

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 879

1 preceding calendar year;

2 (3) the identity and nature of each interest owned in any business during the  
3 preceding calendar year by the person, the person's spouse or dependent child, or a nondependent  
4 child of the person who is living with that person;

5 (4) the identity and nature of each interest in real property, including an option  
6 to buy, owned at any time during the preceding calendar year by the person, the person's spouse  
7 or dependent child, or a nondependent child of the person who is living with that person;

8 (5) the identity of each trust or other fiduciary relation in which the person, the  
9 person's spouse or dependent child, or a nondependent child of the person who is living with that  
10 person held a beneficial interest exceeding \$1,000 during the preceding calendar year, a  
11 description and identification of the property contained in each trust or relation, and the nature  
12 and extent of the beneficial interest in it;

13 (6) any loan or loan guarantee made to the person, the person's spouse or  
14 dependent child, or a nondependent child of the person who is living with that person, and the  
15 identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the  
16 person, the person's spouse or dependent child, or a nondependent child of the person who lives  
17 with that person owed more than \$1,000 [\$500 OR MORE];

18 (7) a list of all contracts and offers to contract with the state or an instrumentality  
19 of the state during the preceding calendar year held, bid, or offered by the person, the person's  
20 spouse or dependent child, a nondependent child of the person who is living with that person,  
21 a partnership or professional corporation of which the person is a member [THE PERSON'S  
22 MOTHER OR FATHER], or a corporation in which the person or the person's spouse or  
23 children, or a combination of them, hold a controlling interest; and

24 (8) a list of all mineral, timber, oil, or any other natural resource lease held, or  
25 lease offer made, during the preceding calendar year by the person, the person's spouse or  
26 dependent child, a nondependent child of the person who is living with that person, [THE  
27 PERSON'S MOTHER OR FATHER] a partnership or professional corporation of which the  
28 person is a member, or a corporation in which the person or the person's spouse or children, or  
29 a combination of them, holds a controlling interest.

\* Sec. 25. AS 39.50.050(d) is amended to read:

(d) To facilitate the filing of reports under AS 24.45 (Regulation of Lobbying) and the

>B299 30  
no change  
31  
↓

1 information required to be provided under AS 24.45.051(4) [AND (5),] the commission shall  
 2 publish copies of the reports required under this chapter not later than the convening of each  
 3 regular session of the legislature. Copies of this publication shall be provided on request;  
 4 however, the commission may make a charge for the publication that may not exceed the actual  
 5 cost of printing, postage, and handling.

6 \* Sec. 26. AS 39.50 is amended by adding a new section to read:

7           Sec. 39.50.147. EXEMPTION FOR MUNICIPALITIES. The provisions of this chapter  
 8 do not apply to a municipal officer of a municipality with a population of 1,000 or less according  
 9 to the latest United States census figures or estimates of population certified correct for  
 10 administrative purposes by the Department of Community and Regional Affairs.

11 \* Sec. 27. AS 15.13.110(a)(3); AS 24.45.041(c), 24.45.051(5), 24.45.116; AS 24.60.030(f),  
 12 24.60.030(g); and AS 39.50.025 are repealed.

*new  
effective  
date*

13 \* Sec. 28. This Act takes effect January 16, 1993.

1 legislature may not solicit, or knowingly allow, a lobbyist to engage in activities on behalf of the  
2 candidate that are prohibited by AS 24.45.121(a)(9).

3 (b) A candidate may not seek to evade the purposes of this section by soliciting, or  
4 knowingly permitting an entity retained to lobby or an employee of a lobbyist to perform  
5 fund-raising services.

6 (c) In this section,

7 (1) "entity retained to lobby" means a firm, corporation, other business entity, or  
8 nonprofit entity that is retained for the primary purpose of influencing legislative or  
9 administrative action;

10 (2) "lobbyist" has the meaning given in AS 24.45.171, but does not include a  
11 person described in AS 24.45.161(a) or a representational lobbyist as defined in AS 24.45.171.

12 **Sec. 15.13.077. USE OF PUBLIC FUNDS PROHIBITED.** A municipality, the state,  
13 agencies of the state, public corporations of the state, the University of Alaska, and other political  
14 subdivisions of the state, including school districts and regional educational attendance areas may  
15 not use public funds to support or oppose a ballot proposition or the election of a candidate. This  
16 section does not prohibit the expenditure of public funds to provide to the public factual  
17 information regarding a ballot proposition.

18 \* Sec. 4. AS 15.13.090 is amended to read:

19 **Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION.** All advertisements,  
20 billboards, handbills, paid-for television and radio announcements, and other communications  
21 intended to influence the election of a candidate or outcome of a ballot proposition or question  
22 shall have their source [BE] clearly identified. The commission may adopt regulations to  
23 implement this section [BY THE WORDS "PAID FOR BY" FOLLOWED BY THE NAME  
24 AND ADDRESS OF THE CANDIDATE, GROUP OR INDIVIDUAL PAYING FOR THE  
25 ADVERTISING. IN ADDITION, CANDIDATES AND GROUPS MUST IDENTIFY THE  
26 NAME OF THEIR CAMPAIGN CHAIRMAN].

27 \* Sec. 5. AS 15.13.100 is amended to read:

28 **Sec. 15.13.100. EXPENDITURES BEFORE FILING.** A person may not accept a  
29 political contribution and a political campaign expenditure may not be made or incurred by a  
30 person in an election or by a person or group with the person's knowledge and on the person's  
31 behalf before the date upon which the person files for nomination for the office which the person

Suggested language - AM

**SENATE FINANCE CS FOR SB 243:**

Changes between (S) JUD version and proposed Finance CS:

Title change to accommodate roll-in of SB 299 - APOC bill

Section 1 - Advisory opinions binding on subsequent proceedings  
[carried forward from SB 243 (JUD)]

Section 2 - Exemption from APOC reporting requirements for candidates who receive or expend less than \$1000 on behalf of a campaign. [rolled in from SB 299 - APOC]

Section 3 - Unreported accrued expenditure not paid within 90 days becomes a contribution [rolled in from SB 299 - APOC]

Section 4 - AS 15.13.041 - Omits criminal penalties from section on prohibited solicitation of contributions - criminal penalties are still available under AS 15.13.120 - Section 14 & 15 [change from SB 243]

AS 15.13.043 - Deleted detailed examples of using public resources for campaigns and exempted Judicial Council evaluation of judges [change from SB 243].

Section 5 - When two or more groups are considered to be a single group for purpose of contribution limit - [no change from SB 243]

Section 6 - Prohibits paid lobbyist from serving as campaign treasurer or dep. treasurer [ no change from SB 243]

Section 7 - Clarifies that nonmonetary contributions are counted for purposes of the \$1000 limit [no change from SB 243]

Section 8 - Prohibits cash expenditure of more than \$100 [ no change from SB 243]

Section 9 - Added clarifying language suggested by APOC highlighted on your draft [no substantive change from SB 243]

Section 10 - Deleted ban on fundraising activities during session for incumbents<sup>4</sup> nonincumbents (limited legislative ban in current ethics law) and deleted ban on political subdivisions making contributions to

candidates to groups at any time [changes from SB 243] My understanding is that you did not see any reason to apply session fund raising ban on challengers and that ban on legislators fund raising activities should be addressed in ethics legislation.

Section 11 - AS15.13.072 Prohibits converting campaign funds or goods into personal use [no change from SB 243]

AS15.13.074 Disbursement of surplus campaign accounts - technical change and deletion of ambiguous and contradictory language suggested by APOC [no substantive change from SB 243]

AS15.13.076 - Changed "head" of group to "chair" of group incorporating APOC suggestion [SB 2143]

AS 15..13.077 - Prohibits use of public funds - per AML request to use language from SB 195

Section 12 - Complainant must sign oath that factual statements are true [no change from SB 243]

Section 13 - Clarified language relating to confidentiality of commission complaint proceedings - would allow commission to state why complaint was dismissed [changed from SB 243]

Section 14 - Added civil penalties for late reporting from SB 299

Section 15 - Expanded civil penalty authority for other violations of campaign disclosure law per APOC request [from HB 195]

Section 16 - Definitions [SB 243 no change]

Section 17 - Sworn statements for material included in election pamphlet [no change from SB 243]

Section 18 - Reduces APOC publication of lobbying activity summaries from 5 to 2 time per year [no change from SB 299]

Section 19 - Revises requirements for lobbyist directory [no change from SB 299]

Section 20 - Requirement for lobbyist's employer to sign lobbyist's registration statement (eliminates one filing) [no change from SB 299]

Section 21 - Reduces from three to one employer (lobbyist) reports per year (number of lobbyist reports will remain the same) [no change from SB 299]

Section 22 - Conforming amendment relating to reporting periods [no change from SB 299]

Section 23 - Eliminates ambiguous and unnecessary language from conflict of interest statute [no change from SB 299]

Section 24 - Changes reporting threshold for reporting sources of income or fiduciary interest on conflict of interest statement from \$100 to \$1000, and increases loan reporting threshold from \$500 to \$1000, retains requirement that gifts over \$100 be reported and codifies that gifts from **family members** need not be reported [minor change from SB 299]

Section 25 - Conforming amendment relating to repealer section (Sec. 27) [no change from SB 299]

Section 26 - Provides exemption for municipal officers in communities with less than 1000 population from filing conflict of interest statements [no change from SB 299]

Section 27 - Repealer section: 10-day campaign disclosure report deleted; photograph of lobbyist for directory; lobbyist business transactions with businesses owned or controlled by public officials deleted; deletes unnecessary language contributions to civic organizations from lobbying law; and eliminates requirement for APOC to distribute ethics law to candidates.

Section 28 - Changes effective date to January 16, 1993 to avoid impact on this year's election.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CS SB 243 (JUD)

Revision Date: \_\_\_\_\_  
Title: "An Act related to campaign financing and campaign material, etc."

Department Affected: Administration  
BRU: Alaska Public Offices Commission  
Component: Alaska Public Offices Commission

Sponsor: Special Committee on Ethics Reform  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	<u>112.2</u> 164.6	<u>117.1</u> 169.5	<u>122.2</u> 174.5	<u>127.4</u> 179.8	<u>132.3</u> 185.2	<u>138.4</u> 190.8
TRAVEL	5.0	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL	6.2	<u>12.5</u> 22.5	<u>12.5</u> 22.5	<u>12.5</u> 22.5	<u>12.5</u> 22.5	<u>12.5</u> 22.5
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	<u>0</u> 1.7	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	<u>123.4</u> 177.5	<u>131.6</u> 194.0	<u>136.7</u> 199.1	<u>141.9</u> 204.3	<u>147.3</u> 209.7	<u>152.9</u> 215.3

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	<u>123.4</u> 177.5	<u>131.6</u> 194.0	<u>136.7</u> 199.1	<u>141.9</u> 204.3	<u>147.3</u> 209.7	<u>152.9</u> 215.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	<u>123.4</u> 177.5	<u>131.6</u> 194.0	<u>136.7</u> 199.1	<u>141.9</u> 204.3	<u>147.3</u> 209.7	<u>152.9</u> 215.3

POSITIONS:

FULL-TIME	<u>3A</u>	<u>3A</u>	<u>3A</u>	<u>3A</u>	<u>3A</u>	<u>3A</u>
PART-TIME	(1)	(1)	(1)	(1)	(1)	(1)
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary. This bill modifies Alaska Statute 15.13, the Campaign Disclosure Law, and includes provisions which prohibit some campaign finance activity in public facilities and limit State and local government officials from using public funds or facilities to influence an election. It prohibits lobbyists from being campaign treasurers or deputy treasurers; prohibits cash contributions over \$100 and (continued)

Prepared by: Karen Booman, Executive Director  
Division: Alaska Public Offices Commission

Phone: 276-4176  
Date: May 1, 1992

Approved by Commissioner: Nancy Bear Usura  
Agency: Administration

Date: 5/1/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

## FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CS SB 243 (JUD)

### ANALYSIS: (continued)

contributions from one candidate to another; limits fun raising by legislators and candidates for the legislature; prohibits use of campaign funds or goods for personal use; limits use of surplus funds and requires closure of campaign accounts after an election. The bill shortens the Alaska Public Offices Commission (APOC) response time on advisory opinions to 30 days and complaints to 45 days.

The commission anticipates it will incur start up costs as it prepares to assume its duties of administering and enforcing these new provisions. Staff must revise forms, manuals, and training materials, as well as prepare new regulations for commission adoption. Existing staff cannot undertake these start up activities, so new positions would be required.

The commission will receive many ongoing requests for advice about interpretation of the law. In particular, the provisions dealing with the limits of the use of public funds or facilities will generate many compliance questions. Questions such as whether a planned campaign expenditure is permissible because it may be for personal use, or whether a local government or school district is improperly using public funds or facilities to influence the outcome of a local election are likely. Staff will need extra funds to prepare for the first election in which candidates must comply with the provisions regarding disbursement of campaign surplus and prohibited uses of campaign funds, and to give training sessions to help candidates comply. Information will have to be given to State and local government officials on the prohibitions regarding use of public funds and facilities.

It is expected that several complaints will be filed each year alleging that a candidate, lobbyist, public entity, or official has violated one of these provisions. Potential complaints include allegations that a candidate used campaign funds for personal use, closed down a campaign account improperly, or conducted fund raising too soon or too late. Since the only penalties available for these violations are criminal, it is reasonable to expect that one complaint each year will proceed to public hearing. This expense cannot be absorbed from funds currently budgeted.

The commission will need to hold a hearing in FY 93 to adopt regulatory changes. The expenses of such a hearing are not funded within the FY 93 budget.

In order to meet the mandates of the new law, the commission will need to add one professional staff member (Associate Coordinator, range 18) to investigate complaints, draft regulations, and provide compliance advice and draft advisory opinions. A paraprofessional staff member (Regulation Specialist II, range 16) will be necessary to help draft regulations, develop manuals, revise forms, conduct training, and provide compliance advice. A Clerk IV (range 9) will be needed to handle the additional paperwork and extra typing that cannot be absorbed by the one secretary in the Anchorage office.

The commission's current office space in Anchorage is too small to house these new positions. Modest sized space is available in the building and could be made functional with minor remodeling. Two desks, chairs, and telephones will be required as well.

The Juneau office will require additional staff to provide compliance advice and assist in investigations. In order to meet this need and provide assistance to the Juneau office administrator, the commission requests extending the current part-time Clerk III position to a full-time clerk position.

