ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

5791 HOUSE JUDICIARY

8672

6-1305Eg ✓
Bradley

AMENDMENT #14

OFFERED IN THE HOUSE BY REP. FINKELSTEIN

TO:: CSHB 327 (State Affairs)

Page 3, line 6, after "15.13.110":

Insert "and may not make any contributions to a candidate for election in a municipal election"

2/26/90

AMENDMENT #15 Page 1 of 2

OFFERED IN THE HOUSE

TO: CSHB 327 (State Affairs)

Page 4, line 2:

Delete "corporation"

Insert "business organization"

Page 4, line 6:

Delete "corporation"

Insert "business organization"

Page 4, line 7:

Delete "corporation"

Insert "business organization"

Page 4, line 8:

Delete "corporation"

Insert "business organization"

Page 4, line 14:

Delete "corporation"

Insert "business organization"

After "stockholders" insert ", shareholders, or members"

Amendment # 15 Page 2 of 2

Page 4, line 19:

Delete "corporation"

Insert "business organization"

Page 4, line 22:

Delete "corporation"

Insert "business organization"

Page 4, after line 22:

Insert a new subsection to read:

"(c) In this section, "business organization" means a profit or nonprofit corporation, a company, partnership, firm, association, business trust, or society."

6-1305Es
Bradley

AMENDMENT # 16

OFFERED IN THE HOUSE

TO: CSHB 327 (State Affairs)

Page 4, line 11, after "organization.":

Insert "A business organization and a labor organization may not contribute to a group or to a political party and its subdivisions."

3/12/90

AMENDMENT #17 Page 1 of 2

OFFERED IN THE HOUSE

TO: CSHB 327 (State Affairs)

Page 3, line 29:

Delete "a new section"

Insert "new sections"

Page 4, after line 22:

Insert a new section to read:

"Sec. 15.13.075. CAMPAIGN ACTIVITIES BY LOBBYISTS. (a) An individual who is registered as a lobbyist under AS 24.45 may contribute the lobbyist's own money goods, and services to a candidate, subject to the limits of AS 15.13.070.

(b) A lobbyist may not

(1) serve as a campaign treasurer or deputy campaign treasurer for a candidate for governor, lieutenant governor, or the legislature; or

(2) receive, collect, handle, disburse, or account for campaign contributions for a candidate for governor, lieutenant governor, or the legislature.

(c) In (b) of this section, "lobbyist"

(1) means a person who has registered under AS 24.45.041 within the last 12 months and is described under AS 24.45.171(8)(A);

(2) does not include a volunteer lobbyist described in

AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the commission."

6-1305Er
Bradley

AMENDMENT #18

OFFERED IN THE HOUSE

TO: CSHB 327 (State Affairs)

Page 6, line 16:

Delete "uses"

Insert "authorizes the use of"

6-1305Em
Bradley

AMENDMENT #19

OFFERED IN THE HOUSE

TO: CSHB 327 (State Affairs)

Page 6, after line 20:

Insert a new subsection to read:

"(f) A person or group who contributes over $250 to a candidate or contributes goods or services to a candidate with a value of more than $250 without furnishing to the commission the report required by AS 15.13.080 is subject to a civil penalty of not more than $250 if the person or group gave over $5,000 in political contributions in a previous year. The determination of the commission is subject to a right of appeal to superior court."

Reletter the following subsections accordingly.

Amendment # 20

MEMORANDUM

State of Alaska
Office of the Governor
Division of Policy

TO: David Finkelstein
Representative
Alaska State Legislature

DATE: March 8, 1990

FROM: Mary Halloran
Director, Policy

PHONE: 465-3568

SUBJECT: Proposed Amendment: HB 327

We would appreciate consideration of the attached amendment to HB 327. The amendment would limit campaign finance activities by lobbyists. In so doing, we believe it would contribute to an improved public attitude towards campaign activities.

Thank you.

cc: House Judiciary members

Litigation
Copy for the [illegible]
please
Give to Sheila re: [illegible]

Amendment # 20 Page 242

Proposed amendment to HB 327:

*Sec. X AS 15.13 is amended by adding new a section to read:

Sec. 15.13.075. CAMPAIGN ACTIVITIES BY LOBBYISTS. (a) An individual who is registered as a lobbyist under AS 24.45 may contribute the lobbyist's own money, goods, and services to a candidate, subject to the limits of AS 15.13.070.

(b) A lobbyist may not

(1) serve as a campaign treasurer or deputy campaign treasurer for a candidate for governor, lieutenant governor, or the legislature; or

(2) solicit, receive, collect, handle, disburse, or account for campaign contributions for a candidate for governor, lieutenant governor, or the legislature.

(c) In (b) of this section, "lobbyist"

(1) means a person who has registered under AS 24.45.041 within the last 12 months and is described under AS 24.45.171(8)(A);

(2) does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the commission.

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 16, 1990 FURTHER REFERRALS:

Date of Committee Action: _____ FINANCE

The JUDICIARY Committee considered: HB 327

HOUSE BILL NO. 327 CAMPAIGN CONTRIBUTIONS

"An Act relating to contributions to a campaign for public office."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title
[ ] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

_____
_____
_____
_____
_____
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_____
_____
_____
_____
_____

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

HOUSE COMMITTEE REPORT

2/16

(7)
Date Referred: May 2, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

+ Finance added 2/16

The STATE AFFAIRS Committee considered: HB 327

HOUSE BILL NO. 327 [CAMPAIGN CONTRIBUTIONS]
"An Act relating to contributions to a campaign for public office."

RECOMMENDATIONS:
[X] be replaced with CSHB327 (SA) [ ] the same title
[ ] have attached amendment(s) [X] a new title
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

FIN

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[X] fiscal impact APOC [ ] fiscal note(s) _____
[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS:

FINKELSTEIN
BOUCHER
MENARD

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
HANLEY		✓	
	✓		
MACLEAN		✓	

You are making it harder for any individual to run for office or against an incumbent

Chairman's Signature

STATE OF ALASKA

STEVE COWPER, GOVERNOR

REPLY TO:

☑ 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176

☐ Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

ALASKA PUBLIC OFFICES COMMISSION

February 22, 1990

Representative Peter Goll
Representative Max Gruenberg
Co-Chairmen, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Goll and Representative Gruenberg:

I am writing with regard to CSHB 327 (State Affairs), an act relating to election campaigns.

It is my understanding that this measure will be heard in the House Judiciary Committee on Monday, February 26, 1990. The Alaska Public Offices Commission would greatly appreciate it if the Committee would consider the following comments as it reviews this measure.

Section 1

This section exempts municipal campaigns with financial activity under $1,000 from filing campaign disclosure reports.

The commission supports this provision. Because the commission for many years has lacked the resources to monitor these small campaigns and summarize their disclosure reports, the commission as a matter of policy has exempted these campaigns from reporting requirements. This policy also has benefitted candidates with limited financial ability who have found it unduly burdensome to comply with reporting requirements. The exemption is in keeping with the reporting exemption in current law for candidates in municipalities with populations of 1,000 or less (AS 15.13.010; Attachment 1). Codification would give the commission's policy the force of law.

The commission suggests one minor technical change. By inserting the word "totalling" in lines 11 and 12, page 1, the statutory language would clarify that municipal candidates who accept contributions and make expenditures totalling less than $1,000 need not file disclosure reports.

Section 2

Paragraph (a) of section 2 addresses closure of campaign accounts. This section would prohibit post-election fundraising by state candidates after December 31 of the election year, and by local candidates 45 days after the local election.

Although the commission prefers an end to contributions as of the date of the election, the commission supports the establishment of a campaign closure date. However, there are several concerns with paragraph (a) as currently drafted.

First, it would be helpful if the statute clarified that contributions may not be accepted if they are postmarked after December 31st. Many last minute contributions do not reach campaigns until after the end of the year, so this clarification would prevent questions and complaints to the commission.

This section also provides that a candidate may not begin to accept contributions until the person files a declaration of candidacy. Under current law (AS 15.13.100; Attachment 2), a candidate cannot make campaign-related expenditures prior to filing except for personal travel, opinions surveys and polls. This means that prior to declaring, potential candidates cannot spend money to raise money, although there appears to be no ban on receiving unsolicited contributions. This provision, which would be reinforced by the proposed new language, has created practical problems for municipal campaigns.

For state candidates, a declaration of candidacy may be filed at any time, so candidates have ample opportunity to raise funds. However, municipal campaigns are restricted to a very short fundraising period, because municipal ordinances typically do not permit declaration of candidacy until a few months before the election. For example, in Anchorage and Fairbanks, candidates cannot file until August for the October election. In Bethel and in Palmer, candidates cannot file until September for an October election.

As a means of addressing this problem, the commission adopted a regulation permitting candidates to file a letter of intent. Under 2 AAC 50.380 (Attachment 2), filing a letter of intent has the effect of extending the filing date, since a candidate may then campaign as long as he or she complies with all the requirements of the campaign disclosure law. At present, two Anchorage

candidates have filed letters of intent for the 1990 elections to be held in October (Tom Fink and Bud Knox), and one assembly member, Mark Begich, has filed a letter of intent for the 1991 race.

The reference to the declaration of candidacy is problematic for another reason. It is unclear from paragraph (a) as presently worded whether filing a declaration of candidacy permits a candidate to accept contributions for a previous campaign, or whether the intent is that each campaign is separate for contribution purposes.

One way to resolve the confusion about these two concerns would be to delete the reference to declaration of candidacy, so that the section would simply provide that a candidate for local office may not accept a contribution more than 45 days after the local election.

Paragraph (b) of this section provides that an individual who accepts campaign contributions may not convert campaign funds to personal income at any time. The commission supports the concept that surplus campaign funds may not be taken as personal income.

Additionally, this section provides that campaign surpluses can be used only for five purposes: leaving the funds in a campaign account for a future election campaign, transferring the funds to an account for the candidate's office, donating the funds to a charitable organization under 26 USC 501(c), donating the funds to a general fund, or returning the funds to contributions on a pro rata basis.

Current commission regulations do not restrict the manner of disposition of surpluses (2 AAC 50.400; Attachment 4). As part of the upcoming revisions to its regulations, in the absence of legislative action the commission anticipates restricting disposition of surpluses to charitable donations or return to contributors. The pro rata return, in the view of some commission members, should be applicable only to those persons who have contributed more than $100 to the candidate.

Although the commission does not believe surpluses should be available for office accounts, if the Committee disagrees, the commission suggests that the Committee narrow the language by providing that the expenditures must qualify as business expenses under 26 USC 162.

The commission also believes that surplus funds should not be transferred to a future campaign. Under current commission regulations, unlimited funds can be transferred. In the absence of legislative action, the commission anticipates changing its regulations to limit the amount which can be transferred to $1,000. This is based on advice from the Department of Law that under current law a campaign can contribute no more than $1,000 to a future or a different campaign. The reasoning is that a campaign is a group controlled by a candidate, and that a group may contribute no more than $1,000 to a candidate.

If the Committee believes an amount in excess of $1,000 should be transferrable to a future campaign, the commission suggests the Committee clarify its intent, by specifically stating the amount which can be transferred.

Paragraph (c) provides that a candidate for state office shall close each campaign account before January 12 and report to the commission not later than February 15. The commission originally suggested extending the year-end report due date in order to give legislators more time to file these reports, and candidates more time to review their records. If the date for the report to the commission is extended until February 12, it would be preferable to change the January 12 date on line 16 of page 2 to February 12. This would mean that campaign accounts would have to be closed by February 12, with a report to the commission three days afterward, which is consistent with current practice.

