS 39.52.910 which would read as follows:

(d) Nothing in this Act shall supersede the provisions of AS 39.90.020, nor preclude individuals from being in an employment relationship with an immediate family member where neither family member is a supervisor who has authority to act or to effectively recommend action in the interest of the public employer in one of the following supervisory functions, if the exercise of that authority is not merely routine but requires the exercise of independent judgment:

(a) employing, including hiring, transferring, laying off, or recalling;

(b) discipline, including suspension, discharge, demotion, or issuance of written warnings; or

(c) grievance adjudication, including responding to a first level grievance under a collective bargaining agreement.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
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Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

Date: May 5, 2007

To: Dan Wayne, Legislative Legal Services

From: Cindy Smith

Re: CS for CSHB109 (JUD) am 25-GH1059\N.A.

Attached are amendments for CSHB109.

In addition to amendments 1-12, we'd also like to include the amendments proposed by the Legislative Ethics committee in the two memos that are also attached.

I will be in the office tomorrow (Sunday) by around 11 a.m. or so and will call to go over this with you.

We have one additional question we'd like you to consider: we would like to ensure that there is a provision, either in existing law or in this bill, that will allow an ethics complaint to be lodged against a member who provides a vote or other legislative support in exchange for the promise of future employment. We understand that this is already covered under the bribery statutes, but want to be sure it is covered as an ethics matter as well. Can you please review current statutes and this bill and let us know if we need to add additional language, either to section 26 or in a new subsection to cover that issue?

Thanks. I'll call you tomorrow.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #1:

On Page 2, line 8 delete: "has the meaning given in AS 39.52.960;" and

insert: "means performance of any duties in the course and scope of a public officer's employment, including, advice, participation or assistance, such as a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction;"

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #3:

Page 3, Section 6:

Add a new exemption to the e-filing requirement for candidates raising less than $5,000.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #4:

Per the language in SB64 (attached), amend AS 39.52.120(b) to add state aircraft to the list of assets and resources and add a new subsection outlining that the restrictions on the use as per the language in SB64.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #5:

Delete Section 27.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #6:

Section 35: Please add language that provides for two level of courses:

(1) an introductory course, which all persons named in the section must take as their initial course, and

(2) a refresher course, which persons who have taken the introductory course are required to take in subsequent sessions.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment # 7

Section 60:

Replace this section with the language for 39.52.180(d) in SB19 (FIN) am (attached).

exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, [OR] determination, [BUT DOES NOT INCLUDE THE] proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures, [;] or [THE] proposal, consideration, or adoption of administrative regulations.

*** Sec. 6.** AS 39.52.180(d) is amended to read:

(d) **An individual who formerly held a position listed in this subsection** [A FORMER GOVERNOR, LIEUTENANT GOVERNOR, OR HEAD OF A PRINCIPAL DEPARTMENT IN THE EXECUTIVE BRANCH] may not engage in activity as a lobbyist under AS 24.45 for a period of one year after leaving **that position** [SERVICE AS THE GOVERNOR, LIEUTENANT GOVERNOR, OR DEPARTMENT HEAD, AS APPROPRIATE]. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission. **This subsection applies to the position of**

(1) governor;

(2) lieutenant governor;

(3) head or deputy head of a principal department in the executive branch;

(4) director of a division or legislative liaison within a principal department in the executive branch;

(5) legislative liaison, administrative assistant, or other employee of the Office of the Governor or Office of the Lieutenant Governor in a policy-making position;

(6) member of a state board or commission that has the authority to adopt regulations, other than a board or commission named in AS 08.01.010;

(7) member of the governing board and executive officer of a state public corporation.

*** Sec. 7.** AS 39.52.960(14) is amended to read:

(14) "official action" means **performance of any duties in the course and scope of a public officer's employment, including review, advice,**

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #8

On page 28, starting at line 9:

In subsection (d)(1), delete "criminally charged" and insert "convicted"

In subsection (d)(2), delete language after the word "degree" and insert the words "of knowledge, if any, of the person's spouse, dependent, or former spouse in connection with the illegal conduct for which the person was convicted.

Delete subsection (d)(3) on lines 12 and 13.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #9

Add language to require that registered lobbyists who purchase food or beverage for immediate consumption for legislators, legislative employees must report that expenditure by date and names of recipients of the food or beverage unless

(a) The food or beverage is provided at an event open to all legislators and legislative employees, or

(b) The food or beverage was purchased for $10 or less.

These reports must be filed monthly.

This provision would not apply to representational or volunteer lobbyists.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #10

Add a new subsection amending the definition of "official action" in 39.52.960(14) as it is stated in amendment #1.

exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, [OR] determination, [BUT DOES NOT INCLUDE THE] proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures, [;] or [THE] proposal, consideration, or adoption of administrative regulations.

*** Sec. 6.** AS 39.52.180(d) is amended to read:

(d) **An individual who formerly held a position listed in this subsection** [A FORMER GOVERNOR, LIEUTENANT GOVERNOR, OR HEAD OF A PRINCIPAL DEPARTMENT IN THE EXECUTIVE BRANCH] may not engage in activity as a lobbyist under AS 24.45 for a period of one year after leaving **that position** [SERVICE AS THE GOVERNOR, LIEUTENANT GOVERNOR, OR DEPARTMENT HEAD, AS APPROPRIATE]. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission. **This subsection applies to the position of**

(1) governor;

(2) lieutenant governor;

(3) head or deputy head of a principal department in the executive branch;

(4) director of a division or legislative liaison within a principal department in the executive branch;

(5) legislative liaison, administrative assistant, or other employee of the Office of the Governor or Office of the Lieutenant Governor in a policy-making position;

(6) member of a state board or commission that has the authority to adopt regulations, other than a board or commission named in AS 08.01.010;

(7) member of the governing board and executive officer of a state public corporation.

*** Sec. 7.** AS 39.52.960(14) is amended to read:

(14) "official action" means **performance of any duties in the course and scope of a public officer's employment, including ~~review~~, advice,** dec

participation, assistance, or another kind of involvement regarding a matter, such as a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

*** Sec. 8.** AS 39.52.180(c) is repealed.

*** Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Sections 5, 6, and 8 of this Act apply to a person who leaves state service on or after the effective date of secs. 5 and 6 of this Act.

CSHB109(JUD) am 25-GH 1059\N.A.

Amendment #11:

Add language that requires that APOC scan and post on-line all handwritten reports in a PDF or other, similar format within 48 hours of their receipt.

25-GH1059\NA.2
Wayne
5/4/07

AMENDMENT #17

OFFERED IN THE SENATE BY SENATOR THERRIAULT

TO: CSHB 109(JUD) am

Page 2, following line 16:

Insert a new bill section to read:

"* **Sec. 2.** AS 14.25.040(c) is amended to read:

(c) A state legislator is not entitled to elect membership under (b) of this section if the state legislator is covered for the same period of service under the public employees' retirement system (AS 39.35). An election of membership under (b) of this section is retroactive to the date the state legislator took the oath of office. A state legislator may not receive membership credit under (b) of this section for legislative service performed before the legislative session during which the state legislator elected membership under (b) of this section. In order to continue in membership service under (b) of this section, the state legislator must earn at least 0.3 years of membership service under other sections of AS 14.25.009 - 14.25.220 during each five-year period. **A state legislator may not receive membership credit under AS 14.25.009 - 14.25.220 for legislative service on or after the date the legislator commits a criminal offense from which a pension forfeiture under AS 37.10.310 results.**"

Renumber the following bill sections accordingly.

Page 3, line 14:

Delete "sec. 5"

Insert "sec. 6"

Page 28, following line 13:

Insert a new bill section to read:

"* **Sec. 47.** AS 39.35.300(a) is amended to read:

(a) An active employee is entitled to credited service for periods of employment with the state after January 1, 1961, regardless of the office, department, division, or agency of the state in which the person was employed. For purposes of AS 39.35.095 - 39.35.680, the University of Alaska is not an office, department, division, or agency of the state. Service credit may not be granted under AS 39.35.095 - 39.35.680 for service that is creditable under the teachers' retirement system, AS 14.25**, or for a person's service as a public officer, as defined in AS 39.52.960, a legislator, or a legislative director, if the service occurs on or after the date the person commits a criminal offense from which a pension forfeiture under AS 37.10.310 results**."

Renumber the following bill sections accordingly.

Page 35, line 18:

Delete "sec. 53"

Insert "sec. 55"

Page 38, line 28:

Delete "sec. 59"

Insert "sec. 61"

Page 38, line 29:

Delete "sec. 59"

Insert "sec. 61"

Page 38, line 30:

Delete "sec. 60"

Insert "sec. 62"

Page 39, line 2:
Delete "sec. 60"
Insert "sec. 62"

Page 39, line 3:
Delete "sec. 61"
Insert "sec. 63"

Page 39, line 7:
Delete "sec. 61"
Insert "sec. 63"

Page 39, line 11:
Delete "sec. 45"
Insert "sec. 46"

Page 39, line 13:
Delete "Sections 6, 41, and 54"
Insert "Sections 7, 42, and 56"

Page 39, line 14:
Delete "Section 53"
Insert "Section 55"

Page 39, line 15:
Delete "secs 67 and 68"
Insert "secs. 69 and 70"

Alaska State Legislature

Select Committee on
Legislative Ethics

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TO: Senator Hollis French
Chair, Senate Judiciary Committee

FROM: Joyce Anderson, Administrator

DATE: April 24, 2007

RE: Amendment to HB 109

The House Subcommittee on Legislative Ethics met on April 17, 2007 and discussed the subject of conflict of interest in regard to political fund raising and campaigning. The subcommittee determined language in AS 24.60.030(a)(5)(C) "telephone or facsimile use that does not carry a special charge" should be deleted.

Further, in AS 24.60.030(a)(2) the same exception is stated in (C) and should be removed. This section prohibits the use of state resources for a nonlegislative purpose, for involvement in or support of or opposition to a partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person but does not prohibit the use of the telephone or fax that does not carry a special charge.

The rationale for the change is as follows.

1. The language in AS 24.60.030(a)(5)(C) and AS 24.60.030(a)(2)(C) allows for an exception to the use of the phone and fax and does not place a 'de minimis' restriction on the use.
2. By removing the language in (C) in both sections the use of the phone or fax would fall within the 'de miminis' use of state funds, facilities, equipment, services, or another asset or resource as stated in AS 24.60.030(a)(2)(A) and AS 24.60.030(a)(5)(A).
3. By deleting the language in AS 24.60.030(a)(5)(C) and AS 24.60.030(a)(2)(C), the use of state resources would be applied consistently across the board.

The subcommittee suggested an amendment be drafted to be introduced when HB 109 is heard in the Senate.

Attached are the relevant statutes. Please give me a call if you have questions.

Sec. 24.60.030. Prohibitions related to conflicts of interest and unethical conduct.
(a) A legislator or legislative employee 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;

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

(B) the use of mailing lists, computer data, or other information lawfully obtained from a government agency and available to the general public for nonlegislative purposes;

(C) **telephone or facsimile use that does not carry a special charge;**

(D) the legislative council, notwithstanding AS 24.05.190, from designating a public facility for use by legislators and legislative employees for health or fitness purposes; when the council designates a facility to be used by legislators and legislative employees for health or fitness purposes, it shall adopt guidelines governing access to and use of the facility; the guidelines may establish times in which use of the facility is limited to specific groups; or

(E) a legislator from using the legislator's private office in the capital city during a legislative session, and for the ten days immediately before and the ten days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others;

(F) a legislator from use of legislative employees to prepare and send out seasonal greeting cards;

(G) a legislator from using state resources to transport computers or other office equipment owned by the legislator but primarily used for a state function;

(H) use by a legislator of photographs of that legislator;

(I) reasonable use of the Internet by a legislator or a legislative employee except if the use is for election campaign purposes;

(J) a legislator from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility; or

(K) a legislator from sending any communication in the form of a newsletter 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;

(3) knowingly seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a

claim, request, or application for compensation, reimbursement, or travel allowances from public funds;

(4) require a legislative employee to perform services for the private benefit of the legislator or employee at any time, or allow a legislative employee to perform services for the private benefit of a legislator or employee on government time; it is not a violation of this paragraph if the services were performed in an unusual or infrequent situation and the person's services were reasonably necessary to permit the legislator or legislative employee to perform official duties;

(5) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

(B) the use of mailing lists, computer data, or other information lawfully obtained from a government agency and available to the general public for nonlegislative purposes;

(C) **telephone or facsimile use that does not carry a special charge**;

(D) storing or maintaining, consistent with (b) of this section, election campaign records in a legislator's office; or

(E) a legislator from using the legislator's private office in the capital city during a legislative session, and for the ten days immediately before and the ten days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is conside· d a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others; or

(F) use by a legislator of photographs of that legislator.

(l) to the legislature or another federal, state, or municipal office or to the board of an electric or telephone cooperative.

Alaska State Legislature

Select Committee on
Legislative Ethics

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99510 – 1468

TO: Senator Hollis French
Chair, Senate Judiciary Committee

FROM: Joyce Anderson, Administrator

DATE: April 24, 2007

RE: Amendment to HB 109 concerning the definition of INCOME

The Senate Subcommittee on Legislative Ethics met on April 17, 2007 and discussed the definition of "income" as stated in AS 24.60.990(a)(7).

> "income" means assets that are received, regardless of whether they are earned or unearned; inheritances and other gifts are not income;"

The subcommittee suggested the definition be changed to read:

> "income" means assets that are received **or deferred**, regardless of whether they are earned or unearned; inheritances and other gifts are not income,"

This change would be consistent with Section 3 of SB 20 which included the language "or deferred income" in AS 24.60.200.

Further, the change in the definition would clarify all sections of the statute and bring consistency to the definition of the term 'income'.

The word "income" also appears in the Legislative Ethics Act in the following two sections:

> AS 24.60.010 Legislative findings and purpose
> (4) a part-time citizen legislature implies that legislators are expected and permitted to earn outside *income* and that the rules governing legislators' conduct

during and after leaving public service must be clear, fair, and complete as possible; the rules, however, should not impose unreasonable to unnecessary burdens that will discourage citizens from entering or staying in government service;

AS 24.60.040 Contract or leases

(c) In this section, "direct or indirect financial benefits" means *income*, profits, or other financial benefits under a state contract, without regard to whether the *income*, profits, or other financial benefits ensue to the person as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor.

Let me know if you have any questions.

CSHB 109(JUD) am VERSION "" SUBJECT SECTIONAL

Section 1. The definition of "benefit" does not include a campaign contribution unless the contribution is made to alter a candidates vote or position on a matter the candidate could take official action on.

Sec. 2. Pension forfeiture provisions in AS 37.10.310 apply to the Teachers' Defined Benefit Retirement Program.

Sec. 3. Pension forfeiture provisions in AS 37.10.310 apply to the teachers first hired on or after July 1, 2006.

Sec. 4. This section eliminates the $5,000 exemption for all candidates for public office except delegates to a constitutional convention, a judge seeking judicial retention, or a candidate for a municipal office.

Sec. 5. Implements a January 1, 2009 deadline for mandatory electronic filing for all candidates except candidates for municipal office and for those candidates whose circumstances warrant an exception.

Sec. 6. Revises section 4 effective January 1, 2009 to limit the municipal election exemption for mandatory electronic filing to communities with a population of less than 15,000.

Sec. 7. Pension forfeiture provisions in AS 37.10.310 apply to the retirement and death benefits of justices and judges.

Sec. 8. Requires APOC to administer an annually updated training course for lobbyists and employers of lobbyists to promote high ethical standards of professional conduct.

Sec. 9. Instructs APOC to obtain a sworn affirmation by a lobbyist to verify that the lobbyist has completed a training course within a 12-month period preceeding the date of registering as a lobbyist.

Sec. 10. Language cleanup for exceptions to prohibition of lobbyists to give gifts and places a further prohibition for lobbyists on campaign contributions or gifts that would violate AS 39.52 the Alaska Executive Branch Ethics Act.

Sec. 11. Allows a person prohibited from lobbying because of family relationship with a legislator to engage in volunteer or representational lobbying, must register as a representational lobbyist, but is not required to pay the registration fee.

Sec. 12. Adds to Definitions for AS 24.45 "domestic partner" as defined in AS 39.50.200(a) "a person who is cohabiting with another person in a relationship that is like a marriage but is not a legal marriage.

Sec. 13. Modifies language in the applicability section of the Legislative Ethics Act that has at times been misinterpreted as exempting legislators, legislative directors, legislative employees and public members of the committee from disclosure requirements related to the latter part of their time in service.

Sec. 14. Language cleanup to reference correct statute cite for defining charity event.

Sec. 15. Amends the definition of campaign period to include the 60 days before a general election and decreases from 90 days to 60 days the "campaign period" for other elections, including the primary election and municipal elections.

Sec. 16. Requires a legislator or legislative employee to report board memberships to the Ethics Committee.

Sec. 17. Requires the Ethics Committee to promptly forward disclosure reports of family members of legislators or legislative staff being involved in a state contract of $5,000 or more to the appropriate house of the legislature and instructs the presiding officer to publish the disclosure in a supplemental journal not later than the next regularly scheduled publication of ethics disclosures.

Sec. 18. Streamlines the Ethics Committees reporting process for disclosures related to loans received or certain programs participated in by legislators or legislative employees changing the "within three weeks" to "next regularly scheduled report". Also allows staff to, upon request, edit information that if disclosed would cause unjustifiable invasion of personal privacy.

Sec. 19. Clarifies "a public official" with which a close economic association would require a disclosure with the Ethics Committee is defined in AS 39.50.200(9).

Sec. 20. Eliminates the term "a legislator" from the "close economic association with a lobbyist" reporting requirement to Ethics Committee since legislators can no longer have a close economic relationship with a lobbyist. Legislative employees continue to be required to file the report.

Sec. 21. Allows for compassionate gifts to legislators or legislative employees "intended to aid or comfort a recipient or a member of the recipient's immediate family in contending with a catastrophe, a tragedy, or a health related emergency."

Sec. 22. Expands the prohibition of gifts from lobbyists to include immediate family members of lobbyists and makes an exception allowing for accepting food or beverage for immediate consumption and tickets for charitable events approved by the legislative council.

Sec. 23. This amendment defines "immediate family", adds the office of victims' rights to the list of legislative employees that do not qualify for the discounts, and allows for a gift of transportation between legislators and legislative staff under certain circumstances. (Special discounts are given to legislators and their staff to make the stay during session more affordable. An example is reduced rates at a local athletic club.) ETHICS

Sec. 24. Adds gifts received by family members of legislators and legislative employees to the disclosures that are maintained for public record and forwarded to APOC. Gifts of value of $250 or more must be reported within 30 days of receipt.

Sec. 25. This language puts disclosers on notice that legislators and legislative employees must disclose gifts of family members' to the Ethics Committee.

Sec. 26. A new section that prohibits serving legislators from "directly or by authorizing another to act on the legislator's behalf, accepting or agreeing to accept compensation from anyone but the state for services related to their work. ETHICS

Sec. 27. Prohibits a legislator or legislative employee from being compensation for representation before a "municipal, legislative, or executive branch" entity. ETHICS

Sec. 26. Streamlines reporting requirements so that unless otherwise provided for, Ethics disclosure deadlines for legislators, legislative employees, and committee members will be "30 days after the commencement of the matter or interest".

Sec. 27. An additional disclosure report of service on a board, interest in a state contract or lease, participation in a state loan program, a close economic association, or representation of a client must be made within 30 days of the first day of session.