A detailed breakdown of the costs associated with administration and enforcement of this bill is attached.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CS SB 243 (JUD)

ANALYSIS: (continued)

CS SB 243  
APOC Estimated Costs  
FY 93

Personnel:

Associate Coordinator, Range 18A -	\$ 59,705
Regulations Specialist II, Range 16A -	← 52,422 →
Clerk IV, Range 9A (Anchorage) -	35,261
Clerk III, Range 8B (upgrade to full-time, Juneau) -	17,169
	<u>\$164,557</u>

Travel:

* Regulations hearing	\$3,000
Training	<u>2,000</u>
	\$5,000 -

Contractual Services:

Instruction/education materials (design, print, postage for amended forms and manuals)	\$1,500
Teleconferencing Cost	\$ 500
Office space: 350 sq.ft. @ \$1.00 sq.ft./month	<u>- 4,200</u>
	\$6,200

*52,422  
4,200  
4,250  
60,872*

\*\* Legal Fees

Hearings	\$12,000
Witness Fees	250
Subpoenas	3,000
Transcripts	<u>1,000</u>
	\$16,250

*← 12,157*

Equipment:

* Desk and Chairs (2)	\$1,200
* Phone Installations/Equipment (2)	<u>500</u>
	\$1,700

*→*

\* Travel for regulations hearing and office equipment required for FY 93 only. (\$4,700 total)

\*\* Complaint investigation funds (legal fees) will be necessary after FY 93.

Personal Services cost projected to increase at three percent per year for merit increase.



4/30/91

SB 243

ELECTION CAMPAIGN FINANCING, CAMPAIGN MATERIAL AND  
THE ALASKA PUBLIC OFFICES COMMISSION

Personnel:

Associate Coordinator Range 18A \$40,723  
Paralegal Range 16A \$35,343  
Clerk Range 9A (ANC) \$22,642  
Clerk Range 8B (part time JNO) \$8,503

Benefits:

30% of base salaries (includes insurance) \$44,800

Travel:

\* Regulations hearing \$3,000  
Training 2,000

Contractual Services:

Instruction/educational materials  
(design, print, postage for amended forms and manuals) \$1,500  
Teleconferencing Cost 500

\*\*Legal fees

Hearing \$12,000  
Witness fee 250  
Subpoenas 3,000  
Transcripts 1,000  
\$16,250

Office space: 350 square feet @ \$1.00 sq. ft. \$4,200  
\*Desk and Chairs (2) 1,200  
\*Phone Installation/Equipment (2) 500  
\$5,900

\*Travel for regulations hearing and office equipment required for FY92 only  
(\$4,700 total)

\*\*Complaint investigation funds (legal fees) will be necessary after FY92.

## SB 243 FISCAL NARRATIVE

This bill modifies AS 15.13, the Campaign Disclosure law, and includes provisions which prohibit some campaign finance activity in public facilities and limit state and local government officials from using public funds or facilities to influence an election. It prohibits lobbyists from being campaign treasurers or deputy treasurers; prohibits cash contributions over \$100 and contributions from one candidate to another; limits fundraising by legislators and candidates for the legislature; prohibits use of campaign funds or goods for personal use; limits use of surplus funds and requires closure of campaign accounts after an election. The bill shortens the APOC response time on advisory opinions to 30 days and complaints to 45 days.

The Commission anticipates it will incur start up costs as it prepares to assume its duties of administering and enforcing these new provisions. Staff must revise forms, manuals and training materials as well as prepare new regulations for Commission adoption. Existing staff cannot undertake these start up activities, so new positions would be required.

The Commission will receive many ongoing requests for advice about interpretation of the law. In particular the provisions dealing with the limits of the use of public funds or facilities will generate many compliance questions. Questions such as whether a planned campaign expenditure is permissible because it may be for personal use, or whether a local government or school district is improperly using public funds or facilities to influence the outcome of a local election are likely. Staff will need extra funds to prepare for the first election in which candidates must comply with the provisions regarding disbursement of campaign surplus and prohibited uses of campaign funds and to give training sessions to help candidates comply. Information will have to be given to state and local government officials on the prohibitions regarding use of public funds and facilities.

It is expected that several complaints will be filed each year alleging that a candidate, lobbyist, public entity or official has violated one of these provisions. Potential complaints include allegations that a candidate used campaign funds for personal use, closed down a campaign account improperly, or conducted fundraising too soon or too late. Since the only penalties available for these violations are criminal, it is reasonable to expect that one complaint each year will proceed to public hearing. This expense cannot be absorbed from funds currently budgeted.

The Commission will need to hold a hearing in FY 92 to adopt regulatory changes. The expenses of such a hearing are not funded within the FY 92 budget.

SB 243  
Fiscal Narrative  
April 30, 1991  
Page Two

In order to meet the mandates of the new law, the Commission will need to add one professional staff member (Associate Coordinator - Range 18) to investigate complaints, draft regulations and provide compliance advice and draft advisory opinions. A paraprofessional staff member (Paralegal - Range 16) will be necessary to help draft regulations, develop manuals, revise forms, conduct training and provide compliance advice. A clerk typist IV (Range 9) will be needed to handle the additional paperwork and extra typing that cannot be absorbed by the one secretary in the Anchorage office.

The Commission's current office space in Anchorage is too small to house these new positions. Modest sized space is available in the building and could be made functional with minor remodeling. Two desks, chairs and telephones will be required as well.

The Juneau office will require additional staff to provide compliance advice and assist in investigations. In order to meet this need and provide assistance to the Juneau office administrator, the Commission requests extending the current part-time Clerk III position to a part-time clerk position, year round.

A detailed breakdown of the costs associated with administration and enforcement of this bill is attached.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

May 7, 1992

**SUBJECT:** Sectional Analysis of CSSB 243 (JUD)  
(Work Order No. 7-LS1064\M)

**TO:** Senator Virginia Collins  
Attention: Shirley Armstrong

**FROM:** Robert Glennon Casey *RG*  
Legislative Counsel *5-7-92*

You have requested a sectional analysis of the above-described bill. The following is an explanation of the contemplated effect of various provisions, but this should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 would add a paragraph to AS 15.13.030 ("Duties of the Commission"). The effect would be to require the Alaska Public Offices Commission (APOC) to issue advisory opinions concerning the meaning of AS 15.13 upon request. APOC would thereafter be bound by its own interpretation in subsequent proceedings, thereby affording candidates who obtained such advisory opinions a measure of security.

Section 2 would add two new sections to AS 15.13. The two new sections would have similar themes. The first of these, AS 15.13.041 ("Prohibited Solicitation of Contributions"), would prohibit public officers and public employees from soliciting or requesting contributions while on the premises of state or municipal buildings. Violators of this section would be guilty of a class A misdemeanor, subject to imprisonment for up to one year, and subject to a fine up to \$5,000 or 400% of the illegal contribution, whichever was greater.

The other part of section 2 would create a new AS 15.13.043 ("Use of Public Office or Agency Facilities in a Campaign"). Under this section, public funds, property, personnel, facilities, and buildings could not be used for campaign fund-raising or various other activities intended to influence the outcome of elections. Specific prohibitions are listed, including a ban on the posting of partisan communications in public buildings. Excepted from the prohibitions are the preparation and distribution of the voter election pamphlet; nonpartisan voter registration; actions taken by public officials expressing collective decision or voting on a motion, proposal, bill, resolution,

Senator Virginia Collins

May 7, 1992

Page 2

ordinance, or order; and actions by elected public officials in support or opposition to ballot propositions or in response to questions at press conferences or specific inquiries.

Section 3 would amend AS 15.13.050 ("Groups") to provide that groups with two or more common officers would be considered single groups for purposes of contribution limitations. Such a measure would be intended to counter the tactic of circumventing contribution limitations by organizing numerous duplicate organizations and having each of them make the maximum donation.

Section 4 would amend AS 15.13.060 ("Campaign Treasurers") to prohibit certain currently registered lobbyists from simultaneously serving as campaign treasurers or deputy campaign treasurers. Representational lobbyists, however, would be permitted to serve both functions simultaneously.

Section 5 would tighten AS 15.13.070(a)'s \$1,000 annual limit on campaign contributions and expenditures by requiring that the calendar year be used to compute "annual" transactions. Furthermore, it would clarify that "money, goods, or services" or a combination thereof would all be included in computing the total amount of contributions. Thus certain methods of circumventing the \$1,000 limit - contributing \$1,000 on consecutive days but accounting the contributions as occurring at the end and the beginning of separate years or making separate contributions of cash, goods, and services, each valued at \$1,000 - would be prohibited.

Section 6 would further amend AS 15.13.070. It would tighten subsection (c)'s requirements concerning the tracing of payments. Contributions and expenditures of over \$100 could no longer be made in cash, regardless of the use of written receipts.

Section 7 would amend AS 15.13.070(d) by providing that a campaign receiving an illegal anonymous donation must disgorge the contribution within ten days. Thus campaigns could not benefit from illegal contributions by freezing them and collecting their interest. This section would also provide that contributions from unemancipated, unmarried minors be deemed to have been made by the minor's parent or guardian and counted toward the parent or guardian's contribution limit. Once again, a method of circumventing the \$1,000 limit - this time, separate contributions by a donor and the donor's unemancipated, unmarried children and wards that collectively totalled over \$1,000 - would be addressed.

Section 8 would amend AS 15.13.070 by adding five further restrictions on contributions to a campaign.

First, a candidate or a group controlled by a candidate could not make a contribution to another candidate except from the candidate's personal funds. Thus certain

campaigns could not be used as conduits for contributions to other campaigns occurring at the same time.

Second, loans and loan guarantees could not be made in favor of candidates or groups, other than by (1) the candidate or the candidate's spouse, parents, or children; (2) persons acting in the regular course of business; or (3) regulated financial institutions providing the same terms as those available to the general public. Circumvention of the \$1,000 limit by disguised loans and loan guarantees would thus be addressed.

Third, there would be a general prohibition against persons acting as conduits or "intermediaries" for transmitting contributions to campaigns. Excepted from the general prohibition, however, would be candidates and campaign officers that passed contributions on to their own campaigns, financial institutions, and certain persons who voluntarily conducted fund-raisers at their own homes.

Fourth, members of the legislature running for any office and nonincumbent candidates for the legislature would be prohibited from engaging in certain fund-raising activity during the legislation session. (See discussion of Section 13.)

Fifth, municipalities and school districts could not make contributions, either directly or through their officers or employees, to a candidate or group.

Section 9 adds more new sections to AS 15.13.

First to be added would be AS 15.13.072 ("Personal Use Prohibited"). This section would prohibit a candidate from converting campaign funds to personal use.

Second to be added would be AS 15.13.074 ("Disbursement of Campaign Accounts"). This section would require that campaign accounts be closed by January 15 of the year following the election and that unexpended and unobligated campaign funds after the election be disgorged according to any of the following methods: (1) transfer to a new account for a future campaign, (2) donation to certain charitable organizations, the state, or a municipality, (3) pro rata return to campaign contributors, (4) transfer to a legislative office account for expenditures qualifying as business expenses under the Internal Revenue Code, or (5) repayment of a candidate's own personal contributions to the campaign.

Under the new AS 15.13.074, miscellaneous special rules would govern transfer of equipment and transfer of funds for use in future elections.

AS 15.13.074's rules would not cover groups organized to influence campaigns on an ongoing basis. Such groups could redirect their accounts for future campaigns.

A third section to be added would be AS 15.13.076 ("Responsibility for Violations"). It would make candidates responsible for the violations of AS 15.13 committed by officers of their campaign committees. It would also make the head of a group responsible for violations by other officers of the same group. "Responsibility" would include personal liability for assessed penalties.

The fourth section to be added would be AS 15.13.078 ("Public Spending Prohibited"). It would prohibit officers and employees of state agencies, municipalities, or school districts from expending or authorizing expenditure of state, municipality, or school district funds to influence the outcome of elections. It would not prohibit use of such funds for dissemination of information regarding the date of an election or nonpartisan information regarding the qualifications of a candidate or the effect of a ballot proposition.

Section 10 would tighten the requirements of complaints filed with APOC that alleged violations of AS 15.13. A complaint would be required to include a statement under oath by the declarant that the factual statements were true, to the best of the declarant's knowledge.

Section 11 addresses the degree to which APOC investigations of possible violations of AS 15.13 would be open to the public. The general rule would be that meetings and records of APOC relating to a complaint would be open to the public. There would, however, be an exception. Until APOC decided that there was probable cause to believe that a violation of AS 15.13 had occurred, proceedings and records relating to a complaint would be confidential. The subject of an investigation could waive confidentiality.

Section 12 adds definitions of "commission," "school district," and "state agency" in response to use of those terms by this bill. The term "school district" would include a regional educational attendance area. The term "state agency" would include the University of Alaska.

Section 13 is a repealer section. Most of what it repeals, however, is restored by section 8 of the bill, as shall be explained.

First, section 13 would repeal AS 24.60.040(f), which presently characterizes as "a conflict of interest" acceptance by a legislator of money from an event held in the capital city during a legislative session that was intended to raise money for state legislative political purposes.

Furthermore, Section 13 would also logically repeal AS 24.60.040(g), which exempted legislators from the capital city from the effect of AS 24.60.040(f).

Senator Virginia Collins  
May 7, 1992  
Page 5

These two repealers would remove the above-described activity from AS 24.60's conflict of interest rules. On the other hand, similar activity would be prohibited under an earlier provision of the bill, section 8. Although section 8 would not prohibit lame duck legislators from receiving money from the kinds of events described above, it would prohibit legislators running for any office (including running for reelection) and nonincumbent candidates for legislature from accepting money from any events occurring during a legislative session. Thus section 8 would narrow the prohibition in one way (making it inapplicable to legislators who were not running for reelection to legislature or election to another office) but expand the prohibition in another way (making it applicable to fund-raising events regardless of where they were held).

RGC:pl  
92-335.plm

SFC-92  
5-8-92pm

ALASKA PUBLIC OFFICES COMMISSION  
CSSB 243  
POSITION PAPER  
APRIL 13, 1992

The Alaska Public Offices Commission has reviewed CSSB 243. This legislation would limit the time and place of campaign fundraising, prohibit some loans to candidates, and make it a crime for the state, school districts and municipalities to spend public money to distribute non-neutral information about an election. It would also require APOC to respond more quickly to complaints and advisory opinion requests and make complaint proceedings more confidential.

The Commission believes this bill is in the public's interest and supports its enactment. However, the Commission has several comments about specific sections.

The Commission notes that AS 15.13 provides only criminal penalties for the new prohibitions proposed in this legislation and suggests that civil penalties (fines) be added to apply to those prohibitions. Only two criminal convictions have resulted from violations of AS 15.13 since it was enacted. It is an expensive and time consuming process. If the goal of this bill is to create a disincentive for undesirable behavior, civil penalties would be a more effective tool than criminal penalties in reaching that goal--especially for the less egregious violations. Criminal penalties should remain available for the more egregious violations.

Section 1. AS 15.13.030(11). Advisory opinion requests. The Commission is not sure whether the legislature intends to make all advisory opinions binding precedent on future opinions. The Commission is also unclear about the need for a mandatory response time of 30 days. Since only the Commission can issue advisory opinions this would increase the frequency and therefore cost of meetings either in-person or telephonically.