Section 3

This section provides that only individuals or groups may contribute $1,000 to a candidate or to a group. The commission believes that as a result of this provision, corporations and unions which presently report as individuals would form political action committees and report as groups. As shown on the attached sheet (Attachment 5), approximately 25 businesses and unions which contribute in excess of $3,000 to candidates currently report to the commission as persons rather than groups, and could be anticipated to form political action committees.

The commission favors this result, because groups report periodically during an election cycle, rather than only after each contribution. Also, failure to file timely and properly completed reports can result in civil penalties; reporting violations by

group entities which report as persons are not subject to civil penalties under current law, and must be criminally prosecuted.

However, since many of these entities which are likely to form political action committees are major participants in Alaska politics, the change in reporting format is likely to result in additional questions and complaints to the commission, increasing the commission's current workload.

This section also provides that a group may not contribute more than $1,000 a year to a political party and its subdivisions. The commission does not favor this provision, and believes that parties should be able to receive contributions in unlimited amounts. If the Committee disagrees, the commission suggests clarifying the language to indicate that the $1,000 yearly limit is an aggregate amount, which includes political parties and subdivisions, and does not permit separate $1,000 contributions to a central committee and then to each individual subdivision.

Additionally, this section provides that a candidate may not contribute more than $1,000 to his or her own campaign. The commission is concerned that this provision raises constitutional issues.

Section 4

This section provides that public agencies at the state and local level may not use public funds to support or oppose the election of a candidate, or to urge the adoption or rejection of a ballot proposition, but that public funds may be used to provide information as long as the public entity does not advocate a particular position.

The commission is concerned that this section as written does not provide adequate guidance to public entities. For example, it would be helpful to define "public funds". As an alternative, the commission suggests the Committee consider the wording in a similar statute adopted in the State of Washington (Attachment 6).

The Executive Director of the Washington State Public Disclosure Commission indicates that the provision barring the use of public funds generates more work for his agency than almost any other provision administered by the Washington State Commission. The Alaska Public Offices Commission likewise anticipates the need

for additional resources to advise public entities about the scope of the prohibition, and to handle complaints.

Under current law, municipalities must report expenditures to influence the outcome of an election (AS 15.13.010; see Attachment 1). The language in Section 4 should clarify that a state or municipal entity which uses public funds to provide information must report these expenditures to the commission.

Finally, the prohibition on use of public funds should extend to support of or opposition to groups and political parties, as well as candidates.

Section 5

This section reiterates that corporations and labor unions may not make direct contributions. This section further provides that these entities may form separate segregated funds (political action committees), may organize "get-out-the-vote drives", or communicate with their members. It is the commission's understanding that this provision is taken directly from federal law. The commission would anticipate adopting regulations similar to those adopted by the Federal Election Commission to implement this section.

Since not all businesses are organized as corporations, the Committee may wish to include the terms "business" along with the terms "corporation and labor organization".

Section 6

Current law spells out in detail the manner in which the source of funding for a political communication must be identified (AS 15.13.090; Attachment 7)). This section would allow the Alaska Public Offices Commission to attempt through its regulations to make it as easy and inexpensive as possible for campaigns to provide meaningful information to the public about the funding source for political communications.

Section 7

This section reiterates that the year-end report to the commission would not be due until February 15. Current law provides that this report is due on December 31 (AS 15.13.110; Attachment 8). The commission has effectively extended the due

date to January 16, by providing that civil penalties will not be assessed except for reports received after January 16.

Section 8

The commission supports this section, which closes the current two-day pre-election reporting gap for large contributions.

Section 9

This section redrafts AS 15.13.125 (see Attachment 7) by breaking it down into separate paragraphs. Additionally, this section permits the commission to assess a civil penalty of not more than $250 for failure to properly identify a political communication. Under current law, each instance of failure to properly identify a communication must be handled as a complaint, with the theoretical possibility of criminal prosecution. Permitting the commission to assess a civil penalty allows the commission to resolve these matters more informally when warranted.

Paragraph (e) of this section provides that an individual who uses public funds is subject to a civil penalty not to exceed three times the misused funds. The commission suggests that the penalty be made applicable to those who authorize the expenditure of funds rather than those who use the funds, so that persons acting at the direction of others will not be the only ones subject to liability under this provision.

The commission has previously indicated to Representative Finkelstein, the bill's sponsor, that the provisions of CSHB 327 would increase staff's workload and require new resources. The commission's fiscal note (Attachment 9) indicates that the workload generated by this bill would warrant the additional of two new positions to APOC's staff (currently 9.25 full-time equivalent positions assigned to administer the three disclosure laws).

The commission hopes these comments are helpful. If Committee members have any questions about the commission's position, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Karla L. Forsythe
Executive Director

Attachments:

1. AS 15.13.010
2. AS 15.13.100
3. 2 AAC 50.380
4. 2 AAC 50.400
5. Top 25 Contributors
6. Washington Law
7. AS 15.13.125
8. AS 15.13.110
9. Fiscal Note

cc: Representative Finkelstein
Representative Ulmer
Representative Brown
Representative Koponen
Senator Pourchot
Commission Members
Nancy Gordon, Assistant Attorney General
APOC Senior Staff
Mary Halloran, OMB
Sioux Plummer, Dept. of Administration

Chapter 13. State Election Campaigns.

Collateral references. — 25 Am. Jur. 2d, Elections, §§ 4-7, 10, 280-290.

29 C.J.S., Elections, §§ 2-4, 6, 113(7), 215(1)-215(5).

Sec. 15.13.010. Applicability. (a) This chapter applies in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking electoral confirmation. It also applies to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs. A municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800(20), or a special municipality-wide election called for that purpose, vote to exempt its elected municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election. This chapter does not prohibit a municipality from regulating by ordinance campaign contributions and expenditures.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate. (§ 1 ch 76 SLA 1974; am §§ 1, 2 ch 189 SLA 1975; am § 32 ch 74 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) substituted "municipality" for "city or borough" in the second sentence, "a" for "any" preceding "regular election" and "AS 29.71.800(20)" for "AS 29.78.010(14)" in the third sentence, and "governing body" for "city council or borough assembly" and "election" for "ordinance" in the next-to-last sentence.

NOTES TO DECISIONS

Applied in Vogler v. Miller, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

Cited in State, Pub. Offices Comm'n v. Marshall, Sup. Ct. Op. No. 2408 (File No. 5614), 633 P.2d 227 (1981).

Collateral references. — Construction and application of provisions of corrupt practices act regarding contributions by corporations. 125 ALR 1029.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 84 ALR3d 944.

Sec. 15.13.080. Statement by contributor. A person or group contributing to a candidate over $250 or contributing goods or services to a candidate with a value of more than $250 to influence the election of a candidate shall furnish the commission a signed statement, on a form made available by the commission. The statement shall itemize the contributions and goods and state that the contributor is not a person or group prohibited by law from contributing and that the contribution consists of funds or property belonging to the contributor and has not been given or furnished by another person or group. The contributor's statement shall be filed with the commission by the contributor no later than 10 days after the contribution is made. A copy of the statement shall be furnished the candidate, campaign treasurer, or deputy campaign treasurer at the time the contribution is made. (§ 1 ch 76 SLA 1974; am § 29 ch 139 SLA 1975)

Sec. 15.13.090. Identification of communication. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign chairman. (§ 1 ch 76 SLA 1974; am § 22 ch 189 SLA 1975; am § 36 ch 100 SLA 1980)

Collateral references. — Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

Sec. 15.13.100. Expenditures before filing. A political campaign expenditure may not be made or incurred by a person in an election or by a person or group with the person's knowledge and on the person's behalf before the date upon which the person files for nomination for the office which the person seeks, except for personal travel expenses or for opinion surveys or polls. These expenditures must be included in

the first report required under this chapter after filing for office. (§ 1 ch 76 SLA 1974; am § 23 ch 189 SLA 1975; am § 25 ch 14 SLA 1987)

Effect of amendments. — The 1987 amendment in the first sentence substituted "A" for "No" at the beginning of the section, inserted "not" following "expenditure may," and substituted "the person's" for "his" in two places and "the person" for "he or she" and in the last sentence substituted "must" for "shall be charged against the spending limitation that applies to the office for which he subsequently files, and shall."

Sec. 15.13.110. Filing of reports. (a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) ten days after the election; and

(4) December 31 of each year for expenditures and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds $250 and which is made within one week of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) The reports of candidates shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) Within 30 days after each election, each supplier shall make a full report to the commission in accordance with AS 15.13.040. Within 60 days after each election, the commission shall prepare a summary by candidate or group of the transactions and make the summaries public.

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section. (§ 1 ch 76 SLA 1974; am § 24 ch 189 SLA 1975; am § 2 ch 133 SLA 1977)

unless it specifically and expressly advocates the election or defeat of a candidate (including himself), or the passage or defeat of a ballot issue.

(c) The commission will, in its discretion, review a communication by an incumbent elected official when a question concerning whether or not the communication is a reportable campaign expense arises. (Eff. 7/22/78, Reg. 67)

Authority: AS 15.13.010 AS 15.13.090
AS 15.13.030(10) AS 15.13.130(4)
AS 15.13.045

2 AAC 50.380. EARLY CAMPAIGNING. (a) An individual wishing to campaign for municipal elective office shall comply with AS 15.13.100 by providing written notification to the commission of his or her candidacy only if the filing period has not yet opened. An individual wishing to campaign for state elective office shall comply with AS 15.13.100 by filing a declaration of candidacy with the lieutenant governor or a letter of intent with the commission.

(b) A letter of intent filed under (a) of this section is valid only for the next election or until it is withdrawn by the individual, whichever occurs first. A letter of intent must include a statement certifying that the individual will comply with the requirements of AS 15.13 although he or she has not satisfied the filing requirements as a candidate. A letter of intent need not include the specific seat for which the individual may file. (Eff. 5/16/76, Reg. 58; am 5/14/80, Reg. 74; am 1/4/86, Reg. 97)

Authority: AS 15.13.030(10)
AS 15.13.100

2 AAC 50.385. REPORTING BY ORGANIZATIONS AND BUSINESS OR TRADE ASSOCIATIONS. Repealed 1/4/86.

2 AAC 50.390. CIVIL PENALTY ASSESSMENTS FOR THE LATE FILING OF A CAMPAIGN DISCLOSURE REPORT. (a) A report required to be filed within the time required by AS 15.13.110(a) and (b) is delinquent if not received, in accordance with 2 AAC 50.310, on or before the due date.

(b) The report continues to be delinquent and subject to a civil penalty until received.

(c) Commission staff will send notice to each candidate or group of his or its delinquency under AS 15.13.110(a) within five working days after the due date of the report.

(d) Upon receipt of a delinquent campaign disclosure report of contributions received by a candidate or a group, commission staff will

(1) calculate the initial civil penalty, for each day of delinquency, as follows:

(A) $10 a day for each 30-day report or 10-day report;

(B) $10 a day for each year-end report received after January 16;

(C) $50 a day for each 7-day report; and

(D) $50 a day up to a maximum of $300 for each 24-hour report;

(2) send notice of the civil penalty assessed against the candidate or group within five working days after receipt of a delinquent report, or in the case of non-receipt of a report required by AS 15.13.110(b), within 15 working days after receiving the information, and include

(A) a statement of the amount of the assessment; and

(B) an affidavit appeal form.

