

HB

109

SENATE COMMITTEE REPORT

DATE: 4/4/07

FURTHER: Judiciary
Finance

DATE TURNED
IN TO OFFICE: _____

State Affairs Committee considered CS FOR HOUSE BILL NO. 109(JUD) am
HB 109 DISCLOSURES & ETHICS

"An Act relating to bribery, receiving unlawful gratuities, and campaign contributions; denying public employee retirement pension benefits to certain legislators, legislative directors, and public officers who commit certain offenses, and adding to the duties of the Alaska Retirement Management Board and to the list of matters governed by the Administrative Procedure Act concerning that denial; relating to campaign financing and ethics, including disclosures, in state and municipal government, to lobbying, and to employment, service on boards, and disclosures by certain public officers and employees who leave state or municipal service or leave certain positions in state or municipal government; restricting representation of others by legislators and legislative employees; relating to blind trusts approved by the Alaska Public Offices Commission; and providing for an effective date."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:

- Same Title
- New Title

HOUSE BILL:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
ADMN	01/23			✓	
LAW	01/24			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French			✓	
	French			✓	
	Green				✓
	Bunde	✓			
	McQuire			✓	
CHAIR:	McQuire			✓	

Amendment #1
(HB 109) (withdrawn)

Proposed Amendment: *New AS 39.52.910(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."

*Brought up for discussion
Purposes

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR MCGUIRE

TO: CSHB 109 (JUD) am

Conceptual Amendment

To prevent legislators from raising funds during session for any person running for elected office.

Legislative ethics should prohibit this see attached

*- Can the amendment be drafted
in a way to still allow legislators
to personally contribute \$ to a
campaign.

*- check w/ APOC & legal

Alaska State Legislature

Select Committee on Legislative Ethics

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Mailing Address:
P.O. Box 101468
Anchorage, AK.
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TO:

FROM: Joyce Anderson, Administrator

DATE:

RE: Fund Raising During Session

You have asked if it is permissible under AS 24.60 for a legislator to conduct fund raising activities during session for a campaign for the office of governor. Specifically, fund raising in Juneau during session.

First of all, I suggest you check with the Alaska Public Offices Commission to determine if AS 15.13, state election campaigns, imposes any restrictions on the activities you are contemplating. I will only address the ethical considerations in AS 24.60 in relation to your position as a legislator.

AS 24.60.031 addresses restrictions on fund raising for legislators and legislative employees. (See statute below.) The restrictions in AS 24.60.031 prohibit legislators from soliciting or accepting a contribution or a promise or pledge to make a contribution when either house is in regular or special session for a campaign for the state legislature. Additionally, legislators cannot accept money from an event held on a day when either house is in regular or special session if the substantial purpose of the event is to raise money on behalf of the legislator for state legislative political purposes.

The statute is clear in that only campaigns for the state legislature fall under the restrictions imposed in AS 24.60.031(a) and (b). Legislators running for statewide office are not restricted from accepting or soliciting campaign contributions during session. Further, legislators running for state office are not restricted from holding an event for the

purpose of raising funds for a statewide campaign. Since the legislative ethics code places no restrictions on fund raising for state office by a legislator this would include fund raising activities in Juneau during session.

In Advisory Opinion 94-04, the ethics committee answered the question of whether a legislator who is a candidate for statewide elective office may engage in fund raising activities for that office during the legislative session. The committee concluded AS 24.60.031(b) prohibited a legislator who is candidate for a statewide race from accepting money from an event held during the legislative session. The language in AS 24.60.031(b) prohibited a legislator from accepting money from an event held during the legislative session for any elective office. AS 24.60.031(b) in 1994 read as follows: A legislator or legislative employee may not accept money from an event held during a legislative session if the substantial purpose of the event is to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes;...

AS 24.60.031(b) was changed in 1998 with the passage of Senate Bill 105 to restrict the prohibition to a legislator running for state legislative political purposes from accepting money from an event held during the legislative session and removed language including 'for campaign purposes.' Attached is Advisory Opinion 94-04 and a copy of the legislative changes to AS 24.60.031. This statute has not had any further changes to date.

