

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8619 HOUSE JUDICIARY

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(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(5) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose to influence the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by

1 a candidate; however, a group that contributes more than 50 percent of its money  
 2 to or on behalf of one candidate shall be considered to support only one  
 3 candidate for purposes of AS 15.13.070, whether or not control of the group has  
 4 been disclaimed by the candidate;

5 (6) "immediate family" means the spouse, parents, children, including a  
 6 stepchild and an adoptive child, and siblings of an individual;

7 (7) "independent expenditure" means an expenditure that is made without  
 8 the direct or indirect consultation or cooperation with, or at the suggestion or the request  
 9 of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy  
 10 campaign treasurer, or another person acting as a principal or agent of the candidate;

11 (8) "individual" means a natural person;

12 (9) "person" has the meaning given in AS 01.10.060, and includes a labor  
 13 union and a political group;

14 (10) "political party" means

15 (A) an organized group of voters that represents a political  
 16 program and that nominated a candidate for governor who received at least  
 17 three percent of the total votes cast at any one of the last five preceding general  
 18 elections for governor; and

19 (B) a subordinate unit of the organized group of voters  
 20 qualifying as a political party under (A) of this paragraph if, consistent with the  
 21 rules or bylaws of the political party, the unit conducts or supports campaign  
 22 operations in a municipality, neighborhood, election district, or precinct;

23 (11) "publicly funded entity" means a person, other than an individual,  
 24 that receives half or more of the money on which it operates during a calendar year from  
 25 government, including a public corporation.

26 \* Sec. 24. AS 15.56 is amended by adding new sections to read:

27 Sec. 15.56.012. CAMPAIGN MISCONDUCT IN THE FIRST DEGREE. (a)

28 A person commits the crime of campaign misconduct in the first degree if the person  
 29 intentionally violates a provision of AS 15.13 or a regulation adopted under authority of  
 30 AS 15.13.

31 (b) Violation of this section is a corrupt practice.

32 (c) Campaign misconduct in the first degree is a class A misdemeanor.

## 1           Sec. 15.56.014. CAMPAIGN MISCONDUCT IN THE SECOND DEGREE. (a)

2           A person commits the crime of campaign misconduct in the second degree if the person

3                   (1) knowingly circulates or has written, printed or circulated a letter,  
4           circular, or publication relating to an election, to a candidate at an election, or an election  
5           proposition or question without the name and address of the author appearing on its face;6                   (2) except as provided by AS 15.13.090(b), knowingly prints or publishes  
7           an advertisement, billboard, placard, poster, handbill, paid-for television or radio  
8           announcement or other communication intended to influence the election of a candidate  
9           or outcome of a ballot proposition or question without the words "paid for by" followed  
10          by the name and address of the candidate, group or individual paying for the advertising  
11          or communication and, if a candidate or group, with the name of the campaign chair;12                   (3) knowingly writes or prints and circulates, or has written, printed and  
13          circulated, a letter, circular, bill, placard, poster or advertisement in a newspaper, on  
14          radio or television15                   (A) containing false factual information relating to a candidate for  
16          an election;

17                   (B) that the person knows to be false; and

18                   (C) that would provoke a reasonable person under the  
19          circumstances to a breach of the peace or damages the candidate's reputation for  
20          honesty, integrity, or the candidate's qualifications to serve if elected to office;  
21          or22                   (4) knowingly violates a provision of AS 15.13 or a regulation adopted  
23          under AS 15.13.

24                   (b) Violation of this section is a corrupt practice.

25                   (c) Campaign misconduct in the second degree is a class B misdemeanor.

## 26           Sec. 15.56.016. CAMPAIGN MISCONDUCT IN THE THIRD DEGREE. (a)

27           A person commits the crime of campaign misconduct in the third degree

28                   (1) if the person recklessly or with criminal negligence violates a  
29          provision of AS 15.13 or a regulation adopted under AS 15.13; or30                   (2) if, during the hours the polls are open and after election judges have  
31          posted warning notices as required by AS 15.15.170 or at the required distance in the  
32          form and manner prescribed by the chief municipal elections official in a local election,

1 the person intentionally is within 200 feet of an entrance to a polling place, and

2 (A) violates AS 15.15.170; or

3 (B) circulates cards, handbills, or marked ballots, or posts  
4 political signs or posters relating to a candidate at an election or election  
5 proposition or question.

6 (b) Campaign misconduct in the third degree is a violation.

7 Sec. 15.56.018. **APPLICABILITY OF CAMPAIGN MISCONDUCT**  
8 **PROVISIONS.** (a) For purposes of AS 15.56.012(a), 15.56.014(a)(4), and  
9 15.56.016(a)(1), each day a violation continues constitutes a separate offense.