(e) A candidate or group subject to a civil penalty assessment may

(1) submit, within 30 days after receipt of the assessment notice described in (d)(2) of this section, an affidavit stating reasons for the late filing to show why a civil penalty should not be assessed; an affidavit

(A) is a statement in writing made under oath and upon penalty of perjury; and

(B) must be sworn to before a notary public, municipal clerk, court clerk, postmaster, or any other person authorized to

ATTACHMENT 3

administer oaths or, if none of the preceding alternatives is available, may be signed by the official without benefit of the oath so long as the official states, in writing, that the affidavit is signed under penalty of perjury; or

(2) pay, within 30 days after receipt of the assessment notice described in (d)(2) of this section, the civil penalty assessed.

(f) If a candidate or group subject to a civil penalty assessment for the late filing of a campaign disclosure report refuses, or fails, within the time required, to submit an affidavit or make payment, then commission staff will refer the matter to the attorney general for appropriate action. The commission will not hear an appeal if an affidavit is not filed within the time required.

(g) An affidavit timely filed with the commission will be considered at the next regular meeting of the commission. If a candidate or group's appeal is

(1) denied by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the civil penalty originally assessed be paid within 30 days after the date of the letter containing notification of the commission's decision; or

(2) accepted by the commission, commission staff will notify the candidate or group of its decision within 15 days, informing him or it that the civil penalty assessment has been waived and that the matter is considered closed; or

(3) accepted, in part, by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the reduced civil penalty assessment be paid within 30 days after the date of the letter containing notification of the commission's decision.

(h) A candidate or group may appeal the commission's decision to deny or partially accept reasons for lateness to the superior court within 30 days after his receipt of the notice under Rule 45 of the Appellate Rules of the Alaska Court System. If no appeal is made within 30 days and no payment is made, the matter will be referred to the attorney general for appropriate action.

(i) If, upon review of a report required by AS 15.13.110(a), (b), or (e), the commission's staff finds substantial or continuous noncompliance with AS 15.13 or any provision of this chapter, or with requests by staff for information required to be reported under this chapter, the matter must be brought to the commission for review. The commission will, in its discretion, reduce or waive any initial civil penalty, uphold any initial civil penalty, increase the amount of any initial civil penalty to an amount not exceeding the maximum amount established in AS 15.13.125, or instruct its staff to begin preliminary investigation into the matter. Where no initial civil penalty has been assessed, the commission will, in its discretion, assess a civil penalty up to the maximum amount established in AS 15.13.125 if the candidate or group in question does not comply. (Eff. 7/22/78, Reg. 67; am 5/14/80, Reg. 74; am 5/24/81, Reg. 78; am 10/18/81, Reg. 80; am 6/29/84, Reg. 90; am 1/4/86, Reg. 97)

Authority: AS 15.13.010
AS 15.13.030(10)
AS 15.13.125

2 AAC 50.395. REPORTING BY A BUSINESS ENTITY OR LABOR ORGANIZATION. Repealed 1/4/86.

2 AAC 50.397. REPORTING BY PERSONS OUTSIDE THE STATE. Persons residing outside the State of Alaska are subject to the same reporting requirements, restrictions, and responsibilities under AS 15.13 as those placed upon persons residing within the state. (Eff. 4/28/79, Reg. 70)

Authority: AS 15.13.030(10)

2 AAC 50.400. DISBURSEMENT OF A SURPLUS BALANCE IN A CAMPAIGN ACCOUNT. (a) The disbursement of a surplus balance of a candidate or group's campaign account must be reported to the commission within 10 days after final disposition of the balance.

(b) A candidate disbursing the surplus balance in his campaign account may

(1) give the money to charity;

(2) repay his contributors;

(3) repay himself, if he made contributions to his own campaign;

(4) take, as income, any money which exceeds the amount which he personally contributed to his campaign;

(5) leave the money in a campaign account until the next time he campaigns for elective office; however, any interest realized from a surplus in a campaign account must remain in the account and be reported on the first report required of him when he is again a candidate for elective office;

(6) contribute the money to another candidate or a group controlled by a candidate, not to exceed the $1,000 limitation, or to a political party or group supporting a ballot proposition or question; or

(7) transfer the money to his office allowance fund.

(c) A group disbursing the surplus balance in its campaign account may

(1) give the money to charity; or

(2) repay its contributors; or

(3) leave the money in a campaign account until the following election, if the group plans to remain active; however, any interest realized from a surplus in a campaign account must remain in the account and be reported on the first report required of the group when it is again active in an election; or

(4) contribute the money to a candidate or a group controlled by a candidate, subject to the $1,000 limitation and other prohibitions under AS 15.13 and 2 AAC 50, or to a political party or group supporting a ballot proposition or question.

(d) Any candidate or group wishing to disburse the surplus balance in a campaign account in a manner not described in (b) or (c) of this section may request commission review and approval of the manner in which he or it wishes to disburse the surplus. (Eff. 7/22/78, Reg. 67; am 10/18/81, Reg. 80)

Authority: AS 15.13.030(10)

2 AAC 50.401. POST-ELECTION FUND-RAISING BY CANDIDATES AND CONTROLLED GROUPS. (a) A candidate or a candidate-controlled group may make post-election expenditures for the purpose of raising money to discharge a debt from a prior campaign, in accordance with (c) of this section.

(b) Absent a debt arising from prior campaign, a candidate may not spend money for the purpose of seeking public office unless the individual is in compliance with AS 15.13.100, the early campaigning provisions of 2 AAC 50.380, or an advisory opinion issued under (c) of this section and 2 AAC 50.905.

(c) A candidate who is in debt from a prior campaign and who has not complied with either AS 15.13.100 or 2 AAC 50.380 by December 31st of the year after the election, shall request an advisory opinion under 2 AAC 50.905 concerning the applicability of AS 15.13.100 to further expenditures to pay off the debt. Absent an advisory opinion request, the commission staff may commence a preliminary investigation to review the applicability of AS 15.13.100 to expenditures by the candidate.

(d) A debt arising from a prior campaign includes

(1) a candidate's personal contributions made before the date of the prior election;

(2) campaign debts to others that were reported on a 10-day post-election campaign disclosure statement;

(3) post-election expenditures made for the purpose of discharging a debt arising from a prior campaign; and

(4) the costs reasonably associated with winding up the affairs of the prior campaign, including social events held immediately after the election for the benefit of campaign workers

WASHINGTON STATE STATUTE

USE OF PUBLIC FUNDS IN CAMPAIGNS

RCW 42.17.130 Forbids use of public office or agency facilities in campaigns. No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage machines, and equipment, use of employees or the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: Provided, That the foregoing provisions of this section shall not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

ATTACHMENT 6

Sec. 15.13.125. Civil penalty: late filing of required reports. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(1), (3), (4) or 15.13.110(d) is subject to a civil penalty of not more than $10 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.120 does not excuse that person from filing reports required by this chapter. (§ 8 ch 167 SLA 1976)

NOTES TO DECISIONS

Penalty cannot be obviously unreasonable. — The penalty cannot be so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable. The standard is one of obvious unreasonableness. Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Statement of reasons for maximum penalties. — A statement of reasons should be given by the commission when it imposes the maximum civil penalties under this section. Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Stated in State, Pub. Offices Comm'n v. Marshall, Sup. Ct. Op. No. 2408 (File No. 5614), 633 P.2d 227 (1981).

Sec. 15.13.130. Definitions. In this chapter

(1) "candidate" means a person who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices;

(2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation of the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

ATTACHMENT 7

the first report required under this chapter after filing for office. (§ 1 ch 76 SLA 1974; am § 23 ch 189 SLA 1975; am § 25 ch 14 SLA 1987)

Effect of amendments. — The 1987 amendment in the first sentence substituted "A" for "No" at the beginning of the section, inserted "not" following "expenditure may," and substituted "the person's" for "his" in two places and "the person" for "he or she" and in the last sentence substituted "must" for "shall be charged against the spending limitation that applies to the office for which he subsequently files, and shall."

Sec. 15.13.110. Filing of reports. (a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) ten days after the election; and

(4) December 31 of each year for expenditures and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds $250 and which is made within one week of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) The reports of candidates shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) Within 30 days after each election, each supplier shall make a full report to the commission in accordance with AS 15.13.040. Within 60 days after each election, the commission shall prepare a summary by candidate or group of the transactions and make the summaries public.

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section. (§ 1 ch 76 SLA 1974; am § 24 ch 189 SLA 1975; am § 2 ch 133 SLA 1977)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 327 (State Affairs)
PUBLISH DATE: 2/16/90

FISCAL NOTE

REQUEST:

Revision Date: 2/23/90
Title: An Act relating to election campaigns
Sponsor: Rep. Finkelstein
Requestor:

Agency Affected: Dept. of Administration
BRU: Alaska Public Offices Commission
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
PERSONAL SERVICES	60.2	62.1	64.0	66.0	68.0	70.1
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	5.1	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	65.3	62.1	64.0	66.0	68.0	70.1
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	65.3	62.1	64.0	66.0	68.0	70.1
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	65.3	62.1	64.0	66.0	68.0	70.1

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page)

SEE ATTACHED.

Prepared by: Karla L. Forsythe, Executive Director
Phone: 276-4176
Division: Alaska Public Offices Commission
Date: 2/23/90
Approved by Commissioner: Annie Laurie Howard, Acting Chair
Date: 2/23/90
Agency: Alaska Public Offices Commission

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ATTACHMENT 9

CSHB 327

NARRATIVE

This bill makes both major and minor changes in the Campaign Disclosure Law. Major changes include: providing a campaign contribution and account closing date; restricting uses of surpluses; prohibiting direct contributions from unions and corporations; prohibiting use of public funds for political purposes and authorizing civil penalties up to three times the amount misused for those who violate the prohibition. Minor changes include: exempting small municipal campaigns from reporting requirements; permitting the commission to establish regulatory guidelines for clear identification of the source of funds for a political communication; closing the two-day pre-election reporting gap; permitting the commission to assess a $250 maximum civil penalty for failure to identify political communications properly.

Virtually all of these changes will require some transition activity, to publicize the changes in the law and to make certain that those subject to it are adequately apprised as to how the change will impact them. Also, Commission regulations would be revised and reprinted. The commission will be required to develop major new regulations in some areas, including prohibition on use of public funds and identification of political communications. Although the commission's work on these regulations will be absorbed as part of normal commission meetings, additional staff time will be needed to work on these changes.

Commission staff currently respond to numerous interpretation questions from persons subject to the law. The commission anticipates that requests for informal and formal advice will increase significantly as a result of restrictions on disposition

of surpluses, the prohibition on direct contributions from labor unions and corporations, and the prohibition on the use of public funds.

Additionally, the commission anticipates that complaints will increase substantially as a result of prohibitions on disposition of campaign surplus, the establishment of a campaign contribution and account close-out date, and the prohibition on the use of public funds. Also, there will be a major shift in work as business and labor entities change from filing occasional reports as "persons" under the law, to filing periodic group reports.

In order to absorb this additional work, the commission would need an additional staff paraprofessional position classified as a Range II Paralegal. This position would investigate complaints, and would provide informal advice and assistance to candidates, groups and public entities with regard to ongoing questions attributable to these changes. Because the commission only has one secretary at the present time, an additional half-time Range 10 Secretary will be required to handle typing, photocopying and data entry attributable to these activities. Although the commission has one surplus computer terminal and printer, a new computer terminal with a laser printer, a desk, and moveable partitions would be needed to equip the new clerical position.