Again, I would like to mention you should contact APOC for a review of AS 15.13.

Pursuant to AS 24.60.158 my advice is informal and not binding on the committee. However, I feel this statute is clear on its face and with the accompanying documentation in Advisory Opinion 94-04 and 1998 legislative changes to the one section addressed in A.O. 94-04, and an advisory opinion is not necessary.

However, you have the option to request an advisory opinion from the committee if you so choose.

Enc. Advisory Opinion 94-04
Senate Bill 105, Section 19, AS 24.60.031

Alaska State Legislature

**Select Committee on
Legislative Ethics**

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Mailing Address:
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January 24, 1994

ADVISORY OPINION 94-04

RE: May a legislator who is a candidate for a statewide elective office engage in fund raising activities for that office during the legislative session?

You are a legislator, covered by the Legislative Code of Ethics. You have filed a general letter of intent and you have announced that you are running for Lieutenant Governor in the next election. You ask whether you may engage in fund raising activities concerning that campaign during the legislative session.

Discussion

To begin with, the committee notes that campaign contributions that you report as required by law are excluded from the provisions concerning gifts by AS 24.60.080(e).¹

Under AS 24.60.031, a legislator's fund raising activities are restricted during the legislative session. The section states:

Sec. 24.60.031. RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not

(1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;

(2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or

(3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

¹ AS 24.60.080(e) states:

(e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

Under paragraph (1) of subsection (a), legislators are prohibited from soliciting or accepting contributions during the legislative session for state legislative campaigns. Under paragraph (3), legislators may not spend money in a state legislative campaign that was raised during the session. The scope of paragraph (2) is not clearly limited to "state legislative campaigns." That paragraph prohibits legislators from accepting money raised at events held during the session if the event was to raise money on behalf of the legislator for campaign purposes or for state legislative political purposes. Unlike the other two paragraphs, this paragraph does not, on its face, limit the prohibition related to "campaign purposes" to "state legislative campaigns."

The committee believes that the language of the statute should be interpreted as it is written. Accordingly, a legislator running for statewide office may solicit and accept contributions for that office during the legislative session (as permitted by paragraph (1) of 24.60.031(a)) and a legislator who has filed a general letter of intent to become a candidate for public office may spend money raised during the session on a campaign for statewide office (as permitted by paragraph (3)). However, under paragraph (2), a legislator may not accept money from an event held during the legislative session if the purpose of the event was to raise money for the legislator's campaign for any elective office. The committee recognizes that this result appears inconsistent, but the committee believes that any change from this result should be made by amendment to the statute, not by interpretation of it.

Conclusion

For the reasons discussed above, the committee finds that the prohibition contained in AS 24.60.031(a)(2), concerning accepting money from an event held during the legislative session, applies to statewide campaigns, including your campaign for lieutenant governor. Therefore, you may not accept money raised during the session at fundraising events.

Adopted by the Select Committee on Legislative Ethics on January 24, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair
Ed Granger, Vice-Chair
Senator Drue Pearce
Margie MacNeille
Representative Brian Porter
Shirley A. McCoy
Senator Jay Kerttula

Members absent were:

Edith Vorderstrasse
Representative Jerry Mackie

TC:gc

ALASKA STATUTE

Sec. 24.60.031. Restrictions on fund raising.

(a) A legislator or legislative employee may not

- (1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for the state legislature; however, a legislator or legislative employee may, except in the capital city, solicit or accept a contribution, promise, or pledge for a campaign for the state legislature that occurs during the 90 days immediately preceding an election;
- (2) accept money from an event held on a day when either house of the legislature is in regular or special session if a substantial purpose of the event is to raise money on behalf of the member or legislative employee for state legislative political purposes; however, this paragraph does not prohibit a legislator or legislative employee from accepting money from an event held in a place other than the capital city during the 90 days immediately preceding an election; or
- (3) in a campaign for the state legislature, expend money that was raised on a day when either house of the legislature was in a legislative session by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office; however, this paragraph does not apply to money raised in a place other than the capital city during the 90 days immediately preceding an election.