✓ Section 2. AS 15.13.041 and 043. Prohibited solicitation of contributions and use of public office or agency facilities in a campaign. While the Commission supports the apparent intent of this section, it is concerned that the terms "state or municipal building," "public funds or property," "public building" and "the time of a public officer or employee" are very broad and may be unnecessarily restrictive. Would this outlaw the use of public broadcasting radio and television stations in campaigns or prevent a candidates forum in a city hall? Definitions would help clarify legislative intent for this section.

Section 3. AS 15.13.050(b). Contribution limits. In the Commission's experience this contribution limitation issue has arisen with corporations and labor unions not groups. The Commission adopted 2 AAC 50.357 to address this area. A copy is attached.

*Attachment*

Section 4. AS 15.13.060(g). Restrictions on lobbyists as campaign treasurers. The Commission supports this section.

Section 5. AS 15.13.070(a). Clarification of maximum contribution. The Commission supports this provision as it makes it more clear that goods and services are included in the contribution.

Section 6. AS 15.13.070(c). Prohibition of cash expenditures over \$100. The Commission believes this provision would create problems for campaigns in rural areas where cash is the dominant medium of exchange. The Commission suggests this section be reworded to prohibit cash expenditures over \$250 rather than \$100 to accomplish the intended purpose but reduce the problems for rural campaigns.

Section 7. AS 15.13.070(d). Contributions from unemancipated or unmarried minors count toward limit of parents. The Commission notes that 2 AAC 50.357(d) already deals with this area (see attached). The Commission suggests two minor additions to clarify this section. First, candidates should be required to return contributions from people wishing to remain anonymous within 10 days of receipt. Second, adding "of the parent or guardian" after "limit" on page 4, line 7 would make it clear whose limit the minor's contribution would count toward.

✓ Section 8. AS 15.13.070(i)-(m). Restrictions on contributions, loans, intermediaries and fundraising.

(i). The Commission notes that this subsection would require all joint campaign expenditures to be split evenly.

(j). The Commission agrees with this subsection.

(k). The Commission notes that 2 AAC 50.334 currently allows authorized intermediaries to transfer contributions as long as it does not take longer than 72 hours.

(l). This subsection bans all fundraising by candidates, parties or groups during legislative session, and is thus very restrictive. Does "member" on page 4, line 30 mean only incumbent legislators running for any office? The Commission suggests the term "state legislative political purposes" be defined.

(m). Is the exclusion of state officials intentional? It may be difficult to determine when an official is acting in an "official capacity." Does this prohibition extend to private as well as public funds?

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Page Three

Section 9. AS 15.13.072 through .078. Restrictions on use of campaign funds, disbursement of campaign accounts, and public spending; candidate and group liability.

.072. The Commission would like to require a candidate to report those assets worth more than \$2500 that the candidate retains at the close of the campaign. The Commission also notes that the prohibition of using campaign funds for "personal purposes" is very broad and a definition of personal purposes would show legislative intent.

.074. This section appears to give an advantage to long term incumbents as it allows transfer of unlimited funds to new campaign accounts and office accounts. The Commission supports limitation on the amount of funds transferred into new campaign accounts. It is not likely that candidates would transfer equipment to new campaign accounts without using it personally in the interim. Subsections (b) and (e) appear to contradict each other; if funds and equipment may be disbursed after January 15, that date has minimal significance as a deadline. What is meant by a group organized on an "on going basis"? Is two consecutive years of activity sufficient to qualify for this exemption?

"Of his or her own" could be added to the end of subsection (a)(1) to clarify the prohibition. The Commission suggests the following wording for subsection (d)

"A candidate or group that transfers campaign funds to an account for a future election under (a)(1) of this section shall report the transfer on the year-end report under AS 15.13.110 (a)(4) or the closing report under 2 AAC 50.400(a), whichever is sooner."

.076. The Commission is concerned that this section may create a disincentive to serve as a group officer or to run for office because of the vicarious criminal liability it creates. For example, a treasurer may make a major error while serving on behalf of a political party subdivision, complete their term and then move on and the group's president could be held personally responsible. The Commission notes that the term "head of a group" appears no other place in AS 15.13.

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Page Four

.078. The title limits this section to municipal spending but the text includes officer or employee of the state and state funds. The Commission believes public funds are properly spent on distributing neutral information. However, the Commission also expects problems to arise in interpreting this term.

Section 10. AS 15.13.120(d). The Commission agrees with the proposed change requiring the oath. However, given its current resources, the Commission cannot meet even the existing standard of resolving complaints within 60 days. Current staffing level allows one full-time investigator to investigate complaints.

Section 11. AS 15.13.120(i) and (j). The Commission generally favors open proceedings because private deliberations may erode public confidence in the fairness of the process. It should be noted the complainant could make the complaint and supporting documents public under these subsections, thus frustrating their apparent goal. There appears to be a conflict between the second sentence of subsection (i) and the first and third sentences; would the complaint always be confidential, or would it become public once probable cause were found?

Section 12. AS 15.13.130 (8) through (10). Definitions. (9) would increase the scope of the campaign disclosure law as rural education attendance areas are currently exempt from AS 15.13. (10) defines "state agency" very broadly and with the prohibitions on the use of state resources could create conflicts with some state agencies' statutes. For example, the Judicial Council, is required by statute to use public funds to distribute election information.

**2 AAC 50.334. PERSONS WHO MAY ACCEPT CONTRIBUTIONS.** (a) A candidate's campaign committee, or a group, may authorize a person who is not registered as a deputy treasurer to accept or solicit campaign contributions on its behalf for any single event. Campaign committees or groups are not in violation of AS 15.13.070(e) if contributions collected by the authorized person are turned over to a candidate, treasurer, or deputy treasurer of the intended committee or group within 72 hours.

(b) An individual who is, or will be fundraising on a regular basis throughout a political campaign must be registered as a deputy treasurer in accordance with AS 15.13.060(e).

(c) Individuals that have not been "authorized" to accept campaign contributions by either a candidate or his treasurer, or the treasurer of a group, are prohibited from collecting campaign contributions on behalf of a candidate's campaign committee or group. (Eff. 4/28/79, Reg. 70; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10) AS 15.13.070(e)  
AS 15.13.060 AS 15.13.130(2)

**2 AAC 50.357. CONTRIBUTIONS IN THE NAME OF ANOTHER.** (a) No contribution may be made, directly or indirectly, by a person other than in the legal name of the original source of the contribution.

(b) No person, employer, principal, supervisor, or contractor may lend, pay, advance, or reimburse employees, agents, or other persons for contributions to a candidate or group in the employee's, agent's, or other person's name, or in a name other than the original source of the contribution.

(c) A contribution made at the direction of another person, including a parent organization, subsidiary, division, department, branch, or local unit, is a contribution in the name of another. Contributions by two or more organizations to the same recipient are in the name of another if the organizations

- (1) share the majority of members of their board of directors;
- (2) share two or more corporate or organizational officers;
- (3) are owned or controlled by the same shareholders or members; or
- (4) are in a parent-subsidiary relationship.

(d) If a minor makes a contribution of money or any thing of value given to the child by a parent for that purpose, the parent has made a contribution in the name of another. (Eff. 1/4/86, Reg. 97)

Authority: AS 15.13.030(10) AS 15.13.070  
AS 15.13.040 AS 15.13.130

## **League updates Campaign Reform Position at State Convention**

At the state convention in April, the League of Women Voters of Alaska delegates voted to update the wording of the Campaign Finance Disclosure Position. Following is the updated statement of position. Please contact your local league president for a copy of the entire position, including amplification.

and other financial resources not be a necessary consideration in seeking public office; and second, that insofar as possible, there be an equalization of opportunity for challengers and incumbents.

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### **STATEMENT OF POSITION**

The League of Women Voters of Alaska favors public disclosure of campaign contributions of money, goods or services as well as the disclosure of financial interests of public officials, both elected and appointed. All disclosure reports should be received, compiled and published by an independent commission, which should have final responsibility for monitoring and enforcement. The League also favors limitations on the length of the time allowed for fund raising, the amount of contributions and, notwithstanding the U.S. Supreme Court decision in Buckley v. Valeo, the amount of expenditures.

The goals of a campaign system should be:

1. To ensure the public's right to know.
2. To combat corruption and undue influence.
3. To enable candidates to compete more equitably for public office.
4. To promote citizen participation in the political process.

"To enable candidates to compete for equitably for public office" reflects two distinct concerns: first, that differences in candidates' personal wealth

# Loophole

ADN 1/31/90

*Spending government money to support candidates isn't illegal — but it should be.*

In the 1988 primary election, 338 North Slope Borough voters opted for someone other than Eileen MacLean in the local state House race. But those 338 voters were forced to give Ms. MacLean support of another kind — with their pocketbooks.

Their borough government spent tens of thousands of dollars of their money to boost Ms. MacLean's prospects on election day. The borough paid for polls checking her standing with voters. It paid to mail a flattering magazine profile of her to every voter in the district. It paid travel bills for her campaign consultant. It paid to send Ms. MacLean to parts of the district where she wasn't well known. It paid for a voter registration drive that the polls said would help her chances.

Common sense suggests that spending public money to promote a candidate would be against the law. But somehow, this common-sense notion has never been written into state statutes. Nothing in state law bars the state or local governments from using taxpayers' money to help candidates for public office.

It's true, the North Slope Borough is in trouble with the state public offices commission. But the borough's mistake was not that it used public money to help Ms. MacLean's candidacy. The borough's mistake was giving Ms. MacLean more help than the \$1,000 allowed by law and failing to report its contributions to the commission.

Settling those charges will cost the borough a \$10,000 fine. From the borough's perspective, that's money well spent. Add up all the activities that smacked of promoting Ms. MacLean, and the bill is well over \$50,000. Another \$10,000 is small change.

Next time, the perpetrators of such sleazy dealings shouldn't be allowed to get off so easily. State lawmakers should close this loophole in state campaign laws. Public officials who wage disguised political campaigns at public expense should face criminal charges.

CS FOR SENATE BILL NO. 243 (JUDICIARY)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/1/92  
Referred: Finance

Sponsor(s): SENATE SPECIAL COMMITTEE ON ETHICS REFORM

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to election campaign financing, to restrictions on election campaign  
2 material, and to the Alaska Public Offices Commission."

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

4 \* Section 1. AS 15.13.030 is amended by adding a new paragraph to read:

5 (11) issue an advisory opinion to a person affected by this chapter regarding the  
6 interpretation of this chapter within 30 days of the request for the opinion or within an additional  
7 period of time that the person requesting the opinion may agree to; the advisory opinion issued  
8 is binding on the commission in a subsequent proceeding concerning the facts and circumstances  
9 set out in the request for an advisory opinion, unless material facts were omitted or misstated in  
10 the request.

11 \* Sec. 2. AS 15.13 is amended by adding new sections to read:

12 Sec. 15.13.041. PROHIBITED SOLICITATION OF CONTRIBUTIONS. (a) A public  
13 officer or employee of the state or of a municipality may not, while on the premises of a state  
14 or municipal building, solicit or request a contribution to a candidate, group, or political party.

1 (b) A person may not solicit or request a public officer to contribute to a candidate,  
2 group, or political party while the public officer or employee is on the premises of a state or  
3 municipal building.

4 (c) A candidate, a candidate's campaign treasurer or deputy campaign treasurer, a group,  
5 or an officer of a group may not accept a contribution that the candidate, campaign treasurer,  
6 deputy campaign treasurer, group, or officer of a group knows was obtained in violation of this  
7 section. A person who violates this subsection is guilty of a class A misdemeanor and may be  
8 fined an amount provided in AS 12.55.035 or an amount equal to four times the amount of the  
9 illegal contribution, whichever is greater.

10 Sec. 15.13.043. USE OF PUBLIC OFFICE OR AGENCY FACILITIES IN A  
11 CAMPAIGN. (a) A person may not use or authorize the use of public funds or property, or the  
12 time of a public officer or employee, to influence the outcome of an election.

13 (b) A person may not use or authorize the use of public funds or property, or the time  
14 of a public officer or employee, to produce, print, publish, broadcast, or otherwise disseminate  
15 material designed and timed to influence the results of an election, regardless of the lack of  
16 specific reference to the election.

17 (c) A person may not solicit, verbally or in writing, or receive a contribution on behalf  
18 of a candidate or group in a facility ordinarily used for the conduct of public business.

19 (d) A person may not deliver a contribution, or cause a contribution to be delivered, in  
20 a facility ordinarily used for the conduct of public business, other than a postal facility.

21 (e) A person may not distribute or post, or cause to be distributed or posted, a  
22 communication designed to influence the outcome of an election in a public building.

23 (f) Nothing in this section prohibits

24 (1) the division of elections from preparing and distributing the voter election  
25 pamphlet under AS 15.58;

26 (2) nonpartisan voter registration activities;

27 (3) action taken at a public meeting by members of the legislature, of a committee  
28 of the legislature, or of a state or municipal board or commission, expressing a collective decision  
29 or voting on a motion, proposal, bill, resolution, ordinance, or order;

30 (4) action by an elected public official of the state or of a municipality in support  
31 of or in opposition to a ballot proposition or question at an open press conference or in response

1 to a specific inquiry.

2 \* Sec. 3. AS 15.13.050 is amended by adding a new subsection to read:

3 (b) Two or more groups, other than political parties and subdivisions of political parties,  
4 in which two or more persons hold office in each group are considered to be a single group for  
5 purposes of the contribution limitations of this chapter.

6 \* Sec. 4. AS 15.13.060 is amended by adding a new subsection to read:

7 (g) A person may not serve as a campaign treasurer or deputy campaign treasurer during  
8 a calendar year in which the person was required to register as a lobbyist under AS 24.45, unless  
9 the person acted only as a representational lobbyist as defined in the regulations of the  
10 commission.

11 \* Sec. 5. AS 15.13.070(a) is amended to read:

12 (a) A person or group, including but not limited to all political committees, businesses,  
13 corporations, and labor unions, may not contribute to or expend more than \$1,000 in a calendar  
14 year, whether in money, goods, or services, or a combination of money, goods, and services,  
15 on behalf of or in opposition to the competing candidates for each elective office. Political  
16 parties and their subdivisions are not subject to the limitation prescribed in this subsection, but  
17 they are subject to the reporting requirements prescribed by AS 15.13.040(b) and 15.13.110. This  
18 chapter does not prohibit

19 (1) a candidate from contributing more than \$1,000 of the candidate's own money  
20 to the candidate's own campaign; or

21 (2) individuals or groups, including but not limited to all political committees,  
22 businesses, corporations, and labor unions, from contributing to or expending on behalf of a  
23 ballot proposition or question more than \$1,000 a year; however, these contributions and  
24 expenditures shall be reported in accordance with AS 15.13.040 and 15.13.110.