Sec. 28. New law requires a former legislator, legislative employee or public member of the Select Committee on Legislative Ethics to file disclosure information for all matters relevant to when that person was a legislator, legislative employee or public member of the Select Committee on Legislative Ethics even though they no longer hold that position.

Sec. 29. Adds an additional disclosure requirement within thirty days after the legislature goes into session of service on the board of an organization, interest in a state contract or lease, participation in a state program or loan, a close economic association, or representation of client before a state agency, board, or commission.

Sec. 30. Requires legislators, legislative employees, and public members of the Ethics Committee to file a final disclosure report with APOC within 90 days of leaving service.

Sec. 31. Allows the chair of the Ethics Committee or a subcommittee to designate the alternate legislative member to attend a meeting if the regular member is unable to attend. Currently the chair can only appoint the alternate if the regular member has a conflict with an with an item on the meeting agenda.

Sec. 32. Adds to Select Committee on Ethics establishment clause a definition of "majority organizational caucus" which means "a group of legislators who have organized and elected a majority leader and constitute more than 50 percent of the total membership of the house or senate."

Sec. 33. Allows the chair of the Ethics Committee or a subcommittee to designate an alternate member to attend a meeting if the regular member and the alternate member are both accused of a violation in the complaint the committee is hearing.

Sec. 34. Adds to duties of the Ethics Committee, requiring that it publish certain educational legislative ethics materials, and in January of each year administer an ethics course to help people covered by the ethics code understand and follow it.

Sec. 35. New section requires legislators, legislative employees, and public members of the Ethics Committee to complete the legislative ethics course offered by the committee. ETHICS

Sec. 36. Adds APOC and Ethics Committee to the list of entities that may request an advisory opinion under AS 24.60.160 and adds the requirement that advisory opinions be redacted before publication to protect the identity of the person involved. It also makes the vote record of the committee a public record.

Sec. 37. Allows persons who have provided legal advice to the Ethics Committee in the past, but no longer do so, to be appointed by the committee to present the case against the person charged. It also grants authority to the committee to approve the change date of a hearing beyond the current 20 - 90 days limit. It also allows the committee to dismiss a complaint if the delay caused by the complainant in the case is not supported by a compelling reason or would result in the person charged being deprived of a fair hearing.

Sec. 38. Defines the victims' advocate as the "appointing authority" for the purpose of determining how to sanction an employee of the Office of Victims' Rights found by the Ethics Committee to have violated the Legislative Ethics Act; and similarly defines the legislature as the "appointing authority" where the question is how to sanction the victims' advocate. ETHICS

Sec. 39. Revises list of financial information a legislator, public member of the committee, or a legislative director is required to disclose, by clarifying that disclosure of income received for personal services, or a loan or loan guarantee, are to be reported to APOC in the Annual Financial Disclosure in Title 24, not Title 39. It also requires that when personal income is reported the approximate numbers of hours worked must be reported along with any other information the earner wishes to report. (This amends the initiative language passed.)

Sec. 40. Requires a person who is appointed after the required annual report as a legislator, public member of the committee, or legislative director, must file a financial disclosure report with APOC within 30 days after the person is appointed. In addition, the person must file a financial disclosure report within 90 days of leaving service.

Sec. 41. Requires mandatory electronic filing of financial disclosures to APOC for legislators, legislative directors, and ethics committee members by July 1, 2008 except in a case where APOC makes an exception.

Sec. 42. Requires APOC to notify the Alaska Legislative Council when the legislative director for the ombudsman's office or the office of victims' rights has failed to file a disclosure report with APOC.

Sec. 43. Amends the definition of "anything of value", "benefit", or "thing of value" to include exemption of food or drink immediately consumed and tickets for a charity event.

Sec. 44. Expands powers and duties of the Alaska Retirement Management Board to include administering pension forfeitures.

Sec. 45. Sets in statute provisions to administer pension forfeitures including provisions to allow the board to award a spouse, dependent, or former spouse some or all of the forfeiture.

Sec. 46. Pension forfeiture provisions in AS 37.10.310 apply to the Public Employees' Defined Benefit Retirement Plan.

Sec. 47. Pension forfeiture provisions in AS 37.10.310 apply to PERS employees first hired on or after July 1, 2006.

Sec. 48. Requires that within 90 days after leaving office a former public official shall file a final statement with APOC covering any period during the official's service for which the official did not already file a statement.

Sec. 49. Public officials and candidates will now be required to disclose to APOC in their financial statements all sources of income over $1,000 and all gifts with cumulative value over $250, and the disclosure of income and gifts will include a description of the income's or gift's source, amount, the recipient and, regarding income, a description of how it was earned. It adds a limited liability company as a source of income.

Sec. 50. Amends the definition of "close economic association" for the purposes of financial disclosure to include a limited liability corporation.

Sec. 51 & 52. This section would substantially amend blind trusts from their current form under AS 39.50.040. Blind trusts would remain optional and applies to public officials. APOC

Sec. 53. Requires information submitted to APOC under 39.50 (public officials and candidates for public office) to be submitted electronically started July 1, 2007 unless APOC makes an exception, but makes electronic filing optional for municipal officers.

Sec. 54. Effective January 1, 2009, municipal candidates in communities with a population of 15,000 or more would be required to file electronically.

Sec. 55. Amends definition of "source of income" for the purposes of disclosure to include income from a limited liability corporation.

Sec. 56. Expands the definition of "public official" AIDEA, board of directors of the Knik Arm Bridge and Toll Authority, Alaska labor Relations Agency, the Board of Trustees of the Alaska Mental Health Trust Authority, and the Board of Director of the Alaska Railroad Corporation. APOC

Sec. 57. New subsection makes presumption that stock or other ownership valued at less than $5,000 is insignificant for public officials in the Executive Branch. The value is based on the dollar value at the time the report is filed. ATTORNEY GENERAL & PERSONNEL BOARD

Sec. 58. Presumes a gift from a lobbyist to a public official or a family member of a public official, regardless of the value, is intended to influence a public official and is prohibited unless the gift is from an immediate family member. APOC.

Sec. 59. Prohibits a public officer for two years after leaving position with the state from representing, advising, or assisting a person for compensation regarding a matter that was under consideration by the administrative unit served by that

public officer, and in which that public officer participated personally and substantially through exercise of official action, including a case, proceeding, application, contract, determination proposal or consideration of a legislative bill, a resolution, constitutional amendment, or other legislative measures, or proposal, consideration, or adoption of an administrative regulation. ATTORNEY GENERAL

Sec. 60. Adds a deputy head or employee of the Office of the Governor in a policy-making position to the list of the governor, lieutenant governor, or department head who are prohibited from lobbying for one year after leaving service. APOC

Sec. 61. Prohibits a public official who is required to file a financial disclosure with APOC from serving on a governing board of certain companies, organizations or other entities, for one year after leaving office, depending on the entity's connection with the person's work as a public officer. APOC

Sec. 62. Before a governor grants executive clemency the governor is required to disclose in writing to the attorney general whether granting clemency would benefit a personal or financial interest of the governor. ATTORNEY GENERAL

Sec. 63. Adds to application of Administrative Adjudications the Alaska Retirement Management Board for administration of administrative forfeitures.

Sec. 64. Repeals AS 24.60.037(d) temporary appointment of legislative members of ethics committee when conflicts occur which is now addressed in Section 29; and AS 24.60.080(k) definition of "immediate family" which was moved to Section 21.

Secs. 65 – 69. Applicability and effective date clauses.

CSHB 109(JUD) am VERSION "N.A"

PENSION FORFEITURES – TITLE 14, 22, 37, 44

Sec. 2. Pension forfeiture provisions in AS 37.10.310 apply to the Teachers' Defined Benefit Retirement Program.

Sec. 3. Pension forfeiture provisions in AS 37.10.310 apply to the teachers first hired on or after July 1, 2006.

Sec. 7. Pension forfeiture provisions in AS 37.10.310 apply to the retirement and death benefits of justices and judges.

Sec. 44. Expands powers and duties of the Alaska Retirement Management Board to include administering pension forfeitures.

Sec. 45. Sets in statute provisions to administer pension forfeitures including provisions to allow the board to award a spouse, dependent, or former spouse some or all of the forfeiture.

Sec. 46. Pension forfeiture provisions in AS 37.10.310 apply to the Public Employees' Defined Benefit Retirement Plan.

Sec. 47. Pension forfeiture provisions in AS 37.10.310 apply to PERS employees first hired on or after July 1, 2006.

Sec. 63. Adds to application of Administrative Adjudications the Alaska Retirement Management Board for administration of administrative forfeitures.

REPORTING - LEGISLATORS – TITLE 15 & 24

Section 1. The definition of "benefit" does not include a campaign contribution unless the contribution is made to alter a candidates vote or position on a matter the candidate could take official action on.

Sec. 4. This section eliminates the $5,000 exemption for all candidates for public office except delegates to a constitutional convention, a judge seeking judicial retention, or a candidate for a municipal office.

Sec. 5. Implements a January 1, 2009 deadline for mandatory electronic filing for all candidates except candidates for municipal office and for those candidates whose circumstances warrant an exception.

Sec. 6. Revises section 4 effective January 1, 2009 to limit the municipal election exemption for mandatory electronic filing to communities with a population of less than 15,000.

Sec. 10. Language cleanup for exceptions to prohibition of lobbyists to give gifts and places a further prohibition for lobbyists on campaign contributions or gifts that would violate AS 39.52 the Alaska Executive Branch Ethics Act.

Sec. 11. Allows a person prohibited from lobbying because of family relationship with a legislator to engage in volunteer or representational lobbying, must register as a representational lobbyist, but is not required to pay the registration fee.

Sec. 12. Adds to Definitions for AS 24.45 "domestic partner" as defined in AS 39.50.200(a) "a person who is cohabiting with another person in a relationship that is like a marriage but is not a legal marriage.

Sec. 13. Modifies language in the applicability section of the Legislative Ethics Act that has at times been misinterpreted as exempting legislators, legislative directors, legislative employees and public members of the committee from disclosure requirements related to the latter part of their time in service.

Sec. 14. Language cleanup to reference correct statute cite for defining charity event.

Sec. 15. Amends the definition of campaign period to include the 60 days before a general election and decreases from 90 days to 60 days the "campaign period" for other elections, including the primary election and municipal elections.

Sec. 16. Requires a legislator or legislative employee to report board memberships to the Ethics Committee.

Sec. 17. Requires the Ethics Committee to promptly forward disclosure reports of family members of legislators or legislative staff being involved in a state contract of $5,000 or more to the appropriate house of the legislature and instructs the presiding officer to publish the disclosure in a supplemental journal not later than the next regularly scheduled publication of ethics disclosures.

Sec. 19. Clarifies "a public official" with which a close economic association would require a disclosure with the Ethics Committee is defined in AS 39.50.200(9).

Sec. 20. Eliminates the term "a legislator" from the "close economic association with a lobbyist" reporting requirement to Ethics Committee since legislators can no longer have a close economic relationship with a lobbyist. Legislative employees continue to be required to file the report.

Sec. 21. Allows for compassionate gifts to legislators or legislative employees "intended to aid or comfort a recipient or a member of the recipient's immediate family in contending with a catastrophe, a tragedy, or a health related emergency."

Sec. 22. Expands the prohibition of gifts from lobbyists to include immediate family members of lobbyists and makes an exception allowing for accepting food or beverage for immediate consumption and tickets for charitable events approved by the legislative council.

Sec. 24. Adds gifts received by family members of legislators and legislative employees to the disclosures that are maintained for public record and forwarded to APOC. Gifts of value of $250 or more must be reported within 30 days of receipt.

Sec. 25. This language puts disclosers on notice that legislators and legislative employees must disclose gifts of family members' to the Ethics Committee.

Sec. 26. Streamlines reporting requirements so that unless otherwise provided for, Ethics disclosure deadlines for legislators, legislative employees, and committee members will be "30 days after the commencement of the matter or interest".

Sec. 27. An additional disclosure report of service on a board, interest in a state contract or lease, participation in a state loan program, a close economic association, or representation of a client must be made within 30 days of the first day of session.

Sec. 28. New law requires a former legislator, legislative employee or public member of the Select Committee on Legislative Ethics to file disclosure information for all matters relevant to when that person was a legislator, legislative employee or public member of the Select Committee on Legislative Ethics even though they no longer hold that position.

Sec. 29. Adds an additional disclosure requirement within thirty days after the legislature goes into session of service on the board of an organization, interest in a state contract or lease, participation in a state program or loan, a close economic association, or representation of client before a state agency, board, or commission.

Sec. 30. Requires legislators, legislative employees, and public members of the Ethics Committee to file a final disclosure report with APOC within 90 days of leaving service.

Sec. 39. Revises list of financial information a legislator, public member of the committee, or a legislative director is required to disclose, by clarifying that disclosure of income received for personal services, or a loan or loan guarantee, are to be reported to APOC in the Annual Financial Disclosure in Title 24, not Title 39. It also requires that when personal income is reported the approximate numbers of hours worked must be reported along with any other information the earner wishes to report. (This amends the initiative language passed.)

Sec. 40. Requires a person who is appointed after the required annual report as a legislator, public member of the committee or legislative director, must file a financial disclosure report with APOC within 30 days after the person is appointed. In addition, the person must file a financial disclosure report within 90 days of leaving service.

Sec. 41. Requires mandatory electronic filing of financial disclosures to APOC for legislators, legislative directors, and ethics committee members by July 1, 2008 except in a case where APOC makes an exception.

Sec. 43. Amends the definition of "anything of value", "benefit", or "thing of value" to include exemption of food or drink immediately consumed and tickets for a charity event.

Sec. 64. Repeals AS 24.60.037(d) temporary appointment of legislative members of ethics committee when conflicts occur which is now addressed in Section 29; and AS 24.60.080(k) definition of "immediate family" which was moved to Section 21.

PROCEDURES OF APOC AND THE ETHICS COMMITTEE

Sec. 8. Requires APOC to administer an annually updated training course for lobbyists and employers of lobbyists to promote high ethical standards of professional conduct.

Sec. 9. Instructs APOC to obtain a sworn affirmation by a lobbyist to verify that the lobbyist has completed a training course within a 12-month period preceeding the date of registering as a lobbyist.

Sec. 18. Streamlines the Ethics Committees reporting process for disclosures related to loans received or certain programs participated in by legislators or legislative employees changing the "within three weeks" to "next regularly scheduled report". Also allows staff to, upon request, edit information that if disclosed would cause unjustifiable invasion of personal privacy.

Sec. 31. Allows the chair of the Ethics Committee or a subcommittee to designate the alternate legislative member to attend a meeting if the regular member is unable to attend. Currently the chair can only appoint the alternate if the regular member has a conflict with an with an item on the meeting agenda.

Sec. 32. Adds to Select Committee on Ethics establishment clause a definition of "majority organizational caucus" which means "a group of legislators who have organized and elected a majority leader and constitute more than 50 percent of the total membership of the house or senate."

Sec. 33. Allows the chair of the Ethics Committee or a subcommittee to designate an alternate member to attend a meeting if the regular member and the alternate member are both accused of a violation in the complaint the committee is hearing.

Sec. 34. Adds to duties of the Ethics Committee, requiring that it publish certain educational legislative ethics materials, and in January of each year administer an ethics course to help people covered by the ethics code understand and follow it.

Sec. 36. Adds APOC and Ethics Committee to the list of entities that may request an advisory opinion under AS 24.60.160 and adds the requirement that advisory opinions be redacted before publication to protect the identity of the person involved. It also makes the vote record of the committee a public record.

Sec. 37. Allows persons who have provided legal advice to the Ethics Committee in the past, but no longer do so, to be appointed by the committee to present the case against the person charged. It also grants authority to the committee to approve the change date of a hearing beyond the current 20 - 90 days limit. It also allows the committee to dismiss a complaint if the delay caused by the complainant in the case is not supported by a compelling reason or would result in the person charged being deprived of a fair hearing.

ENFORCEMENT STATUTES APOC AND ETHICS COMMITTEE

Sec. 23. This amendment defines "immediate family", adds the office of victims' rights to the list of legislative employees that do not qualify for the discounts, and allows for a gift of transportation between legislators and legislative staff under certain circumstances. (Special discounts are given to legislators and their staff to make the stay during session more affordable. An example is reduced rates at a local athletic club.) ETHICS

Sec. 26. A new section that prohibits serving legislators from "directly or by authorizing another to act on the legislator's behalf, accepting or agreeing to accept compensation from anyone but the state for services related to their work. ETHICS

Sec. 27. Prohibits a legislator or legislative employee from being compensation for representation before a "municipal, legislative, or executive branch" entity. ETHICS

Sec. 35. New section requires legislators, legislative employees, and public members of the Ethics Committee to complete the legislative ethics course offered by the committee. ETHICS

Sec. 38. Defines the victims' advocate as the "appointing authority" for the purpose of determining how to sanction an employee of the Office of Victims' Rights found by the Ethics Committee to have violated the Legislative Ethics Act; and similarly defines the legislature as the "appointing authority" where the question is how to sanction the victims' advocate. ETHICS

Sec. 42. Requires APOC to notify the Alaska Legislative Council when the legislative director for the ombudsman's office or the office of victims' rights has failed to file a disclosure report with APOC.

Sec. 56. Expands the definition of "public official" AIDEA, board of directors of the Knik Arm Bridge and Toll Authority, Alaska labor Relations Agency, the Board of Trustees of the Alaska Mental Health Trust Authority, and the Board of Director of the Alaska Railroad Corporation. APOC

Sec. 58. Presumes a gift from a lobbyist to a public official or a family member of a public official, regardless of the value, is intended to influence a public official and is prohibited unless the gift is from an immediate family member. APOC.

Sec. 59. Prohibits a public officer for two years after leaving position with the state from representing, advising, or assisting a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which that public officer participated personally and substantially through exercise of official action, including a case, proceeding, application, contract, determination proposal or consideration of a legislative bill, a resolution, constitutional amendment, or other legislative measures, or proposal, consideration, or adoption of an administrative regulation. ATTORNEY GENERAL

Sec. 60. Adds a deputy head or employee of the Office of the Governor in a policy-making position to the list of the governor, lieutenant governor, or department head who are prohibited from lobbying for one year after leaving service. APOC

Sec. 61. Prohibits a public official who is required to file a financial disclosure with APOC from serving on a governing board of certain companies, organizations or other entities, for one year after leaving office, depending on the entity's connection with the person's work as a public officer. APOC

REPORTING - PUBLIC OFFICIALS – TITLE 39

Sec. 48. Requires that within 90 days after leaving office a former public official shall file a final statement with APOC covering any period during the official's service for which the official did not already file a statement.

Sec. 49. Public officials and candidates will now be required to disclose to APOC in their financial statements all sources of income over $1,000 and all gifts with cumulative value over $250, and the disclosure of income and gifts will include a description of the income's or gift's source, amount, the recipient and, regarding income, a description of how it was earned. It adds a limited liability company as a source of income.

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Sec. 51 & 52. This section would substantially amend blind trusts from their current form under AS 39.50.040. Blind trusts would remain optional and applies to public officials. APOC

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Sec. 54. Effective January 1, 2009, municipal candidates in communities with a population of 15,000 or more would be required to file electronically.

Sec. 55. Amends definition of "source of income" for the purposes of disclosure to include income from a limited liability corporation.