(b) In this section, "contribution" has the meaning given in AS 15.13.400.

1 shall file the disclosure with the committee by the deadlines set out in
 2 AS 24.60.105 stating the name of each organization on whose board the person
 3 serves. The committee shall maintain a public record of the disclosure and
 4 forward the disclosure to the appropriate house for inclusion in the journal. This
 5 subsection does not require a legislator or legislative employee who is appointed
 6 to a board by the presiding officer to make a disclosure of the appointment to the
 7 committee if the appointment has been published in the appropriate legislative
 8 journal during the calendar year.

9 * Sec. 17. AS 24.60.030(g) is amended to read:

10 (g) Unless required by the Uniform Rules of the Alaska State Legislature, a
 11 legislator [OR LEGISLATIVE EMPLOYEE] may not vote on a question
 12 [PARTICIPATE IN LEGISLATIVE, ADMINISTRATIVE, OR POLITICAL ACTION]
 13 if the legislator [OR LEGISLATIVE EMPLOYEE] has an equity or ownership interest
 14 in a business, investment, real property, lease, or other enterprise if the interest is
 15 substantial and the effect on that interest of the action to be voted on [THAT
 16 INTEREST] is greater than the effect on a substantial class of persons to which the
 17 legislator [OR LEGISLATIVE EMPLOYEE] belongs as a member of a profession,
 18 occupation, industry, or region.

19 * Sec. 18. AS 24.60.030 is amended by adding a new subsection to read:

20 (h) An employee who engages in political campaign activities other than
 21 incidental campaign activities during the employee's work day shall take leave for the
 22 period of campaigning. Political campaign activities while on government time are
 23 permissible if the activities are part of the normal legislative duties of the employee,
 24 including answering telephone calls and handling incoming correspondence.

25 * Sec. 19. AS 24.60.031(a) is amended to read:

26 (a) A legislator or legislative employee may not
 27 (1) on a day when either house of [WHILE] the legislature is in
 28 regular or special session, solicit or accept a contribution or a promise or pledge to
 29 make a contribution for a campaign for the state legislature; however, a legislator
 30 or legislative employee may, except in the capital city, solicit or accept a
 31 contribution, promise, or pledge for a campaign for the state legislature that

1 occurs during the 90 days immediately preceding an election [STATE
2 LEGISLATIVE CAMPAIGN];

3 (2) accept money from an event held on a day when either house of
4 the legislature is in regular or special [DURING A LEGISLATIVE] session if a
5 substantial purpose of the event is [EITHER] to raise money on behalf of the member
6 or legislative employee for [CAMPAIGN PURPOSES OR TO RAISE MONEY FOR]
7 state legislative political purposes; however, this paragraph does not prohibit a
8 legislator or legislative employee from accepting money from an event held in a
9 place other than the capital city during the 90 days immediately preceding an
10 election; or

11 (3) in a campaign for the state legislature, expend money that was
12 raised on a day when either house of the legislature was in a [STATE] legislative
13 session [CAMPAIGN THAT WAS RAISED] by or on behalf of a legislator [DURING
14 A LEGISLATIVE SESSION] under a declaration of candidacy or a general letter of
15 intent to become a candidate for public office; however, this paragraph does not
16 apply to money raised in a place other than the capital city during the 90 days
17 immediately preceding an election.

18 * Sec. 20. AS 24.60.039 is amended by adding a new subsection to read:

19 (b) If a person files a complaint with the committee under AS 24.60.170
20 alleging a violation of this section, the committee may refer the complainant to the
21 State Commission for Human Rights and may defer its consideration of the complaint
22 until after the complainant establishes to the satisfaction of the committee that the
23 commission has completed its proceedings in the matter.

24 * Sec. 21. AS 24.60.040(a) is amended to read:

25 (a) A legislator or legislative employee, or a member of the immediate family
26 of a legislator or legislative employee, may not be a party to or have an interest in a
27 state contract or lease unless the contract or lease is let [THROUGH COMPETITIVE
28 SEALED BIDDING] under AS 36.30 (State Procurement Code) or, for agencies that
29 are not subject to AS 36.30, under similar procedures, or the total annual amount
30 of the state contract or lease is \$5,000 [\$1,000] or less, or is a standardized contract
31 or lease that was developed under publicly established guidelines and is generally

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 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.