10 (b) When a person is convicted of violating AS 15.56.012, in addition to  
11 imposition of a sentence as authorized by AS 12.55.015, notwithstanding  
12 AS 12.55.015(c), the court shall order suspension, for a period of one year, of any  
13 license held by the defendant that allows the defendant to do business in the state.

14 Sec. 15.56.019. **DEFINITIONS.** In AS 15.56.012 - 15.56.018, the terms  
15 "intentionally," "knowingly," "recklessly," and "with criminal negligence" have the  
16 meanings given in AS 11.81.900(a).

17 \* Sec. 25. AS 24.45.121(a) is amended to read:

18 (a) A lobbyist may not

19 (1) engage in any activity as a lobbyist before registering under  
20 AS 24.45.041;

21 (2) do anything with the intent of placing a public official under personal  
22 obligation to the lobbyist or to the lobbyist's employer;

23 (3) intentionally deceive or attempt to deceive any public official with  
24 regard to any material fact pertinent to pending or proposed legislative or administrative  
25 action;

26 (4) cause or influence the introduction of a legislative measure solely for  
27 the purpose of thereafter being employed to secure its passage or its defeat;

28 (5) cause a communication to be sent to a public official in the name of  
29 any fictitious person or in the name of any real person, except with the consent of that  
30 person;

31 (6) accept or agree to accept any payment in any way contingent upon  
32 the defeat, enactment, or outcome of any proposed legislative or administrative action;

# Alaska State Legislature



## House of Representatives House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

March 25, 1996

TO: House Judiciary Committee members

FROM: Tom Meyer

RE: Materials for today/calendar

Attached are two amendments, "F.10" and "F.11", from Chairman Porter for your consideration for HB 368. These amendments address issues brought to the committee's attention by Anne Carpeneti and Chris Christianson. Also attached is a proposed amendment from Rep. Bunde--"F.9".

HB 368 will be followed today by HB 443 and HB 474. HB 414 is not yet ready for a hearing. If we reach it, HB 512 will be subcommittee'd.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 368(STA)

1 Page 1, line 4, after "campaign misconduct":

2 Insert "and the prosecution of those offenses"

3 Page 24, line 9, through page 25, line 28:

4 Delete all material and insert:

5 **\*\* Sec. 24.** AS 15.56 is amended by adding new sections to read:

6 Sec. 15.56.012. CAMPAIGN MISCONDUCT IN THE FIRST DEGREE. (a)

7 A person commits the crime of campaign misconduct in the first degree if the person  
8 knowingly engages in conduct that violates a provision of AS 15.13 or a regulation  
9 adopted under the authority of AS 15.13 and the person acts recklessly with respect  
10 to any result or circumstance.

11 (b) Campaign misconduct in the first degree is a class A misdemeanor.

12 Sec. 15.56.014. CAMPAIGN MISCONDUCT IN THE SECOND DEGREE.

13 (a) A person commits the crime of campaign misconduct in the second degree if the  
14 person

15 (1) knowingly circulates or has written, printed or circulated a letter,  
16 circular, or publication relating to an election, to a candidate at an election, or an  
17 election proposition or question without the name and address of the author appearing  
18 on its face;

19 (2) knowingly prints or publishes an advertisement, billboard, placard,  
20 poster, handbill, paid-for television or radio announcement or other communication  
21 with the intent to influence the election of a candidate or outcome of a ballot  
22 proposition or question without the words "paid for by" followed by the name and  
23 address of the candidate, group or individual paying for the advertising or  
24 communication and, if a candidate or group, with the name of the campaign chair;

1 (3) knowingly writes or prints and circulates, or has written, printed  
2 and circulated, a letter, circular, bill, placard, poster or advertisement in a newspaper,  
3 on radio or television

4 (A) containing false factual information relating to a candidate  
5 for an election;

6 (B) that the person knows to be false; and

7 (C) that would provoke a reasonable person under the  
8 circumstances to a breach of the person or that a reasonable person would  
9 construe as damaging to the candidate's reputation for honesty, integrity, or  
10 the candidate's qualifications to serve if elected to office; or

11 (4) knowingly engages in conduct that violates a provision of  
12 AS 15.13 or a regulation adopted under the authority of AS 15.13 and the person acts  
13 with criminal negligence with respect to any result or circumstance.

14 (b) Violation of (a)(1) - (3) of this section is a corrupt practice.

15 (c) Campaign misconduct in the second degree is a class B misdemeanor.

16 Sec. 15.56.016. CAMPAIGN MISCONDUCT IN THE THIRD DEGREE. (a)  
17 A person commits the crime of campaign misconduct in the third degree if, during the  
18 hours the polls are open and after election judges have posted warning notices as  
19 required by AS 15.15.170 or at the required distance in the form and manner  
20 prescribed by the chief municipal elections official in a local election, the person is  
21 within 200 feet of an entrance to a polling place, and

22 (1) violates AS 15.15.170; or

23 (2) circulates cards, handbills, or marked ballots, or posts political  
24 signs or posters relating to a candidate at an election or election proposition or  
25 question.