Sec. 57. New subsection makes presumption that stock or other ownership valued at less than $5,000 is insignificant for public officials in the Executive Branch. The value is based on the dollar value at the time the report is filed. ATTORNEY GENERAL & PERSONNEL BOARD

Sec. 62. Before a governor grants executive clemency the governor is required to disclose in writing to the attorney general whether granting clemency would benefit a personal or financial interest of the governor. ATTORNEY GENERAL

Secs. 65 – 69. Applicability and effective date clauses.

Definitions: HB 109

"**administrative action**" means the proposal, drafting, development, consideration, amendment, adoption or approval, promulgation, issuance, modification, rejection, or postponement by any state agency of any rule or regulation, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act); "administrative action" does not include

(A) a proceeding or an action to determine the rights or duties of a person under existing statutes, regulations, or policies;

(B) the issuance, amendment, or revocation of a permit, license, or entitlement for use under existing statutes, regulations, or policies by the agency authorized to issue, amend, or revoke the permit, license, or entitlement for use;

(C) the enforcement of compliance with existing law or the imposition of sanctions for a violation of existing law;

(D) procurement activity, including the purchase or sale of property, goods, or services by the agency or the award of a grant contract;

(E) the issuance of, or ensuring compliance with, an opinion or activity related to a collective bargaining agreement including negotiating or enforcing the agreement; AS 24.45.171 (1).

"**administrative action**" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use; AS 24.60.990 (a)(1).

"**agency**" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government; AS 24.45.171 (2).

"**anything of value**," "**benefit**," or "**thing of value**" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; "anything of value," "benefit," or "thing of value" does not include

(A) an item listed in AS 24.60.080 (c);

(B) campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support;

(C) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction; or

(D) grants under AS 37.05.316 to named recipients; AS 24.60.990 (a)(2).

"**assistant to the governor or the lieutenant governor**" includes any executive, legislative, special, administrative, or press assistant to the governor or lieutenant governor, and any person similarly employed in a policy-making position; AS 39.50.200 (a)(1).

"**benefit**" means anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value; AS 39.52.960 (3).

"**child**" includes a biological child, an adoptive child, and a stepchild; AS 39.50.200 (a)(2).

"**commission**" means the Alaska Public Offices Commission; AS 24.45.171 (3).

"**commission**" means the Alaska Public Offices Commission created under AS 15.13.020 (a); AS 39.50.200 (a)(3).

"**committee**" means the Select Committee on Legislative Ethics and includes, when appropriate, the senate or house subcommittee; AS 24.60.990 (a)(3).

"**communicate directly**" means to speak with a legislator, legislative employee, or public official;

(A) by telephone;

(B) by two-way electronic communication; or

(C) in person; AS 24.45.171 (4)

"**compensation**" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person; AS 24.60.990 (a)(4).

"**compensation**" means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another; AS 39.52.960 (7).

"**contribution**" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity; AS 15.13.040 (A).

"**designated supervisor**" or "**supervisor**" means

(A) the commissioner of each department in the executive branch, for public employees within the department;

(B) the president of the University of Alaska, for university employees;

(C) the attorney general, for the governor and lieutenant governor;

(D) the executive director of a board or commission for the staff of the board or commission;

(E) the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and

(F) the governor, for commissioners and for other public officers not included in (A) - (E) of this paragraph; or

(G) a public officer designated by a commissioner, the university president, or the governor to act as the supervisor if the name and position of the officer designated has been reported to the attorney general; AS 39.52.960 (8).

"**domestic partner**" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage. AS 24.60.990 (a)(5).

"**domestic partner**" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage; AS 39.60.200 (a)(4).

"financial interest" means

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management; AS 39.52.960 (a)(9).

"fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are $50 a person or less in amount or value. AS 15.13.040 (B).

"gift"

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

(B) includes but is not limited to

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

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

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

(C) does not include

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

(ii) food and beverages consumed in places of public accommodation; AS 24.45.171 (5).

"immediate family" means the spouse and dependent children of an individual; AS 24.45.171 (6).

"**immediate family**" means

(A) the spouse or domestic partner of the person; or

(B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person; AS 24.60.990 (a)(6).

"**immediate family member**" means

(A) the spouse of the person;

(B) another person cohabiting with the person in a conjugal relationship that is not a legal marriage;

(C) a child, including a stepchild and an adoptive child, of the person;

(D) a parent, sibling, grandparent, aunt, or uncle of the person; and

(E) a parent or sibling of the person's spouse; AS 39.52.960 (a)(11).

"**individual**" means a natural person; AS 24.45.171 (7).

"**influencing legislative or administrative action**" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action; AS 24.45.171 (8).

"**judicial officer**" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court; AS 39.50.200 (a)(6).

"**legislative action**" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor; AS 24.45.171 (9).

"**legislative action**" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction; AS 24.60.990 (a)(9).

"**legislative director**" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency; AS 24.60.990 (a)(10).

"**legislative employee**" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee; AS 24.60.990 (a)(11).

"**lobbyist**" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession; AS 24.45.171 (10).

"**lobbyist**" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171 , but does not include a volunteer lobbyist described in AS 24.45.161 (a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission; AS 24.60.990 (a)(12).

"**municipal officer**" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality; AS 39.50.200 (a)(8).

"**official action**" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer; AS 39.52.960 (a)(14).

"**organization**" includes a group, association, society, political party, or other entity made up of two or more persons, whether operated for profit or nonprofit; AS 39.52.960 (a)(15).

"**payment**" means the disbursement, distribution, transfer, loan, advance, deposit, gift, or other rendering or tendering of money, property, goods, or services or anything else of value; AS 24.45.171 (11).

"**payment to influence legislative or administrative action**" means any of the following:

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

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

(C) a payment that directly benefits a public official or a member of the immediate family of that official;

(D) a payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with a public official;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official;

(F) a payment or reimbursement for expenses in the categories set out in AS 24.45.051 (2); AS 24.45.171 (12).

"**person**", in addition to the terms set out in AS 01.10.060 includes a labor union; AS 24.45.171 (13).

(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;)

"**personal interest**" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit; AS 39.52.960 (a)(18).

"**personnel board**" or "**board**" means the personnel board established in AS 39.25.060 ; AS 39.52.960 (a)(19).

"**political action**" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office; AS 24.60.990 (a)(13).

"**public employee**" or "**employee**" means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service; AS 39.52.960 (a)(20).

"**public officer**" or "**officer**" means

(A) a public employee;

(B) a member of a board or commission; and

(C) a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties; in this paragraph, "trust" has the meaning given in AS 37.14.450 ; AS 39.52.960 (a)(21).

"**public official**" or "**public officer**" means a public official as defined in AS 39.50.200 (a), a member of the legislature, or a legislative director as defined in AS 24.60.990 (a); however, it does not include a judicial officer or an elected or appointed municipal officer. AS 24.45.171 (14).

"**public official**" means

(A) a judicial officer;

(B) the governor or the lieutenant governor;

(C) a person hired or appointed in a department in the executive branch as

(i) the head or deputy head of the department;

(ii) the director or deputy director of a division;

(iii) a special assistant to the head of the department;

(iv) a person serving as the legislative liaison for the department;

(D) an assistant to the governor or the lieutenant governor;

(E) the chair or a member of a state commission or board;

(F) state investment officers and the state comptroller in the Department of Revenue;

(G) the chief procurement officer appointed under AS 36.30.010 ;

(H) the executive director of the Alaska Workforce Investment Board;

(I) each appointed or elected municipal officer; and

(J) the members of the board of trustees, the executive director, and the investment officers of the Alaska Permanent Fund Corporation; AS 39.50.200 (a)(9).

"**registered lobbyist**" means a person who is required to register under AS 24.45.041 ; AS 24.60.990 (a)(14).

"**representation**" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings; AS 24.60.990 (a)(15).

"**source of income**" means the entity for which service is performed or that is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or domestic partner, or the person's dependent children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation, but, if the entity that is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

(b) In this chapter "state commission or board" means the

(1) *[Repealed, Sec. 30 ch 81 SLA 2000].*

(2) Alaska State Council on the Arts (AS 44.27.040);

(3) Alcoholic Beverage Control Board (AS 04.06.010);

(4) State Assessment Review Board (AS 43.56.040);

(5) *[Repealed, Sec. 1 ch 54 SLA 1981].*

(6) Board of Education and Early Development (AS 14.07.075);

(7) Alaska Public Broadcasting Commission (AS 44.21.256);

(8) Alaska Public Offices Commission (AS 15.13.020);

(9) *[Repealed, Sec. 16 ch 61 SLA 1995].*

(10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020);

(11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010);

(12) *[Repealed, Sec. 140 ch 4 FSSLA 1992].*

(13) State Commission for Human Rights (AS 18.80.010);

(14) *[Repealed, Sec. 86 ch 59 SLA 1982].*

(15) Alaska Judicial Council (art. IV, Sec. 8, Alaska Constitution);

(16) Commission on Judicial Conduct (art. IV, Sec. 10, Alaska Constitution);

(17) *[Repealed, Sec. 24 ch 22 SLA 2001].*

(18) Local Boundary Commission (AS 44.33.810);

(19) Occupational Safety and Health Review Board (AS 18.60.057);

(20) Board of Parole (AS 33.16.020);

(21) State Personnel Board (AS 39.25.060);

(22) *[Repealed, Sec. 20 ch 110 SLA 1981].*

(23) *[Repealed, Sec. 132 ch 9 FSSLA 2005].*

(24) Regulatory Commission of Alaska (AS 42.04.010);

(25) University of Alaska Board of Regents (AS 14.40.120);

(26) Alaska Royalty Oil and Gas Development Advisory Board (AS 38.06.020);

(27), (28) *[Repealed, Sec. 86 ch 59 SLA 1982].*

(29) *[Repealed, Sec. 132 ch 9 FSSLA 2005].*

(30) *[Repealed, 1983 Initiative Proposal No. 2, Sec. 6].*

(31) Workers' Compensation Board (AS 23.30.005) and Workers' Compensation Appeals Commission (AS 23.30.007);

(32) Alaska Commission on Postsecondary Education (AS 14.42.015);

(33) Alaska Municipal Bond Bank Authority (AS 44.85.020);

(34) *[Repealed, Sec. 1 ch 54 SLA 1981].*

(35) Alaska Medical Facility Authority (AS 18.26);

(36) Alaska Oil and Gas Conservation Commission (AS 31.05);

(37) Alaska Housing Finance Corporation (AS 18.56.010 - 18.56.900);

(38) *[Repealed, Sec. 44 ch 24 SLA 2003].*

(39) *[Repealed, Sec. 4 ch 75 SLA 1979].*

(40) Board of Fisheries (AS 16.05.221 (a));

(41) Board of Game (AS 16.05.221 (b));

(42) Alaska Permanent Fund Corporation (AS 37.13.040);

(43) *[Repealed, Sec. 69 ch 14 SLA 1987].*

(44) Alaska Seafood Marketing Institute (AS 16.51.010);

(45) Council on Domestic Violence and Sexual Assault (AS 18.66.010);

(46) *[Repealed, Sec. 27 ch 18 SLA 1993].*

(47) *[Repealed, Sec. 38 ch 168 SLA 1990].*

(48) *[Repealed, Sec. 16 ch 33 SLA 1996].*

(49) *[Repealed, Sec. 10 ch 29 SLA 1999].*

(50) *[Repealed, Sec. 9 E.O. No. 84 (1993)].*

(51) *[Repealed, Sec. 102 ch 21 SLA 2000].*

(52) *[Repealed, Sec. 10 ch 58 SLA 2006].*

(53) the board of directors and the executive director of the Alaska Aerospace Development Corporation (AS 14.40.821);

(54) Alaska Retirement Management Board (AS 37.10.210);

(55) Alaska Workforce Investment Board (AS 23.15.550);

(56) Board of Agriculture and Conservation (AS 03.09.010);

(57) the board of directors and chief executive officer of the Alaska Natural Gas Development Authority (AS 41.41.020);

(58) Big Game Commercial Services Board (AS 08.54.591). AS 39.50.200 (a)(10).

"**source of income**" means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or child, or a combination of them, holds a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source. AS 39.52.960 (22).

"**state office**" includes the office of governor, lieutenant governor, member of the legislature, or similar state office. AS 24.60.990 (a)(16).

Sec. 39.90.020. »Nepotism« prohibited.

It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency.

To: Rep. Jay Ramras, Chair
House Judiciary Committee

From: Heidi Drygas, General Counsel
Alaska District Council of Laborers

Date: March 19, 2007

Re: HB 109

Thank you for the opportunity to provide comments on HB 109.

Alaska has a long-standing nepotism statute, AS 39.90.020, and regulations, 2 AAC 07.950, which prohibit family members from working together in a *supervisory* relationship.

But in August 2005, the Department of Administration promulgated a new policy, Alaska Administrative Manual (AAM) 100.050, which prohibits employees from being in an "*employment relationship*" with an immediate family member, including conjugal relationships, up to the second degree of kindred.

This provision was enacted in response to a Department of Law memorandum issued in March 2005 on how the Executive Branch Ethics Act (Ethics Act) applies when a supervisor and a subordinate are in a conjugal relationship. The AG's opinion was that the relationship violated the Ethics Act.

But the AG's opinion was just that--- the Ethics Act would prevent a **supervisor** and another employee from working together if they were family members or living in a conjugal relationship. The Dept. of Administration, in promulgating AAM 100.050, has taken that opinion and dramatically expanded its scope.

In defining an "*employment relationship*," the Department expanded it to include a vast number of actions typically completed by non-supervisory employees. As it stands, the Department's new policy, based on its interpretation of the Ethics Act and the March 2005 AG memorandum, has had devastating effects on Alaska's public employees, especially those living and working in rural and Native communities. The policy prohibits one family member from being hired, promoted, or transferred if it results in an employment relationship with another family member. This is true even if neither one of them is a supervisor, based solely on the minutest possibility that one family member may be promoted to a lead or foreman position even if only for a day. As most of you know, many Alaskan communities are so small that most individuals *are* related in some way. The impact on non-supervisory employees is substantial and unnecessary, as it

essentially prohibits both supervisory and non-supervisory relationships between family members.

The Department of Administration's policy is affecting everyday working Alaskans in such a way that was never intended by this legislation. Family members who seek to work together in a non-supervisory employment relationship are held to an even stricter standard than legislative branch employees.

Under long-standing state regulations promulgated by the Alaska Labor Relations Agency, a "supervisory employee" is essentially defined as an individual who has authority to act on behalf of the public employer in carrying out supervisory functions, if the exercise of that authority is not just routine but requires the exercise of independent judgment. "Supervisory functions" are defined as the ability to take action in the area of:

-**Employment** (hiring, transfers, lay offs, recall),
-**Discipline** (suspension, discharge, demotion, issuance of written warnings) or
-**Grievance adjudication** (response to a first level grievance under a collective bargaining agreement)

The Department's new nepotism policy, however, prohibits far more than just supervisory relationships.

It bears mentioning that the Ethics Act, in AS 39.52.110(a)(3), was meant to "*distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.*"

It is noteworthy that AS 39.52.910(b) of the Ethics Act states: "*The provisions of this chapter supersede the common law on conflicts of interest that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, **excluding nepotism**, adopted under AS 39.25.*" It is the Union's position that this means the Ethics Act does not and should not supersede the long-standing nepotism statute and regulations, which is the result of the Department of Administration's policy. However, the Union concedes that AS 39.52.910(b) is ambiguous.

The Union suggests an amendment which would limit the affect of the Ethics Act to what the legislature likely intended: to clarify that Ethics Act issues arise in ***supervisory*** relationships between family members.

This amendment would add a section "(d)" to the Ethics Act provision AS 39.52.910 which would read as follows:

> "Nothing in this Act shall supersede the provisions of AS 39.90.020, nor preclude individuals from being in an employment relationship with an immediate family member where neither family member is a supervisor who has authority to act or to effectively recommend action in the interest of the public employer in one of the following

supervisory functions, if the exercise of that authority is not merely routine but requires the exercise of independent judgment:

(a) employing, including hiring, transferring, laying off, or recalling;

(b) discipline, including suspension, discharge, demotion, or issuance of written warnings; or

(c) grievance adjudication, including responding to a first level grievance under a collective bargaining agreement."

We believe that such an amendment would clarify the scope of the Ethics Act and protect working Alaskans, especially those working in small rural and native communities, yet also strike a balance by highlighting the ethical issues involved in familial supervisory relationships.

Thank you.

An Amendment to add a new section to AS 39.52.910 which would read as follows:

(d) Nothing in this Act shall supersede the provisions of AS 39.90.020, nor preclude individuals from being in an employment relationship with an immediate family member where neither family member is a supervisor who has authority to act or to effectively recommend action in the interest of the public employer in one of the following supervisory functions, if the exercise of that authority is not merely routine but requires the exercise of independent judgment:

(a) employing, including hiring, transferring, laying off, or recalling;

(b) discipline, including suspension, discharge, demotion, or issuance of written warnings; or

(c) grievance adjudication, including responding to a first level grievance under a collective bargaining agreement.

Mike,

Thanks for your inquiry and request for the gist of what I wanted to contribute to aide deliberations on ethics bills. Since human error prevented my contribution being aired to the whole state affairs committee, could you place this in the information packets provided to staff and officials studying the bills? Also, since my previously submitted petition to all Legislators about managing ethics and corruption in government has a stand-alone Legislative Rule proposal, could you place this before those deliberating ethics as well? Thanks in advance. See below:

>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>

Here are thoughts for ethics bill deliberations in the Legislature.

Lawmakers are not inherently evil ogres that can only function with guns held to their heads. Lawmakers are human beings who need support to resist temptations that appeal to their imperfections. Since the natural imperfections of human beings are why government is even necessary, how to govern the governors is what defines form of government. In other words, a form of government is any design for minimizing corruption and poor administration by those wielding government powers.

The philosopher Socrates demonstrated that inadequate comprehension of a subject□s key words prevents the affected person from understanding the subject well enough to constructively apply it. Let□s use this wisdom towards ethics in government. Example: □corruption□ is a condition-of-being noun derived from the verb □corrupt□. American Heritage Dictionary provides 5 easy definitions for this verb □ and so for its noun: 1) To destroy or subvert the honesty or integrity of; 2) To ruin morally, pervert; 3) to taint, contaminate; 4) To cause to become rotten, spoil; 5) To change the original form of (a text, for example).

Vigorous prosecution of pledges of allegiance and oaths of office, with educated initiative, is historically proven to control corruption and unethical conflicts of interest. Moreover, citizen and peer pressure empowers honoring oaths better than a flood of laws. Educated initiative . . important because ignorance and unwillingness to continuously learn are the most fertile soils possible for growing all types of human corruption and ethical lapses. In other words, stagnant understandings create prejudices and extreme partisanship □ forms of corruption by definition.

The universal mark of human professionalism is a career-long study of the history and new developments of one□s profession. Consequently, a politician or public servant neglecting a personal continuous study of the craft of government, derived from the work and experience of politicians and rulers of the past, naturally reinvents or reenacts the political failures of the past. This is corruption by definition.

For a legislator to be addicted to using the minds of a small group of experts and lobbyists, while abandoning the thousands-strong constellation of his constituent□s minds, is literally overthrowing people-based government. This is corr .ption by definition.

For a citizen to plead apathy or cynicism about our form of government, while insisting he or she is □too busy□ to work with other people to pursue happiness for all, is corruption by definition.

I recommend legislators personally study at least these two references to help in ethics bill deliberations: 1) Theodore Roosevelt□s first State of the Union Address concerning public disclosure being the most practical device to combat the corruption of undue influence by special interests; and 2) James Madison□s Federalist Papers #10 on managing factions and selfish interest through balance of powers and separation of kinds of authority. Such knowledge is an effective prescription against becoming political losers.