The FY 91 salary, benefits and equipment costs for these positions are set out below:

	Salary and Benefits
Paralegal II (Range 16) full-time	$44,382
Secretary I (Range 10) part-time	15,822
1 Personal Computer, Laser Printer	3,993
1 Desk/Chair	875
Moveable Partitions	200
	$65,272

CAMPAIGN FINANCE: CSHB 327 (State Affairs)

** Outline **

Major changes to current law

- With exception of the prohibition on misuse of public funds, these changes would not take effect for this election (effective date 1/1/91)

1. Establish a deadline for accepting contributions. A contribution can be accepted if it is delivered or postmarked on the day of the deadline (amendments 4 a and c)

Alternatives

Election day or shortly thereafter (Martin & APOC)		Municipal:45 days after election State: December 31 (section 2, paragraph a) APPROVED

2. Establish a campaign account closing date.

Alternatives

Before December 31 (APOC first choice)	January 12 (APOC 2nd choice)	State: February 12 Municipal:45 days after election (amendment 4g) APPROVED

3. Change date for filing report with APOC

Alternatives

December 31 (current law; APOC 1st choice)	January 15 (APOC 2nd choice)	State: February 15 Municipal: 60 days after election (section 2, paragraph c, an section 7) APPROVED

4. Establish by law what can be done with campaign surpluses

Alternatives

Can't use for personal income. Can only give to charity, return pro rata to contributors of over $100, give to general funds or to a political party (APOC, Martin)

Can't use for personal income. CAN transfer funds to a candidate's campaign (intent: entire surplus can be transferred, amendment 4bb), can transfer funds to a legislative office account for business expenses, give to charity or to general funds, return pro rata to contributors, or give to a political party (section 2, paragraph b; amendments 4e and f; amendment 5) APPROVED

5. Let business and labor organizations continue to contribute, but through forming political action committees

Alternatives

Allow contributions from individuals and parties only, not from groups, pacs, businesses or unions (Governor, APOC)

Allow contributions from individuals, parties, and "issue" pacs (groups other than those formed by business and labor organiziations) (Amendment 16)

Change to resemble federal system, which doesn't prohibit these contributions, but allows them to form pacs, to have more disclosure to public of their contribution and expenditure activity (State Affairs;section 3,paragraph a and section 5; APOC 2nd choice)

Change should include all labor and all business organizations, not just corporations (Amendment 15)

No change to law. Groups, pacs, businesses and unions can contribute (Amendment 6)

6. Limit amounts which can be given to political parties.

Alternatives

No change to current law, which allows contributions to parties in any amount (Amendment 7)

Limit contributions from groups to $1000 (State Affairs, section 3, Paragraph a)

Limit contributions from individuals to $10,000 (Amendment 11)

Limit contributions from groups and from individuals to $1000 (Martin, amendment 10); also clarify that $1000 covers contributions to both the central parties and their subdivisions

Prohibit business and labor organizations from contributing to parties (Amendment 16)

7. Limit the amount candidates can give to their own campaigns.

Alternatives

Candidates can only give $1000 to themselves (State Affairs, section 3 paragraph a)

Keep current law, which allows unlimited contributions from candidates to themselves (APOC; amendment 8)

8. Limit to $5000 the amount candidates can take from different categories of contributors (examples: no more than $5000 from all lawyers combined; no mor than $5000 from all labor organiziations combined; no more than $5000 from individual members of the State Chamber of Commerce combined). Therefore, no more contributions could be accepted from individual members of these categories once the total reached $5000. (Martin; Amendment 12).

APOC position: does not favor.

9. Rather than allowing $1000 each year, limit it to $1000 per campaign. (Martin and APOC; Amendment 13).

10. Don't let political. parties contribute to municipal candidates (Amendment 14; Finkelstein and APOC).

Current law is silent. APOC's understanding is that municipal elections ae nonpartisan by charter or by ordinance).

11. Restrict lobbyist participation in fundraising for governor, lt. governor and legislative seats. Exclude volunteer and representational lobbyists.

Alternatives

Can't serve as treasurer or deputy treasurer, and can't collect, handle, disburse, or account for campaign contributions. (Amendment 17)

All these, PLUS prohibit lobbyists from soliciting contributions (Amendment 20).

12. Effective immediately, prohibit state or municipalities from using public funds to support or oppose a candidate or ballot question, but allow use of public funds to provide information on a public issue if no particular position is advocated (State Affairs, section 4). Penalty for those who misuse funds could be up to 3 times the amount misused; APOC handles the penalty

Amendment: if this provision stays in the bill, clarify that the penalty is imposed against the person who authorized the misuse (Amendment 18).

APOC position: this is a public policy issue with many ramifications. It is separate from campaign finance, and should be discussed further, possibly in the context of a separate bill.

13. Currently, contributors who do not report contributions are not penalized. This is because the law provides only for criminal prosecution, not for civil penalties, so there is little enforcement. This is a problem in non-election years, when candidates don't file reports with APOC listing contributions until the end of the year. This means the public has no way of knowing about ongoing contribution activity (which can be occurring during a legislative session) -- unless contributors file their required reports on time.

The amendment would change the law to provide that a large contributor, who gave more than $5000 across the board in any year, could be penalized by APOC up to $250. (Amendment 19).

The commission believes this is a major issue, and members have widely differing views. APOC staff suggests making the penalty available against those who have contributed $2000 over a two-year period, and calculate the penalty based on the $10 daily accrual which is provided by current law for other reports filed late with APOC.

Minor changes to current law

1. Charter commission candidates would have to file campaign disclosure and conflict of interest reports with APOC (Amendments 1 and 2). APPROVED.

2. Effective immediately, municipal candidates who spend or accept $1000 or less would not have to file campaign disclosure reports with APOC; currently authorized by APOC policy, but should be in law (Section 1; amendment 3.) APPROVED.

3. Effective immediately, close the reporting gap on days 8 and 9 before the election (State Affairs, section 8). No amendments proposed.

Clarification issues

1. The $1000 limit on contributions to candidates is in the aggreagate; $1000 covers both the primary and general elections (Amendment 9; conforms to APOC interpretation on current law).

2. If a candidate decides to use surplus funds to repay contributors, should be surplus be divided pro rata among all contributors no matter how smal which might mean spending 25 cents to return an even smaller pro rata amount, OR should the pro rata return be limited to contributions of more than $100? (page 2, lines 13 -14).

3. The law would still require clear identification of a political ad, but the State Affairs bill, effective immediately, would leave the specifics to the commission, rather than stating the exact wording required (section 6). The bill also provides that the commission may assess a penalty up to $250 for failure to clearly identify an ad (criminal sanctions would remain for serious violations). (section 9, paragraph d).

APOC believes the following wording would be more clear:

"All advertisements, billboards, handbills, paid-for television and radio announcements, and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified as to source of payment. BY THE WORDS "PAID FOR BY" FOLLOWED BY THE NAME AND ADDRESS OF THE CANDIDATE, GROUP OR INDIVIDUAL PAYING FOR THE ADVERTISING. IN ADDITION, CANDIDATES AND GROUPS MUST IDENTIFY THE NAME OF THEIR CAMPAIGN CHAIRMAN.

The commission already has authority under AS 15.13.020 to promulgate regulations, so there is no need to restate the authority.

4. Section 7 should be conformed with references in section 2 to municipal candidates.

5. Amendments 4 b and d should be reconsidered, because the language they would have deleted would help avoid an inadvertent but major problem for municipal candidates.

2-27-90

Submitted by: Assemblymen Barnett, Begich and Wood
Prepared by: Assembly Budget Analyst
For reading: February 27, 1990

ANCHORAGE, ALASKA
AR NO. 90-61

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SEEKING ALTERNATIONS OF STATE STATUTES TO LIMIT CONTRIBUTIONS FROM POLITICAL PARTIES IN NONPARTISAN ELECTIONS

WHEREAS, the Anchorage Charter and Code provide that all persons holding elective office serve in a nonpartisan capacity; and

WHEREAS, it is fitting and proper to maintain a nonpartisan posture in all campaigns involving Municipal elections in furtherance of the clear directive of the framers of the Anchorage Charter; and

WHEREAS, Alaska Statute 15.13.070 (a) does not limit political parties and their subdivisions to the $1,000 limit placed on other groups and individuals; and

WHEREAS, most Alaskan voters have chosen not to be affiliated with either political party; and

WHEREAS, the intent of the nonpartisan election process dictated by the Charter can be seriously undercut by allowing unlimited contributions from political parties to Municipal races; and

WHEREAS, Municipal elections are nonpartisan and, it is therefore, reasonable to place a $1,000 limitation on political parties.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

That the Legislature is encouraged to amend A.S. 15.13.070 to limit the contributions from a political party and its subdivisions to $1,000 to any candidate in nonpartisan Municipal elections.

PASSED AND APPROVED by the Anchorage Assembly this 27th day of February, 1990.

Heather Hyman
Chair

ATTEST:

Barbara E. Waldhauser
Municipal Clerk

DOCB/AR14

AM 205-90
AM 266-90

HB

329

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 3, 1989 FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 329

HOUSE BILL NO. 329 [POWER OF ATTORNEY]
"An Act relating to powers of attorney."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title
[ ] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 348

PUBLISH DATE: 5/5/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: Claims by victims of crime arising from criminal conduct
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
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
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit
Phone: (907) 465-2320
Date: December 4, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue
Date: December 4, 1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

House Bill 348
Analysis
Prepared by:
Steven E. Kettel
Income and Excise Audit Division
December 4, 1989

Analysis:

Although this legislation is intended to provide direct benefit to victims (prsons) of a crime against their property, the amendment will strengthen the state's ability to collect taxes which were fraudently understate or reported.

Fiscal Impact:

We do not anticipate that this legislation will markedly increase revenue collections. It will require no additional appropriation to this division.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 329
PUBLISH DATE: May 3, 1989

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to powers of attorney."
Sponsor: Repr. Taylor
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 9, 1990

Richard L. Pegues (FOR)

Approved by Commissioner: Douglas B. Baily, Attorney General
Date: January 9, 1990
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 329

This bill amends AS 13.26 by providing that the state's current statutory power of attorney form, except where statutory form provisions relate to a durable power of attorney, does not prevent a person from using another form or other language that under common law would create a valid and binding grant of a power of attorney. Because the bill deals with transactions between private parties, there will not be a fiscal impact on the Department of Law. The department does note that there has been an increasing number of occasions where individuals have attempted by a power of attorney to "sell" permanent fund dividends. Likewise, there has been a recent increase in attempts to use a power of attorney to overcome the two-year prohibition for paying a finder's fee under the state's escheated property act. The propriety of granting a power of attorney for these purposes is, however, a matter of substance and not form.

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

December 21, 1989

Representative Peter Goll
Representative Max Gruenberg
Representative Dave Donley
3111 C Street
Anchorage, AK 99503

Re: HB 348 An Act relating to claims by victims of crime arising from criminal conduct.

Dear Representatives Goll, Gruenberg and Donley:

This bill provides that creditors may levy against exempt property of a debtor to enforce claims arising from criminal conduct of the debtor that results in a felony conviction. Although the purpose of the bill is to allow creditors of these debtors to reach exempt property, the first section of the bill grants these debtors most of the exemptions listed in AS 09.38.020 (omitting only the jewelry, pets and motor vehicle exemptions). This unduly complicates the exemption procedure for the creditors as well as the work of court clerks. Also the court system will need to change its forms and handbooks for creditors and debtors.

Section 2 of the bill requires creditors of these debtors to use the procedures of AS 09.38.075 on those items (jewelry, pets and motor vehicles) that are not made exempt by Section 1. This is inconsistent with the purpose of AS 09.38.065(c) that allows creditors simply to serve the debtor with a notice of levy stating the basis of the creditor's right to levy on exempt property without having to give the debtor notice and opportunity to apply for exemptions.