26 (b) Campaign misconduct in the third degree is a violation.

27 Sec. 15.56.018. APPLICABILITY OF CAMPAIGN MISCONDUCT  
28 PROVISIONS. (a) For purposes of AS 15.56.012(a) or 15.56.014(a)(4), each day a  
29 violation continues constitutes a separate offense.

30 (b) When a person is convicted of an intentional violation of AS 15.56.012(3),  
31 in addition to imposition of a sentence as authorized by AS 12.55.015,  
32 notwithstanding AS 12.55.015(c), the court shall order suspension, for a period of one

1 year, of any license held by the defendant that allows the defendant to do business in  
2 the state."

3 Page 25, following line 31:

4 Insert new bill sections to read:

5 **\*\* Sec. 25.** AS 15.56.130 is amended to read:

6 Sec. 15.56.130. TIME LIMITATION. Except as provided in (b) of this  
7 section, a [A] prosecution for an offense described in the title [THE ALASKA  
8 ELECTION CODE (AS 15.05 - AS 15.60)] may not be maintained unless it is begun  
9 within one year after the date of the election in connection with which the offense is  
10 alleged to have been committed.

11 **\* Sec. 26.** AS 15.56.130 is amended by adding a new subsection to read:

12 (b) A prosecution under AS 15.13.012(a) or 15.13.014(a)(4) for a violation  
13 of a provision of AS 15.13 or a regulation adopted under authority of AS 15.13 may  
14 not be commenced after four years have elapsed from the date of the alleged  
15 violation.

16 **\* Sec. 27.** AS 15.56 is amended by adding a new section to read:

17 Sec. 15.56.135. RELATIONSHIP BETWEEN THIS CHAPTER AND  
18 AS 15.13. The attorney general may prosecute an offense under AS 15.13.012(a) or  
19 15.13.014(a)(4) independently of any action taken on a complaint by the Alaska  
20 Public Offices Commission and without regard to whether the matter has been or is  
21 being investigated or heard as a complaint by the Alaska Public Offices Commission."

22 Renumber the following bill sections accordingly.

23 Page 27, line 16:

24 Delete "Sections 1 - 30"

25 Insert "Sections 1 - 33"

26 Page 27, line 18:

27 Delete "secs. 1 - 30"

28 Insert "secs. 1 - 33"

- 1 Page 27, line 23:
- 2       Delete "secs. 1 - 30"
- 3       Insert "secs. 1 - 33"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 368(STA)

1 Page 16, following line 15:

2 Insert new bill sections to read:

3 **\*\* Sec. 19.** AS 15.13 is amended by adding a new section to read:

4 Sec. 15.13.118. USE OF BALANCE OF A STATE CANDIDATE'S  
5 CAMPAIGN ACCOUNT AND DISPOSITION OF ASSETS. A candidate for state  
6 office may not take money from the surplus balance of the candidate's campaign  
7 account as personal income. In this section,

8 (1) "candidate for state office" means a candidate for governor,  
9 lieutenant governor, or the state legislature;

10 (2) "personal income" means income that the candidate is required to  
11 report as income on the candidate's personal income tax return to the federal  
12 government.

13 **\* Sec. 20.** AS 15.13.118 is repealed and reenacted to read:

14 Sec. 15.13.118. DISPOSITION OF CAMPAIGN FUNDS HELD OR  
15 TRANSFERRED. (a) A candidate for state office in an election held before the  
16 effective date of this section may not take money from the surplus balance of the  
17 candidate's campaign account as personal income.

18 (b) An individual who holds the surplus balance of money transferred to an  
19 account for a future election campaign under AS 15.13.116(a)(8) or transferred to a  
20 legislative office account under AS 15.13.116(a)(9) may not take money from the  
21 surplus balance of an account to which a transfer was made as personal income.

22 (c) In this section,

23 (1) "candidate for state office" means a candidate for governor,  
24 lieutenant governor, or the state legislature;

25 (2) "personal income" means income that the candidate is required to

1 report as income on the candidate's personal income tax return to the federal  
2 government."

3 Renumber the following bill sections accordingly.

4 Page 27, line 16:

5 Delete "Sections 1 - 30"

6 Insert "Sections 1 - 32"

7 Page 27, line 18:

8 Delete "secs. 1 - 30"

9 Insert "secs. 1 - 32"

10 Page 27, line 23:

11 Delete all material.

12 Insert new bill sections to read:

13 "\*\* Sec. 34. If this Act takes effect, then, except as provided in sec. 35 of this Act, it takes  
14 effect January 1, 1997.