Stuart Thompson
PO Box 870702
Wasilla, AK 99687
1-877-950-7980

HB 109

Sec 8 – newsletters:

New language proposed in AS 24.60.030(a)(2)(K) prohibiting the mailing of a newsletter within 30 days of an election needs review in relation to the current 90 day prohibition in AS 24.60.030(c).

HB 109, Section 8, Page 7, Lines 14-20
AS 24.60.030(a)(2)(K)

(a) A legislator or legislative employee may not

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit

(K) a legislator from sending any communication in the form of a newsletter to the legislator's constituents **unless the communication is**

(i) sent during the 30-day period immediately preceding a state election; or

(ii) [, 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

Current language in AS 24.60.030(c)

(c) Unless approved by the committee, during a campaign period for an election in which the legislator or legislative employee is a candidate, a legislator or legislative employee may not use or permit another to use state funds, other than funds to which the legislator is entitled under AS 24.10.110, to print or distribute a political mass mailing to individuals eligible to vote for the candidate. In this subsection,

(1) a "campaign period" is the period that

(A) begins 90 days before the date of an election to the board of an electric or telephone cooperative organized under AS 10.25, a municipal election, or a primary election, or that begins on the date of the governor's proclamation calling a special election; and

(B) ends the day after the cooperative election, municipal election, or general or special election;

(2) a mass mailing is considered to be political if it is from or about a legislator, legislative employee, or another person who is a candidate for election or reelection to the legislature or another federal, state, or municipal office or to the board of an electric or telephone cooperative.

- STATE FUNDS: Include but are not limited to Finance Committee funds, other committee funds, leadership funds, and the use of the LAA print shop.

- Timeframe from 2006 campaign season with the 90 day prohibition:
  - May 9 – legislative session ends
  - May 24 – last day to use state funds to print a legislative newsletter
  - May 25 – 90 days prior to Primary Election (August 22) and start of ban on the use of state funds for a legislative newsletter
  - November 8 – ban on use of state funds for a legislative newsletter lifted (the day after the General Election)

- Timeframe from 2006 campaign season if the 30 day prohibition were in place:
  - May 9 – legislative session ends
  - July 22 – last day to use state funds to print a legislative newsletter
  - July 23 -90 days to Primary Election (August 22) and start of ban on the use of state funds for a legislative newsletter
  - November 8 – ban on use of state funds for a legislative newsletter lifted (the day after the General Election)

Legislators have used the following funds to send out a newsletter

- STATE FUNDS
- OFFICE ALLOWANCE ACCOUNT FUNDS under AS 24.10.110
- PUBLIC OFFICE EXPENSE TERM (POET) ACCOUNT FUNDS under AS 15.13.116

Back-up Exhibit #37

SCHEDULE A
SOURCES OF INCOME OVER $5000

Self-Employment **If NONE reportable, check box ⇒** ☐

Self-employment results when the person whose income is being reported worked in any of the following: a corporation in which you, your spouse, domestic partner, dependent children, nondependent children living with you or a combination of them held a controlling interest, or a sole proprietorship, limited liability company, partnership, or professional corporation in which the person whose income is being reported has an ownership interest.

List the name, address, and nature of services provided for each self-employment source of income from whom more than $5000 was received as compensation for personal services by you or a family member. Provide enough detail when describing the nature of services to tell a reader what work was performed for the compensation received.

If the business is non-retail, list the nature of services performed and the name and address of each client or customer who paid the business over $5000 during calendar year 2005.

Report the amount of income you received from a client, patient or customer when the client, patient, or customer:

- Hired a lobbyist or was a lobbyist;
- Had or sought contracts with the legislature or agency of the state that exceeded $10,000;
- Was a municipality or local government entity; or
- Was affected financially by an action of the legislature or any other state agency in an amount exceeding $5,000 including actions concerning professional or occupational licenses, natural resource permits or quotas, rates of assessment or taxation, health, safety or environmental standards and insurance or business practices.

Use copies of this page if you need additional space to complete this section.
See pages 8-10 of the LFD manual for more help with this section.

Name of filer, spouse, domestic partner, or child: [redacted]

Business Name: [redacted]

Retail ☐ Non-Retail ☒ (If you check non-retail, list clients/customers and amounts if required, below.)

Name of client/customer: [redacted]

Client/Customer Address: [redacted]

Nature of Services Provided: Assist with the development of construction-related projects, including arranging and conducting meetings, performing research, and developing plans and strategies.

Amount: $ 38,100.00

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: $ _____

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: $ _____

Legislator #01

MAR 15 2006

pg 1 of 2

SCHEDULE A
SOURCES OF INCOME OVER $5000

Self-Employment **If NONE reportable, check box ⇒ ☐**

Self-employment results when the person whose income is being reported worked in any of the following: a corporation in which you, your spouse, domestic partner, dependent children, nondependent children living with you or a combination of them held a controlling interest, or a sole proprietorship, limited liability company, partnership, or professional corporation in which the person whose income is being reported has an ownership interest.

List the name, address, and nature of services provided for each self-employment source of income from whom more than $5000 was received as compensation for personal services by you or a family member. Provide enough detail when describing the nature of services to tell a reader what work was performed for the compensation received.

If the business is non-retail, list the nature of services performed and the name and address of each client or customer who paid the business over $5000 during calendar year 2005.

Report the amount of income you received from a client, patient or customer when the client, patient, or customer:

- Hired a lobbyist or was a lobbyist;
- Had or sought contracts with the legislature or agency of the state that exceeded $10,000;
- Was a municipality or local government entity; or
- Was affected financially by an action of the legislature or any other state agency in an amount exceeding $5,000 including actions concerning professional or occupational licenses, natural resource permits or quotas, rates of assessment or taxation, health, safety or environmental standards and insurance or business practices.

Use copies of this page if you need additional space to complete this section.
See pages 8-10 of the LFD manual for more help with this section.

Name of filer, spouse, domestic partner, or child: [redacted]

Business Name: [redacted]

Retail ☐ Non-Retail ☒ (If you check non-retail, list clients/customers, and amounts if required, below.)

Name of client/customer: [redacted]

Client/Customer Address: [redacted]

Nature of Services Provided: Business Services

Amount: $ 33,600

Name of client/customer: [redacted]

Client/Customer Address: [redacted]

Nature of Services Provided: Business Services

Amount: $ 24,000

Name of client/customer: [redacted]

Client/Customer Address: [redacted]

Nature of Services Provided: Business Services

Amount: $ 50,000

legislator #2

pg 2 of 2

SCHEDULE A
SOURCES OF INCOME OVER $5000

Self-Employment **If NONE reportable, check box ⇒** ☐

Self-employment results when the person whose income is being reported worked in any of the following: a corporation in which you, your spouse, domestic partner, dependent children, nondependent children living with you or a combination of them held a controlling interest, or a sole proprietorship, limited liability company, partnership, or professional corporation in which the person whose income is being reported has an ownership interest.

List the name, address, and nature of services provided for each self-employment source of income from whom more than $5000 was received as compensation for personal services by you or a family member. Provide enough detail when describing the nature of services to tell a reader what work was performed for the compensation received.

If the business is non-retail, list the nature of services performed and the name and address of each client or customer who paid the business over $5000 during calendar year 2005.

Report the amount of income you received from a client, patient or customer when the client, patient, or customer:

- Hired a lobbyist or was a lobbyist;
- Had or sought contracts with the legislature or agency of the state that exceeded $10,000;
- Was a municipality or local government entity; or
- Was affected financially by an action of the legislature or any other state agency in an amount exceeding $5,000 including actions concerning professional or occupational licenses, natural resource permits or quotas, rates of assessment or taxation, health, safety or environmental standards and insurance or business practices.

Use copies of this page if you need additional space to complete this section.
See pages 8-10 of the LFD manual for more help with this section.

Legislator #2

Name of filer, spouse, domestic partner, or child: [redacted]

Business Name: [redacted]

Retail ☐ Non-Retail ☒ (If you check non-retail, list clients/customers, and amounts if required, below.)

Name of client/customer: [redacted]

Client/Customer Address: [redacted]

Nature of Services Provided: Business Services

Amount: $ 16,800

Name of client/customer: [redacted]

Client/Customer Address: [redacted]

Nature of Services Provided: Business Services

Amount: $ 57,000

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: $ _____

Emily Stancliff

om: Heidi Drygas [hdrygas@alaskalaborers.com]
ent: Thursday, March 22, 2007 11:26 AM
To: Emily Stancliff
Subject: Re: HB 109

This is from Mary Coulman, who is the administrative manager at the Tok DOT station.

----Original Message----
From: Mary Coulman [mailto:mary_coulman@dot.state.ak.us]
Sent: Thursday, March 22, 2007 12:08 PM
To: hdrygas@alaskalaborers.com
Subject: Nepotism

I do not agree with how the nepotism waiver has been used in the hiring of clerical employees. A clerical employee in the district office can not be related to any maintenance worker in any station in that district. We do not have any supervisory duties over these employees, so I do not believe this should narrow our ability to get employment.
Also limiting any relative from being employed in a maintenance position in our district, which in this case is 7 maintenance stations. In small communities this greatly narrows a persons ability to find employment.

Originator –Paul D. Kendall = One mans contribution to a dialogue for better public servant conduct.

ETHICS – A ROUGHLY PROPOSED DRAFT
(throw down thoughts/wrinkled thinking)

Wednesday, January 4, 2007

NOTE: The following constitutional amendment, statue, law, regulation or what ever you call it, shall be invoked, used, or applied when the conduct of a public servant is called into question or review:

a. Following a normal trial,
b. During a normal trial (in parallel with),
c. In addition to a trial,
d. Or in a stand alone event where there is enough self evident in its nature; evidence, suspicion, events sufficiently suspect in their nature, indicators,
e. Or other public concerns that would warrant its sole and immediate application so as to protect the publics interest or punish a self evident abuse of public service,
f. Or where a contrived, conspired, or construct of a corrupted or "Less than Honorable Conduct" may exist,s,ed or will exist.....
g. Also, all public servants should receive thi.. declaration and sign for its understanding

---Public Service Conduct/Ethics Cont. next page

(Complete truths and individual free will are fundamental requisites for a free and viable society)

----Public Service Conduct/Ethics Cont.----

Paul D. Kendall January 4, 2007

A determination and findings of the Conduct of a public servant:

HONORABLE Conduct ---(OR)--- LESS than HONORABLE Conduct

Any and all public servants brought into review in regards to being "questionable, unethical, suspect, inappropriate or of other like concern actions" in reference to conducting the publics business shall be reviewed and judged by the following ruling or process:

Any and all public servants (1) conducting the publics' business (1a) in anyway (2) shall conduct the publics business in an "open to the publics view"(3) and shall represent the publics business with "Honorable Conduct"; And, not in a "Less than Honorable Conduct" manner.

All conduct by public servants as mentioned above shall be judged (4) as either "Honorable Conduct" or "Less than Honorable Conduct"(5) and be subject to the mandatory sentencing, fines and actions attached to the determination of findings.

---

1. Elected, appointed, titled, employed, entrusted, assigned, contracted, represented, part time or full time, exempt or non-exempt, to, for, in.

1a. All public matters deemed to be the publics business --- matters of public assets, projects, financial and /or other matters.

2. Shape, or form, either directly, indirectly, implied, inferred, or on behalf of , or for the publics' interests, or, at the direction of , etc..

3. Shall always be conducted in an open to the public manner and not just or only upon request from the public citizenry; With camera broadcast; And, all and any testimony shall be considered as under oath or sworn in testimony.

4. By a jury of their peers- standard jury – in a priority and expedited means

5. Once conduct determination or findings by the jury has been determined, the following sentences, penalties and actions shall apply as per each offence: as described in (a) thru (f) under the findings sections

FINDINGS of conduct by the jury ---------- determinations, descriptions, sentences and actions

Finding #s -- findings -----descriptions ----------sentencing and actions

1. Honorable Cor duct --- --------- ------- self explanatory and self evident

2. Less than Honorable Conduct / with good intentions or ineptness only----
---- well intended, bullied by duress, poor judgment, self evident in true conduct, conned, unsuspectingly conned,
---- verbal admonishment, probation, suspension, probation, and fine -- no jail time ?

3. Less than Honorable Conduct / Inconclusive ----
---- unable to detect confirmation of intent to do less than honorable conduct and is suspect at best , unable to determine collaboration or motive for the process or occurrence of less than honorable conduct
---- probation ??

4. Less than Honorable Conduct --level $ 0 to $500.oo penalty is a) + b) + c) +

5. Les than Honorable Conduct --level$501.oo ---to--$1,000.oo a), b) - < 90 days mandatory, c), d), e) - <$2,000.oo fine

6.Less than Honorable Conduct --$1,001.oo --to—$$$ any amount over -- a), b) + very heavy fines and jail sentences; Again very large fines and jail time + other actions

Findings cont. nxt pg.

Findings cont.

Notes: the above findings of sentencing, fines, and actions are determined by assessments of or degrees of damage / impacts as listed below reflected by all of the conduct of the public official being reviewed.

a) Immediate "loss of employment" and "not for hire" with any current or future public servant entity.

b) Loss of all current and future retirement, medical, life or other benefit or compensation.

*1c) Must pay fine in the minimum amount of $1,000.oo (should go up !!)

*2d) Immediate jail incarceration for a period of 30 days with no bail or parole

e) Must repay all court costs, injuries, harms, damages, jail, and transport costs back within one year following completion of jail sentence

f) Make it a felony and loss of voting for a 2 year period...???

---

*1 –Minimum fines shall be $1,000.oo and then increase with severity with assessment determination from jury ---Then, go very large if over $1,000.oo jury determination

*2 – Minimum mandatory jail shall increase in severity with assessment from $0 to $1,000.oo and up –i. e. $0 to $500 = 30 days, ---- $501.oo to $1,000.oo = 90 days etc. Again, we must impose large and impacting sentences if determination or finding of impact is larger than $1,000.oo.—3 to 5 years mandatory.

NOTES, THOUGHTS, VIEWS, CONSIDERATIONS AND SUPPORT COMMENTALRY-----

It has become common knowledge to us, the general citizenry, that many of those to whom we have conveyed the "highest honor in the land"(*1), are failing us in their representations of our publics business affairs and matters; Thereby jeopardizing our general welfare, safety, well being and the pursuit of happiness.

The time has come for us citizens to impose a higher standard of expectations and performances from our public servants behaviors; And in order to achieve a greater degree of responsible, honest, fair, and truthful conduct we must declare, design and impose a higher magnitude of penalty;

And, in order to stop the continued skirting, eroding, dodging, and re-drafting of the laws we pass in hoping to curtail these ever continuing corrupted "Less than Honorable Conduct" actions by public servants and officials;

We must give our jury system the latitude (discretion?) to make the "final determination of a description of a public servants deeds" as either "Honorable Conduct or "Less than Honorable Conduct"(*2),

Along with the severest penalties, fines and actions so as to stop the continuing malaise of corrupted conduct by our public servants.

In constructing this long overdo procedure of punishing aberrant or corrupted public officials for their deceitful, deceptive, and self indulgent betrayal of the publics "full faith and trust";

We must try to use words other than transparency, ethics, etc.(*3) ; Rather, simple words with little misunderstandings.

If we do not protect and establish integrity and value for the fundamental laws that govern our society and hold accountable those who we elect to represent those values and us with "Honorable Conduct", then we have in essence undermined our entire legal system and the very fabric our society itself.

We must in all fairness, set a bar and a standard that gives a clear and obvious forewarning, and notification that any public servant who betrays the "full faith and trust" of the general citizenry will pay a heavy and just price with short and long term impacts and consequences in an expedient manner of trial and sentencing.(*4)

*1 The conveyance of our full faith and trust of the Alaskan/American people who comprise our families, loved ones, homes, communities, and states (the voting process and other)

*2 We must maintain the capacity for the general citizenry to "by its own merits" via the jury system determine what is "Honorable Conduct" and what is "Less than Honorable Conduct"; Any vagueness here must be maintained so the jury can use a subjective and or objective means of determination because
history has shown us that political bodies will attempt to circumvent a given specific law of exactness with their ability to draft legislation or warp its interpretations and applications.

*3 It is time to use simple words with clear and common understandings, applications, and meanings, i.e. open, clear, simple, etc. (not lawyered up words)

*4 Punishment of corrupted public servants, officials, etc. must exemplify sentencing and actions of the firmest, strongest, and severest application possible- as well as expediency in trial as a priority.

Words used as indicators of Conduct ??---

Advisement – arrangements – agreements –actions – discussions – directions –decisions –determinations – involvement – instructions – contributions – participations – understandings –communications –judgments—representations—presentations, etc.

In closing, I believe that time is of the essence, or at least at hand for us, today, to end this historical continuing and ongoing betrayal of the publics' conveyance of their "full faith and trust" in our public leadership.

I realize we have focused primarily on our need to and means of judgment and penalties here in this writing;

Because we have to begin our work on those foundational aspects to begin correcting our political representations, infrastructure, and process; Those foundational aspects being the establishment of clear and meaningful reward and punishment for ones actions.–

Considering the damage and / or the grave consequences we have suffered as a community, people, city, county, state, nation, family, species, environment, society, laws, happiness, loss of loved ones; Along with

The ability, if not the consequences of our elected and represented public officials to do harm to and on us and all of the most sacred things we hold to;
Is astronomical in its proportions.

The ability of our public servants to weave false hoods, irresponsible acts, omissions, false and misleading proclamations, combined with the full might and power of the assets of the collective peoples nation or community is just undeniably catastrophic on our entire lifes' realm of nearly the entire planet and all living creatures and good or GOD forces.

How can we hold to accountability the common criminal for an impact born out of an act of desperation while we let the those who represent the "highest law and honor of the land" go nearly scott free for an act of unmitigated greed and self indulgence with impacts far beyond what that individual criminal might do??

LET US HERE IN THE GREAT STATE OF ALASKS BEGIN TO RIGHT THE WRONG –
TO SET THE STANDARD.
THE BEGINNING OF OUR TRUE NEXT LEGACY FOR NOT JUST US , BUT THE REST OF OUR SOCIETY.
LET US MAKE THE HISTORY RATHER THAN WATCH HISTORY BEING MADE BY ANOTHER .

WE ALL KNOW THAT THE ABOVE MENTIONED WILL HAPPEN SOMEWHERE SOMETIME, SOMEPLACE BY SOMEONE ---

LET US LEAD this resolution in this matter of politicul corruption by public servants TO BE THAT MOMENT AND THAT EVENT IN THIS MATTER WHICH CRIES OUT TO BE RESOLVED AND HAVE JUSTICE SERVED—

Sincerely and Respectfully,

Paul D. Kendall _____

h 907-222-7882 cell 702-403-3656 (I know, vegas made me a deal on air time but lied on prefix change)

Dated: January, 4, 2007 _____

-------ADDITIONAL ANNEDOTAL VIEWS AND SUPOPORT ----------

See next page .....

--------ADDITIONAL ANNEDOTAL VIEWS AND SUPPORT ----------

Look at the history of atrocities and wars alone by errant leaders and despots; By their use and abuse of the publics assets an might

A Magnitude of consequences
A Consensus of opinions

It is imperative we as a peoples determine a harsh and fearful consequence for those who commit public betrayal.