25 \* Sec. 6. AS 15.13.070(c) is amended to read:

26 (c) An expenditure over \$100 may not be made in cash [OR BY CASH PAYMENT  
27 UNLESS A WRITTEN RECEIPT IS OBTAINED AND FILED WITH THE COMMISSION].

28 \* Sec. 7. AS 15.13.070(d) is amended to read:

29 (d) A contribution may not be made, and an expenditure may not be made or incurred,  
30 directly or indirectly, anonymously, in a fictitious name, or by one person or group in the name  
31 of another, to influence the election of a candidate in an election. A contribution made by a

1 person wishing to remain anonymous, and received by a candidate, campaign treasurer or deputy  
2 campaign treasurer, may not be used or expended, but shall be returned within 10 days to the  
3 donor, if the donor's identity is known, and if no donor is found, the contribution escheats to the  
4 state if not donated by the candidate to the charity of the candidate's choice. A contribution  
5 from a minor under the age of 18, other than a minor who has been emancipated or who  
6 is married, is considered to have been made by a parent or guardian of the individual  
7 under the age of 18, and shall be counted toward the contribution limit established by this  
8 section.

9 \* Sec. 8. AS 15.13.070 is amended by adding new subsections to read:

10 *brook* (i) A candidate or a group controlled by a candidate may not make a contribution to  
11 another candidate, except that a candidate may make a contribution to another candidate from  
12 the candidate's own personal funds.

13 (j) An individual or a group may not make a loan to a candidate or to a group, or  
14 guarantee a loan made by another to a candidate or to a group. This subsection does not prohibit

15 (1) a contribution in the form of a loan by a candidate or by the spouse, parent,  
16 or child of a candidate to the candidate's campaign;

17 (2) an extension of credit by a person made in the person's regular course of  
18 business to a candidate or a group; or

19 (3) a loan by a regulated financial institution to a candidate or group on the same  
20 terms as would apply to a loan by the financial institution to a similarly situated member of the  
21 public.

22 (k) A person may not act as an intermediary to transmit contributions to a candidate or  
23 group from a person or group. In this section, "intermediary" does not include a candidate, a  
24 treasurer, deputy treasurer, or other campaign officer, a financial institution, or a person  
25 voluntarily hosting a fund-raising event at the person's home.

26 *Executive P/B below* (l) A candidate for the legislature, including an incumbent legislator, may not

27 (1) solicit or accept a contribution during a legislative session; or

28 (2) accept money from an event held during a legislative session if a substantial  
29 *brook* purpose of the event is either to raise money on behalf of the member for campaign purposes or  
30 to raise money for state legislative political purposes.

31 (m) A municipality or a school district, or an officer or employee of a municipality or

1 a school district, acting in an official capacity, may not make a contribution to a candidate or to  
2 a group.

3 \* Sec. 9. AS 15.13 is amended by adding new sections to read:

4 Sec. 15.13.072. PERSONAL USE PROHIBITED. A candidate for public office may not  
5 use campaign funds for personal purposes, convert ~~campaign~~ funds into personal income, or  
6 convert goods purchased with campaign funds for personal use.

7 Sec. 15.13.074. DISBURSEMENT OF CAMPAIGN ACCOUNTS. (a) If a candidate  
8 for public office or a group has unexpended and unobligated funds after the date of the election,  
9 the candidate or group shall, no later than January 15 of the year following the election,

10 (1) elect to carry forward the funds for a future election campaign;

11 (2) donate the funds to an organization that qualifies as a charitable organization  
12 under 26 U.S.C. 501(c), to a political party as defined in AS 15.60.010, or to the state or a  
13 municipality;

14 (3) return the funds on a pro rata basis to the contributors to the candidate or  
15 group; or

16 (4) transfer the funds to a legislative office account for expenditures qualifying  
17 as business expenses under 26 U.S.C. 162.

18 (b) In addition to the uses listed in (a) of this section, a candidate may, no later than  
19 January 15 of the year following the election, use unexpended and unobligated funds remaining  
20 after the election to repay the candidate's contributions to the candidate's campaign.

21 (c) Equipment owned by a candidate or group shall, no later than January 15 of the year  
22 following the election, be carried forward or donated as provided in (a)(1) and (2) of this section.  
23 If the equipment was purchased solely with funds provided by a candidate personally, the  
24 candidate may convert the equipment to the candidate's personal use.

25 (d) A candidate or group that elects to carry forward campaign funds for a future election  
26 under (a)(1) of this section shall file an annual report with the commission under  
27 AS 15.13.110(a)(4) in the year following the election, even if the candidate or group makes no  
28 expenditures or receives no contributions during that year.

29 (e) Funds carried forward under (a)(1) of this section may, even after the transfer, be  
30 disbursed as provided in (a) and (b) of this section. Equipment carried forward under (c) of this  
31 section may, even after the transfer, be distributed as provided by that subsection.

HB 195  
(a-guage)

1 (f) This section does not apply to a group that is organized to influence elections on an  
2 ongoing basis.

3 Sec. 15.13.076. RESPONSIBILITY FOR VIOLATIONS. A candidate is responsible for  
4 violations of this chapter by officers of the candidate's campaign committee, and the head of a  
5 group is responsible for violations of this chapter by other officers of a group. Penalties assessed  
6 against a candidate's campaign committee or against a group may be assessed directly against  
7 the candidate or the head of the group.

8 *Scott*  
*Bugles* Sec. 15.13.078. PUBLIC SPENDING PROHIBITED. (a) An officer or employee of a  
9 state agency, a municipality, or a school district acting in an official capacity may not expend  
10 state funds or municipal or school district funds, or authorize the expenditure of state funds or  
11 municipal or school district funds, to influence the outcome of an election for a public office or  
12 on a ballot proposition.

13 (b) This section does not prohibit the expenditure of state funds or municipal or school  
14 district funds to provide to the public factual information regarding the dates of an election and  
15 neutral information regarding the candidates and ballot propositions appearing on the ballot; in  
16 this subsection, "neutral information" means information that does not imply a bias for or against  
17 a candidate or ballot proposition but does enable a voter to assess the qualifications of a  
18 candidate or the effect of a ballot proposition.

19 \* Sec. 10. AS 15.13.120(d) is amended to read:

20 (d) A person who believes a violation of this chapter has occurred may file a complaint  
21 with the commission. The complaint must include a statement, made under oath, that the  
22 factual statements in the complaint are true, to the best of the complainant's knowledge.  
23 If the commission determines there is substantial reason to believe that a violation has occurred,  
24 it shall expeditiously make an investigation, which may also include an investigation of reports  
25 and statements filed by the complainant if the complainant is a candidate, of the matter  
26 complained of. When, in the judgment of the commission, after affording due notice and an  
27 opportunity for a hearing, a person has engaged or is about to engage in any acts or practices  
28 which constitute or will constitute a violation of a provision of this chapter, or a regulation or  
29 order issued under it, it shall promptly report the information to the attorney general for  
30 appropriate action. The commission shall report its determination and recommendation to the  
31 person who filed the complaint with the commission within 60 days of receiving the complaint

1 unless circumstances require additional time to make an adequate investigation. The finding of  
2 the commission may be appealed to the superior court.

3 \* Sec. 11. AS 15.13.120 is amended by adding new subsections to ~~read:~~

4 (i) Proceedings of the commission relating to complaints before it under this section are  
5 confidential until the commission determines that there is probable cause to believe that a  
6 violation of this chapter has occurred. The complaint and all documents produced or disclosed  
7 as a result of the commission's investigation are confidential and not subject to inspection by the  
8 public. All meetings of the commission relating to the complaint are closed to the public before  
9 the determination of probable cause is made. The confidentiality provisions of this subsection  
10 may be waived by the subject of the complaint.

11 (j) Except as provided in (i) of this section, meetings of the commission relating to a  
12 complaint are governed by AS 44.62.310 - 44.62.312 (Open Meetings Act), and records in the  
13 possession of the commission relating to the complaint are subject to AS 09.25.110 - 09.25.125.

14 \* Sec. 12. AS 15.13.130 is amended by adding new paragraphs to read:

15 (8) "commission" means the Alaska Public Offices Commission created in  
16 AS 15.13.020;

17 (9) "school district" means a municipal school district or a regional educational  
18 attendance area established under AS 14.08;

19 (10) "state agency" means a department, agency, instrumentality, or corporate  
20 authority of the state, whether in the executive, legislative, or judicial branch, and includes the  
21 University of Alaska.

22 \* Sec. 13. AS 15.58.030 is amended by adding a new subsection to read:

23 (h) A candidate, or a person on behalf of a candidate, submitting material under this  
24 section shall swear that factual statements contained in the material are true to the best of the  
25 candidate's or person's knowledge. A candidate or person who knowingly swears falsely is  
26 guilty of perjury under AS 11.56.200.

27 \* Sec. 14. AS 24.60.030(f) and 24.60.030(g) are repealed.

SENATE COMMITTEE REPORT

*Juan*

DATE: 5/3/91

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-30-92

Judiciary Committee considered SENATE BILL NO. 243

"An Act relating to election campaign financing, to restrictions on election campaign material, and to the Alaska Public Offices Commission."

and a majority of the committee recommends it be replaced with

and recommended:

replace with CS SB 243 (JUD)  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_

same title  
 new title  
 technical title change (HB only)

attached amendment(s) \_\_\_\_\_ and do pass  
 \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

*FN*

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

fiscal note(s) Admin 5/1/92 - CS

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Rich Halford do pass  
Chair: Signature and Recommendation

CS FOR SENATE BILL NO. 243 (ETHICS REFORM)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON ETHICS REFORM

Offered: 5/3/91  
Referred: Finance

Sponsor(s): SENATE SPECIAL COMMITTEE ON ETHICS REFORM

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to election campaign financing, to restrictions on election campaign  
2 material, and to the Alaska Public Offices Commission."

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

4 \* Section 1. AS 15.13.030 is amended by adding a new paragraph to read:

5 (11) issue an advisory opinion to a person affected by this chapter regarding the  
6 interpretation of this chapter within 30 days of the request for the opinion or within an additional  
7 period of time that the person requesting the opinion may agree to; the advisory opinion issued  
8 is binding on the commission in a subsequent proceeding concerning the facts and circumstances  
9 set out in the request for an advisory opinion, unless material facts were omitted or misstated in  
10 the request.

11 \* Sec. 2. AS 15.13 is amended by adding new sections to read:

12 Sec. 15.13.041. PROHIBITED SOLICITATION OF CONTRIBUTIONS. (a) A public  
13 officer or employee of the state or of a municipality may not, while on the premises of a state  
14 or municipal building, solicit or request a contribution to a candidate, group, or political party.

1 (b) A person may not solicit or request a public officer to contribute to a candidate,  
2 group, or political party while the public officer or employee is on the premises of a state or  
3 municipal building.

4 (c) A candidate, a candidate's campaign treasurer or deputy campaign treasurer, a group,  
5 or an officer of a group may not accept a contribution that the candidate, campaign treasurer,  
6 deputy campaign treasurer, group, or officer of a group knows was obtained in violation of this  
7 section. A person who violates this subsection is guilty of a class A misdemeanor and may be  
8 fined an amount provided in AS 12.55.035 or an amount equal to four times the amount of the  
9 illegal contribution, whichever is greater.

10 Sec. 15.13.043. USE OF PUBLIC OFFICE OR AGENCY FACILITIES IN A  
11 CAMPAIGN. (a) A person may not use or authorize the use of public funds or property, or the  
12 time of a public officer or employee, to influence the outcome of an election.

13 (b) A person may not use or authorize the use of public funds or property, or the time  
14 of a public officer or employee, to produce, print, publish, broadcast, or otherwise disseminate  
15 material designed and timed to influence the results of an election, regardless of the lack of  
16 specific reference to the election.

17 (c) A person may not solicit, verbally or in writing, or receive a contribution on behalf  
18 of a candidate or group in a facility ordinarily used for the conduct of public business.

19 (d) A person may not deliver a contribution, or cause a contribution to be delivered, in  
20 a facility ordinarily used for the conduct of public business, other than a postal facility.

21 (e) A person may not distribute or post, or cause to be distributed or posted, a  
22 communication designed to influence the outcome of an election in a public building.

23 (f) Nothing in this section prohibits

24 (1) the division of elections from preparing and distributing the voter election  
25 pamphlet under AS 15.58;

26 (2) nonpartisan voter registration activities;

27 (3) action taken at a public meeting by members of the legislature, of a committee  
28 of the legislature, or of a state or municipal board or commission, expressing a collective decision  
29 or voting on a motion, proposal, bill, resolution, ordinance, or order;

30 (4) action by an elected public official of the state or of a municipality in support  
31 of or in opposition to a ballot proposition or question at an open press conference or in response

1 to a specific inquiry.

2 \* Sec. 3. AS 15.13.050 is amended by adding a new subsection to read:

3 (b) Two or more groups, other than political parties and subdivisions of political parties,  
4 in which two or more persons hold office in each group are considered to be a single group for  
5 purposes of the contribution limitations of this chapter.

6 \* Sec. 4. AS 15.13.060 is amended by adding a new subsection to read:

7 (g) A person may not serve as a campaign treasurer or deputy campaign treasurer during  
8 a calendar year in which the person was required to register as a lobbyist under AS 24.45, unless  
9 the person acted only as a representational lobbyist as defined in the regulations of the  
10 commission.

11 \* Sec. 5. AS 15.13.070(a) is amended to read:

12 (a) A person or group, including but not limited to all political committees, businesses,  
13 corporations, and labor unions, may not contribute to or expend more than \$1,000 in a calendar  
14 year, whether in money, goods, or services, or a combination of money, goods, and services,  
15 on behalf of or in opposition to the competing candidates for each elective office. Political  
16 parties and their subdivisions are not subject to the limitation prescribed in this subsection, but  
17 they are subject to the reporting requirements prescribed by AS 15.13.040(b) and 15.13.110. This  
18 chapter does not prohibit

19 (1) a candidate from contributing more than \$1,000 of the candidate's own money  
20 to the candidate's own campaign; or

21 (2) individuals or groups, including but not limited to all political committees,  
22 businesses, corporations, and labor unions, from contributing to or expending on behalf of a  
23 ballot proposition or question more than \$1,000 a year; however, these contributions and  
24 expenditures shall be reported in accordance with AS 15.13.040 and 15.13.110.

25 \* Sec. 6. AS 15.13.070(c) is amended to read:

26 (c) An expenditure over \$100 may not be made in cash [OR BY CASH PAYMENT  
27 UNLESS A WRITTEN RECEIPT IS OBTAINED AND FILED WITH THE COMMISSION].