Although Section 2 of the bill requires the creditor to use the execution procedures of AS 09.38.075(a), Section 3 of the bill also requires creditors to follow the regular execution procedures.

The effect of AS 09.38.065(3) is to deny the debtor his exemption. By doing so, this section gives the creditor a relatively straightforward levy procedure to follow. However, this bill gives the debtor of criminal conduct claims most, but not all, of the statutory exemptions and makes it difficult, if not impossible, for the creditor to follow the existing levy procedures.

Sincerely,

Jan Strandberg
Staff Counsel

JS:gah

HB309

Alaska State Legislature

COMMITTEES:

MEMBER
RULES
COMMITTEE ON COMMITTEES
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE
FINANCE SUBCOMMITTEE
DEC

PO. BOX 1441
WRANGELL, ALASKA 99929
(907) 874-2316

While in Juneau
PO. BOX V
JUNEAU, ALASKA 99811
(907) 465-4905

House of Representatives

ROBIN L. TAYLOR
MINORITY LEADER

March 29, 1989

Representative Gruenberg, Co Chair
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Max,

I am enclosing a copy of Chuck Cloudy's request on amending the law on general power of attorney. Please take a look at it and give it serious consideration. I would be more than happy to co-sponser legislation that you come up with to take care of this matter.

Thank you very much for your prompt attention.

Sincerely,

Robin L. Taylor
RLT/sjw

enclosure

LAW OFFICES OF
ZIEGLER, CLOUDY, KING & PETERSON
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

C. L. CLOUDY
EDWARD G. KING
J. W. PETERSON
WILL ADDELL
THEODORE STEPHENS

(907) 225-9401
FACSIMILE
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(1918-1972 DECEASED)
A. M. ZIEGLER
RETIRED
ROBERT M. ZIEGLER SR.

March 9, 1989

Robin L. Taylor, Esq.
Post Office Box 1441
Wrangell, Alaska 99929

Re: AS 13.26.332 et seq. General Power of Attorney

Dear Robin:

As discussed with you on the telephone Friday March 3, 1989, I do not feel at all comfortable with the statutory form power of attorney.

To me, over the past 36½ years of practice, and to my clients as well (educated and otherwise), a general power is one which grants the grantee a power to do whatever the grantor could do in person. Anything less than that is a special power. Over the years, I have yet to deal with a client who did not fully understand the distinction and the difference. Insofar as the form itself is concerned, it creates more problems than it solves per my marginal notes. I am enclosing particular portions of the statute with which I have a problem. Overall, the form addressed by the statute is actually a special power rather than a general (unless 344 can be said to be a finite list of all that a grantor could do on his or her own).

My more particularized concern, however, is that the statute does not clearly save the common law as to powers generally, so that we can continue to follow the simple concepts. Aside from the statutory language set out for proof of disability for durable powers, and related third party reliance, I do not find anything in the entire statute which I would be comfortable in using.

I am not a legislative draftsman; however, per your suggestion, I am enclosing an attempt which I believe solves the problem.

Thanks for your interest in this matter.

Sincerely,

ZIEGLER, CLOUDY, KING & PETERSON

By
C. L. Cloudy

CLC:tlg

Enclosure:
Extract of AS 13.26.332 et seq.

Statutory Power not exclusive. Save for the language prescribed in Section 13.26.350(a), the medical proofs called for in AS 13.26.353, and the affidavit called for in AS 13.26.356(b), all with reference to what is commonly known as a "durable power" and related considerations, and without reservation or limitation as to all other non-durable grants of a power or powers, neither the statutory form set forth herein nor the statutory language employed herein is intended to exclude the use of any other format or any other language, the use of which under the common law would constitute a valid and binding grant of a power or powers with third party reliance protection as to the exercise by the grantee of said power or powers.

Editor's notes. — Section 2, ch. 109, SLA 1988 provides

"(a) A general power of attorney created before September 4, 1988 shall be construed to grant to the attorney-in-fact the powers set out under AS 13.26.344.

"(b) A special power of attorney created before September 4, 1988 shall be construed to grant the attorney-in-fact the powers set out in that special power of attorney.

"(c) The provisions of AS 13.26.338, 13.26.341, 13.26.347, 13.26.353(b), 13.26.353(c), and 13.26.356 apply

"(1) to a general power of attorney in effect on September 4, 1988, and

"(2) to a special power of attorney in effect on September 4, 1988.

"(d) The provisions of AS 13.26.338, 13.26.341, 13.26.347, 13.26.350, 13.26.353, and 13.26.356 apply to a durable power of attorney, whether general or specific, in effect on September 4, 1988."

Secs. 13.26.325, 13.26.330. Death or disability. [Repealed, § 3 ch 109 SLA 1988.]

Sec. 13.26.332. Statutory form power of attorney. A person who wishes to designate another as attorney-in-fact or agent by a power of attorney may execute a statutory power of attorney set out in substantially the following form:

GENERAL POWER OF ATTORNEY

THE POWERS GRANTED FROM THE PRINCIPAL TO THE AGENT OR AGENTS IN THE FOLLOWING DOCUMENT ARE VERY BROAD. THEY MAY INCLUDE THE POWER TO DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND PERSONAL PROPERTY, AND THE POWER TO MAKE YOUR HEALTH CARE DECISIONS. ACCORDINGLY, THE FOLLOWING DOCUMENT SHOULD ONLY BE USED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE.

YOU MAY REVOKE THIS POWER OF ATTORNEY AT ANY TIME.

Pursuant to AS 13.26.338 — 13.26.353, I, Name of principal, of (Address of principal), do hereby appoint (Name and address of agent or agents), my attorney(s)-in-fact to act as I have checked below in my name, place, and stead in any way which I myself could do, if I were personally present, with respect to the following matters, as each of them is

DOES THIS Legalize the otherwise UNLAWFUL practice OF LAW?

defined in AS 13.26.344, to the full extent that I am permitted by law to act through an agent.

THE AGENT OR AGENTS YOU HAVE APPOINTED WILL HAVE ALL THE POWERS LISTED BELOW UNLESS YOU

DRAW A LINE THROUGH A CATEGORY; AND INITIAL THE BOX OPPOSITE THAT CATEGORY

(A) real estate transactions	( )
(B) transactions involving tangible personal property, chattels, and goods	( )
(C) bonds, shares, and commodities transactions	( )
(D) banking transactions	( )
(E) business operating transactions	( )
(F) insurance transactions	( )
(G) estate transactions	( )
(H) gift transactions	( )
(I) claims and litigation	( )
(J) personal relationships and affairs	( )
(K) benefits from government programs and military service	( )
(L) health care services	( )
(M) records, reports, and statements	( )
(N) delegation	( )
(O) all other matters, including those specified as follows:	( )

IF YOU HAVE APPOINTED MORE THAN ONE AGENT, CHECK ONE OF THE FOLLOWING:

( ) Each agent may exercise the powers conferred separately, without the consent of any other agent.

( ) All agents shall exercise the powers conferred jointly, with the consent of all other agents.

TO INDICATE WHEN THIS DOCUMENT SHALL BECOME EFFECTIVE, CHECK ONE OF THE FOLLOWING:

( ) This document shall become effective upon the date of my signature.

( ) This document shall become effective upon the date of my disability and shall not otherwise be affected by my disability.

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE ON THE DATE OF YOUR SIGNATURE, CHECK ONE OF THE FOLLOWING:

( ) This document shall not be affected by my subsequent disability.

( ) This document shall be revoked by my subsequent disability.

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE UPON THE DATE OF YOUR SIGNATURE

AND WANT TO LIMIT THE TERM OF THIS DOCUMENT, COMPLETE THE FOLLOWING:

This docment shall only continue in effect for _____ ( ) years from the date of my signature.

NOTICE OF REVOCATION OF THE POWERS GRANTED IN THIS DOCUMENT

You may revoke one or more of the powers granted in this document. Unless otherwise provided in this document, you may revoke a specific power granted in this power of attorney by completing a special power of attorney that includes the specific power in this document that you want to revoke. Unless otherwise provided in this document, you may revoke all the powers granted in this power of attorney by completing a subsequent power of attorney.

NOTICE TO THIRD PARTIES

A third party who relies on the reasonable representations of an attorney-in-fact as to a matter relating to a power granted by a properly executed statutory power of attorney does not incur any liability to the principal or to the principal's heirs, assigns, or estate as a result of permitting the attorney-in-fact to exercise the authority granted by the power of attorney. A third party who fails to honor a properly executed statutory form power of attorney may be liable to the principal, the attorney-in-fact, the principal's heirs, assigns, or estate for a civil penalty, plus damages, costs, and fees associated with the failure to comply with the statutory form power of attorney. If the power of attorney is one which becomes effective upon the disability of the principal, the disability of the principal is established by an affidavit, as required by law.

IN WITNESS WHEREOF, I have hereunto signed my name this ___ day of _____, ___.

_____
Signature of Principal

Subscribed and sworn to or affirmed before me at _____
_____ on _____.

Signature of Officer or Notary

(§ 1 ch 109 SLA 1988)

Sec. 13.26.335. Additional optional provisions to statutory form power of attorney. Each of the following provisions may be included in a statutory form power of attorney:

(1) IF YOU HAVE GIVEN THE AGENT AUTHORITY REGARDING HEALTH CARE SERVICES UNDER SUBDIVISION (L), COMPLETE THE FOLLOWING:

( ) I have executed a separate declaration under AS 18.12, known as a "Living Will."

Ditto codicil p 333

( ) I have not executed a "Living Will."

(2) YOU MAY DESIGNATE AN ALTERNATE ATTORNEY-IN-FACT. ANY ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR ALTERNATES, COMPLETE THE FOLLOWING:

If the agent(s) named at the beginning of this document is unable or unwilling to serve or continue to serve, then I appoint the following agent to serve with the same powers:

First alternate or successor attorney-in-fact

_____(Name and address of alternate)_____

Second alternate or successor attorney-in-fact

_____(Name and address of alternate)_____

(3) YOU MAY NOMINATE A GUARDIAN OR CONSERVATOR. IF YOU WISH TO NOMINATE A GUARDIAN OR CONSERVATOR, COMPLETE THE FOLLOWING:

In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate _____(Name and address of person nominated)_____ to be considered by the court for appointment to serve as my guardian or conservator, or in a similar representative capacity. (§ 1 ch 109 SLA 1988)

Sec. 13.26.338. Completion of statutory form power of attorney. (a) In the instrument set out in AS 13.26.332 — 13.26.335, the principal must draw a line through the text of any category for which the principal does not desire to give the agent authority.

(b) Special provisions and limitations may be imposed on the statutory form power of attorney only if they conform to the requirements of AS 13.26.347. (§ 1 ch 109 SLA 1988)

Sec. 13.26.341. Applicability of provisions of statutory form power of attorney. In the instrument set out in AS 13.26.332 — 13.26.335,

(1) if the principal has appointed more than one person to act as attorney-in-fact or agent and failed to check whether the agents may act "jointly" or "severally," the agents are required to act jointly;

(2) if the principal has failed to indicate when the instrument shall become effective, the instrument shall become effective upon the date of the principal's signature;

(3) if the principal has indicated that the instrument shall become effective upon the date of the principal's signature or has failed to indicate when the instrument shall become effective and has failed to indicate the effect of the principal's subsequent disability on the instrument, the instrument shall be revoked by the subsequent disability of the principal;

mean that the principal gives the agent full and unqualified authority to delegate a power set out in AS 13.26.332 — 13.26.356 to a person whom the agent may select.