No doubt there some will attempt to belittle, demean, bemoan, minimize the need, mitigate, castigate, by calling this declaration mean spirited, vindictive, malevolent, Ill willed, without foundation, ostracize, or in some other quasi-intellectual dialogue attempt to declare its foundation is too vague;

This proposed determination and findings of "Honorable or less Than Honorable" act does not deny or restrict; It simply says that the voting general public gets to make the determination as to the conduct of a public servant. The same elected or appointed official who ask for the publics trust should have faith that the public is quite capable of ferreting out the truth.
This conduct act is really an extension of the foundational values we use every da' .n our family lives, jury decisions, homes, and legal systems

And I would suggest to you that the foundation of this declaration is a reflection of the fundamental laws of the fabric of our society which are based on faith on trust in each other; as it is a relationship, in our families,

Cont.....

I realize I am a simple man without much education and there may be need for reconsideration of its declaration; But, it seems to me that someone has to begin the discussion;
That we are on the edge of a new society, a better society,

This is my contribution and I am eager, anxious and excited to hear the dialogue of our larger collective society in its review to obtain a greater degree of leadership

Selective enforcement or application on public servants ?? All societies have done this.

As we hold those of the police to hold a higher standard,

The soldier in the military – military code of conduct
The reverend or priest in his faith and perseverance
Matrimony ---- vows of marriage
A doctor in practice
Etc.....
Based on a collective contribution of taxes from a society

Attached to the Above Notes:
Let it be known that I realize we need to address or redesign some of the political infrastructure used to elect our public officials..
how they are accessible to us..
their compensation terms...
their time or terms spent in office..
how in divisive times we can pole our general citizenry for resolution....
the role of parties and their affects on the representation of issues...
how we can terminate or remove them from office asap procedurally....
And the influential power of the incumbency,
as well as the penalties above such as :
No doubt, others I have not mentioned.

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1) declare a public state wide video channel as an official election channel and require the officials to be sworn in before their political commentary and other standards

2) It is necessary to establish a c-span type channel or channels for Alaska so that we as a state wide community may watch our public officials conduct business in an accessible manner of oversight.

3) and more is needed – I am time restricted !

Paul D. Kendall _____date _____1-4-07

Look, I know its hard to be a public servant and / or a politician also; But. Something has to be done. We can't go on this way and remain a viable society. (We need to increase the salary a politician makes so he/she can support their loved ones and still serve a calling— that also, would encourage more persons to be involved enough to run for office, plus many other improvements ---)

We have to make a stand somewhere to set an example for the rest

END ----------

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MEMORANDUM March 26, 2007

SUBJECT: Changes in CSHB 109(JUD) (Work Order No. 25-GH1059\V)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee

FROM: Dan Wayne
Legislative Counsel

Enclosed is the referenced CS.

1. We reworded amendment 36 (concerning AS 24.60.100) to try to make it clearer. You may want to check with the sponsor to make sure the draft is correct.

2. Amendment 4 (concerning AS 24.60.080) required extensive changes. You may want to show this memo to the sponsor of amendment 4.

A. Because of the deletion of AS 24.60.080(c)(10), we also had to amend AS 24.45.121(a)(9), AS 24.60.030(a)(1), and AS 24.60.990(a)(2)(A).

B. Because of the deletion of "during a legislative session" we also had to amend AS 24.45.121(a)(9).

C. We also modified the language in new AS 24.60.080(a)(2)(B) to reflect the fact that it is a subparagraph, not a paragraph, and to change the reference to "(a) of this section" to "(1) of this subsection". We did not delete "from a lobbyist" in new (a)(2)(B), although arguably this language should be changed to include family members and those acting on behalf of lobbyists.

D. We moved the material in AS 24.60.080(k) into AS 24.60.080(c)(5) and repealed AS 24.60.080(k) since it was now to apply only to (c)(5). We added "immediate" before "family member" in AS 24.60.080(i) but did not include a reference to AS 24.60.990 because that definition will automatically apply now that AS 24.60.080(k) is repealed.

E. As requested in amendment 4, we deleted "solicit" from AS 24.60.080(a)(2), but left it in AS 24.60.080(a)(1). Was that the sponsor's intent?

We concurred with the suggestion of Senior Assistant Attorney General Dave Jones and moved "information about" from line 14 to line 11 on page 24, and changed "electoral confirmation" to "judicial retention" on page 2, line 8. However, AS 15.13.010(a)(1) still uses "electoral confirmation," which should be changed as well.

Please note that amendment 31, adding "general election" to AS 24.60.030(c), makes it unclear whether the period starts 90 days before the primary election or 90 days before the general election. You may want to speak to the sponsor about this.

If I may be of further assistance please advise.

DCW:lmb
07-072.lmb

Enclosure

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MEMORANDUM March 23, 2007

SUBJECT: Constitutional issues concerning pension forfeiture as proposed by AMENDMENT 25 to CSHB 109(STA)
(Work Order No. 25-GH1059\O.6)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Dan Wayne
Legislative Counsel

You have asked for a constitutional analysis of draft amendment 25-GH1059\O.6 which is before the House Judiciary Committee as AMENDMENT 25 to CSHB 109(STA). The amendment raises several constitutional issues. It is not possible to predict with certainty, but the court would probably resolve most of them in favor of the state if the amendment becomes law.

1. **Accrued state retirement benefits shall not be diminished or impaired.**
Article XII, sec. 7 of the Constitution of the State of Alaska says:

> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

A right to benefits under a state retirement system vests immediately upon the employee's enrollment in the system.[1] While the retirement system may be changed to permit the pension system to make adjustments, the modifications must be reasonable and any change that results in a disadvantage to employees must be offset by comparable new advantages.[2] Rights that are protected by the constitution include not only the amount of benefits, but also the requirements for eligibility.[3] Both eligibility and amount are at issue in AMENDMENT 25.

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[1] *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

[2] *Hoffbeck* at 1057.

[3] *Hoffbeck* at 1058.

AMENDMENT 25 would diminish accrued benefits, but only those benefits accrued on or after the date of the criminal offense. An argument can be made that those after-acquired benefits are tainted by the offense, either directly or indirectly, depending on the facts of a case. A state employee, for example, can be terminated instantly upon the discovery of work-related felony conduct. If the employee's felony is undiscovered and the employee continues to work, it may be said that the benefits accrued from the work are not legitimately acquired because they were acquired by the employee's concealment of a work-related felony. The state's interest in maintaining the public's trust in government is substantial. In this type of case, and in others, the court may find that this substantial government interest outweighs a person's constitutional right to an undiminished benefit, particularly when the diminishment is limited as in AMENDMENT 25.

2. Equal rights are guaranteed.

Article I, sec. 1 of the Constitution of the State of Alaska says:

> This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

The court resolves constitutional issues by using a balancing test to weigh the state's interest against the interest of the person or persons impacted by the state's proposed action. The test used depends on the constitutional provision at issue.

> [T]he Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit.[4]

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[4] *Malabed v. North Slope Borough*, 70 P.3d 416, 420 - 421 (Alaska 2003).

In this instance it can be argued that persons who may be subject to forfeiture if the bill becomes law -- legislators, legislative directors, and public officers[5] -- are entitled as much as other persons to enjoy the rewards of their own industry, in this case a pension. AMENDMENT 25 creates a special class of person and denies them something all persons in the state are guaranteed; therefore, in order to survive a challenge if it becomes law, it will have to withstand the highest of the three levels of scrutiny in the three-part balancing test applied by the court. [6]

3. Cruel and unusual punishment is prohibited.
Article I, sec. 12 of the Constitution of the State of Alaska says:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.

Our courts have found this section entitles a convicted offender to a fair sentence. In fashioning a fair sentence, judges are required to take into consideration a number of things, including the ones listed in this section, but also things like the offender's prior criminal history or lack of one, the need to deter others from offending, and the principle that sentences for like offenders should be similar. Our court is not likely to find that constitutional fairness requirements at sentencing can be relaxed because the state's interest in preserving public trust in government is so great as to outweigh the right of a legislator or public official to a fair sentence; however, in the civil case the person would arguably have less at stake than freedom from incarceration. The court could find that a person's right to a pension is outweighed, in the context of a felony-based pension forfeiture, by the governmental interest at stake.

In a criminal forfeiture, property is taken before conviction occurs and often not returned unless the state fails to prove the criminal case. In AMENDMENT 25 forfeiture is not automatic. For example, it will not occur unless a hearing officer hears evidence and argument in a new civil proceeding, separate from the criminal case, under the

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[5] In the bill, "public officer" means: a public employee, a member of a board or commission, or a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties.

[6] For example, the Alaska Supreme Court has said Alaska has a substantial governmental interest in campaign finance reform that justifies some restriction on First Amendment freedoms. *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156 (2000).

Administrative Procedure Act. The state will have to prove that the conduct upon which the conviction was based was "in connection with the person's official duties."[7]

4. <u>No conviction shall work corruption of blood or forfeiture of estate.</u>

Part of art. I, sec. 15 of the Constitution of the State of Alaska says, in part: "No conviction shall work corruption of blood or forfeiture of estate." This stands for the principle that the punishment for a crime should not reach beyond the offender, or affect the right to property that has been acquired legitimately. AMENDMENT 25 allows some or all of a pension that would otherwise be forfeited to be awarded to dependents of the convicted person, as the hearing officer determines.[8] This partially addresses the constitutional issue concerning the forfeiture's reach beyond the convicted person, and AMENDMENT 25 would probably be upheld with regard to that issue. AMENDMENT 25 also protects from forfeiture benefits accrued before the date of the offense. This makes it less vulnerable to a constitutional challenge on the basis that legitimately acquired benefits are at stake.

You asked if the term "dependent," on page 2, line 23, includes a spouse. The terms "dependent" and "spouse," which appear in the bill in AS 37.10, are not defined in AMENDMENT 25, and therefore it would be up to the hearing officer or the court to interpret their meaning. Since AMENDMENT 25 relates to pension forfeiture, to the extent the legislature does not take the opportunity to clarify the term "dependent," a hearing officer or court would likely refer first to words and phrases applicable to the general pension provisions for public employees, codified in AS 39.35.010 - 39.35.680 (defined benefits) and AS 39.35.700 - 39.35.990 (defined contributions). In both instances, "dependent" appears as a modifier of "child" in the phrase, used throughout the chapter, "dependent child"; in the same body of material, AS 39.35, a "spouse" is referred to as a "surviving spouse." The differences between AS 39.35 and the bill's choice of the term "dependent" provides no definitive clue as to what the legislature is intending. At least arguably, it is more likely than not that the hearing officer or court would equate the rights of a "surviving spouse" as at least the equivalent of the rights accorded to a "former spouse" and make some provision for payment of a partial reward to a current spouse. If that is the outcome, then the administrative officer or court would in effect be extending to the "current spouse" the status of a "dependent," notwithstanding the absence of a clear statement on the point.

Rather than leave the outcome to chance, while the bill is under consideration, the legislature should step up and clarify direction on this point.

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[7] Under the evidence rules described in AS 44.62.460 of the Administrative Procedure Act, the state would have the burden of proving its case by a preponderance of the evidence.

[8] AMENDMENT 25 could be clearer as to whether or not a dependent has the same right to a hearing or an appeal as the convicted legislator does.

Finally, in reviewing the bill for this memo it occurred to me that the term "convicted," on page 2, line 7, might need to be defined in order to avoid confusion about its meaning in situations involving appeals, conviction reversals, plea-bargains, suspended imposition of sentences, and pardons. There might be a particular constitutional issue, and other legal and logistical problems, in connection with a forfeiture in any one of these situations. A definition might say: under this section a person is convicted if they have been sentenced and the time for filing of a merit appeal has expired; however, a person is not convicted if pardoned by an act of executive clemency or if the trial court order or judgment of conviction is reversed or expunged.

If I may be of further assistance, please advise.

DCW:ljw:med
07-204.med

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MEMORANDUM March 22, 2007

SUBJECT: Amendments relating to lobbying activities by a spouse or domestic partner of a legislator
CSHB 109(STA) (Work Order Nos. 25-GH1059\O.2 and \O.36)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion as to the differences between proposed amendments 25-GH1059\O.2 and 25-GH1059\0.36. In an earlier memorandum, dated February 26, 2007, I expressed my belief that a court might interpret the former (O.2) as unconstitutional. That amendment read in relevant part:

> The spouse or domestic partner of a legislator may not engage in activity as a lobbyist. This subsection does not prohibit the spouse or domestic partner from acting as a volunteer lobbyist under AS 24.45.161(a)(1) or a representational lobbyist, as defined in regulation by the commission.

While the state has a legitimate interest in regulating lobbyists,[1] preventing corruption and any appearance of corruption, and while 25-GH1059\O.2 might be intended to promote public confidence in the integrity of legislators; "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

25-GH1059\O.2 is not narrowly tailored but disallows all paid lobbying by spouses and domestic partners of legislators; not lobbying on issues before committees on which a legislator's spouse or domestic partner might serve, a matter on which the legislator's spouse or domestic partner will vote, etc. In justifying any infringement on the personal liberty of legislators' spouses and domestic partners, the state would have to demonstrate a compelling interest in the purposes advanced by the restriction and an absence of less

---

[1] See McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995).

restrictive alternatives in realizing these ends. It was my contention that there were less restrictive alternatives than the O.2 amendment.

The second amendment, 25-GH1059\O.36 reads in relevant part:

> A legislator or legislative employee may not [ ] communicate directly with a spouse or domestic partner of a legislator if the spouse or domestic partner is registered as a lobbyist under AS 24.45.041 and the communication concerns legislative action; in this paragraph, "legislative action" has the meaning given it in AS 24.45.171.

This second amendment does not operate to prohibit the spouse or domestic partner of a legislator from lobbying municipalities or the executive branch, and it does not deny them the opportunity to engage in an economic endeavor within a particular industry (lobbying).[2] The amendment is better directed at the locus of possible impropriety, undue influence, and conflicts of interest; the possibly suspect relationship between legislators and the lobbyist spouses or domestic partners of legislators. It is my opinion that this second amendment, 25-GH1059\O.36 is more "narrowly drawn and represent[s] a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, at 611 - 612.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-196.med

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[2] See State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989) (The right to engage in an economic endeavor within a particular industry is an "important" right for state equal protection purposes) and Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003) (close scrutiny of enactments impairing the important right to engage in economic endeavor requires that the state's interest underlying the enactment be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close).

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MEMORANDUM March 21, 2007

SUBJECT: Prohibition on legislative constituent "newsletters"
(CSHB 109(STA); Work Order No. 25-GH1059\O.37)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard TKB
Legislative Counsel

The draft amendment relating to a prohibition on the sending of "newsletters" by legislators to constituents in the 60 day period preceeding an election in which a legislator or legislative employee is a candidate is enclosed. I have two comments.

Constitutionality

As I have explained to Mr. Cohen of your staff, please be advised that the amendment's prohibition on the use of funds from a legislator's office account (AS 24.10.110) or Public Office Expense Term (POET) account may be challenged as (1) a violation of a legislator's right to engage in political speech as guaranteed by art. I, sec. 5 of the Alaska Constitution and the First and Fourteenth Amendments to the United States Constitution, (2) insufficiently tailored to a compelling governmental purpose (witness the multifold advantages of incumbency, i.e. press releases, appearances as a legislator at public meetings and on television and the radio, posting to a web page or electronic constituent newsletter, see generally Common Cause v. Bolger, 574 F. Supp. 672 (1981)), and more distantly (3) as a possible violation of the separation of powers in creating a role for the judiciary to interpose in the legislative department between the constituent and his representative, see United States v. Ford, 830 P.2d 596 (1981) and United States v. Brewster, 408 U.S. 501, 524 (1972).

Drafting Issue

I told Mr. Cohen that I believed that AS 24.60.030(c) operated to prohibit the state funding of the mailing of constituent newsletters during a campaign period. While this interpretation was based in part on an opinion found in the April 2006 edition of the Select Committee on Legislative Ethics' "The Advisor" (see "campaign related questions"), a closer reading of the statute reveals that general elections are absent from those elections included under AS 24.60.030(c)(1). In addition to your draft amendment requests, I have further amended AS 24.60.030(c) to resolve any such question as to its applicability by including the general election.

If you have any questions or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
07-145.ljw

Enclosure

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MEMORANDUM March 21, 2007

SUBJECT: Breadth and Scope of Sec. 16 of CSHB 109(STA)
(Work Order No. 25-GH1059\O)

TO: Representative Lindsey Holmes

FROM: Dan Wayne
Legislative Counsel

You have asked for an analysis regarding the breadth and scope of the above-referenced bill section, particularly concerning to whom, and to what, it would apply to.

AS 24.60.100 currently reads:

> A legislator or legislative employee who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place to the committee. The disclosure shall be made by the deadlines set out in AS 24.60.105. The committee shall maintain a public record of a disclosure under this section and forward the disclosure to the respective house for inclusion in the journal. A legislator or legislative employee may not represent another person for compensation before an agency, committee, or other entity of the legislative branch.

If amended as proposed by sec. 16, AS 24.60.100 would read:

> A legislator or legislative employee may not represent another person for compensation before a municipal, legislative, or executive branch agency, board, or commission.

The main difference between the two versions is in the approach. The existing law allows compensated representation and requires disclosure of that representation, while the proposed new version prohibits compensated representation.

"Representation" is defined in AS 24.60.990 as

> . . . action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

This means that if the amendment proposed in sec. 16 becomes law, a legislator-lawyer, or any other person who is a legislator or a legislative employee, would be prohibited from doing just about anything for a client in a state matter[1] unless or until the matter is before the judicial branch. For example, the legislator or legislative employee would be prohibited from offering any paid assistance to someone in a child support enforcement matter until it has gone from the initial investigation through the final decision of an administrative hearing officer and is on appeal in the court. I think a legislator or legislative employee would still be allowed to be an unpaid witness before the case gets to court, but the person would not be able to do much else, including offer private advice to another person, if the person receives compensation.[2]

Obviously the language goes beyond application only to legislators or legislative employees who are lawyers. Would it prohibit a legislator who is a building contractor, for example, from obtaining a municipal building permit for a customer? I think it might. I am not as certain, and perhaps it is just a question of how the Ethics Committee interprets the meaning of the language in the future, about whether sec. 16 would apply to a legislator or legislative employee who is, for example, a retail worker involved in a retail business's application for a state or municipal license, an accountant involved in preparing her employer's state or municipal compliance documents (i.e., tax forms, etc.), or a restaurant manager communicating with a DEC inspector about compliance issues. I think that many employees can think of at least one instance where they might be involved in "representing" their regular employer, and I don't know if a showing that the representation is simply part of the person's regular employee duties for which the person is already compensated would be enough to exempt the person from the prohibition in sec. 16.

If I may be of further assistance, please advise.

DCW:ljw
07-148.ljw

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[1] In my opinion it would be an unreasonable stretch to interpret the statute as applicable to federal legislative and executive branches.

[2] According to the applicable definition in AS 24.60.990(4):

> "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

Westlaw.

AK ST § 24.60.990 Page 1

AS 24.60.990

ALASKA STATUTES
Title 24. Legislature.
Chapter 60. Standards of Conduct.
Article 5. Miscellaneous and General Provisions.
→Sec. 24.60.990 Definitions.

(a) In this chapter,

(1) "administrative action" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use;

(2) "anything of value," "benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; "anvthing of value," "benefit," or "thing of value" does not include

(A) an item listed in AS 24.60.080(c);

(B) campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support;

(C) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction; or

(D) grants under AS 37.05.316 to named recipients;

(3) "committee" means the Select Committee on Legislative Ethics and includes, when appropriate, the senate or house subcommittee;

(4) "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

(5) "domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage.