28 \* Sec. 7. AS 15.13.070(d) is amended to read:

29 (d) A contribution may not be made, and an expenditure may not be made or incurred,  
30 directly or indirectly, anonymously, in a fictitious name, or by one person or group in the name  
31 of another, to influence the election of a candidate in an election. A contribution made by a

1 person wishing to remain anonymous, and received by a candidate, campaign treasurer or deputy  
2 campaign treasurer, may not be used or expended, but shall be returned within 10 days to the  
3 donor, if the donor's identity is known, and if no donor is found, the contribution escheats to the  
4 state if not donated by the candidate to the charity of the candidate's choice. A contribution  
5 from a minor under the age of 18, other than a minor who has been emancipated or who  
6 is married, is considered to have been made by a parent or guardian of the individual  
7 under the age of 18, and shall be counted toward the contribution limit established by this  
8 section.

9 \* Sec. 8. AS 15.13.070 is amended by adding new subsections to read:

10 (i) A candidate or a group controlled by a candidate may not make a contribution to  
11 another candidate, except that a candidate may make a contribution to another candidate from  
12 the candidate's own personal funds.

13 (j) An individual or a group may not make a loan to a candidate or to a group, or  
14 guarantee a loan made by another to a candidate or to a group. This subsection does not prohibit

15 (1) a contribution in the form of a loan by a candidate or by the spouse, parent,  
16 or child of a candidate to the candidate's campaign;

17 (2) an extension of credit by a person made in the person's regular course of  
18 business to a candidate or a group; or

19 (3) a loan by a regulated financial institution to a candidate or group on the same  
20 terms as would apply to a loan by the financial institution to a similarly situated member of the  
21 public.

22 (k) A person may not act as an intermediary to transmit contributions to a candidate or  
23 group from a person or group. In this section, "intermediary" does not include a candidate, a  
24 treasurer, deputy treasurer, or other campaign officer, a financial institution, or a person  
25 voluntarily hosting a fund-raising event at the person's home.

26 (l) A candidate for the legislature, including an incumbent legislator, may not

27 (1) solicit or accept a contribution during a legislative session; or

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

31 (m) A municipality or a school district, or an officer or employee of a municipality or

1 a school district, acting in an official capacity, may not make a contribution to a candidate or to  
2 a group.

3 \* Sec. 9. AS 15.13 is amended by adding new sections to read:

4 Sec. 15.13.072. PERSONAL USE PROHIBITED. A candidate for public office may not  
5 use campaign funds for personal purposes, convert campaign funds into personal income, or  
6 convert goods purchased with campaign funds for personal use.

7 Sec. 15.13.074. DISBURSEMENT OF CAMPAIGN ACCOUNTS. (a) If a candidate  
8 for public office or a group has unexpended and unobligated funds after the date of the election,  
9 the candidate or group shall, no later than January 15 of the year following the election,

10 (1) elect to carry forward the funds for a future election campaign;

11 (2) donate the funds to an organization that qualifies as a charitable organization  
12 under 26 U.S.C. 501(c), to a political party as defined in AS 15.60.010, or to the state or a  
13 municipality;

14 (3) return the funds on a pro rata basis to the contributors to the candidate or  
15 group; or

16 (4) transfer the funds to a legislative office account for expenditures qualifying  
17 as business expenses under 26 U.S.C. 162.

18 (b) In addition to the uses listed in (a) of this section, a candidate may, no later than  
19 January 15 of the year following the election, use unexpended and unobligated funds remaining  
20 after the election to repay the candidate's contributions to the candidate's campaign.

21 (c) Equipment owned by a candidate or group shall, no later than January 15 of the year  
22 following the election, be carried forward or donated as provided in (a)(1) and (2) of this section.  
23 If the equipment was purchased solely with funds provided by a candidate personally, the  
24 candidate may convert the equipment to the candidate's personal use.

25 (d) A candidate or group that elects to carry forward campaign funds for a future election  
26 under (a)(1) of this section shall file an annual report with the commission under  
27 AS 15.13.110(a)(4) in the year following the election, even if the candidate or group makes no  
28 expenditures or receives no contributions during that year.

29 (e) Funds carried forward under (a)(1) of this section may, even after the transfer, be  
30 disbursed as provided in (a) and (b) of this section. Equipment carried forward under (c) of this  
31 section may, even after the transfer, be distributed as provided by that subsection.

1 (f) This section does not apply to a group that is organized to influence elections on an  
2 ongoing basis.

3 Sec. 15.13.076. RESPONSIBILITY FOR VIOLATIONS. A candidate is responsible for  
4 violations of this chapter by officers of the candidate's campaign committee, and the head of a  
5 group is responsible for violations of this chapter by other officers of a group. Penalties assessed  
6 against a candidate's campaign committee or against a group may be assessed directly against  
7 the candidate or the head of the group.

8 Sec. 15.13.078. MUNICIPAL SPENDING PROHIBITED. (a) An officer or employee  
9 of a state agency, a municipality, or a school district acting in an official capacity may not  
10 expend state funds or municipal or school district funds, or authorize the expenditure of state  
11 funds or municipal or school district funds, to influence the outcome of an election for a public  
12 office or on a ballot proposition.

13 (b) This section does not prohibit the expenditure of state funds or municipal or school  
14 district funds to provide to the public neutral information regarding the dates of an election and  
15 the candidates and ballot propositions appearing on the ballot.

16 \* Sec. 10. AS 15.13.120(d) is amended to read:

17 (d) A person who believes a violation of this chapter has occurred may file a complaint  
18 with the commission. The complaint must include a statement, made under oath, that the  
19 factual statements in the complaint are true, to the best of the complainant's knowledge.

20 If the commission determines there is substantial reason to believe that a violation has occurred.  
21 it shall expeditiously make an investigation, which may also include an investigation of reports  
22 and statements filed by the complainant if the complainant is a candidate, of the matter  
23 complained of. When, in the judgment of the commission, after affording due notice and an  
24 opportunity for a hearing, a person has engaged or is about to engage in any acts or practices  
25 which constitute or will constitute a violation of a provision of this chapter, or a regulation or  
26 order issued under it, it shall promptly report the information to the attorney general for  
27 appropriate action. The commission shall report its determination and recommendation to the  
28 person who filed the complaint with the commission within 60 days of receiving the complaint  
29 unless circumstances require additional time to make an adequate investigation. The finding of  
30 the commission may be appealed to the superior court.

31 \* Sec. 11. AS 15.13.120 is amended by adding new subsections to read:

1 (i) Proceedings of the commission relating to complaints before it under this section are  
2 confidential until the commission determines that there is probable cause to believe that a  
3 violation of this chapter has occurred. The complaint and all documents produced or disclosed  
4 as a result of the commission's investigation are confidential and not subject to inspection by the  
5 public. All meetings of the commission relating to the complaint are closed to the public before  
6 the determination of probable cause is made. The confidentiality provisions of this subsection  
7 may be waived by the subject of the complaint.

8 (j) Except as provided in (i) of this section, meetings of the commission relating to a  
9 complaint are governed by AS 44.62.310 - 44.62.312 (Open Meetings Act), and records in the  
10 possession of the commission relating to the complaint are subject to AS 09.25.110 - 09.25.125.

11 \* Sec. 12. AS 15.13.130 is amended by adding new paragraphs to read:

12 (8) "commission" means the Alaska Public Offices Commission created in  
13 AS 15.13.020;

14 (9) "school district" means a municipal school district or a regional educational  
15 attendance area established under AS 14.08;

16 (10) "state agency" means a department, agency, instrumentality, or corporate  
17 authority of the state, whether in the executive, legislative, or judicial branch, and includes the  
18 University of Alaska.

19 \* Sec. 13. AS 15.58.030 is amended by adding a new subsection to read:

20 (h) A candidate, or a person on behalf of a candidate, submitting material under this  
21 section shall swear that factual statements contained in the material are true to the best of the  
22 candidate's or person's knowledge. A candidate or person who knowingly swears falsely is  
23 guilty of perjury under AS 11.56.200.

24 \* Sec. 14. AS 24.60.030(f) and 24.60.030(g) are repealed.

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 4/5/91

FURTHER: Judiciary  
Finance

Date of 5-Day Notice: April 19, 1991  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-3-91

Senate Special Comtee on Ethics Reform considered SB 243

Election campaign financing, to restrictions on election campaign material, and to the Alaska Public Offices Commission.

and recommended: *s it be replaced w*

- replace with \_\_\_\_\_ CS SB 243  same title  new title
- attached amendment(s) *& report back as follows*
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to Judiciary

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) APDC - SB  
~~APDC - SB~~

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

[Signature] - No Rec  
[Signature] No Rec  
[Signature] No Rec  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chair: Signature and Recommendation

**SENATE BILL NO. 243****IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE SENATE SPECIAL COMMITTEE ON ETHICS REFORM**

Introduced: 4/8/91

Referred: ETR, Judiciary, Finance

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

1 "An Act relating to election campaign financing, to restrictions on election campaign  
2 material, and to the Alaska Public Offices Commission."

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

4 \* Section 1. AS 15.13.030 is amended by adding a new paragraph to read:

5 (11) issue an advisory opinion to a person affected by this chapter regarding the  
6 interpretation of this chapter within 30 days of the request for the opinion or within an additional  
7 period of time that the person requesting the opinion may agree to; the advisory opinion issued  
8 is binding on the commission in a subsequent proceeding concerning the facts and circumstances  
9 set out in the request for an advisory opinion, unless material facts were omitted or misstated in  
10 the request.

11 \* Sec. 2. AS 15.13 is amended by adding new sections to read:

12 Sec. 15.13.041. PROHIBITED SOLICITATION OF CONTRIBUTIONS. (a) A public  
13 officer or employee of the state or of a municipality may not, while on the premises of a state  
14 or municipal building, solicit or request a contribution to a candidate, group, or political party.

1 (b) A person may not solicit or request a public officer to contribute to a candidate,  
2 group, or political party while the public officer or employee is on the premises of a state or  
3 municipal building.

4 (c) A candidate, a candidate's campaign treasurer or deputy campaign treasurer, a group,  
5 or an officer of a group may not accept a contribution that the candidate, campaign treasurer,  
6 deputy campaign treasurer, group, or officer of a group knows was obtained in violation of this  
7 section. A person who violates this subsection is guilty of a class A misdemeanor and may be  
8 fined an amount provided in AS 12.55.035 or an amount equal to four times the amount of the  
9 illegal contribution, whichever is greater.

10 Sec. 15.13.043. USE OF PUBLIC OFFICE OR AGENCY FACILITIES IN A  
11 CAMPAIGN. (a) A person may not use or authorize the use of public funds or property, or the  
12 time of a public officer or employee, to influence the outcome of an election.

13 (b) A person may not use or authorize the use of public funds or property, or the time  
14 of a public officer or employee, to produce, print, publish, broadcast, or otherwise disseminate  
15 material designed and timed to influence the results of an election, regardless of the lack of  
16 specific reference to the election.

17 (c) A person may not solicit, verbally or in writing, or receive a contribution on behalf  
18 of a candidate or group in a facility ordinarily used for the conduct of public business.

19 (d) A person may not deliver a contribution, or cause a contribution to be delivered, in  
20 a facility ordinarily used for the conduct of public business, other than a postal facility.

21 (e) A person may not distribute or post, or cause to be distributed or posted, a  
22 communication designed to influence the outcome of an election in a public building.

23 (f) Nothing in this section prohibits

24 (1) the division of elections from preparing and distributing the voter election  
25 pamphlet under AS 15.58;

26 (2) nonpartisan voter registration activities;

27 (3) action taken at a public meeting by members of the legislature, of a committee  
28 of the legislature, or of a state or municipal board or commission, expressing a collective decision  
29 or voting on a motion, proposal, bill, resolution, ordinance, or order;

30 (4) action by an elected public official of the state or of a municipality in support  
31 of or in opposition to a ballot proposition or question at an open press conference or in response

1 to a specific inquiry.

2 \* Sec. 3. AS 15.13.050 is amended by adding a new subsection to read:

3 (b) Two or more groups, other than political parties and subdivisions of political parties,  
4 in which two or more persons hold office in each group are considered to be a single group for  
5 purposes of the contribution limitations of this chapter.

6 \* Sec. 4. AS 15.13.060 is amended by adding a new subsection to read:

7 (g) A person may not serve as a campaign treasurer or deputy campaign treasurer during  
8 a calendar year in which the person was required to register as a lobbyist under AS 24.45, unless  
9 the person acted only as a representational lobbyist as defined in the regulations of the  
10 commission.

11 \* Sec. 5. AS 15.13.070(a) is amended to read:

12 (a) A person or group, including but not limited to all political committees, businesses,  
13 corporations, and labor unions, may not contribute to or expend more than \$1,000 in a calendar  
14 year, whether in money, goods, or services, or a combination of money, goods, and services,  
15 on behalf of or in opposition to the competing candidates for each elective office. Political  
16 parties and their subdivisions are not subject to the limitation prescribed in this subsection, but  
17 they are subject to the reporting requirements prescribed by AS 15.13.040(b) and 15.13.110. This  
18 chapter does not prohibit

19 (1) a candidate from contributing more than \$1,000 of the candidate's own money  
20 to the candidate's own campaign; or

21 (2) individuals or groups, including but not limited to all political committees,  
22 businesses, corporations, and labor unions, from contributing to or expending on behalf of a  
23 ballot proposition or question more than \$1,000 a year; however, these contributions and  
24 expenditures shall be reported in accordance with AS 15.13.040 and 15.13.110.

25 \* Sec. 6. AS 15.13.070(c) is amended to read:

26 (c) An expenditure over \$100 may not be made in cash [OR BY CASH PAYMENT  
27 UNLESS A WRITTEN RECEIPT IS OBTAINED AND FILED WITH THE COMMISSION].

28 \* Sec. 7. AS 15.13.070(d) is amended to read:

29 (d) A contribution may not be made, and an expenditure may not be made or incurred,  
30 directly or indirectly, anonymously, in a fictitious name, or by one person or group in the name  
31 of another, to influence the election of a candidate in an election. A contribution made by a

1 person wishing to remain anonymous, and received by a candidate, campaign treasurer or deputy  
2 campaign treasurer, may not be used or expended, but shall be returned within 10 days to the  
3 donor, if the donor's identity is known, and if no donor is found, the contribution escheats to the  
4 state if not donated by the candidate to the charity of the candidate's choice. A contribution  
5 from a minor under the age of 18, other than a minor who has been emancipated or who  
6 is married, is considered to have been made by a parent or guardian of the individual  
7 under the age of 18, and shall be counted toward the contribution limit established by this  
8 section.

9 \* Sec. 8. AS 15.13.070 is amended by adding new subsections to read:

10 (i) A candidate or a group controlled by a candidate may not make a contribution to  
11 another candidate, except that a candidate may make a contribution to another candidate from  
12 the candidate's own personal funds.

13 (j) An individual or a group may not make a loan to a candidate or to a group, or  
14 guarantee a loan made by another to a candidate or to a group. This subsection does not prohibit

15 (1) a contribution in the form of a loan by a candidate or by the spouse, parent,  
16 or child of a candidate to the candidate's campaign;

17 (2) an extension of credit by a person made in the person's regular course of  
18 business to a candidate or a group; or

19 (3) a loan by a regulated financial institution to a candidate or group on the same  
20 terms as would apply to a loan by the financial institution to a similarly situated member of the  
21 public.