(o) In a statutory form power of attorney, the language conferring general authority with respect to all other matters shall be construed to mean that the principal authorizes the person designated in the power of attorney to act as an agent of the principal with respect to

(1) matters specifically described as other matters in the statutory form power of attorney; and

(2) any other matter that is not enumerated in or excluded by this section and that the principal can lawfully do through an agent. (§ 1 ch 109 SLA 1988)

Sec. 13.26.347. Validity of modified statutory form power of attorney. A power of attorney that satisfies the requirements of AS 13.26.332 — 13.26.344 is not prevented from being a statutory form power of attorney by the fact that it also contains additional language that

(1) eliminates from the power of attorney one or more of the powers enumerated in one or more of the subsections of AS 13.26.344 with respect to a section of the statutory form power of attorney that is not eliminated by the principal;

(2) supplements one or more of the powers enumerated in one or more of the subsections of AS 13.26.344 with respect to a section of the statutory form power of attorney that is not eliminated by the principal by specifically listing additional powers of the agent; or

(3) makes an additional provision that is not substantially inconsistent with the other provisions of the statutory form power of attorney. (§ 1 ch 109 SLA 1988)

DOES THIS MEAN only a Statutory P/A can be DURABLE?

Sec. 13.26.350. When statutory form power of attorney is not affected by disability or incompetence of principal. (a) The subsequent disability or incompetence of a principal does not revoke or terminate the authority of an attorney-in-fact who acts under a power of attorney in a writing executed by a principal if the writing contains the words "This power of attorney shall become effective upon the disability of the principal," or contain the words "This power of attorney shall not be affected by the subsequent disability of the principal," or words substantially similar showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability, incompetence, or uncertainty as to whether the principal is dead or alive.

(b) An act done by an attorney-in-fact under a power granted in a power of attorney under AS 13.26.332 — 13.26.344 during a period of disability, incompetence, or uncertainty as to whether the principal is dead or alive has the same effect and enures to the benefit of and binds

a principal and the principal's distributees, devisees, legatees, and personal representatives as if the principal were competent and not disabled. If a conservator is later appointed for the principal, during the continuance of the appointment the attorney-in-fact shall account to the conservator rather than to the principal. The conservator has the same power the principal would have if the principal were not disabled or incompetent to revoke, suspend, or terminate the power of attorney. (§ 1 ch 109 SLA 1988)

Sec. 13.26.353. Provisions applicable to statutory form power of attorney. (a) For purposes of AS 13.26.332 — 13.26.344,

(1) the disability of a principal shall be established by affidavit stating that the principal's ability to receive and evaluate information, or to communicate decisions, is impaired as a result of mental illness, mental deficiency, physical illness, physical disability, advanced age, use of drugs, chronic intoxication, or other similar medical or psychological reason, to such an extent that the principal is unable to manage the principal's property or affairs;

(2) the affidavit shall be signed by two physicians or similarly qualified medical professionals who have personally examined the principal; however, the affidavit may be signed by only one physician or similarly qualified medical professional if only one physician or similarly qualified medical professional is available and the affidavit executed by the person so states.

(b) A third party who relies on the reasonable representations of an attorney-in-fact designated under AS 13.26.332 — 13.26.344 as to a matter relating to a power granted by a properly executed statutory form power of attorney does not incur a liability to the principal or the principal's heirs, assigns, or estate as a result of permitting the attorney-in-fact to exercise the authority granted by the power of attorney.

(c) A third party shall honor the terms of a properly executed statutory form power of attorney. A third party who fails to honor a properly executed statutory form power of attorney may be liable in a civil action to the principal, the attorney-in-fact, or the principal's heirs, assigns, or estate for a civil penalty not to exceed $1,000, plus the actual damages, costs, and fees associated with the failure to comply with the statutory form power of attorney. The civil action shall be the exclusive remedy at law for damages. (§ 1 ch 109 SLA 1988)

Sec. 13.26.356. Powers of attorney not revoked until notice of death or disability. (a) The death, disability or incompetence of a principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Action so taken, unless otherwise invalid or unen-

forceable, binds the principal and the heirs, devisees, and personal representatives of the principal.

(b) An affidavit executed by the attorney-in-fact or agent stating that the attorney-in-fact or agent did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of an instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

(c) A special power of attorney created before September 4, 1988 shall be construed to grant the attorney-in-fact the powers set out in that special power of attorney. (§ 1 ch 109 SLA 1988)

Chapter 43. Uniform Simultaneous Death Act.

Editor's notes. — Section 3, ch. 1, SLA 1987 provides that this chapter does "not apply to the distribution of the property of the person who died before June 15, 1987."

Sec. 13.43.010. No sufficient evidence of survivorship. Except as otherwise provided in this chapter, when the title to property or the devolution of property depends upon priority of death and there is no sufficient evidence that the persons have died other than simultaneously, the property of each person shall be disposed of as if that person had survived. (§ 2 ch 1 SLA 1987)

Sec. 13.43.020. Survival of beneficiaries. When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that the beneficiaries died otherwise than simultaneously, the property disposed of shall be divided into as many equal portions as there are successive beneficiaries and the portions shall be distributed to those who would have taken if each designated beneficiary had survived. (§ 2 ch 1 SLA 1987)

HB

334

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 12, 1990 FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 334

HOUSE BILL NO. 334 REQUIRE PROFESSIONAL LIABILITY INSURANCE

"An Act requiring certain persons who are in a regulated occupation or profession to obtain malpractice insurance."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title [ ] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

CU

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 334(L&C) No. 1
PUBLISH DATE: HOUSE 2/12/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Requiring certain persons to obtain malpractice insurance
Sponsor: House Labor & Commerce Comm.
Requestor: House Labor & Commerce Comm.

Agency Affected: Commerce & Economic Dev.
BRU: Insurance, Occ. Licensing
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary) No fiscal impact for FY 90.

Prepared by: Linda Wild, Special Assistant
Division: Commissioner's Office
Phone: 465-2500
Date: 1/29/90

Approved by Commissioner: Larry Merculieff
Agency: Department of Commerce & Economic Development
Date: 1/29/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

LW/dg16209D/12990a

B

HOUSE COMMITTEE REPORT

2/12

(7)
Date Referred: May 4, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 2/8/90

The LABOR & COMMERCE Committee considered: HB 334

HOUSE BILL NO. 334 [REQUIRE PROFESSIONAL LIABILITY INSURANCE]
"An Act requiring certain persons who are in a regulated occupation or profession to obtain malpractice insurance."

RECOMMENDATIONS:
[X] be replaced with CSHB334 (L&C) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact _____ [ ] fiscal note(s) _____
[✓] zero fiscal note DCED/Insurance Dec. Licensing [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS:

(DONLEY) Dave Donley
(Gruenberg) [illegible]
(Finkelstein) [illegible]
(Boyer) Mark Boyer

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
(COLLINS) [illegible]	X		
(LEMAN) Drew D. Leman	X		
[illegible]			

Dave Donley
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 334(L&C) No. 1
PUBLISH DATE: HOUSE 2/12/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Requiring certain persons to obtain malpractice insurance
Sponsor: House Labor & Commerce Comm.
Requestor: House Labor & Commerce Comm.

Agency Affected: Commerce & Economic Dev.
BRU: Insurance, Occ. Licensing
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary) No fiscal impact for FY 90.

Prepared by: Linda Wild, Special Assistant
Division: Commissioner's Office
Phone: 465-2500
Date: 1/29/90

Approved by Commissioner: Larry Merculieff (Jim Bill for)
Agency: Department of Commerce & Economic Development
Date: 1/29/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

LW/dg16209D/12990a

Judiciary

MICA Medical Indemnity Corporation of Alaska

ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503
(907) 563-3414

February 13, 1990

Representative Dave Donley, Chairman
Labor and Commerce Committee
House of Representatives
State of Alaska
PO Box V
Juneau, Alaska 99811

Dear Chairman Donley:

I testified in front of the House Labor and Commerce Committee and was requested to submit my comments in writing. Please share this written testimony with the other committee members.

Chairman Donley and Committee members, I am Mary Pierce, Executive Director of MICA.

* CSHB334 - Requiring insurance of outstanding judgement.

We wanted to make a few brief informational comments on this bill. We, like all insurance companies, have underwriting requirements to write physicians. We do gather previous claims experience and our Underwriting Manager and the Underwriting Committee may not cover an applicant based upon that experience. In other words, we do not offer insurance coverage to all applicants. If this bill is passed we wanted the committee to know that physicians with an outstanding judgement may not be able to procure coverage and therefore not able to practice.

* CSHB336 - Medical Malpractice Advisory Panels.

We feel strongly that if current Medical Malpractice Advisory panels are to work they need to be comprised of experts, more importantly specialists who can understand the technical medical procedures and make assessments that offer the judge and both parties accurate medical conclusions.

We fight now to obtain the appropriate physicians specialist on a panel. It does no good whatsoever to have a family practitioner on a panel where we have technical complications involving an orthopedic procedure. We feel that adding lay people to this panel would not make it any better. In fact, the time the panel would need to review a case would increase as the physicians would have to educate the lay people.

We ask you to not further dilute the credibility of the panel but in fact maintain it as an "expert" advisory panel membered with medical experts. We suggest that lay people have a place in the system and that is on the jury. If you must put a lay person on the panel to make sure the doctors play straight then please make them non-voting members on these highly technical issues.

Medical Indemnity Corporation of Alaska

* CSHB337 - Mandatory insurance requirements for hospitals.

Our comments here are similar to HB334. We do have underwriting requirements for hospitals. We are concerned since we are the only company offering coverage in the state to the rural hospitals that we may not chose to underwrite a hospital. We want the committee to understand that we are unwilling to compromise our standards because the strength and stability of those standards allow us to continue in business. We are not interested in becoming a substandard market or acquiring risks that may lead to our insolvency. It is our commitment to be here to write malpractice for the majority.

HB349 - Money from Medical Malpractice Revolving Loan Fund.

This fund was established to fund the operations of MICA. We have borrowed from it twice and have an outstanding balance of $2,402,286 on the first note and $800,000 on the second note. This fund has been important to us both in our original capitalization and also as surplus. This surplus is critical when being reviewed by reinsurers because it helps add stability to our small company. Needless to say, we are concerned about any depletion to the fund.

HB350 - Matching Fund.

We are certainly supportive of the concept of a matching fund. We do have some questions regarding this in legislation.

First of all, I believe I understand the intent of the formula but for the life of me, I can't get it to work. Perhaps someone can explain it to me.

We are also curious as to a definition of the term "rural" as it applies to the bill.

Finally, we have some concerns if we are to administer this fund.

1) The first is a potential restraint of trade problem that might occur by a physician with another carrier being denied access to the fund. It is at the very least a potential conflict of interest.

2) Secondly, if we do administer it we are concerned with the increase in administrative costs to us. Our question is therefore one of developing a budget and receiving compensation to administer the fund.

Again, we don't disagree in concept to the idea of a matching fund but do have questions regarding the mechanics.

Thank you for your time. I will be happy to answer any questions.

Sincerely,

Mary A. Pierce

Mary A. Pierce
Executive Director

HB

335

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 4, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/1/90

The LABOR & COMMERCE Committee considered: HB 335

HOUSE BILL NO. 335 [AMEND COURT RULE 68:COSTS/ ATTORNEY FEES]
"An Act amending Rule 68 of the Alaska Rules of Civil Procedure relating to the award of costs and attorney fees and to the payment of prejudgment interest."