(6) "immediate family" means

(A) the spouse or domestic partner of the person; or

(B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

AS 24.60.990

(7) "income" means assets that are received, regardless of whether they are earned or unearned; inheritances and other gifts are not income;

(8) "knowingly" has the meaning given in AS 11.81.900;

(9) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

(10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;

(12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, but does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;

(13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;

(14) "registered lobbyist" means a person who is required to register under AS 24.45.041;

(15) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

(16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of $10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

Current through all 2006 Legislation, Annotations current through Opinions
Decided as of July 1, 2006.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

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February 26, 2007

The Honorable Bill Stoltze
State House of Representatives
State Capitol, Room 501
Juneau, AK 99801

Re: Amendment of Laws Enacted by Initiative

Dear Representative Stoltze:

During a budget hearing on February 15, 2007, you requested that our office provide you with an analysis on two matters related to voter initiatives. You asked, first, for a summary of the case law on the legislature's authority to amend a law enacted by voter initiative within two years of enactment, and second, for a history of the legislature's amendments to initiatives during those first two years. The reason to examine the legislature's authority to change an initiated law during the first two years that the law is effective is the prohibition in the Alaska Constitution against the repeal of an initiative during those years. Alaska Const., art. XI, sec. 6. This limit on repeal has been interpreted to restrict the legislature's power to amend an initiated law during its first two years even though the Constitution expressly permits amendments to initiated laws at any time.

1. Summary of the case law

The Alaska Supreme Court has addressed the legislature's authority to amend an initiated law in three cases, although it has reviewed the actual exercise of this authority in only one case. The first case in which the Court discussed the subject is *Warren v. Boucher,* 543 P.2d. 731, 737 (Alaska 1975), a case reviewing the legislature's exercise of its authority to void an initiative petition by enacting substantially the same measure in legislation. Alaska Const., art. XI, sec. 4. The power to amend was described as "broad" and "a check or balance against the initiative process." 543 P.2d. at 737.

The Court speculated that the purpose of the power to amend was

> to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be *altered or corrected* rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. [*Id.* (emphasis added).]

Two years later, in *Warren v. Thomas,* 568 P.2d 400, 402-03 (Alaska 1977), the Court considered a challenge to the legislature's amendment of laws adopted by initiative. The initiated laws concerned public official financial disclosure, and the legislature amended them soon after they became effective. The amendments moved the deadline for filing financial disclosure reports from February to April of 1975 and excused public officials leaving office from the obligation to file. Although the amended laws differed in many respects from the initiative measure, the Court found that the amendments did not amount to a repeal: "[t]here are considerable language changes, but, these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant," and "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.* at 402. The changes were not found to so vitiate the regulatory scheme "as to 'constitute its repeal.'" *Id.* (quoting *Boucher,* 543 P.2d. at 737). Although it upheld the amendments under review in *Thomas*, the Court clearly viewed the prohibition against repeal as a limitation on the legislature's authority to amend an initiative. For an amendment to be authorized during the first two years of an initiative, it must continue to further the intent of the voters.

The third case in which the Court discussed the legislature's power to amend an initiative was *State v. Trust the People,* 113 P.3d 613, 623 (Alaska 2005). That case concerned the legislature's exercise of its power to supplant an initiative measure by passing a substantially similar law, rather than its power to amend after an initiative is enacted by the voters. Although the Court recognized that the power to supplant is somewhat narrower than the power to amend, the Court relied in part upon its earlier decision in *Thomas.* The Court characterized *Thomas* as holding that "amendments to popularly-initiated legislation must still 'effectuate the intent of the electorate,' and an amendment that 'so vitiates an act passed by initiative as to constitute its repeal' is not acceptable." *Id.* at 623 (quoting *Thomas*, 568 P.2d at 403).

In *Trust the People* the Court identified three factors relevant to determining whether a proposed initiative and legislation were substantially the same. Although this

test was developed with regard to the power to supplant, rather than the somewhat broader power to amend, the test may also be helpful in determining whether proposed changes would continue to promote the same goals of the electorate in enacting the initiative. First, the scope of the subject matter is important: "The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." *Id.* at 620-21 (quoting *Boucher,* 543 P.2d. at 736), and conversely, "the simpler and more focused a law is, the fewer details that can be adjusted without effecting a fundamental change in the measure's purpose and effect." *Id.* at 621. Second, whether the general purpose of the amended initiative would be the same as the original is important. Clues to the purpose of the initiative can be found in the text of the initiative measure, the ballot summary for the measure, and the arguments published in connection with it, such as the supporters' statement in the voter's pamphlet. *Id.* at 622. Third, the Court examines whether the initiative and proposed legislation employ the same means to accomplish its purpose. The means can be similar, rather than identical, so long as they truly accomplish the goals of the initiative measure. *Id.*

In *Trust the People*, the Court applied the test to determine whether a proposed initiative restricting the governor's power to appoint a temporary United States Senator should be supplanted by legislation retaining that authority temporarily until the results of a special election to fill the vacancy could be certified. The Court found that the scope of the initiative was narrow, filling a vacancy, and that its purpose, to eliminate the governor's appointment power, was significantly different from the purpose of the legislation, which provided for the governor to retain this authority. In addition, the means chosen to fill the vacancy, particularly with regard to the role of the governor, were dissimilar. The Court concluded that the proposed initiative and the legislation were not substantially the same and held that the legislation did not supplant the proposed initiative.

2. History of legislative amendments during the first two years of an initiative measure's enactment

Our research discovered few amendments to initiated laws during the first two years of their enactment. We found two, in addition to the 1974 public official financial disclosure initiative enacted in 1974 and examined in *Thomas,* 568 P.2d 400, that was discussed previously. The legislature adopted a number of amendments to a 1998 initiative on the medical use of marijuana. A copy of 1999 Inf. Op. Att'y Gen. (May 24; 883-99-0037) (providing an analysis of the bill amending the initiated law) is attached for your information.

The legislature also amended the gas line initiative enacted in 2000 by changing the definition of "project." An analysis of that bill is also attached. In addition, various

"housekeeping" amendments to sections enacted by the gas line initiative were made by the 2003 "revisor's bill." CSSB49(STA) (secs. 54, 55, 56, 57 & 58, ch. 35, SLA 2003). These amendments are by definition minor and corrective and do not change the meaning of any law. AS 01.05.031.

If you have additional questions or further assistance is required, please do not hesitate to contact me.

Sincerely,

Talis J. Colberg
Attorney General

Enclosures

cc w/enc: John Bitney, Legislative Liaison, Office of the Governor
AAG D. Behr, Legislation & Regulations, Acting Legislative Liaison,
Office of the Attorney General

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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May 24, 1999

The Honorable Tony Knowles
Governor
P. O. Box 110001
Juneau, AK 99811-0001

Re: HCS CSSSSB 94(FIN) -- Relating to the Medical Use of Marijuana
A.G. file no: 883-99-0037

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed HCS CSSSSB 94(FIN), relating to the medical use of marijuana.

The medical marijuana law enacted by voter initiative in the 1998 general election contained ambiguous language, and as a result contained a large number of provisions that make the law difficult to administer, difficult to enforce, and difficult to interpret. These problems could not have been envisioned by the voters.

The goal of this Administration was to fix the problems in the voter initiative in order to make the law work, that is, to give effect to the intent of the voters to allow marijuana to be used to address debilitating medical conditions under appropriate controls.

In assessing HCS CSSSSB 94(FIN) (hereafter referred to as SB 94), it is helpful to bear in mind that the legislature heard a great deal of testimony about the potency and profitability of marijuana. In addition to consistent police testimony that marijuana grown in Alaska is among the most potent grown anywhere in the world, the legislature took testimony from medical marijuana users. In particular, the House Judiciary Committee heard very compelling testimony from a user who described how, in the last few months, he was able to stop using prescription narcotic pain medications by substituting marijuana. This individual testified that he had been taking an amount of narcotics that would likely kill an ordinary person who had not built up a level of tolerance to the drugs. He also indicated that marijuana of this quality sells for $500-600 per ounce, which was supported by police testimony that Alaska-grown marijuana often sells for $4,000-5,000 per pound, or more. Thus the testimony showed that marijuana is a powerful drug capable of producing similar pain-killing effects as narcotics, and creating an enormous profit potential, all of which supported the

legislature's desire that medical use of marijuana remain under appropriate controls and not be subject to abuse.

Legal Standard

Under art. XI, sec. 6. of the Alaska Constitution. a voter initiative cannot be repealed for two years, but may be amended at any time. Alaska case law holds that the legislature has broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). There seems to be a sliding scale analysis, such that "[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." Medical use of marijuana is a fairly narrow topic, so we should assume for purposes of this analysis that a court will look more closely at any amendments than they would if the subject matter were broader. Nevertheless, the legislature can amend an initiative if the amendments "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977). As discussed more fully below, we believe that the amendments to the initiative made by this bill are valid because a court will find that they are certainly much more than a "hollow gesture" toward medical use of marijuana. 543 P.2d at 739.

Moreover, much of the original initiative still remains. For example, the proponents of the initiative specifically did not require a prescription by the physician, so as to avoid what they characterized as the practice in other states in which the federal authorities threatened action against doctors writing such prescriptions. SB 94 retains this provision and requires only that the physician consider other approved medications and treatments. By not requiring a formal prescription, SB 94 avoids an argument that the amendment is simply a "subterfuge to frustrate the ability of the public to obtain consideration and enactment" of a law allowing use marijuana for medical purposes. *Id.*

Main Changes made to the Initiative

The Department of Health and Social Services, Department of Public Safety, and Department of Law identified several changes needed to make the medical marijuana law work, and SB 94 addressed most of these issues. The issues that were important to this Administration were:

- Recognize that marijuana, like other prescription drugs, should be a controlled substance, regardless of how it is used.
- Prohibit patients from selling or distributing marijuana.
- Limit the number of patients who can be supplied marijuana by the same person.
- Require mandatory registration with the Department of Health and Social Services.

- Limit possession to one ounce and six plants.

- Allow police to take action in medical marijuana cases just as with misuse of a prescription for a narcotic drug, and make the legal burden of proof for medical marijuana consistent with that applied to other drugs.

- Allow access to the registry in criminal investigations.

Each of these points is discussed below and analyzed in terms of the legal standard set out above.

Marijuana Should Be a Controlled Substance, Regardless of How It Is Used. The medical marijuana initiative provides that marijuana used for medical purposes is not a "controlled substance." AS 11.71.190(b). This seemingly insignificant change has serious legal consequences because many other state laws depend on the phrase "controlled substance." For example, it is a crime to possess a firearm while under the influence of alcohol or a controlled substance. AS 11.61.210(a)(1). Thus, because medical marijuana is no longer a "controlled substance," a patient intoxicated on marijuana could lawfully possess and use a firearm. Although the laws relating to driving while intoxicated use a different definition of controlled substance, and thus we believe that a patient can be convicted for driving after using marijuana, an attorney for the legislature has written an opinion that suggests that it is possible a court would not allow prosecution or conviction for driving while intoxicated.

By continuing to treat marijuana as a "controlled substance," SB 94 takes into consideration the potential for abuse of the drug, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Prohibit Patients from Selling or Distributing Marijuana. The medical marijuana initiative contains an oddly worded provision that would allow registered patients to sell or give marijuana to anyone else, as long as the registered patient did not know that the buyer was not eligible to be registered. AS 17.37.040(a)(3). The legislature heard testimony that this could lead to the problem encountered in California, where retail outlets, euphemistically called "marijuana clubs," sprung up after the medical marijuana initiative was enacted in that state.

There was legislative testimony that the price of marijuana in California clubs ranged from $20 to $120 for one-eighth of an ounce, thus offering a product selling for nearly $1,000 per ounce. One large marijuana club in San Francisco had profits of $1 million per month before it was shut down. Although California authorities were able to close that business, it appears that the Alaska medical marijuana initiative would allow selling by patients.

SB 94 takes into consideration the potential for abuse of the drug and making a profit on its use, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Limit the Number of Patients Who Can Be Supplied Marijuana by the Same Person. The initiative is silent as to the number of patients who can be supplied marijuana by a single caregiver. If one person is allowed to supply marijuana to multiple patients, at least two problems are created. First, the designated caregiver would be allowed to possess one ounce plus six plants for each patient, thus allowing large growing operations, and the caregiver could transport and distribute multiple ounces of marijuana. Second, the caregiver would almost certainly have a large profit-making incentive and could easily take advantage of patients, as was done in the California marijuana club selling marijuana for triple the price of gold. SB 94 also prohibits convicted felony drug offenders from being caregivers and raises the minimum age for caregivers to 21, which is consistent with laws relating to possession of alcohol.

SB 94 also changed the definition of "primary caregiver," so as to give patients a broader choice of persons to assist them in obtaining marijuana. Moreover, the bill also eases a restriction in the initiative by allowing each patient to have a primary caregiver, as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. Thus, while SB 94 imposes some different requirements on caregivers in light of the potential for abusing the drug and making a profit on its use, at the same time the bill allows patients additional flexibility to designate "caregivers."

The changes to the laws on caregivers do not repeal the initiative.

Mandatory Registration. The marijuana initiative allows patients to register with the Department of Health and Social Services, but does not require it. From a quick reading of the initiative, it is not immediately apparent that persons are allowed to use marijuana for medical purposes even if they have not registered with the Department of Health of Social Services. Yet a careful legal review discloses that this is the result. AS 17.37.030(a).

The optional registration was described in testimony by many police administrators as a serious practical problem for the police. If a person tells a police officer that he or she is possessing marijuana for medical purposes, but is not registered, the officer has two choices, neither of which is acceptable: the officer can seize the marijuana and arrest the person, thus possibly depriving someone of a substance the person legitimately needs for medical care, or the officer can let the person go on his or her way, thus in essence overlooking a criminal act if the person cannot legally use the substance.

The prime sponsor of the initiative testified that some persons with debilitating conditions may choose not to register because they believe it is a violation of their privacy. However,

those fears should be allayed because the application process for registration does not require the patient to disclose the nature or symptoms of their condition. Moreover, the police will not have access to the registry for general investigative purposes and will be allowed access only to confirm that a person who claims to be registered is in fact registered. Mandatory registration is a protection for patients, because the police will be able to determine immediately that they can lawfully use marijuana for medical purposes.

Mandatory registration also cures unintended problems that arise because the initiative treats registered users differently from unregistered users in several ways. One of the examples of this different treatment is that registered patients cannot use marijuana in public. AS 17.37.040(a)(2). Yet there is no similar restriction for unregistered users. Unregistered persons who uses marijuana in public can therefore do so freely, as long as they can show they have a medical need to use marijuana. This difference in treatment is hard to justify, and thus a registered patient is likely to be able to convince a court that it is a denial of equal protection of the laws, and a restriction on their right to use marijuana, that a registered patient is prohibited from doing in public what an unregistered person can do. Without mandatory registration, the initiative would allow marijuana to be openly used in public, which could lead to a backlash against the law.

Even though SB 94 requires registration for all marijuana users, whereas the initiative makes registration optional, we do not believe this change can be characterized as a repeal of the initiative as lawful medical use of marijuana is still permitted under the bill.

Limit Possession to One Ounce and Six Plants. SB 94 limits patients to possessing one ounce plus six plants of marijuana. The one-ounce-plus-six-plants limit is contained in the original ballot initiative that enacted the medical marijuana provisions, and thus is current Alaska law. AS 17.37.020(a). As such, it is presumptively valid. Because SB 94 adopts that same limit, it would also be presumed to be valid by the courts.

The ballot proposition goes on to provide, however, that patients can possess more than one ounce and six plants if they can prove by a preponderance of the evidence that a greater amount is "medically justified." AS 17.37.020(b). SB 94 does not adopt this exception.

Although the prime sponsor of the ballot initiative testified that some patients want to have more than one ounce plus six plants, there was no testimony before any committee that explained why that is so from a medical perspective. One medical marijuana user who testified in House Judiciary Committee did not register any objection to the one-ounce-plus-six-plants limit. Indeed, there was evidence presented that this is a large amount of marijuana for personal use for medical purposes.

There was testimony in committee hearings that the *average* mature marijuana plant seized by the Alaska State Troopers in 1998 provided four ounces of dried and usable marijuana, that

is, the dried leaves, buds and seeds, with roots and stalks removed. There was also testimony in the House HESS Committee from a Fairbanks police officer who participated in the investigation of one of the largest marijuana growing operations, where plants tended by a skilled grower were up to 10 feet tall and yielded up to two pounds of marijuana each.

The three mature marijuana plants allowed by SB 94 provide an average of 12 ounces of usable marijuana. The committee testimony showed that the three other plants provide an average of three more ounces, for a total of 15 ounces of usable marijuana in plant form. Thus the testimony establishes that one ounce plus six plants, on average, yields one pound of usable marijuana.

The House Judiciary Committee heard testimony from a user of marijuana for medical purposes, who indicated that his medical needs required one ounce of marijuana every 10 days. The House HESS Committee heard testimony from a federal official who indicated that each marijuana cigarette uses about one-half gram of marijuana, thus yielding 56 cigarettes per ounce. The federal official's testimony assumed a duration of effectiveness lasting only two hours per cigarette, which means a person would need eight cigarettes per day to stay under the influence of marijuana for 16 hours, or essentially all their waking hours. Even at this unrealistically high rate of consumption of low-grade marijuana, one ounce would last a week for a heavy user of marijuana for medical purposes.

The testimony before the legislature thus shows that a patient with one ounce plus six plants has, on average, access to 16 ounces of marijuana, which provides a constantly regenerating 16-week supply, even if they use it at a rate that keeps them intoxicated all the time. There was no evidence, and no testimony, that this amount is not adequate for patients for medical purposes.

The portion of the ballot initiative that allows more marijuana if the patient proves it is "medically justified" raises two primary issues. The first issue is the practical difficulty created for police officers if every patient is allowed to possess a different amount of marijuana, depending upon what the patient can later show in court. Testimony by police officials showed that the best approach for both police officers and patients is a clear "bright line" rule that establishes a set amount that can be possessed. This was a matter of policy for the legislature to consider.

The second issue revolves around the "medical justification" that would authorize more than one ounce plus six plants. While this can be characterized as a question of medical care, it appears that this, too, was a policy matter for the legislature.

In terms of actual *medical* justification, a patient needs only enough marijuana for his or her immediate use. Anything more than that is not a matter of medical *need*, but a matter of convenience for the patient or the patient's caregivers.

It may very well be the case that possessing four ounces of usable marijuana, or eight ounces, or possessing 12 plants or 24 plants is more convenient for the patient than one ounce plus six plants. But there was no testimony in any committee that there is any possible *medical* justification for greater amounts than one ounce plus six plants. The issue for the legislature, then, was whether the increase in convenience outweighs the risks in allowing greater amounts of marijuana to be freely possessed, grown, and transported by patients and caregivers. Whether to allow more marijuana than one ounce plus six plants therefore appears to be a pure policy question for the legislature, rather than a medical one.

Given the testimony before the legislature about the potency and profitability associated with marijuana, we believe that a court would find that the one-ounce-plus-six-plants limit in SB 94, with no provision for possession of greater amounts, is a proper exercise of the legislature's authority to amend the medical marijuana law.