22 (k) A person may not act as an intermediary to transmit contributions to a candidate or  
23 group from a person or group. In this section, "intermediary" does not include a candidate, a  
24 treasurer, deputy treasurer, or other campaign officer, a financial institution, or a person  
25 voluntarily hosting a fund-raising event at the person's home.

26 (l) A member of the legislature running for any office, and a nonincumbent candidate for  
27 the legislature, may not

28 (1) solicit or accept a contribution during a legislative session; or

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

1 (m) A municipality or a school district, or an officer or employee of a municipality or  
2 a school district, acting in an official capacity, may not make a contribution to a candidate or to  
3 a group.

4 \* Sec. 9. AS 15.13 is amended by adding new sections to read:

5 Sec. 15.13.072. PERSONAL USE PROHIBITED. A candidate for public office may not  
6 use campaign funds for personal purposes, convert campaign funds into personal income, or  
7 convert goods purchased with campaign funds for personal use.

8 Sec. 15.13.074. DISBURSEMENT OF CAMPAIGN ACCOUNTS. (a) If a candidate  
9 for public office or a group has unexpended and unobligated funds after the date of the election,  
10 the candidate or group shall, no later than January 15 of the year following the election,

11 (1) transfer the funds to a new account for a future election campaign;

12 (2) donate the funds to an organization that qualifies as a charitable organization  
13 under 26 U.S.C. 501(c), or to the state or a municipality;

14 (3) return the funds on a pro rata basis to the contributors to the candidate or  
15 group; or

16 (4) transfer the funds to a legislative office account for expenditures qualifying  
17 as business expenses under 26 U.S.C. 162.

18 (b) In addition to the uses listed in (a) of this section, a candidate may, no later than  
19 January 15 of the year following the election, use unexpended and unobligated funds remaining  
20 after the election to repay the candidate's contributions to the candidate's campaign.

21 (c) Equipment owned by a candidate or group shall, no later than January 15 of the year  
22 following the election, be disposed of as provided in (a)(1) and (2). If the equipment was  
23 purchased solely with funds provided by a candidate personally, the candidate may convert the  
24 equipment to the candidate's personal use.

25 (d) A candidate or group that transfers campaign funds to an account for a future election  
26 under (a)(1) of this section in the year following the election shall file an annual report with the  
27 commission under AS 15.13.110(a)(4), even if the candidate or group makes no expenditures or  
28 receives no contributions during that year.

29 (e) Funds transferred to a new account under (a)(1) of this section may, even after the  
30 transfer, be disbursed as provided in (a) and (b) of this section. Equipment transferred to a new  
31 account under (c) of this section may, even after the transfer, be distributed as provided by that

1 subsection.

2 (f) Candidates and groups shall close each campaign account no later than January 15  
3 of the year following the year of the election.

4 (g) This section does not apply to a group that is organized to influence elections on an  
5 ongoing basis.

6 Sec. 15.13.076. RESPONSIBILITY FOR VIOLATIONS. A candidate is responsible for  
7 violations of this chapter by officers of the candidate's campaign committee, and the head of a  
8 group is responsible for violations of this chapter by other officers of a group. Penalties assessed  
9 against a candidate's campaign committee or against a group may be assessed directly against  
10 the candidate or the head of the group.

11 Sec. 15.13.078. MUNICIPAL SPENDING PROHIBITED. (a) An officer or employee  
12 of a state agency, a municipality, or a school district acting in an official capacity may not  
13 expend state funds or municipal or school district funds, or authorize the expenditure of state  
14 funds or municipal or school district funds, to influence the outcome of an election for a public  
15 office or on a ballot proposition.

16 (b) This section does not prohibit the expenditure of state funds or municipal or school  
17 district funds to provide to the public neutral information regarding the dates of an election and  
18 the candidates and ballot propositions appearing on the ballot.

19 \* Sec. 10. AS 15.13.120(d) is amended to read:

20 (d) A person who believes a violation of this chapter has occurred may file a complaint  
21 with the commission. The complaint must include a statement, made under oath, that the  
22 factual statements in the complaint are true, to the best of the complainant's knowledge.

23 If the commission determines there is substantial reason to believe that a violation has occurred,  
24 it shall expeditiously make an investigation, which may also include an investigation of reports  
25 and statements filed by the complainant if the complainant is a candidate, of the matter  
26 complained of. When, in the judgment of the commission, after affording due notice and an  
27 opportunity for a hearing, a person has engaged or is about to engage in any acts or practices  
28 which constitute or will constitute a violation of a provision of this chapter, or a regulation or  
29 order issued under it, it shall promptly report the information to the attorney general for  
30 appropriate action. The commission shall report its determination and recommendation to the  
31 person who filed the complaint with the commission within 45 [60] days of receiving the

1 complaint unless circumstances require additional time to make an adequate investigation. The  
2 finding of the commission may be appealed to the superior court.

3 \* Sec. 11. AS 15.13.120 is amended by adding new subsections to read:

4 (i) Proceedings of the commission relating to complaints before it under this section are  
5 confidential until the commission determines that there is probable cause to believe that a  
6 violation of this chapter has occurred. The complaint and all documents produced or disclosed  
7 as a result of the commission's investigation are confidential and not subject to inspection by the  
8 public. All meetings of the commission relating to the complaint are closed to the public before  
9 the determination of probable cause is made. The confidentiality provisions of this subsection  
10 may be waived by the subject of the complaint.

11 (j) Except as provided in (i) of this section, meetings of the commission relating to a  
12 complaint are governed by AS 44.62.310 - 44.62.312 (Open Meetings Act), and records in the  
13 possession of the commission relating to the complaint are subject to AS 09.25.110 - 09.25.125.

14 \* Sec. 12. AS 15.13.130 is amended by adding new paragraphs to read:

15 (8) "commission" means the Alaska Public Offices Commission created in  
16 AS 15.13.020;

17 (9) "school district" means a municipal school district or a regional educational  
18 attendance area established under AS 14.08;

19 (10) "state agency" means a department, agency, instrumentality, or corporate  
20 authority of the state, whether in the executive legislative, or judicial branch, and includes the  
21 University of Alaska.

22 \* Sec. 13. AS 24.60.030(f) and 24.60.030(g) are repealed.

SENATE FINANCE COMMITTEE REPORT

DATE: 5/3/91

FURTHER:

DATE TURNED INTO OFFICE: 5-16-91

The Finance Committee considered SENATE BILL NO. 245

"An Act relating to state purchases of heavy trucks and heavy equipment."

and recommended:

[x] replace with CS SB 245 (FIN)
[ ] or adopt CS
[ ] attached amendment(s)
[ ] letter of intent adopted

[x] same title
[ ] new title
[ ] technical title change (HB only)

- [x] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] further referral to

ATTACHES NEW FISCAL NOTE(S):
[ ] fiscal note(s) Dept/Date:
[ ] zero fiscal note(s)
[ ] appropriation-no fiscal note

APPROVES PREVIOUS:
[ ] fiscal note(s) Dept/Date:
[x] zero fiscal note(s)
DOT 4/17/91

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Handwritten signatures of committee members.

Blank lines for other recommendations.

1. 2. Co-Chairs: Signatures and Recommendations

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

FISCAL NOTE

No.         
Bill Version: SB 245  
(S) Publish Date: 5/3/91

Revision Date: \_\_\_\_\_ Department Affected: DOT&PF  
Title: State Purchase of Trucks/Heavy Equipment BRU: Admin. Services  
Sponsor: Senate Finance Committee Component: SEF  
Requestor: \_\_\_\_\_ Component Serial Number: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

No additional funding will be required to the Highway Equipment Working Capital Fund (HEWCF) as a result of this bill. Although the initial purchase cost of some equipment may be higher, the long-term cost will be lower because higher quality equipment will last longer, costs less to maintain, and has a higher resale value.

Prepared by: Robert N. Bartholomew Phone: 465-3911  
Division: Administrative Services Division Date: April 17, 1991  
Approved by Commissioner: Frank G. Turpin Phone: 465-3911  
Agency: Department of Transportation and Public Facilities Date: April 17, 1991

Distribution By Preparer: Legislative Finance, Legislati

REV 2/7/91

Changes in 05 SB 245 (Fin)  
reflect NO FISCAL CHANGE from the original  
fiscal note. This fiscal note is appropriate.

5/16/91 date  
JKL Comte Aide (initial)

s).

ge 1 of 1

5-16-91  
Adopted

7-LS1167A.1  
Bannister  
05/16/91

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHULTZ

TO: SB 245

Page 3, following line 27:

Insert a new bill section to read:

"\* Sec. 6. AS 36.30.990 is amended by adding a new paragraph to read:

(22) "heavy trucks and heavy equipment" means earth-moving, material handling, road maintenance, and construction equipment, including dump trucks, generators, track type tractors, motor graders, excavators, land fill compactors, wheel tractors, scrapers, wheel loaders, dozers, cranes, attachments, and specialty construction equipment."

CS SENATE BILL NO. 245 (Fin)  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced: 4/8/91  
 Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state purchases of heavy trucks and heavy equipment."

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

3 \* Section 1. LEGISLATIVE INTENT. It is the intent of the legislature that the state take into  
 4 account certain factors in addition to price when purchasing heavy trucks and heavy equipment. The  
 5 state should consider resale value, durability as measured by projected operating and maintenance costs,  
 6 and service requirements, including warranty, parts availability, and service locations. These factors  
 7 should be considered with the goal of acquiring the best value for the state considering the price and  
 8 quality of the equipment purchased.

9 \* Sec. 2. AS 36.30.040(b) is amended to read:

10 (b) The commissioner shall adopt regulations pertaining to the following:

- 11 (1) suspension, debarment, and reinstatement of prospective bidders and  
 12 contractors;  
 13 (2) bid protests;  
 14 (3) conditions and procedures for the procurement of perishables and items for

1 resale;

2 (4) conditions and procedures for the use of source selection methods authorized  
3 by this chapter, including sole source procurements, emergency procurements, and small  
4 procurements;

5 (5) the opening or rejection of bids and offers, and waiver of informalities in bids  
6 and offers;

7 (6) confidentiality of technical data and trade secrets submitted by actual or  
8 prospective bidders or offerors;

9 (7) partial, progressive, and multiple awards;

10 (8) storerooms and inventories, including determination of appropriate stock levels  
11 and the management of agency supplies;

12 (9) transfer, sale, or other disposal of supplies;

13 (10) definitions and classes of contractual services and procedures for acquiring  
14 them;

15 (11) providing for conducting price analysis;

16 (12) use of payment and performance bonds in connection with contracts for  
17 supplies, services, and construction;

18 (13) guidelines for use of cost principles in negotiations, adjustments, and  
19 settlements;

20 (14) conditions under which an agency may use the services of an employment  
21 program;

22 (15) a bidder's or offeror's duties under AS 36.30.115 and 36.30.210; [AND]

23 (16) the elimination and prevention of discrimination in state contracting because  
24 of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap,  
25 or political affiliation; and

26 (17) the criteria to be considered when purchasing heavy trucks and  
27 equipment.

28 \* Sec. 3. AS 36.30.100(b) is amended to read:

29 (b) Competitive sealed bidding is not required

30 (1) when the commissioner determines in writing that food, clothing, or medical  
31 supplies, or materials for use in laboratory or medical studies may be purchased otherwise to the

1 best advantage of the state;

2 (2) when rates are fixed by law or ordinance;

3 (3) for the purchase of products or services manufactured or provided by an  
4 employment program;

5 (4) for the purchase of products or services provided by the correctional industries  
6 program established under AS 33.32;

7 (5) for professional services; [OR]

8 (6) for concessions operated on state property; or

9 (7) for the purchase of heavy trucks and heavy equipment.

10 \* Sec. 4. AS 36.30.200 is amended by adding a new subsection to read:

11 (d) Notwithstanding other provisions of this chapter, when a state agency procures heavy  
12 trucks and heavy equipment, the agency may use competitive sealed proposals.

13 \* Sec. 5. AS 36.30 is amended by adding a new section to read:

14 Sec. 36.30.215. EVALUATION FACTORS FOR HEAVY TRUCKS AND EQUIPMENT.

15 When a state agency uses competitive sealed proposals to procure heavy trucks and heavy  
16 equipment, the following evaluation factors may be considered:

17 (1) the price;

18 (2) the quality of the article offered;

19 (3) the performance capabilities of the offerors and the manufacturers;

20 (4) the suitability of the articles for the intended use;

21 (5) the service requirements, including warranty, parts availability, and parts  
22 locations;

23 (6) durability as measured by projected operating and maintenance costs;

24 (7) the resale value;

25 (8) the transportation charges;

26 (9) the date of delivery and performance; and

27 (10) other factors determined to be pertinent or peculiar to the procurement.

CS FOR SENATE BILL NO. 245 (FINANCE)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state purchases of heavy trucks and heavy equipment."

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- 3 by this chapter, including sole source procurements, emergency procurements, and small
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- 6 and offers;
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- 8 prospective bidders or offerors;
- 9 (7) partial, progressive, and multiple awards;
- 10 (8) storerooms and inventories, including determination of appropriate stock levels
- 11 and the management of agency supplies;
- 12 (9) transfer, sale, or other disposal of supplies;
- 13 (10) definitions and classes of contractual services and procedures for acquiring
- 14 them;
- 15 (11) providing for conducting price analysis;
- 16 (12) use of payment and performance bonds in connection with contracts for
- 17 supplies, services, and construction;
- 18 (13) guidelines for use of cost principles in negotiations, adjustments, and
- 19 settlements;
- 20 (14) conditions under which an agency may use the services of an employment
- 21 program;
- 22 (15) a bidder's or offeror's duties under AS 36.30.115 and 36.30.210; [AND]
- 23 (16) the elimination and prevention of discrimination in state contracting because
- 24 of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap,
- 25 or political affiliation; and
- 26 (17) the criteria to be considered when purchasing heavy trucks and
- 27 equipment.

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2 (2) when rates are fixed by law or ordinance;

3 (3) for the purchase of products or services manufactured or provided by an  
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5 (4) for the purchase of products or services provided by the correctional industries  
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25 (8) the transportation charges;

26 (9) the date of delivery and performance; and

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30 road maintenance, and construction equipment, including dump trucks, generators, track type  
31 tractors, motor graders, excavators, land fill compactors, wheel tractors, scrapers, wheel loaders,



*Senator Udine*

Diane Mayer Pearson, C.P.M.  
4541 Sawa Circle  
Juneau, AK 99801  
789-4551 / 789-3772

*Mitch*  
*F*

May 7, 1991

Alaska State Legislature  
Senate Finance Committee

Dear Colleagues,

Re: SB 245 on State purchases of trucks and heavy equipment

This intent of this bill is commendable, but its form is undeserving of the effort. The intent is to allow consideration of factors other than purchase price in the procurement of heavy trucks and heavy equipment. This procurement technique is called life cycle costing or total cost bidding. This considers factors such as costs of operation, maintenance, repair, disposal, trade-in allowances, repurchase guarantees, projected life, money costs, and other costs of ownership and operation in addition to the initial acquisition price in the evaluation of bids. Both techniques are specifically provided for use in State bids by AS 36.30.150.