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. 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:

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"administrative action" means the proposal, drafting, development, consideration, amendment, adoption, 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);

Definitions:

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(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)

Definitions:

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"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).

Definitions:

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"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).

Definitions:

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"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).

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"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).

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"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;)

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"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;

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(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*].

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- (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]*.

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- (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);

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(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).

Definitions:

HB 109

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.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 109
(H) Publish Date: 1/25/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An Act relating to the requirement for candidates, groups, legislators, public officials... RDU: AK Public Offices Commission
Sponsor: Rules by Request Component: AK Public Offices Commission
Requester: Governor's Office Component No.: 70

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill requires candidates, groups, legislators, public officials, and others to submit required reports electronically; requires legislators and public officials to file financial disclosures after leaving office; requires financial disclosure filers to provide a detailed description about services performed for compensation and about certain income, gifts, and other financial matters; establishes a presumption that an interest of less than \$5000 in a business is an "insignificant" interest for the purposes of the Executive Branch Ethics Act; prohibits gifts from lobbyists to public officers or the immediate family members of public officers; and tightens the restrictions on employment after leaving state service. It is not anticipated that this measure will add to the costs of the Public Offices Commission.

Prepared by: Brooke Miles, Executive Director
Division: Alaska Public Offices Commission
Approved by: Melanie Millhorn, Deputy Commissioner
Agency: Department of Administration

Phone 907-334-1726
Date/Time 1/23/07 12:00 AM
Date 1/23/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 109
 (H) Publish Date: 1/25/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to disclosures to the APOC and RDU Civil Division
Legislative and Executive Branch ethics. Component Opinions, Appeals & Ethics
 Sponsor Rules Committee
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the state's election campaign laws, legislative standards of conduct, public official financial disclosure laws, and the Executive Branch Ethics Act in an effort to require more detailed disclosures from current and former legislators and public officials, restrict public officers' receipt of gifts from lobbyists, and extend existing restrictions on public employees' employment after leaving state service. It is unclear whether these amendments will change the department's workload. The amendments may result in increased assistance to the APOC or executive branch client agencies; however, the budget impact is indeterminable since it is impossible to predict with any certainty how many complaints or questions will arise.

Prepared by: Robert Meiners, Acting Director Phone 465-5427
 Division Administrative Services Division Date/Time 1/24/07 1:29 PM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 1/24/2007
 Agency Department of Law

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.

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:

Amount: \$

38,100.00

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

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: \$ _____

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: \$ _____

MAR 15 2006

I # 104015167
Legislator

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: _____

Business Name: _____

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

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 33,600

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 24,000

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 50,000

2501 G

Legislator #2

2 of 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.

Name of filer, spouse, domestic partner, or child: _____

Business Name: _____

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

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 16,800

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 57,000

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: \$ _____

#2
Legislator

Emily Stancliff

From: Heidi Drygas [hdrygas@alaskalaborers.com]
Sent: 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.

1

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 this 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)

1

----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 public's business shall be reviewed and judged by the following ruling or process:

Any and all public servants (1) conducting the public's business (1a) in anyway (2) shall conduct the public's business in an "open to the public's view"(3) and shall represent the public's 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 public's 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 public's 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 Conduct --- ----- 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, probati n, 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 \$500.00 penalty is a) + b) + c) +**
- 5. **Les than Honorable Conduct --level\$501.00 ---to--\$1,000.00 a), b) - < 90 days
 mandatory, c), d),
 e) - <\$2,000.00 fine**
- 6.**Less than Honorable Conduct --\$1,001.00 --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 \$1,000.00 (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 \$1,000.00 and then increase with severity with assessment determination from jury ---Then, go very large if over \$1,000.00 jury determination

*2 - Minimum mandatory jail shall increase in severity with assessment from \$0 to \$1,000.00 and up -i. e. \$0 to \$500 = 30 days, ---- \$501.00 to \$1,000.00 = 90 days etc. Again, we must impose large and impacting sentences if determination or finding of impact is larger than \$1,000.00.—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 force.