Allow Police to Take Action in Medical Marijuana Cases Just As with Misuse of a Prescription for a Narcotic Drug, and Make the Legal Burden of Proof for Medical Marijuana Consistent with That Applied to Other Drugs. The medical marijuana initiative gave registered patients immunity from arrest, prosecution, and conviction for any offense related to medical use of marijuana, even if the patient possessed more than the legal limit of marijuana. AS 17.37.030(b). Even if the state had evidence that the person possessed a large amount of marijuana, police and prosecutors could take no action. Although the prime sponsor of the initiative has indicated that this was not the intent of the initiative, it is certainly the plain meaning of the initiative. SB 94 removes this provision, and thus allows the police to make arrests just as they would with any other misused prescription drug: if it a felony offense, they can arrest if there is probable cause to believe that a crime has been committed, and if it is a misdemeanor offense the offense must also have been committed in the officer's presence. SB 94 also removes similar restrictions on the authority of police to seize and forfeit evidence, thus allowing general Alaska law to control those actions.

SB 94 brings the medical marijuana law into conformity with other laws that make it an "affirmative defense" if a person seeks to rely on a statutory exemption to otherwise illegal conduct. For example, the concealed handgun law requires the registered person to prove he or she is registered and that the carrying of the handgun conformed to the law. More directly to the point, however, Alaska law for many years has required that users and dispensers of controlled substances have the burden of proving by a preponderance of the evidence that they are entitled to any exemption or exception in the controlled substances laws. AS 11.71.350. Thus SB 94 puts medical users of marijuana in exactly the same position as users of prescription drugs.

Given that this allocation of burden of proof does not appear to unduly restrict access to prescription drugs, it is not a repeal of the marijuana initiative. Similarly, it is not a repeal to remove the practical impediments to police officers, by allowing them to use general laws relating to arrests and forfeiture actions, just as they can with any other prescription drug.

Allow Access to the Registry in Criminal Investigations. This Administration favored a provision allowing police access to the registry in the course of a criminal investigation. SB 94, however, retains the language in the initiative that allows access only if a person claims to be a registered patient or caregiver. We believe that this level of confidentiality will interfere with some police investigations, and make police investigative efforts more difficult. The Administration may wish to consider requesting amendments in the future if this proves to be unworkable or not in the state's best interest.

Other Changes. SB 94 changes the medical standard for a physician to recommend marijuana to a patient, by requiring the doctor to consider other approved medications and treatments. With new pain killers coming on the market all the time, as well as the availability of new nausea medications and FDA-approved synthetic THC (delta-9-tetrahydrocannabinol, the active ingredient in marijuana), it would seem to be sound medical practice to consider these other approved alternatives before advising a patient to use an unregulated substance of unknown purity and potency.

Although SB 94 does change the medical standard, by requiring doctors to consider other approved medications before recommending marijuana, this is certainly a much more flexible standard than expressed in a recent report by the Institute of Medicine of the National Academy of Sciences, and it does not constitute a repeal. The sponsor of SB 94 circulated information to legislative committees about the report, which stated that, given the health risks associated with smoked marijuana, short-term use of marijuana by certain patients was justified only if the "failure of all approved medication to provide relief has been documented." *Marijuana & Medicine: Assessing the Science Base* (Recommendation 6), National Academy Press, Washington, D.C., 1999.

A long-time Alaska physician testified in the House HESS Committee and stated that in his experience almost all requests for marijuana for medical purposes come not from patients with terminal illnesses, but from patients with chronic conditions who will be using marijuana indefinitely. The physician testified that research showed marijuana has seven times the amount of tar and other potentially cancer-causing substances as cigarettes and that there was therefore the potential (although specific research had not been done) that marijuana presented seven times the cancer risk of cigarettes. Thus the legislature certainly had an adequate record upon which to make a change in the standard to be applied by physicians, and the change in the medical standard does not repeal the initiative.

In addition to tightening up the medical marijuana law, SB 94 relaxed some requirements of the initiative. First, it allowed marijuana to be transported by patients and caregivers. The marijuana initiative defined medical use of marijuana to include transportation of marijuana. The initiative went on to say that registered patients could not "engage in medical use of marijuana" in public. This meant that marijuana could not be transported. Although this provision might have been struck down as unconstitutional (as discussed above), the law might very well have imposed a practical burden on patients and caregivers. Second, as discussed above, although SB 94 limits each

caregiver to supplying marijuana to only one patient (except in unusual circumstances), the bill also eases restriction in the initiative by allowing each patient to have a broader ranger of persons from which to choose caregivers and to designate a primary caregiver as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. These relaxed requirements also do not repeal the initiative.

In conclusion, in our opinion the changes to the initiative do not violate the constitution, either singly or in their totality, because they do not constitute a repeal of the initiative. Instead, the amendments appear to be a proper exercise of the legislature's broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The amendments to the initiative, though numerous, still "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977).

SB 94 has an immediate effective date if it is enacted into law.

Conclusion

The bill addresses legal concerns raised by law enforcement and the Department of Health and Social Services.

Sincerely,

Deborah E. Behr for

Bruce M. Botelho
Attorney General

BMB:DJG:jf

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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May 19, 2004

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HB 417 -- amending the definition of "project" in the act establishing the Alaska Natural Gas Development Authority
Our File: 883-04-0044

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed HB 417, which expands the definition of "project" in the act establishing the Alaska Gas Development Authority ("ANGDA") to include a possible gas pipeline terminus at tidewater at a point on Cook Inlet. Before this addition, the definition of "project" included only a terminus at tidewater at a point on Prince William Sound and a spur line from Glennallen to the Southcentral gas distribution grid. This bill has an immediate effective date under AS 01.10.070(c) so, if you sign the bill into law, it would become effective at 12:01 a.m. Alaska Standard Time on the day after you took that action.

The Alaska Natural Gas Development Authority is a public corporation housed in the Department of Revenue. ANGDA was created by public initiative when voters passed Proposition 3 during the November 5, 2002 election. The establishing legislation is codified at AS 41.41.010 - AS 41.41.990. This bill amends the definition of project in AS 41.41.990(3) to read:

> (3) "project" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska **either** to tidewater at a point on Prince William Sound and the spur line from Glennallen to the South Central gas distribution grid **or to tidewater at a point on Cook Inlet** and includes

> planning, design, and construction of the pipeline and facilities as described in AS 41.41.010(a)(1)-(5). [Language in bold added by this bill.]

The Alaska Constitution art. XI, sec. 1 provides that the people may propose and enact laws by initiative. Although an initiated law may not be repealed by the legislature within two years of its effective date, Alaska Const. art. XI, sec. 7 provides that an initiated law may be amended at any time. The Alaska Supreme Court has stated that the legislature has broad authority to vary the terms of an initiated law after its adoption. *See Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The addition of a new project for ANGDA to consider is a proper exercise of that broad authority and does not constitute a repeal of the initiated legislation.

In summary, we see no legal or constitutional problems presented by this bill.

Sincerely,

for Gregg D. Renkes
Attorney General

GDR:LHH:tag

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MEMORANDUM March 6, 2007

SUBJECT: Comments by Drafter regarding CSHB 109(STA)
(Work Order No. 25-GH1059\O)

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

FROM: Dan Wayne
Legislative Counsel

Attached is the above-referenced bill draft for your review. In particular please note the following:

1. On page 28, line 10, I removed sec. 2 from the list of sections that would become effective July 1, 2007. In drafting the amendment that eventually was adopted and became sec. 2, I was permitted to discuss it with your staff, Representative Gruenberg's staff, and David Jones of the Department of Law. In those discussions I think it was generally understood that the effective date of the section, except as specifically noted otherwise in the language of the section itself, would be the same as the general effective date of the bill. Therefore, instead of giving a specific May 1, 2007, effective date for persons campaigning for or against a ballot proposition or initiative, as in the previous draft adopted by the committee (which was later rescinded for other reasons), I was able to accomplish the same thing but in leaner and simpler language. By removing sec. 2 from the list of sections that become effective July 1, 2007, sec. 2 becomes effective at the time as I believe the committee intended.

2. Regarding the section amending AS 39.52.180(d) (page 26, lines 19 - 28), I modified the language of oral amendment 3 (by Representative Bob Roses) to conform with drafting requirements. I conformed the language of new subsection 39.52.180(e) (page 26, line 29, through page 27, line 7) and corresponding applicability sections as well, by adding the amended language.

3. The next committee of referral may want to consider two changes to sec. 20 of the bill, to better define the term "caucus" in AS 24.60.130(p). I recommend adding the word "organizational" following the word majority on page 15, lines 24, 27, and 31, the word minority, on page 15, line 28, and page 16, lines 2 and 3. With that change the sentence on page 16, line 4 that begins "In this paragraph," should be deleted because "minority organizational caucus" is already defined in the section and the extra reference

would not be needed.[1] In my opinion, the meaning of "majority organizational caucus" in this context is self-evident, and needs no further definition in the bill.

DCW:lmb
07-045.lmb

Enclosure

[1] Rule number 1(e) of the Alaska State Legislature Uniform Rules says, in part:

> For purposes of this subsection "minority" means a group of members who have organized and elected a minority leader and who constitute at least 25 percent of the total house membership.

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MEMORANDUM February 26, 2007

SUBJECT: Prohibition on lobbying by legislator spouses and domestic partners in CSHB 109( )(Work Order No. 25-GH1059\K)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion as to the constitutionality of the proposed statutory change that would prohibit the spouse or domestic partner of a legislator from being a lobbyist as is proposed in sec. 5 of the Committee Substitute for House Bill 109, draft version "K". It is my opinion that the prohibition as it is currently structured may be interpreted by a court as unconstitutional.

The First Amendment provides that "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances", art. I, sec. 1 of the Alaska Constitution provides that ". . . all persons have a natural right to life, liberty, . . . equal rights, opportunities, and protection under the law . . .", and art. I, sec. 5 of the Alaska Constitution provides that "[e]very person may freely speak, write, and publish on all subjects . . . ." Lobbying involves both the petitioning of government agencies and core political speech concerns that "implicates First Amendment guarantees of petition, expression, and assembly." Kimball v. Hooper, 665 A.2d 44, 46 (Vt. 1995); United States v. Sawyer, 85 F.3d 713, 731 n. 15 (1st Cir. 1996) (paid lobbyist's employment goal of attempting to persuade and influence legislators was guaranteed by the First Amendment); Findanque v. Oregon Government Standards and Practices Commission, 969 P.2d 376, 379 (Ore. 1998) ("Lobbying is political speech, and being a lobbyist is the act of being a communicator to the legislature on political subjects."); Liberty Lobby, Inc. v. Person, 390 F.2d 489, 491 (D.C. Cir. 1968) ("While the term 'lobbyist' has become encrusted with invidious connotations, every person or group engaged . . . in trying to persuade Congressional action is exercising the First Amendment right of petition."); and United States v. Harris, 347 U.S. 612, 625 (1954).

The fact that the proposed prohibition applies only to paid lobbyists ("volunteer" and "representational" lobbyists being excluded, see 25-GH1059\K p. 4. lines 5 - 7) does not shield the proposed prohibition from constitutional analysis. "The mere fact . . . that one earns a living by exercising First Amendment rights does not vitiate the ability to assert those rights." Moffett v. Killian, 360 F. Supp. 228, 231 (D. Conn. 1973) citing Follett v.

McCormick, 321 U.S. 573 (1944). Additionally, the individual rights afforded by the Alaska Constitution, art. I, sec. 1, include the right to make certain contracts for personal employment. see State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989) (The right to engage in an economic endeavor within a particular industry is an "important" right for state equal protection purposes) and Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003) (close scrutiny of enactments impairing the important right to engage in economic endeavor requires that the state's interest underlying the enactment be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close.) In justifying such an infringement on the personal liberty of legislators' spouses and domestic partners, the state would have to demonstrate a compelling interest in the purposes advanced by the restriction and an absence of less restrictive alternatives in realizing these ends. While the United States Supreme Court has acknowledged that governments have a legitimate interest in regulating lobbyists, see McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption"), "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

While the United States Supreme Court has recognized that governments have a "sufficiently important" interest in preventing political corruption and the appearance of corruption that justifies limits on campaign contributions and a standard of review below that of strict scrutiny, see McConnell v. Federal Election Commission, 540 U.S. 93 (2003), I am not aware of any court that has recognized this rationale as a basis for such a broad prohibition on paid lobbying. While the ban may be intended to promote public confidence in the integrity of legislators and to prevent corruption and any appearance of corruption, the prohibition as it is currently structured disallows all paid lobbying by spouses and domestic partners of legislators; not lobbying on issues before committees on which a legislator spouse or domestic partner might serve, a matter on which the legislator spouse or domestic partner will vote, etc. Therefore, a court might conclude that the ban as structured is not sufficiently narrow to further a compelling state interest and is an unconstitutional infringement on the First Amendment rights of the spouses and domestic partners to whom it applies.

It is my opinion that the state may be unable to meet its burden of demonstrating that no less restrictive alternatives exist to eliminate impropriety, undue influence, and conflicts-of-interest, and that this restriction might be invalidated.

TLAB:med
07-127.med

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MEMORANDUM February 28, 2007

SUBJECT: Constitutionality of statutes similar to sec. 5 of CSHB 109( ), draft version "K" (Work Order No. 25-GH1059\K)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

In a response to an earlier memorandum, you have requested that I augment my efforts by searching for and examining any existing judicial interpretation of statutes similar to sec. 5 of the proposed Committee Substitute for House Bill 109, draft version "K."

My research for the earlier memorandum began with such an effort, but I did not, and have not, unearthed any judicial examination of a statutory prohibitions on lobbying by a legislative spouse or domestic partner as broad as that found in sec. 5.

While decidedly second best, what I was able to find, was circumstantial evidence of state legislative and congressional consideration of similar provisions. The common thread or denominator discovered, is that while such broad prohibitions have been considered, they are absent from the final enactments of the legislation in which the provisions were to be included. For one example, see the ethics opinion draft concerning the history of Kentucky Senate Bill No. 7, 1993 at "www.lrc.ky.gov/ethics/Opinions/02-04.doc."

The most similar provision to sec. 5 that I found, is "S.1, Commission to Strengthen Confidence in Congress Act of 2007" passed by the United States Senate on January 18, 2007. The bill addresses statutory changes affecting lobbyists under the federal Lobbying Disclosure Act and other laws. The bill includes a prohibition on "official contacts" by a senator's spouse or immediate family member with the personal, committee, and leadership staff of that senator if the spouse or immediate family member is a registered lobbyist or retained or employed by a registered lobbyist. If it becomes law, a provision in the bill also would prohibit a senator's spouse from having any "official contacts" with any senator or staff if the spouse is a registered lobbyist or retained or employed by a registered lobbyist. The provision in full reads:

SEC. 113. PROHIBIT OFFICIAL CONTACT WITH SPOUSE OR IMMEDIATE FAMILY MEMBER OF MEMBER WHO IS A REGISTERED LOBBYIST.

Rule XXXVII of the Standing Rules of the Senate is amended by--

(1) redesignating paragraphs 10 through 12 as paragraphs 11 through 13, respectively; and

(2) inserting after paragraph 9, the following:

10. (a) If a Member's spouse or immediate family member is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, the Member shall prohibit all staff employed by that Member (including staff in personal, committee, and leadership offices) from having any official contact with the Member's spouse or immediate family member.

(b) Members and employees on the staff of a Member (including staff in personal, committee, and leadership offices) shall be prohibited from having any official contact with any spouse of a Member who is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist.

(c) The prohibition in subparagraph (a) shall not apply to the spouse of a Member who was serving as a registered lobbyist at least 1 year prior to the election of that Member to office or at least 1 year prior to their marriage to that Member.

(d) In this paragraph, the term 'immediate family member' means the son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, or stepsister of the Member. (www.govtrack.us/congress/billtext.xpd?bill=s110-1)

This is as similar a provision as I have been able to find.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-0132.med

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MEMORANDUM February 14, 2007

SUBJECT: Constitutionality of Amending AS 15.13.040(b); CSHB 6( )
(Work Order No. 25-LS0055\K)

TO: Representative John Harris
Speaker of the House
Attn: Tom Wright

FROM: Alpheus Bullard JAB
Legislative Counsel

You have requested a legal opinion on whether the referenced Committee Substitute for House Bill 6 is constitutional. The potential constitutional violation arises in secs. 2 and 5 of the Committee Substitute for House Bill 6. These two sections amend AS 15.13.040(b) and AS 15.13.070(c), statutory sections that were changed by 2006 Ballot Measure No. 1 initiative. I believe that the bill may be constitutional, but that it is a close question. In this instance, my opinion is without the benefit of a bright-line rule or clear precedent, therefore a review of the relevant legal and historical information is a necessary element in providing a complete answer to your question. Allow me to provide a summary.

Constitutionality of Amending an Initiated Law

Two Alaska court decisions are implicated.

In early 1974, two related initiative petitions were filed with the lieutenant governor. One dealt with conflict of interest, and the other election campaign disclosure. Both petitions were certified as having sufficient signatures and were scheduled for inclusion on a statewide election ballot. The 1974 Legislature considered both matters. The legislature did not take any action on the conflict of interest petition, but did adopt legislation, approved as ch. 76, SLA 1974, on campaign disclosures.

The lieutenant governor concluded that the campaign disclosure enactment was substantially the same as the campaign disclosure petition and voided the initiative. That decision was challenged. The challenger, Cliff Warren, an initiative sponsor, contended that the legislature had short-circuited the initiative process by passing a law determined to be substantially the same as the proposed initiative. In its decision upholding the lieutenant governor's conclusion, the Alaska Supreme Court observed that the legislature enjoys broad authority to amend an initiative:

The final constitutional provision states in pertinent part:

> An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time . . . .

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975).

But the legislature's authority to amend is not without limits. At the August 1974 primary election, the voters approved the second initiative petition, the conflict of interest proposal, and it was certified and became law on December 11, 1974. The 1975 Legislature amended the law to change deadlines and to exclude certain former officials, who under the initiative were required to file disclosures, from having to file. Ch. 2, SLA 1975. The law was amended again that session by adding a further delay to the filing deadline. Ch. 25, SLA 1975. Mr. Warren challenged the amendments, contending that the changes were beyond the authority of the legislature to approve and amounted to a "repeal" of the initiated law.

The court rejected his contentions in its decision in Warren v. Thomas, 568 P.2d 400 (Alaska 1977):

> The central issue in the case at bar is whether the legislature has exceeded the broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." [Warren v. Boucher, 543 P.2d 731,] at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments . . . amount to a repeal of the law. We disagree. "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, . . . 243 P.2d 38, 42 (Cal. 1952); see also W.R. Grasle

> Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974) . . . .
>
> [T]here remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant . . . . Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.
>
> . . .
>
> For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of an initiated law.

Warren v. Thomas, 568 P.2d 400, 402 - 404.

This pair of cases has not been the court's last word. In Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985), the court decided an appeal by setting out the full text of the trial court opinion, "which explains the questions presented and, in our view, properly resolves them." Id. at 1175. The trial court opinion, which the Supreme Court acknowledged, declared that "[t]he two Warren cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives." Id. at 1179.

AS 15.13.040(b)

AS 15.13.040(b) was most recently amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.040(b) to provide that groups need only report the "the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor. . ." for contributions exceeding $100 in the aggregate a year. At that time AS 15.13.040(b) provided that the name, address, date, and amount contributed by each contributor be reported in all instances, and that for contributions in excess of $250 in the aggregate during a calendar year, that the principal occupation and employer of the contributor also be provided. The effect of this section (section three of six) of the initiated law was to dispense with reporting requirements for contributions of $100 or less in the aggregate a year (name, address,

date, and amount up contributed up to $100) and require the additional information of the principal occupation and employer of the contributor for contributions of $100.01 - $250.00 (the principal occupation and employer of the contributor was already required contributor information for contributions in excess of $250).