RECOMMENDATIONS:
[✓] be replaced with CS HB 335 (L+C) [✓] the same title [ ] a new title
[ ] have attached amendment(s)
[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

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

[ ] fiscal impact _____ [ ] fiscal note(s) _____
[Ø] zero fiscal note AK Court System [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS:

Finkelstein
Conley
Rosenberg
Bogle

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
		X	
Leman		X	
Collins	X		

Chairman's Signature
Conley

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: HB 335
Publish Date: 5/4/89

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act amending Rule 68
BRU: Trial Courts

Sponsor: Labor & Commerce
Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 02/26/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 02/26/90
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 19, 1990 FURTHER REFERRALS:

Date of Committee Action: 4/24/90

The JUDICIARY Committee considered: HB 335

HOUSE BILL NO. 335 AMEND COURT RULE 68:COSTS/ ATTORNEY FEES

"An Act amending Rule 68 of the Alaska Rules of Civil Procedure relating to the award of costs and attorney fees and to the payment of prejudgment interest."

RECOMMENDATIONS:
[X] be replaced with CSHB 335(JUD) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[X] zero fiscal note(s) Court System 3/19/90
[ ] zero fn/analysis _____

SIGNING DO PASS:

Chip Davidson DAVIDSON
M. Gruenberg Gruenberg
Jay Ellis Ellis

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Peter Goll Goll		X	
Terry Martin MARTIN		✓	
Allen Davis DAVIS			

M. Gruenberg / Peter Goll
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 335
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act amending Rule 68... relating to the award of costs and attorney fees..."
Sponsor: House Labor and Commerce
Requestor: House Labor and Commerce

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: February 27, 1990

Richard L. Pegues /FOR/

Approved by Commissioner: Douglas B. Baily, Attorney General
Date: February 27, 1990
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 335

This bill repeals and reenacts Rule 68(b) of the Alaska Rules of Civil Procedure in a way that increases the likelihood that a party who unreasonably offers, or unreasonably refuses an offer, for the settlement of a claim, will have to pay the other side's reasonable, actual costs and attorney's fees. Currently, costs and fees are determined on the basis of a portion of the reasonable fees, usually about 50 percent of actual costs, or on the basis of the sliding scale percentage of the value of a claim as provided by Rule 82. It appears that the bill is intended to serve as an incentive for the reasonable, timely settlement of claims and as a disincentive for prolonged and costly litigation. In this respect, the bill would increase the penalty for unreasonably rejecting a settlement offer, and it would increase the penalty for making an unreasonable settlement offer.

The settlement process, in lieu of continued litigation, may often be somewhat more complicated than is generally understood. This process may involve substantial bargaining on both sides, with several offers and counter-offers made by each of the parties over a long period of time. Although some claims are clear-out, making them amenable to the process proposed by this legislation, in the majority of cases the issues and facts usually present varying degrees of weakness and strength for all the parties to a claim requiring a flexible settlement process. Consequently, the bill's attempt to quantify, or simplify an oftentimes complex process may not provide the intended incentive to settle a claim.

It has been the department's experience that only about one in fifty personal injury claims made against the state ever reaches trial. Of this number, about thirty claims are unmeritorious and are either dropped or settled for small sums due to their nuisance value. Of the remaining twenty meritorious claims, one will probably proceed to trial and perhaps nineteen will be settled without going to trial. Viewed in this light, a change in the current process is probably not necessary, at least insofar as the state is a claims' litigant.

To the extent that the state as a defendant may run afoul of the limitations contained in the bill, the cost might be as high as $50,000 per year. These costs are not reflected in this fiscal note because the cost of personal injury claims is borne by the Division of Risk Management. To the extent that the plaintiffs against the state run afoul of the proposed limitations, the state will probably not receive much additional benefit because such plaintiffs often do not have the ability to pay.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSHB 335(L&C) No. 1
Publish Date: HOUSE 3/19/90

FISCAL NOTE

cc

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act amending Rule 68
BRU: Trial Courts

Sponsor: Labor & Commerce
Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 02/26/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 02/26/90
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

Department of Commerce & Economic Development / POSITION PAPER

CSSSSB 335 (Fin): "An Act relating to health maintenance organizations; and providing for an effective date."

The department is in favor of this legislation. HMO's provide or arrange for basic health care services to persons on a prepaid basis. This form of organization combines some of the functions of an insurer with those of traditional health care providers. In this way, the providers of medical care share in the financial risk of health care and, therefore, have an incentive to reduce health care costs and to promote preventative medicine. This kind of organization is not possible under our present statutes. This proposal will provide a framework for the establishment of these hybrid organizations. It is based on a National Association of Insurance Commissioners model statute.

The attached commentary will provide an analysis of CSSSSB 335 (Fin).

Linda Wild for
Larry Merculieff, Commissioner

Date: 4-9-90

LM/DK/dgl6381D
040990c

Introductory Comment:

The rising cost of health services in recent years has led government agencies, private organizations, and legislative bodies to seek alternatives to the traditional medical delivery system which will provide improved health care at a lower cost. The health maintenance organization is a concept which has received such attention as one means through which an improvement in delivery might be achieved.

Shortcomings of Existing Health Care Delivery System

The health care delivery system as it is now constituted presents several problems. First, many people are unable to obtain health care when they need it and in the form they need it. This problem can be divided into three subareas:

1. In many areas of the country, the availability of health care in terms of the quantity of manpower and facilities is inadequate.

2. Even where physicians, nurses, clinics, and hospitals do exist, they may lack accessibility due to poor location, poor management, lack of transportation, language or racial barriers, inconvenient hours, etc.

3. Even if health care is available and accessible, it may not be continuous: that is, a single patient may not be treated as a person with a continuing or a variety of problems but rather as a single isolated health care problem incident. The problems of viability, accessibility, and continuity, at least in part, have been attributed to the lack of responsibility vested in one person, group, or organization to assure the delivery of health care.

A second problem is the escalating cost of health care services. This stems from the limited supply of health care service facilities which is confronted by an expanded and fragmented financing mechanism and the consequent tremendous increase of demand for such services. This is the classic model for inflation. Traditional reimbursement of providers by the federal government, insurance plans, and hospital and medical service corporations, because of the inherent difficulties involved, has been accompanied by uneven efforts toward ineffective cost review or control. Furthermore, services or facilities are often duplicated or used inefficiently. A basic cause of inflation and inefficiency rests with the improper structuring of incentives. Where no individual group, or organization is responsible for the use of more economical services and facilities, including those relating to preventive care, greater income is generated for providers by the more frequent use of services and facilities and by the use of the more expensive facilities and services available.

A third problem is the quality of health care delivered. Throughout various parts of the country, the quality of health care can range from the very best to the very poor. Generally speaking, there is no locus for quality assessments either as to health care processes or health care results. In the absence of a means to measure quality, it is virtually impossible to design and implement effective programs to rectify defects.

This brief discussion in no way attempts to provide a comprehensive discussion of the problems of the health care delivery system in the United States nor does it give adequate recognition to the strenuous efforts of many to improve the existing system. However, it does highlight some of the major problems prevailing today. Development of the health maintenance organization (HMO) concept offers one alternative means to help alleviate some of these problems.

Nature of the Health Maintenance Organizations:

A health maintenance organization may be described as an organization which brings together a comprehensive range of medical services in a single organization to assure a patient of convenient access to health care services. It furnishes needed services for a prepaid fixed fee paid by or on behalf of the enrollees. An HMO can be organized, operated and financed in a variety of ways. For example, an HMO may be organized by physicians, hospitals, community groups, labor unions, government units, insurance companies, etc. Generally speaking, an HMO delivery system is predicated on three principles:

1. It is an organized system for the delivery of health care which brings together health care providers.

2. Such an arrangement makes available basic health care which the enrolled group might reasonably require, including emphasis on the prevention of illness or disability.

3. The payments will be made on a prepayment basis, whether by the individual enrollees, medicare, medicaid, or through employer-employee arrangements.

An HMO can directly address itself to the problems of availability, accessibility, and continuity since it is a health care delivery system. It assumes responsibility for actually furnishing to its enrollees those health care services necessary to meet the obligations it undertakes. Thus, the HMO occupies a position through which both the accessibility and continuity of care may be affected.

An HMO, by its very nature, may provide incentives toward lessening costs in delivering health care. It has a limited membership prepaying fixed sums of money. The providers are obligated to deliver a specified set of health care services. The fixed amount of income provides incentive to control expenses and costs. The HMO provides a mechanism to analyze costs, expenses and utilization of services, and affords a means to implement measures to enhance efficiency.

The problem of the quality of health care is not susceptible to an easy solution. An HMO is in a position to assess the quality of care provided since it is a closed system. It can study the health of its members, review the records of treatment, and, in general, provide a monitoring mechanism.

A variation of the HMO concept is seen in some medical care foundations. Although individual foundations differ greatly in detail, a foundation for medical care is usually sponsored and organized by a county or state medical society. The membership consists of physicians who apply to and are accepted by the foundation.

Those medical care foundations which can be considered as a variant of the HMO concept often contract with an insurer or other prepayment plan (e.g., hospital or medical service corporations) to provide coverage meeting certain minimum criteria consistent with the delivery of quality medical care. The insurer collects the premiums, promotes, markets, and underwrites the program. The enrollee may seek physician services from any member of the foundation who then bills either the insurer or the foundation, not the enrollee. Although such billings are on a fee-for-service basis, the amount charged the enrollee is fixed and prepaid without regard to the number or type of services used. The foundation establishes some form of peer review to monitor not only the level of charges but also the type and quality of care rendered. Since the amount of income does not vary with the number or type of services provided, incentives exist to maintain costs at as low a level as possible. However, unlike the HMO concept described above, even though physician services are prepaid from the patients' viewpoint, from the physicians' viewpoint, the fee-for-service practice is maintained. under the federal HMO Act, this type of organization is called an Individual Practice Association Type HMO.

The Need for State Authorizing and Regulatory Legislation

From 1970 to 1973, the administration and committees in both houses of Congress spent much time analyzing the health maintenance organization alternative in connection with national health insurance and federal assistance bills for HMO's. This analysis resulted in the enactment of the federal HMO Act in 1973. Since then, the number of health maintenance organizations and the number of HMO enrollees has grown rapidly. Prior to 1972, however, few states had a statutory framework tailored to the supervision of health maintenance organizations. Chartering, licensing, contract and rate regulation and other supervision was being carried out under general insurance laws, hospital and medical service corporation statutes, other special statutes, or not at all. Because the HMO is a unique type of organization, many provisions of such state laws were inapplicable, highly restrictive or prohibitive to the formation and operation of an HMO. Therefore, in 1972, the National Association of Insurance Commissioners (NAIC) adopted the Model Health Maintenance Organization Act which accommodates the unique features of HMO's. CSSSSB 335 (Fin) substantially tracks that model act.

Purpose of CSSSSB 335 (Fin)

CSSSSB 335 (Fin) clearly authorizes the establishment and operation of HMO's. Restrictive provisions in other laws which are inappropriate to HMO's are rendered inapplicable. Appropriate grants of authority are established to enable the HMO's to fulfill the function envisioned for them. At the same time, however, the public has a vital interest in the fiscally sound, efficient, and ethical operation of HMO's. As is the case with insurance and hospital and medical service corporations, HMO's are "affected with the public interest." Thus, the purpose of this bill is twofold.