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 political 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 und fearful consequence for those who commit public betrayal.

No doubt there some will attempt to belittle, demcan, 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 day in 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.

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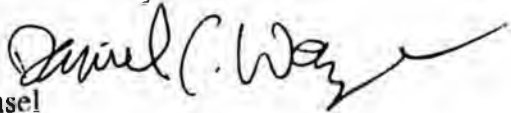
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 26, 2007

SUBJECT: Changes in CSHB 109(JUD) (Work Order No. 25-GH1059V)

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.

Representative Jay Ramras

March 26, 2007

Page 2

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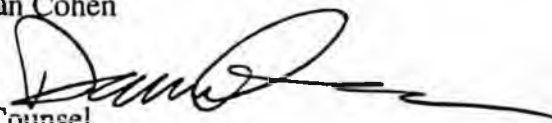
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

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 V. Lyne 
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.

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

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 officers⁵ -- 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

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. No conviction shall work corruption of blood or forfeiture of estate.

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.

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.

Representative Max Gruenberg

March 23, 2007

Page 5

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 *RAB*
Legislative Counsel

You have requested a legal opinion as to the differences between proposed amendments 25-GH1059\O.2 and 25-GH1059\O.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).

Representative Max Gruenberg
March 22, 2007
Page 2

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

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 *ALB*
Legislative Counsel

The draft amendment relating to a prohibition on the sending of "newsletters" by legislators to constituents in the 60 day period preceding 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.

Representative Max Gruenberg

March 21, 2007

Page 2

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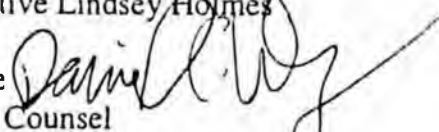
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

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;

Representative Lindsey Holmes

March 21, 2007

Page 2

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 matter¹ 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

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; "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;

(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;

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- (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.

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STATE OF ALASKA

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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

3 prong test
re: supplant

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

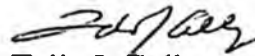
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"housekeeping" amendments to sections enacted by the gas line initiative were made by the 2003 "revisor's bill." CSSB49(STA) (secs. 54, 55, 56, 57 & 58, ch. 35, SLA 2003). These amendments are by definition minor and corrective and do not change the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

The Honorable Tony Knowles, Governor
A.G. file no: 883-99-0037

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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 range 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.

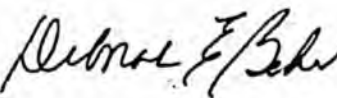
In conclusion, in our opinion the changes to the initiative do not violate the constitution, either singly or in their totality, because they do not constitute a repeal of the initiative. Instead, the amendments appear to be a proper exercise of the legislature's broad authority to "substitute its judgment 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,


for Bruce M. Botelho
Attorney General

BMB:DJG:jf

STATE OF ALASKA



FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

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

Hon. Frank H. Murkowski, Governor
Our file: 883-04-0044

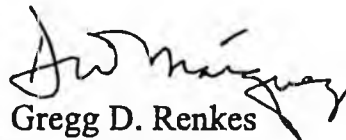
May 19, 2004
Page 2

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 35 (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

Representative Bob Lynn
March 6, 2007
Page 2

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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Deliveries to: 129 6th St., Rm. 329**MEMORANDUM**

February 26, 2007

SUBJECT: Prohibition on lobbying by legislator spouses and domestic partners in CSHB 109() (Work Order No. 25-GH1059K)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard ⁷⁴⁵
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-GH1059K 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.

Representative Max Gruenberg
February 26, 2007
Page 2

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-GH1059AK)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard *AB*
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 *ALB*
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:

Representative John Harris
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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. Grasley

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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,

Representative John Harris
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Page 4

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 Ballot¹ 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

¹ See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet.

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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

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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
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