Life cycle costing and total cost bidding have been used in the past by the State for heavy equipment, building construction and leasing, appliances, lighting, air charters, vehicle purchases and rentals, light bars, testing equipment, generators, and other goods and services. Both techniques are vital parts of the array of advanced procurement methods currently available to procurement professionals throughout the world.

There are two major problems with the bill. First, it excludes heavy trucks and heavy equipment from the article on competitive sealed bidding. The competitive sealed bidding article is the very one which allows total cost bidding and life cycle costing as part of the objectively measurable evaluation criteria to be set out in the invitation to bid. This criteria includes assigning reasonable equivalent value to performance, parts availability, service, warranty, delivery or performance delays, resale price, and other relevant factors affecting the total ownership and operating costs of an item or service.

Second, it includes heavy trucks and equipment in the article covering competitive sealed proposals. This is the method typically used for professional services such as consultants and engineers, when subjective evaluation factors such as aesthetics are required, when negotiations or best and final offers are required, and situations where competitive sealed bidding is impractical. While the statute does not require a minimum evaluation factor for cost, the regulations establish a minimum 10% evaluation factor applied to cost items. The remaining evaluation may be on subjective, rather than objective factors -- a move that could easily subvert the intent of the proposed bill.

SB 245 Comments  
May 7, 1991

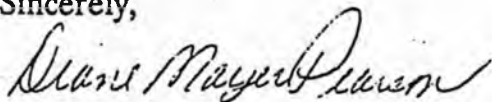
The intent of the existing procurement code is, in part,: "... to increase economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of state funds; ... and permit the continued development of state procurement practices and policies." This intent is carried out in AS 36.30.150 which allows the desired specifications, terms, conditions, and evaluation factors for heavy trucks/equipment to be set out in invitations to bid and multi-step bids. It also allows the use of competitive sealed negotiations when competitive sealed bidding cannot be used.

By setting aside heavy trucks and equipment for special treatment, the bill excludes the named evaluation factors and procurement methods from being used for other procurement that are not separately set aside by law. This would be detrimental to all other purchases for which application of life cycle costing or total cost bidding could benefit. Additionally, excluding heavy trucks and equipment from bidding and including it in proposals removes the focus of reasonable and objectively measurable evaluation criteria required in bidding and instead promotes subjective criteria and the potential for individual preferences not related to utility or economy.

In summary, I urge you to retract the bill. If this bill passes, it could be to the exclusion of using the noted evaluation factors for other purchases; it implies life cycle costing and total cost bidding techniques cannot be fully utilized for heavy trucks and equipment; it impedes the use of advanced procurement techniques as they are developed in the profession; it promotes non-objective evaluation, negotiations and multi-offers when named in the competitive proposals article; and it causes unnecessary delays and burden in administrative regulations to implement a redundant law.

Since the procurement code already promotes the evaluation of factors other than initial acquisition price in order to achieve economy and maximum value of state funds, this bill is unnecessary and damaging. Perhaps a resolution would be suitable instructing procurement officers to use life cycle costing and total cost bidding to the extent practicable in all procurements, including but not limited to procurements of heavy trucks and heavy equipment.

Sincerely,



Diane Mayer Pearson, C.P.M.

(Certified Purchasing Manager, conferred by the  
National Association of Purchasing Management, Inc.)



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: SB 245

APPROVED:

*J. Randy Luman Sr FT*

TITLE: State Purchases of Trucks/Heavy  
Equipment

DATE: April 17, 1991

The Department of Transportation and Public Facilities has the statutory responsibility for management of the Statewide Equipment Fleet (SEF). SEF is responsible for procurement of new replacement equipment for the fleet in order to provide safe, reliable, and cost-effective vehicles and heavy equipment to state agencies.

The proposed bill responds to issues that were discussed in Senate Finance Committee budget hearings relative to the need for the state to purchase better quality equipment and apply accepted industry standardization principles. Resolution of these issues requires taking factors other than initial price into account when necessary. Current equipment awards are essentially made to the low bidder with little consideration given to the overall quality or resale value of the unit. In some instances, the low bid does not equate to the best value for the state. The legislative intent and the procurement flexibility provided by the proposed bill would enhance SEF's ability to purchase heavy trucks and heavy equipment that would perform better and give lower overall cost to the state in the long run.

The department supports this legislation as being in the best interests of the state by reducing long-term cost for the acquisition of heavy trucks and equipment while providing more reliable units for use in maintenance of airports, roads, and streets.

*For Further Information contact Katy McHugh at 465-3900.*



# Alaska State Legislature

SENATOR DICK SHULTZ

P.O. Box V  
Juneau, Alaska 99801,  
(907) 465-4940  
Home: P.O. Box 487  
Tok, Alaska 99780

Member  
Finance Committee  
Transportation Committee  
Special Committee on Oil & Gas

Senate  
District J

MEMORANDUM

TO : Senate Finance Committee

FROM : Senator Dick Shultz *DS*

DATE : April 3, 1991

RE : Procurement of heavy trucks and heavy equipment.

District 17

- ALCAN BORDER
- ANDERSON
- BIG DELTA
- BOUNDARY
- CANTWELL
- CHICKEN
- CHISTOCHINA
- CLEAR
- COPPER CENTER
- DELTA JUNCTION
- DENALI PARK
- DOT LAKE
- DRY CREEK
- EAGLE
- EAGLE VILLAGE
- GAKONA
- GLENNALLEN
- GULKANA
- HEALY
- HEALY LAKE
- KENNY LAKE
- MENDELTA
- MENTASTA LAKE
- NABESNA
- NELCHINA
- NENANA
- NORTHWAY
- PAXSON
- SLANA
- TANACROSS
- TAZLINA
- TETLIN
- TOK
- TOLSONA
- TONSINA

During operating budget hearings on the State Equipment Fleet and the Highway Working Capital Fund, several issues were raised regarding current practices of procurement that result in inefficiencies and unnecessary expense to the state of Alaska.

Heavy trucks and heavy equipment represents a significant investment for the maintenance of our transportation facilities and has a major impact on safety of our roads and airports.

Having the right equipment for the particular requirement and reducing costs of operations, is not always compatible with the method of awarding the lowest bid. "Buying the cheapest does not always buy the best value" for the state. Other factors need to be considered in evaluating the most appropriate equipment.

Considerations of life-cycle cost and even routine maintenance of the equipment are complicated and expensive in relation to the distance away from urban distribution centers. The public's reliance on the maintenance of roads and airports and other public facilities particularly in rural areas depends on efficient equipment operation. Many of us have heard reports of this problem from our constituents and those who use the equipment.

District 18

- BADGER ROAD
- EIELSON/MOOSE CREEK
- NEWBY
- NORTH POLE
- PLACK
- RICHARDSON
- SALCHA

While drafting this legislation, it became apparent that agencies in addition to DOT/PF procure heavy equipment, therefore this legislation has been drafted to apply to all state purchases of heavy trucks and heavy equipment.

This draft legislation seeks to address the procurement of the types of equipment that represent a high per unit cost, and also have a significant impact on the operating budget. It is intended that this legislation will address these specific needs, clarify the states best interest, and result in greater efficiency in terms of effort, operations, and cost.

I would like to ask for your consideration of this issue and would hope that the Senate Finance Committee would consider sponsoring this bill. Please contact me if you have any questions or have staff contact Steve Soenksen in my office at 4740.

Thank you for your consideration.

Backup File

Comparative Statutes

§ 36.30.170

PUBLIC CONTRACTS

§ 36.30.170

**Collateral references.** — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 ALR4th 991.

**Sec. 36.30.170. Contract award after bids.** (a) Except as provided in (b), (c), and (d) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent and an Alaska products preference as described in AS 36.30.322 — 36.30.338 have been applied. In this subsection, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

(2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;

(3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;

(4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) — (4) of this subsection.

(c) If a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program as defined under AS 36.30.100(c), and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, the procurement officer shall award the contract to that bidder.

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) — (5) of this section and who is an Alaska domestic insurer. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987)

**Effect of amendments.** — The 1987 amendment, effective January 1, 1988, in subsection (a) inserted "(c), and (d)"; in subsection (b) substituted the first sentence for "Notwithstanding an Alaska product preference under AS 36.30.322 — 36.30.338, the procurement officer shall

award a contract based on solicited bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's"; and added subsection (d).

for public inspection until after the notice of intent to award a contract is given. To the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential. (§ 2 ch 106 SLA 1986; am § 6 ch 65 SLA 1987)

*Effect of amendments.* — The 1987 amendment, effective January 1, 1988, in subsection (a) deleted "publicly in the presence of one or more witnesses" following "open bids" in the first sentence and added the second sentence.

**Sec. 36.30.150. Bid acceptance and bid evaluation.** (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

(b) A contract based on total or life cycle costs may be awarded only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing at the time of contract solicitation that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interests of the state. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.160. Late bids; correction or withdrawal of bids; cancellation of awards.** (a) Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the contracting agency.

(b) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with regulations adopted by the commissioner. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by regulation, a decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on bid mistake, shall be supported by a written determination made by the procurement officer. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security. (§ 2 ch 106 SLA 1986)

**2 AAC 12.090. NO RESTRICTIVE SPECIFICATIONS.** All specifications must describe the requirements to be met without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a sole source, unless no other manner of description will suffice. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.040  
AS 36.30.060

**2 AAC 12.100. BRAND NAME SPECIFICATION.** A specification that limits the procurement of items to a specific manufacturer's name or catalog numbers may be used only if the procurement officer makes a written determination that only the identified brand name item or items will satisfy the state's needs. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.040  
AS 36.30.060

**2 AAC 12.110. QUALIFIED PRODUCTS LIST.** (a) A qualified products list may be developed with the approval of the chief procurement officer, or the commissioner of transportation and public facilities, if testing or examination of the supplies or construction items before issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

(b) When developing a qualified products list, a representative group of potential suppliers must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(c) Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements. Test results may be made public in a manner that protects the confidentiality of the identity of the competitors, such as using numerical designations. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential if requested in writing by the supplier.

(d) The existence of a qualified products list

does not constitute prequalification of any prospective supplier of prequalified products. (E 1/1/88, Reg. 104)

Authority: AS 36.30.0  
AS 36.30.0

### ARTICLE 3. COMPETITIVE SEALED BIDDING; MULTISTEP BIDDING

#### Section

- 120. Invitations for competitive sealed bids
- 130. Public notice
- 140. Pre-opening correction or withdrawal of bids
- 150. Receipt, opening, and recording of bid
- 160. Late bids, late corrections, and late withdrawals
- 170. Inadvertent errors discovered after opening but before award
- 180. Bid evaluation and award
- 190. Only one responsive bid received
- 200. Documentation of award
- 210. Notice of intent to award

**2 AAC 12.120. INVITATIONS FOR COMPETITIVE SEALED BIDS.** (a) An invitation bid must include the following:

(1) instructions and information to bidders concerning the bid submission requirements, the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the state, and any other special information;

(2) a purchase or project description, evaluation factors, delivery or performance schedule and the inspection and acceptance requirements that are not included in the purchase or project description;

(3) a description of all applicable contract terms and conditions, including warranty, bonding or other security requirements;

(4) a requirement for certification by bidder that it complies with the applicable provisions of 42 U.S.C. 1971, 1975, and 2000 (Federal Civil Rights Act of 1964), AS 18, and regulations adopted or promulgated under those laws by the federal government and the state, as applicable; and

## Table 3. Requirements for Sealed Bids

- (16) Is there a requirement in the state's purchasing law for sealed bids, publicly opened?
- (17) Above what dollar amount are you required to use sealed bids?
- (18) Below this dollar amount, do your small purchase procedures usually require competitive quotations?
- (19) What is the usual dollar amount below which agencies are authorized to obtain their own quotations locally?
- (20) Can state agencies obtain quotations for local purchase of items or types of items that are available under a contract issued by the central purchase office?
- (21) What are the statutory criteria for evaluating sealed bids (IFB's) and awarding contracts? Please quote from the relevant statutory provision(s) and provide a complete citation. (Printed in italics under states' names.)

TABLE 3

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Ex:
ALABAMA	Y	2,000	Y	100	N
	<i>"... award shall be made to the lowest reasonable bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purpose for which required, the terms of delivery, transportation charges, and the dates of delivery." Title 11-16-32</i>				
ALASKA	Y	5,000	Y	5,000	N
	<i>The procurement officer shall award a contract "... to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid." A.S. 36.30.170</i>				
ARIZONA	Y	10,000	Y	750	N
	<i>"The contract shall be awarded to the lowest reasonable and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids." (A.R.S. §41-2533.G.)</i>				
ARKANSAS	Y	5,000	Y	5,000	N
	<i>"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and reasonable bidder whose bid meets the requirements and criteria set forth in the invitation for bids, and all other bidders requesting to be notified of the award decision shall be promptly notified of said decision." Arkansas Statutes 1947 Annotated Sec. 14-254(H)</i>				
CALIFORNIA	Y	10,000	Y	960	N
	<i>Award to "lowest responsible bidder meeting specifications". (Public Contract Code Section 10301)</i>				
COLORADO	Y	3,000	Y	500	N
	<i>"All orders awarded or contracts made by the state purchasing director shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery." Colorado 24-103-202</i>				
CONNECTICUT	Y	7,500	Y	400	N
	<i>"All ... contracts shall be awarded to the lowest responsible qualified bidder, the quality of article to be supplied, their conformity with the specifications, their suitability to the requirements of the state government and the delivery terms being taken into consideration and, at the discretion of the commissioner of administrative services, trade-in or resale volume of the articles may be considered where it appears to be in the best interests of the state." Conn. General Statutes, Section 4-114</i>				
DELAWARE	Y	5,000	N	5,000	Y
	<i>"... shall be awarded ... by the agency or a representative delegated by the agency, in accordance with regulations prescribed by the agency, to the lowest responsible vendor unless, in the opinion of the agency or its delegated representative, the interest of the State ... shall be better served by the awarding of the contract to some other vendor, which may then be done, provided the agency shall set down in its minutes the reason or reasons for granting the contract to the person other than the lowest responsible vendor, and clearly describing how the interest of the State or the contracting county shall be better served by awarding the contract to other than the lowest vendor. In determining how the interest of the State or contracting county is better served in making an award to other than the lowest responsible vendor, the agency may take into consideration unsatisfactory performances on any previously awarded contract by the vendor being rejected." Chapter 69, ss 6907, Title 29 of the Delaware Code</i>				
FLORIDA	Y	3,000	Y	3,000	N
	<i>Laws: None. Regulations: 13A-1.02(9) - "Determination of Best Bid - It shall be the responsibility of the agency to determine the lowest responsive bidder meeting specifications and conditions of a bid invitation. In any case where an agency makes a determination to award to a bid other than the low bid meeting specifications, it shall first submit to the Division of Purchasing its complete file containing all information available to that agency, including reasons for recommending a bid other than the low bid."</i>				
GEORGIA	Y	5,000	Y	5,000 (6)	N
	<i>"... shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges and the date or dates of delivery specified in the bid." GA Laws 1937 pp. 503, 508; 1939, pp. 160, 165 (GA Code Ann. ss40-1910)</i>				
HAWAII	Y	4,000	N	(1)	N
	<i>"All contracts ... shall be made with the lowest responsible bidder..." Section 103-32, Hawaii Revised Statutes</i>				