First, it attempts to provide a legal framework enabling the organization and functioning of HMO's of a wide variety, including those based upon the medical care foundation or individual practice association concept. The legal environment is designed to permit a high degree of flexibility. No one form of organization or one type of modus operandi is required. Instead the HMO concept can be refined and subjected to further experimentation. Second, the bill attempts to provide a regulatory monitoring system not only to prevent or remedy abuse, but also to assist in the future improvement and development of this alternative form of a health care delivery system.

Since the model bill on which CSSSSB 335 (Fin) was approved, the federal HMO Act has been enacted and amended four times. The model, or substantial portions of it, has been enacted in 27 states and substantial experience has been gained in implementing and regulating HMO's under its terms. In addition, a few HMO's have become insolvent and commissioner have had to deal with the results of those insolvencies. Therefore, the model act has been revised to reflect changes which have occurred in the federal law, to reflect experience gained in administering the law and to clarify and strengthen the provisions relating to HMO agency.

AS 21.86.010

This section requires the licensing of an HMO in order to provide health care services on a prepaid basis. The legal entity, in which the responsibilities imposed by this Act are vested, serves as a focus of regulatory attention to assure that the consuming public is well served.

AS 21.86.020

A health maintenance organization combines several characteristics of an insurance operation (including the need for financial responsibility, the assumption of risk and similarity in marketing activities) with the characteristics of a health care delivery system. This section provides for the authorization and regulation of health maintenance organizations to be carried out through existing state agencies. The creation of a new agency specifically for health maintenance organizations would unnecessarily duplicate existing functions in the Insurance Division and the Department of Health and Social Services. It is felt that the expertise of the Alaska Insurance Division on fiscal and other regulatory matters and the familiarity of the Alaska Department of Health and Social Services with regard to health matters should both be utilized in the regulation of health maintenance organizations. To minimize administrative problems, the prime responsibility for administration is vested in one agency - the Insurance Division. However, to the extent possible, the responsibilities of the two agencies are clearly defined with the Insurance Division obligated to rely on the Department of Health and Social Services with respect to the latter's sphere of expertise.

Subsection (b)(2) makes explicit the requirement that an HMO must provide a minimum package of services on a prepaid basis. Reasonable co-payments, however, are permitted and do not violate the requirement for prepayment. Such co-payments may be used to (a) reduce the amount of prepayments; and (b) minimize frivolous utilization of services. In addition, an HMO may have more than one benefit package involving different levels of co-payments.

Under subsection (b)(3), to grant a certificate of authority, the director should be satisfied that the health maintenance organization will have the financial resources to provide the health care services for which it is obligated to its enrollees. However, it is recognized that requiring an HMO to have more than a minimum capitalization as set forth in AS 21.86.140(h) might prevent the organization or implementation of an otherwise viable HMO. Furthermore, with various possible insurance and surety arrangements available to back up the HMO's promise of performance, reserve requirements such as those found in the insurance laws are not deemed necessary.

AS 21.86.030

The exercise of authority granted in this section is subject to disapproval by the director within 30 days of a filing by a health maintenance organization. The director may promulgate rules and regulations exempting certain contracts from the filing requirement where exercise of the authority granted in the section would have little or no effect on the financial condition and ability to meet obligations of the organization.

AS 21.86.040

This section makes explicit the permissible membership of such a group. CSSSSB 335 (Fin) does not, however, require that a health maintenance organization be consumer controlled. It is expected that HMO's controlled in a variety of ways will be organized. Where organizations are not consumer controlled, it is believed that some means for enrollee participation should be provided. For example, such matters as availability, accessibility and continuity of health care services are factors which directly confront the consumers and in which they have a particular interest. The disclosure of information under other sections is also designed to assist the consumers.

Arguments against a role for the consumer include: (1) such participation is unnecessary and perhaps even harmful to the efficient and professional delivery of health care services; (2) a consumer role will impede the initiation of an HMO since more people must be involved; and (3) consumers can always seek alternative health care. The arguments for a consumer role seem more persuasive. These include: (1) consumer participation results in a more responsive organization; and (2) consumer participation is not the same as lay control over the rendering of professional service.

AS 21.86.050

This section provides a level of fidelity protection for the consumer by requiring a bond.

AS 21.86.060

This section requires that services be provided through appropriately licensed persons. It allows the HMO to provide services directly or through other arrangements.

AS 21.86.070

Subsection (a) requires that every enrollee be provided with evidence of coverage and allocates the responsibility for providing that evidence.

Subsection (b) and (e) requires that evidences of coverage and forms are subject to filing with and approval by the director.

Subsection (c) establishes requirements which evidence of coverage must meet.

Subsection (d) provides that filing is required under subsection (b) unless the form is already subject to filing requirements under existing filing statutes.

Subsection (f) provides for the filing of charges for health care services, i.e., that part of the benefit package which is provided in the form of service vis-a-vis indemnity or service benefits. Those parts of the package providing benefits under agreement with an insurance company or hospital or medical service corporation will be subject to regulation in accordance with existing laws.

Paragraph (f) neither requires nor prohibits community rating. Reasonable underwriting classifications are permitted for the purpose of establishing the charges. Different charges may be imposed on different groups of enrollees. Such a rigid requirement as community rating would appear to be inappropriate when the competing financing mechanisms are not subject to such a constraint. The competitive disadvantage which such requirement might impose could impeded the development of HMO's.

Because of its somewhat different nature, an HMO is not required by this Act to meet reserve requirements similar to those imposed on insurance companies. Thus, it is important that the charges be set at an adequate level. The requirement for certification by an actuary or other qualified person, along with supporting information, is intended to assist the director in determining adequacy. In applying the standard of excessive, inadequate, or unfairly discriminatory, it is contemplated that the director may consider the amount necessary to assure a reasonable return on the initial and subsequent capital invested and an amount needed to accumulate adequate funds to stabilize the level of charges against fluctuation due to inflation, changes in medical technology and related causes.

AS 21.86.080

This section provides the director with the authority to require reports considered necessary to carry out his duties. The reports could include:

- a financial statement of the organization;
- any material changes in the information submitted pursuant to AS 21.86.010(b)(3);
- the number of persons enrolled at the beginning and end of the year; and
- the amount of uncovered and covered expenditures that are payable and more than 90 days past due.,

In establishing filing requirements, the director will be cognizant of the fact that HMO's that are qualified under the federal HMO Act must submit detailed reports to the Department of Health and Human Services. The director will make use of such reports when they are relevant and avoid the imposition of duplicate reporting requirements.

AS 21.86.090

This section requires the HMO to provide notice to enrollees of changes in operation affecting them.

AS 21.86.100

Every health maintenance organization is required to establish a complaint system to provide reasonable procedures for the disposition of complaints. The organizations may be expected to receive two types of complaints. One type is related to the basic health care services or additional services furnished by it. The other type is related to that portion of the coverage in addition to basic health care services which is provided by insurance, hospital or medical service corporations, or some means other than being furnished by the organization. For complaints arising from health care services, the administrative procedure to handle complaints should provide the mechanism through which enrollees receive a fair and proper opportunity to have their cases heard, including the use of binding arbitration as a means of resolving claims concerning coverage. For complaints regarding benefits over which the health maintenance organization has no direct control such as those portions of the benefit package which are covered by insurance, the health maintenance organization is responsible only for maintaining statistical information and transmitting the complaints to the persons responsible.

AS 21.86.110

This section avoids duplication of benefits.

AS 21.86.120

This section provides a ten-day free look.

AS 21.86.130

Life and health insurers are subject to statutory investment requirements designed to assure conservatism and liquidity in the handling of the insurer's funds. Sound financial management is an important element in the variable operation of an HMO. Furthermore, it is contrary to the intent of this bill to foster conditions which would enable an HMO to be used as a "front" for a speculative investment operation. At the same time, however, it is recognized that for an HMO to fulfill its expected functions, it may be both desirable and necessary for the HMO to invest a portion of its capital funds in facilities and services to better enable it to meet its obligations. Such investments may not conform to the traditional insurance law investment limitations. Consequently, this section excepts this type of investment when approved by the director in accordance with the standards set out in AS 21.86.030(b).

AS 21.86.140

Even though very serious problems can arise if a health maintenance organization defaults on its contracts, fiscal control of health maintenance organizations in a manner comparable to that applied to insurance companies appears inappropriate in view of the service nature of such organizations. The best protection for enrollees is a financially sound organization that generates net income. However, beginning health maintenance organizations are often small businesses with limited financial resources that will sustain operating losses in their early years. Unreasonably high starting capital or reserve requirements may prevent some organization from starting or may unreasonably tie up the capital of those that do. Therefore, this section provides for a structured but flexible approach to protecting against insolvency. It requires the maintenance of a minimum capital account, a deposit of cash or securities in a minimum account, and the organization's generation of additional amounts annually as a source of funds to meet its contractual obligations to the enrollees in the event of insolvency. The director may waive all or part of these requirements when satisfied that the organization has sufficient net worth or an adequate history of generating net income to assure its viability. The requirements may also be waived if the health maintenance organization's performance is guaranteed by another financially strong organization.

The section relates the deposit requirements to the amount of the health maintenance organization's uncovered expenditures. This amount will vary depending upon the type of organization and the nature of its arrangements with providers. For example, the physicians of the staff of the organization or a contracting medical group of individual practice association may agree to look only to the organization for payment of services provided to the organization's enrollees and agree not to bill them in the event of insolvency. An organization could have insurance for all or part of its hospitalization expense or another organization could agree to guarantee that the liabilities of the health maintenance organization are met.

In all such cases, it is recommended that the contractual provision require the provider or guarantor to notify the director if the provision or insurance is modified or no longer in effect or if payment on the contract or policy has not been made in a reasonable period of time. This can provide an early warning of possible adverse changes in the health maintenance organization's financial position. In addition, the status of such provisions or policies should be covered in annual interrogatories to the organization.

In (b), the Finance Committee has increased the deposit amount required of a new HMO from 5% of its estimated expenditures for health care services and not less than $100,000 to 10% of its estimated expenditures for health care services and not less than $250,000. This strengthens the solvency protection for consumers substantially, particularly during its first year of operation.

AS 21.86.150

Subsection (a) requires licensing.

Subsection (b) addresses false or defective advertising and solicitation.

Subsection (c) applies the insurance Unfair Trade Practices Act to the degree applicable.

Subsection (d) is designed to foster continuance of coverage to the extent possible.

Subsection (e) addresses potential deception through name utilized.

Subsection (f) requires a certificate of authority to use the phrase "Health Maintenance Organization" or "HMO."

AS 21.86.160

Provides for regulation of assets.

AS 21.86.170

This section overrides the group laws to permit an insurer or a hospital or medical service corporation to provide coverage protecting enrollees of an HMO. This authority is intended to permit insurers and the service corporations to write coverage (1) to fill the gaps which the providers of health care services do not provide, (2) to provide coverage in excess of the services provided, (3) to cover catastrophe situations, (4) to provide protection to the enrollees in the event the HMO becomes insolvent, and (5) to provide coverage against the cost of health care services as the health maintenance organization deems necessary.

AS 21.86.180

The director is provided authority to examine health maintenance organizations as is reasonably necessary. However, any determination related to the quality of health care services is the exclusive responsibility of the commissioner of health and social services.

AS 21.86.190 - .200

These sections list the reasons for suspension or revocation of the HMO's certificate of authority. They also set forth a process for such action.

AS 21.86.210

This section provides for the rehabilitation, liquidation, or conservation of health maintenance organizations to be carried out by the director under the statute applicable to insurance companies.

AS 21.86.220

This section provides authority to adopt regulations.