In a paragraph summarizing the entirety of the initiative, the August 22, 2006 Ballot[1] encapsulated the effect of sec. 3 as "requir[ing] groups to disclose the name, address, occupation, employer, date and amount given by each contributor for contributions more than $100 during a calendar year". The Legislative Affairs Agency Summary in the 2006 Official Primary Election Voter Pamphlet was marginally more informative; "[g]roups would have to report more about donors. For gifts over $100 to a group, the group would have to provide the true source of the gift. The group would also have to report the donor's job and the donor's employer." In the voter pamphlet, in the "Ballot Measure 1, Statement In Support" and "Ballot Measure 1, Statement In Opposition" pages, the lifting of the disclosure requirements for contributions of up to $100 dollars to groups received mention only in the text of the "Statement in Opposition" page as a "change eliminat[ing] the disclosure of some names and addresses". It received no mention in the "Statement of Support." This was the sum of information provided to the electorate about sec. 3 of the initiative.

Conspicuous in its absence from the ballot language and Legislative Affairs Summary of the 2006 Official Primary Election Voter Pamphlet is any mention of how sec. 3 of the initiative would operate to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to $100 during a calendar year. The change was not reflected in the title of the initiative nor in the summaries provided to the voters. The change, which dispenses with the disclosure of previously required contributor information, is arguably less than consistent with the reduced contribution limits, limitations on lobbying, and more stringent disclosure requirements that made up the other 5/6 of the initiative.

If this initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, the operation of the initiative's sec. 3, unexplained to voters, to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to $100 during a calendar year could be interpreted by the court as effecting something less than the intent or will of the electorate. While sec. 3 of the initiative is the best statement of its contents, the section did not appear on the ballot itself, and where it was printed in the voter pamphlet, the text appeared as it would after enactment. The voter did not have the benefit of comparing the proposed amendment with the existing statutory text. While ignorance of the law may not be an excuse, this was a ballot measure labeled by the "Statement In Support" in the voter pamphlet as the "Take Our State Back" initiative, a measure that would limit campaign

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[1] See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet.

contributions and "close the soft money loophole" . . . words and phrases poorly reconciled with sec. 3 of the initiative.

AS 15.13.070(c)

AS 15.13.070(c) was also amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.070(b) to provide that "[a] group that is not a political party may contribute not more than $1,000 per year" to a candidate, an individual conducting a write-in campaign as a candidate, another group, a nongroup entity, or to a political party. Previous to the passage of the initiative AS 15.13.070(c) had provided that "[a] group that is not a political party may contribute not more than $2,000 per year." The Committee Substitute for House Bill 6 now proposes to further limit such contributions to $500 per year.

The central issue for a court in interpreting the effect of the legislature's amendment to the initiated law is whether the legislature has exceeded their "broad power" by passing an amendment which "so vitiates the initiative as to "constitute its repeal," Warren v. Boucher, at 737. The changes to AS 15.13.070(c) are not drastic, and do not work against the initiative, but further the stated goals of the initiative by further limiting campaign contributions. I don't believe that this amendment, which changes the statute to further the aims endorsed in the initiative itself, would be interpreted by a court to amount to a repeal of the law.

> "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

The amended law imposes substantial campaign contribution restrictions and effectuates the intent of the electorate that campaign contributions from groups be further restricted. If the initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, it is my opinion that the Committee Substitute's amendment to this section is constitutional.

Conclusions

It is my opinion that the Committee Substitute's changes to AS 15.13.040(b) and 15.13.070(c) could be interpreted by a court as a constitutional modification. While a court could decide that these sections were key features to the initiative, and the Committee Substitute's changes are unconstitutional, I believe that the "broad power" of the legislature to amend adopted initiatives recognized by the courts is sufficient in this instance to prevent the present amendment from offending art XI, sec. 6 of the Alaska Constitution. The Committee Substitute's amendment to AS 15.13.040(b) and 15.13.070(c) is in keeping with stated goals and rationales of the initiative, and operates

to modify an element of AS 15.13.040(b) that is arguably inconsistent with the initiative's other provisions. For these reasons, I believe a court could find that the present amendment does not operate as a repeal of the initiative's provisions "to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
07-082.ljw

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MEMORANDUM April 25, 2007

SUBJECT: Ethics (CSHB 109(JUD)am; Work Order No. 25-GH1059\N.A)

TO: Senator Lesil McGuire
Attn: Shalon Szymanski

FROM: Dan Wayne
Legislative Counsel

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

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

Section 1. Expands the scope of bribery statutes to include certain public officers.[1]

Section 2. Makes applicable to the teachers' defined benefits retirement plan the pension forfeiture provisions added in sec. 45 of the bill.

Section 3. Makes applicable to the teachers' defined contribution retirement plan the pension forfeiture provisions added in sec. 45 of the bill.

Section 4. Expands the list of persons exempted, in AS 15.13.040(g), from requirements in AS 15.13.040(a) that candidates make a full report which, among other things, lists expenditures made, total contributions received, and, for contributions in excess of $250 in the aggregate in a calendar year, the name and address of contributors, along with other information related to the contribution. The expanded list exempts constitutional convention delegates, judges, or candidates for municipal office.

Section 5. Requires persons, including the Governor, Lieutenant Governor, and proponents of ballot propositions or initiatives, to submit campaign information only in electronic form. It exempts municipal candidates from electronic filing requirements,

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[1] Political contributions to legislators or legislative candidates may still be excluded from the scope of the bribery statutes, after the change proposed in this section, because only public officers as defined in AS 39.52.960 -- a definition that does not include legislators or legislative candidates -- have authority, under section 1, to take "official action."

and exempts legislative candidates from electronic filing requirements until January 1, 2009.

Section 6. Amends the law as would be established by sec. 5 of the bill so that, effective January 1, 2009, all candidates, except candidates for municipal office in a municipality with a population of less than 15,000, would be required to file APOC reports electronically.

Section 7. Makes applicable to the (former) Elected Public Officials Retirement System, in AS 37.10.310, the pension forfeiture provisions added in sec. 45 of the bill.

Section 8. Adds to the duties of the Alaska Public Office's Commission a duty to administer an annually updated training course for lobbyists and their employers.

Section 9. Requires registered lobbyists and volunteer lobbyists to complete the APOC training course annually.

Section 10. On page 5, line 14, adds new limits on circumstances in which a lobbyist is allowed to make a gift to a person serving in the executive branch.

Section 11. Allows persons to engage in volunteer or representational lobbying in spite of limitations on lobbying activity in AS 39.52.[2] Prohibits a spouse or domestic partner of a legislator from lobbying, except as a volunteer or representational lobbyist.

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[2] Under this section a volunteer lobbyist is as described in AS 24.45.161(a)(1), which exempts from the requirements of chapter AS 24.45:

> (1) an individual
> (A) who lobbies without payment of compensation or other consideration and makes no disbursement or expenditure for or on behalf of a public official to influence legislative or administrative action other than to pay the individual's reasonable personal travel and living expenses; and,
> (B) who limits lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies;

A "representational lobbyist" is not defined in statute, only in regulation. 2 AAC 50.511 reads:

> Registering and reporting by a representational lobbyist and his employer.
> (a) An individual who attempts to influence legislative or administrative action, and receives only reimbursement for his travel and personal living expenses, is considered a representational lobbyist. "Representational lobbyist" means that the individual is not employed by the person or group on whose behalf he is lobbying and receives no salary, fee, retainer, or any economic consideration whatsoever, other than reimbursement of travel and personal living expenses, for his services as a lobbyist. A

Section 12. Adds a definition of "domestic partner" to the chapter regulating lobbyists.

Section 13. Modifies language in the applicability section of the Legislative Ethics Act that has at times been misinterpreted as exempting legislators, legislative directors, legislative employees and public members of the committee from disclosure requirements related to the latter part of their time in service.

Section 14. Adds language, on page 7, line 21, conforming AS 24.60.030(a) to a new definition of "charity event" elsewhere in the bill.

Section 15. Shortens, from 90 days to 60 days, the period right before an election when legislators and legislative employees are not allowed to use state funds to print or distribute political mass mailings to voters.

Section 16. Requires a legislator or legislative employee who serves on a board of any organization, including a government entity, to disclose the board membership to the committee.

Section 17. Adds a requirement that the ethics committee forward to the legislature, and that the legislature publish in the journal or supplemental journal of the appropriate house, disclosures related to loans received or certain programs participated in by legislators or legislative employees.

Section 18. Changes the date of publication by the committee, of disclosures related to loans received or certain programs participated in by legislators or legislative employees, to the next regularly scheduled publication date instead of within three weeks of the date of the disclosure. Allows the committee to edit the information published, upon request, if the committee determines making the entire disclosure public would cause an unjustifiable invasion of personal privacy.

Section 19. Changes the definition of "public official" as it applies, in AS 24.60.070(a), to the disclosure by legislators and legislative employees of the formation or existence of certain close economic associations.

Section 20. Deletes certain references to "legislator" in order to conform AS 24.60.070(c) with new subsection AS 24.45.121(e) prohibiting the spouse or domestic partner of a legislator from engaging in certain lobbying activity.

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representational lobbyist need not submit reports pursuant to AS 24.45.051, but must register his representation on a form prescribed by the commission. "Personal living expenses" is considered to be an amount equal to the per diem currently allowed by the Administrative Manual of the State of Alaska. "Travel" means the cost of traveling to the capital city or the location of official proceedings of standing, interim, or special legislative or administrative committees or agencies.

Section 21. Adds an exception to AS 24.45.121 and AS 24.60.080, sections that limit gifts to legislators and legislative employees, to allow "compassionate gifts" to aid or comfort in time of catastrophe, tragedy, or health-related emergency.

Section 22. Amends AS 24.60.080(a) by making the prohibition on gifts from lobbyists during the legislative session a year-round prohibition, and adding to it gifts from family members of lobbyists.

Section 23. Amends AS 24.60.080(c), dealing with exceptions to limitations on gifts to legislators and legislative employees, by adding a definition of "immediate family" to the exception in paragraph (c)(5). Adds persons employed by the Office of Victims' Rights to the list of persons not permitted to accept certain discounts and welcome gifts that legislators and their staff employees are permitted by the exception in paragraph (c)(7) to accept during legislative sessions. Adds legislative employees to the transportation exemption in paragraph (c)(9). Paragraphs (c)(10) and (c)(11) conform subsection (c) to changes made in subsection (a) regarding tickets to charitable events.

Section 24. Adds gifts to family members (made, by a third party, because of the family member's relationship to the legislator or legislative employee), and gifts of legal services, to the list of gift disclosures by legislators and legislative employees that the committee shall make public, and, in conformity with the bill's proposed changes to deadlines in AS 24.60.105, prescribes a 30-day deadline for disclosure.

Section 25. Conforms AS 24.60.080(i) to the changes in sec. 24 of the bill regarding gifts to immediate family members. Changes "reported" to "disclosed," for clarity.

Section 26. Prohibits legislators, while serving, from, "directly or by authorizing another to act on the legislator's behalf," accepting or agreeing to accept compensation from anyone but the state for services related to their work.

Section 27. Changes current law that allows a legislator or legislative employee to be compensated outside of their legislative pay for representing a person before an agency, board, or commission of the state as long as they disclose it to the committee. The change would prohibit a legislator or legislative employee from representing themselves or any other person, with or without compensation, if the representation is before a "municipal, legislative, or executive branch."

Section 28. Establishes that, except in an instance where another legal deadline applies, disclosure of a matter or interest shall be required within "30 days after the commencement of the matter or interest."

Section 29. Clarifies that disclosures made under AS 24.60.105(a) shall be made annually as well, under AS 24.60.105(c).

Section 30. Codifies a recent opinion by the Select Committee on Legislative Ethics, interpreting the Legislative Ethics Act to require that persons covered by it do not have to disclose conflicts and potential conflicts that arise after they leave service, but after they leave service they are still required to disclose every matter that was subject to disclosure by the Act while the person was still serving. The section would require a final ethics disclosure to be filed within 90 days after the person's last day of service.

Section 31. Clarifies the role of the ethics committee in securing the attendance of a regular member's alternate at a meeting, or at a proceeding under the complaint procedure in AS 24.60.170, if the regular member is unable to attend

Section 32. Amends AS 24.60.130(o) to add a definition of "majority organizational caucus."

Section 33. Establishes a procedure for selection of an alternate member of the committee to serve in a complaint proceeding where the regular member and the regular member's alternate are both accused of a violation in the complaint the committee is hearing.[3]

Section 34. Adds to the duties of the ethics committee a requirement that it publish certain educational legislative ethics materials, and administer an ethics course to help people covered by the ethics code understand and follow it.

Section 35. Adds a new section requiring that legislators, legislative employees and public members of the ethics committee complete the legislative ethics course offered by the committee.

Section 36. Adds APOC and the Select Committee on Legislative Ethics to the list of entities that may request an advisory opinion under AS 24.60.160, and also adds language to that statute that requires advisory opinions to be redacted before publication to protect the identity of persons involved. It adds language that would make the final vote by the committee (the name of the person voting and how they cast their vote) a public record.

Section 37. Amends AS 24.60.170(j), to allow persons who have provided legal advice to the committee in the past, but no longer do so, to be appointed by the committee to present the case against the person charged, if the complaint has reached the formal charge phase. It also adds new language that allows the committee to schedule the hearing on a formal charge to a date outside of the 20 - 90 day period in the statute, and allows the committee to dismiss a complaint or take other appropriate action if a delay caused by the complainant in the case is not supported by a compelling reason or would result in the person charged being deprived of a fair hearing.

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[3] The procedure set out in this section is based on the procedure set out in AS 24.60.037(d), regarding open meetings requirements.

Section 38. Defines the victims' advocate as the "appointing authority" for the purpose of determining how to sanction an employee of the Office of Victims' Rights found by the committee to have violated the Legislative Ethics Act; and similarly defines the legislature as the "appointing authority" where the question is how to sanction the victims' advocate.

Section 39. Revises the list of financial information a legislator, public member of the committee, and a legislative director are required to disclose, by clarifying that disclosure of income received for personal services, or a loan or loan guarantee, are to be reported under AS 24.60.200, not AS 39.50.030. The section adds language to AS 24.60.200, requiring that when personal income is reported the approximate hours worked to earn it must be reported as well, along with any other information the earner chooses to disclose.

Section 40. Says that, in addition to the required annual reporting to APOC regarding financial disclosures under AS 24.60.200, a person appointed as a legislator under AS 15.40, a public membe of the committee, or a legislative director must also file a disclosure within 30 days after the person's appointment. Under this section a final disclosure is required, after a person leaves service, for the period ending with the person's last day of service.

Section 41. Adds a new subsection that would require financial disclosures under AS 24.60.210 to be made electronically starting July 1, 2008, except in a given case where APOC makes an exception. (AS 24.60.110 is the statute prescribing deadlines for disclosure, by legislators, legislative directors, and ethics committee members, of information described in AS 24.60.200.)

Section 42. Specifies that when APOC finds a person at the Office of Victim's Rights has failed or refused to file a financial disclosure when required, APOC will notify the Legislative Council.

Section 43. Conforms AS 24.60.990(a)(2) (which defines "anything of value," "benefit," or "thing of value") to proposed changes set out in secs. 22 and 23 of the bill (regarding gifts to legislators and legislative employees).

Section 44. Amends AS 37.10.220(a) to add the administration of pension forfeitures to the duties of the ARM board.

Section 45. Makes pension forfeiture a civil consequence for a public officer, legislator, or legislative director who is convicted of certain crimes of dishonesty, and sets up a process by which the ARM board may award some or all of a to-be-forfeited pension to certain family members of the convicted person.

Section 46. Makes applicable to the public employees' defined benefit plan the pension forfeiture provisions of sec. 45 of the bill.

Section 47. Makes applicable to the public employees' defined contribution plan the pension forfeiture provisions of sec. 45 of the bill.

Section 48. Adds a requirement, regarding financial disclosure by public officials, that within 90 days after leaving office a public official shall file a final statement covering any period during the official's service for which a statement hasn't already been filed.

Section 49. Adds to the list of items that must be disclosed by a public official or candidate under AS 39.50, lowers the threshold amount for reporting from $5,000 to $1,000, and adds limited liability companies to the list of entities with which an association by the public official or a member of the public official's family might create a need for disclosure to APOC.

Section 50. Adds "limited liability company" to the list of entities, in the definition of "close economic association," with which a public official might have a close economic association of a type that must be disclosed to APOC.

Sections 51 and 52. These sections are both part of a substantially amended AS 39.50.040, under which a public official would have the option to put certain assets into a blind trust as one way of resolving certain conflicts of interest.

Section 53. Requires information submitted to APOC under AS 39.50 (public officials and candidates for public office) to be submitted electronically starting July 1, 2007, unless APOC makes an exception, but provides that municipal officers retain the option of submitting information to APOC on paper.

Section 54. Further amends AS 39.50.050(a) to require municipal officers for municipalities with populations of more than 15,000 to submit APOC reports electronically. This section has a delayed effective date of January 1, 2009.

Section 55. Conforms AS 39.50.200(a)(10) to secs. 49 and 50 of this bill, by adding the term "limited liability company."

Section 56. Adds to the list of state commissions or boards in AS 39.50.200(b), which has the effect of expanding the definition of "public official" in AS 39.50.200(a), which, in turn, would make more board or commission members subject to the requirements of AS 39.50.

Section 57. Adds a new subsection to AS 39.52.110, in the Executive Branch Ethics Act, which says that stock or other ownership interest is presumed insignificant if its value is less than $5,000.

Section 58. Adds language to AS 39.52.130 saying that a gift from a registered lobbyist to a public officer or public officer's family member is presumed to be intended to influence the public officer, unless the person giving the gift is an immediate family member of the person receiving the gift.

Section 59. AS 39.52.180(a), which this section amends, prohibits public officers from taking some types of work, for two years after leaving office, and allows them to accept other types of work. This section moves a number of types of work from the "permitted" list to the "prohibited" list, by deleting the phrase "but does not include the," on page 26, lines 14 and 15.

Section 60. Adds deputy heads of departments and certain employees of the Office of the Governor to the list of persons already prohibited from lobbying for one year after leaving service.

Section 61. Prohibits heads of departments and certain employees of the Office of the Governor from serving on a governing board of certain companies, organizations or other entities, for one year after leaving office, depending on the entity's connection with the person's work as a public officer.

Section 62. Requires that the Governor make certain advance disclosures to the Attorney General in advance of granting a pardon, and requires that the Attorney General publish a written determination as to whether granting the pardon would be a violation, by the Governor, of the Executive Branch Ethics Act's Code of Ethics.

Section 63. Adds the ARM board to the list of boards covered by the Administrative Procedures Act, limited to the ARM board's handling of pension forfeitures.

Section 64. Repeals AS 24.60.037(d), which would be made obsolete by passage of the bill because it is subsumed by amending language in bill sec. 33. Repeals AS 24.60.080(k), a definition of "immediate family" which is replaced with a definition of the same in bill sec. 23.

Section 65. Restricts applicability of sec. 1 to offenses committed on or after the effective date of the Act, and restricts applicability of secs. 36, 37, and 38 to persons leaving state service on or after the effective date of the Act.

Section 66. Amends uncodified law to make AS 37.10.310 (pension forfeiture) applicable to benefits under former AS 39.37 (elected public officers' retirement system).

Section 67. Delayed effective dates for secs. 6, 41, 54.

Section 68. July 1, 2007, effective date for sec. 53.

Section 69. Provides an immediate effective date of the bill, except for secs. 67 and 68.

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