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
IDAHO	Y	5,000	Y	500(2)	Y
	<i>"Lowest Responsible Bidder. The reasonable bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed as set out in the specifications, in determining the lowest acquisition price." ID</i>				
ILLINOIS	Y	5,000	Y	2,500	N
	<i>"That all purchases, contracts and expenditure of funds shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability..." Chapter 127, para. 1321, section 6a, Illinois Revised Statutes.</i>				
INDIANA	Y	5,000	Y	50	Y
	Sec. 1. (a) <i>"Contracts for supplies must be awarded under section 2 (competitive sealed bidding)"</i> of this chapter. (b) <i>"Contracts for services are not required to be awarded under this chapter."</i> Indiana Code 4-13.4-5-1 Sec. 2. (a) <i>"A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids."</i> Indiana Code 4-13.4-5-2				
IOWA	Y	5,000	Y	500	Y
	<i>"... Contracts for the purpose of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price." Code of Iowa, 1979 edition, Section 18.6, pp. 72-73.</i>				
KANSAS	Y	5,000	Y	2,000	N
	<i>"... shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." KSA 75-3740(a)</i>				
KENTUCKY	Y	1,000	Y	1,000	N
	<i>"The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price." Kentucky Model Procurement Code 45A.080(5)</i>				
LOUISIANA	Y	5,000	Y	(8)	N
	<i>"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation To Bid" (LRS 39:1594G)</i>				
MAINE	Y	2,500	Y	250	N
	<i>"Except as otherwise provided by law, orders awarded or contracts made shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the services, supplies and materials..." Maine R.S. 5-1816 (7)</i>				
MARYLAND	Y	10,000	Y	1,000	N
	<i>The Department shall make awards on the basis of competitive sealed bidding. "Lowest bid price or the lowest evaluated bid price, whichever is applicable."</i>				
MASSACHUSETTS	Y	500	N	500	Y
	<i>"No criteria defined or set forth."</i>				
MICHIGAN	N	9,999	Y	1,000	N
	<i>"Lowest responsive and responsible bidder meeting specifications" - Rule</i>				
MINNESOTA	Y	15,000	Y	100/1,500 (10)	N
	<i>"All contracts and purchases made by or under the supervision of the commissioner or any state department or agency for which competitive bids are required shall be awarded to the lowest-responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." Minnesota Statutes 16.08</i>				
MISSISSIPPI	Y	2,500	Y	500	N
	<i>"Awards shall be made to the lowest and/or best bid meeting all requirements of the specifications." Chapter 7, "Public Purchasing Section 31-7-13, Regulation 6 - Purchasing Division Regulation</i>				
MISSOURI	Y	2,000	Y	2,000	N
	<i>"The contract shall be let to the lowest and best bidder." Missouri Revised Statutes 1969, Section 34.040</i>				
MONTANA	Y	2,000	Y	500	N
	<i>"In awarding contracts for purchase of products, materials, supplies, or equipment such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible bidder whose offered material, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance." Montana Code Annotated, 1978, Title 18, Chapter 1, Part 1; 18-1-102</i>				
NEBRASKA	Y	5,000	Y	35	N
	<i>"(award) ... shall be made to the lowest responsible bidder, taking into consideration the best interest of the state, the quality or performance of the articles or property proposed to be supplied for which required, and the times of delivery;" Nebraska Revised Statutes 81-161</i>				
NEVADA	Y	7,500	Y	500	N
	<i>"Every contract or order shall be awarded to the lowest responsible bidder, taking into consideration: (1) The location of the using agency to be supplied; (2) The qualities of the articles to be supplied; (3) Their conformity with the specifications; (4) The purposes for which they are required; (5) The dates of delivery;" Nevada R.S. 333.340</i>				
NEW HAMPSHIRE	N	2,000*	Y(3)	100	N
	None				

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
NEW JERSEY	Y	2,500	Y	1,500	N
	"... award shall be made ... to that reasonable bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." New Jersey Statutes Annotated 52:34-12				
NEW MEXICO	Y	5,000	Y	250	N
	"Awards for all material and services are awarded based on the lowest responsible bid meeting the minimum specifications and delivery requirements."				
NEW YORK	Y	5,000	Y	5,000	N
	"Contracts ... shall be let to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the articles proposed to be supplied, their conformity with the specifications, the purposes for which required and the terms of delivery ..." N.Y.S. Finance Law, Article XI, Section 174				
NORTH CAROLINA	Y	5,000	Y	5,000	N
	"... acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the article offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use, the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factors) deemed pertinent or peculiar to the purchase in question which if controlling shall be made a matter of record." GS 143-52, pp. 2-3 Public Laws Relating to the North Carolina Purchase and Contract Division				
NORTH DAKOTA	Y	2,000*	Y	300	N
	"... purchasing contracts shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability." SB 2048 Section 5				
OHIO	Y	1,000	N	1,000	N
	"Contracts shall be awarded to the lowest and best bidder on each item and the Department of Administrative Services may accept or reject any or all bids in whole or by item." Ohio Revised Code Section 125.11				
OKLAHOMA	Y	500	N	500	N
	"Award shall be made to the lowest and best bidder ..." Oklahoma State Purchasing Act, Section 85.5				
OREGON	Y	15,000	Y	5,000	N
	"... shall award the contract to the lowest responsible bidder." ORS 279.029				
PENNSYLVANIA	Y	300	Y	5,000	N
	"... award the contracts to the lowest responsible bidder ..." The Administrative Code of 1929 of the Commonwealth of Pennsylvania, as amended, Section 2409				
RHODE ISLAND	N	*(4)	Y	100	N
	"Awards will be made to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purpose for which required and the terms of delivery." State of Rhode Island Division of Purchases, General Specification for all quotations and contracts, paragraph 25, Title: Award				
SOUTH CAROLINA	Y	2,500	Y	2,500	N
	"The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids ..." (IFB) Section 11-24-1530(7)				
SOUTH DAKOTA	Y	3,000	Y	500	N
	"In determining the successful bidder, the lowest or most advantageous price upon grade, quality, or quantity and general conditions specified, shall be the determining factors." S.D. Code 5-23-11.1				
TENNESSEE	Y	2,000	Y	1,000	N
	"Each contract shall be awarded and let by the commissioner in the name of the State of Tennessee with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid."				
TEXAS	Y	(5)	Y	1,500	(9)
	"The Commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required." Section 3.11(e), Article 601b, V.T.C.S.				
UTAH	Y	10,000	Y	1,000	N
	"The contract shall be awarded ... to the lowest responsive and responsible bidder whose bid meets the requirement and criteria set forth in the invitation For Bids." Utan 63-56-20				
VERMONT	N	10,000*	Y	200	N
	"... shall be awarded to the person whose bid or quotation is in the best interest of the state ... in his determination of the best interest of the state shall consider (1) specified quality (2) price (3) ease of access of supplies (4) incidental administrative costs (5) proven reliability of bidder." Requisition for supplies and materials (T. 29, Sec. 903)				
VIRGINIA	Y	10,000	Y	1,200	N
	"... the contract shall be let to the lowest responsible bidder, taking into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery provided however that whenever the Division has reason to believe that the low bid is not the best price, it shall have authority to enter into further negotiations with the apparent low bidder to the end that the price paid shall be the best price obtainable." Code of Virginia 2.1-42				

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
WASHINGTON	Y	5,000	Y	2,500	N
<p>"... the contract shall be let to the lowest responsible bidder... In determining 'lowest responsible bidder' in addition to price, the following elements shall be given consideration: (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required; (2) The character, integrity, reputation, judgment, experience and efficiency of the bidder; (3) Whether the bidder can perform the contract within the time specified; (4) The quality of performance of previous contracts of services; (5) The previous and existing compliance by the bidder with laws relating to the contract or services; (6) Such other information as may be secured having a bearing on the decision to award the contract." 1965 c 8 ss 43.19.1911</p>					
WEST VIRGINIA	Y	5,000	Y	5,000	N
<p>"... shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the state government and the delivery terms." W. VA Code ss 5A-3-14 (1972)</p>					
WISCONSIN	Y	10,000	Y	5,000	N
<p>"All orders awarded or contracts made by the department for all materials, supplies, equipment and contractual services, except as otherwise provided in subs. (2), (6) and (7), shall be awarded to the lowest responsible bidder, taking into consideration the location of the institution or agency, the quantities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the date of delivery; but preference shall always be given to materials, supplies, equipment and contractual services of Wisconsin producers, distributors, suppliers and retailers." Subchapter IV, Section 16.75-1</p>					
WYOMING	Y	1,500	Y	1,000	N
<p>"... award on the basis of lowest evaluated price..." WS 9-2-101b (XIV) (A)</p>					

KEY: \*Even though there is no legal requirement, by policy above this amount sealed bids are used.

- (1) Agencies are not mandated to buy them through Central Purchasing.
- (2) No bidding requirements; some agencies given authority of \$1,000, \$2,500 or \$5,000 of which certain requirements have to be met, including monthly reports.
- (3) At buyers' discretion.
- (4) All solicitations.
- (5) No specified amount.
- (6) Four major universities up to \$5,000.
- (7) Agencies listed in Question 4 have same purchase authority as state purchasing office, all other agencies and boards can go up to \$500.
- (8) Depends on Delegated Purchasing Authority which varies from \$250 - 5,000.
- (9) Unless the order is under the contract minimum order quantity, then agencies may purchase on a SPOT basis.
- (10) Two levels of local Purchase Authority.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

It is the intent of the Legislature that, to the maximum extent allowable under existing law, the State Equipment Fleet take factors other than lowest price into account when making bid awards for heavy equipment. These factors should include resale value; service as measured by warranty, parts availability, and service locations; and durability as measured by projected operating and maintenance costs. This should be done with the goal of acquiring the best value considering the price and the quality of equipment purchased.

## B R I E F I N G   P A P E R

### X-CLASS EQUIPMENT (Non-replaceable with HEWCF Funds)

#### INTRODUCTION

There are certain pieces of equipment designated as "X-Class" which are not replaceable under the authority of the Highway Equipment Working Capital Fund (HEWCF). Generally, units in this category represent equipment that has been replaced, but the old unit is in good enough condition to remain in service for awhile longer. Agencies have turned to vehicles and equipment in this category as a way to field equipment needed to cover expanding services. This works well to fill short term needs until funding can be secured to purchase the needed additional equipment. But when funding is not available, these units are kept in service on a more or less permanent basis. This leads to old, unreliable equipment kept in use which has no replacement funds set aside, and which has a higher maintenance cost.

The purpose of this briefing paper is to provide an overview of the status of the X-Class fleet.

#### 1. X-CLASS DEFINITION

A unit which has been replaced but is still in use by the agency. They pay 25% of the regular replacement fee to recover the loss of salvage or sale value. This vehicle is intended to be for a short term need or a special project only. It is not intended to be an addition to the number of vehicles an agency has.

#### 2. SIZE OF X-CLASS FLEET

Because of effort expended by SEF to accelerate the lagging replacement program, the number of units in X-Class status has declined somewhat in the last year. Currently, approximately 12% of the fleet is in X status. The numbers of units in each major equipment category is shown below.

Light Vehicles	315
Heavy Trucks & Equipment	109
Attachments	77
Other	<u>35</u>
TOTAL UNITS	536

3. POTENTIAL COST OF REPLACING X-CLASS EQUIPMENT

There is a legitimate use and place for X-Class units in a fleet, so not all units in this category would be considered as needing replacement. A rough order of magnitude (ROM) estimate to replace all units is shown below. Of this amount, only a portion of the heavy truck and equipment area would need serious consideration for actual replacement with a permanent unit. ROM costs to replace all units is shown below.

**Light Vehicles**

315 units @ \$20K avg repl cost = \$ 6.3M

**Heavy Trucks & Equip**

109 units @ \$100K avg repl cost = \$10.9M

**Attachments**

77 units @ \$ 15K avg repl cost = \$ 1.2M

**Other**

35 units @ \$ 20K avg repl cost = \$ 0.7M

Total = \$19.1M

Of this amount, probably only \$5M is really needed to address the most critical needs.

4. COST OF MAINTENANCE

SEF does not have detailed computer records to accurately analyze the additional maintenance cost for the older X-Class units. But a cursory review does reveal that it costs the state more money to keep these older units in service.

5. SUMMARY

Agencies need to identify X-Class vehicle and equipment units that are needed on a permanent basis and request funding so replacements can be made and set up in the HEWCF.

**FISCAL NOTE**

Revision Date: 05/16/91  
Title: State Purchase of Trucks/Heavy Equipment

Department Affected: DOT&PF  
BRU: Administrative Services

Sponsor: Senate Finance Committee  
Requestor:

Component: State Equipment Fleet  
Component Serial Number: 539

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	0	0	0	0	0	0

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: \_\_\_\_\_

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

No additional funding will be required to the Highway Equipment Working Capital Fund (HEWCF) as a result of this bill. Although the initial purchase cost of some equipment may be higher, the long-term cost will be lower because higher quality equipment will last longer, costs less to maintain, and has a higher resale value.

Prepared by: Robert N. Bartholomew, Director

Phone: 465-2951

Division: Administrative Services Division

Date: January 9, 1992

Approved by Commissioner: *Frank G. Turpin*  
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 9, 1992

Distribution By Preparer: Leg. Finance, Leg. Sponsor, Requestor, OMB/DBR, Gov. Leg. Office, Impacted Agency(ies).

SB 245

SENATE COMMITTEE REPORT  
(FIRST COMMITTEE OF REFERENCE)

DATE: 4/8/91

FURTHER: Finance

Date of 5-Day Notice: 4/18/91  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-2-91

Transportation Committee considered SB 245

State purchases of heavy trucks and heavy equipment.

and report it back as follows

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

*DFM*

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) DEPT-OF  
TRANS 4/17/91  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*(1) Dick Shulley*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(2) Department No Not Pass*  
*(3) Finance (no rec)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(1) [Signature]*  
Chair: Signature and Recommendation