15 \* Sec. 35. If sec. 19 of this Act takes effect, sec. 19 of this Act takes effect July 1, 1996."

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 12, 1996

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/25/96

The JUDICIARY Committee considered:

HB 368

HOUSE BILL NO. 368

ELECTION CAMPAIGN FINANCE REFORM

"An Act relating to election campaigns, election campaign financing, the oversight and regulation of election campaigns by the Alaska Public Offices Commission, the activities of lobbyists that relate to election campaigns, and the definitions of offenses of campaign misconduct; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 368 (JUD)  the same title  a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

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

fiscal note(s) Admin (3.12.96)

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

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

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Brigit Porter</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>				<input checked="" type="checkbox"/>
<i>Car Beardo</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>David Enabtan</i>			<input checked="" type="checkbox"/>	
<i>Beau Davis</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *Brigit Porter*

INITIATIVE	CSHB 368 (JUD)	CSSB 191 (JUD)
<b>Contributions from individuals</b> \$500/yr. to a candidate. \$250/yr. to a group. \$5,000/yr. to a political party.	Same as initiative.	\$500/yr. to a candidate. \$500/yr. to a group. \$5,000/yr. to a political party.
<b>Contributions from parties</b> \$5,000/yr. to legislative, municipal or other candidate. \$50,000/yr. to Gov. or Lt. Gov. candidate.	\$10,000/yr. to House. \$5,000/yr. to other candidates. \$15,000/yr. to Senate cand. \$100,000/yr. to Gov./Lt. Gov. candidate.	Same as House CS.
<b>Contributions from groups of individuals</b> \$500/yr. to a candidate.	\$1,000/ yr. to a candidate.	Same as House CS.
<b>Candidate-to-candidate contributions</b> Prohibited.	Same as initiative.	Allowed.
<b>Lobbyists</b> A for-profit lobbyist could contribute only to a candidates in the lobbyist's district.	Same as initiative.	No provision.
<b>When money can be raised</b> A candidate could not accept a contribution 11 months before, or more than 30 days after the election.	June 1 to 45 days after for legis. candidates. Jan. 1 to 45 days after for Gov./Lt. Gov. 5 months before to 45 days after for other candidates.	Same as House CS.
<b>Personal use of campaign funds</b> Prohibited.	Transfer of \$5,000 (House) or \$10,000 (Senate) to office account allowed.	Transfer of \$5,000 (House) or \$20,000 (Senate) to office account allowed.
<b>Carry forward of campaign surpluses</b> Prohibited.	Transfer of \$5,000 (House), \$7,500 (Senate), or \$50,000 (Gov./Lt. Gov.) to next campaign allowed.	Transfer of \$5,000 (House), \$10,000 (Senate), or \$50,000 (Gov./Lt. Gov.) to next campaign allowed.
<b>Out-of-state contributions</b> Prohibited.	Out-of-state contributions allowed up to \$2,000 (House), \$3,000 (Senate) or \$20,000 (Gov./Lt. Gov.).	Allowed.
<b>Ballot propositions</b> Group limits apply.	Same as initiative.	No limits.
<b>Serious violations</b> Intentional violations would be Class C felonies, and knowing violations would be Class A misdemeanors.	Penalties would be reduced by one step so the most severe penalty would be a Class A misdemeanor.	Same as House CS.
<b>Civil penalties</b> Minimums and maximums would increase. Court may impose treble penalties.	Maximums would increase. Court may impose treble penalties.	Maximums would increase. No treble penalties allowed.
<b>Power to enforce</b> Access to Superior Court for civil penalties.	Citizen suits allowed only after complaint to APOC.	Citizen suits allowed only after complaint to APOC.
<b>Complaintant recovery</b> Up to 50% of penalty amount.	Same as initiative.	No provision.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

April 8, 1996

**SUBJECT:** Effect of Initiative 95 CFPO and related pending legislation on election campaign fundraising applicable to the April 1997 Anchorage mayoral campaign. (Work Order No. 9-LS1846)

**TO:** Senator Tim Kelly  
ATTN: Bill Miles  
and  
Representative Jeannette James

**FROM:** Jack Chenoweth  
Legislative Counsel

Your April 3 memo notes the April, 1997, Anchorage mayoral election and inquires as to the implications for election campaign fundraising for that election under the pending election campaign financing reform initiative, Initiative 95 CFPO, and under each of the two principal measures--CSHB 368(JUD) or CSSB 19(STA)--that are now under consideration by the legislature. <sup>1/</sup> Of particular interest to you is the probable effect of the Initiative and the two measures on election campaign funds "already raised and those currently being raised" for that municipal mayoral election. <sup>2/</sup>

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<sup>1/</sup> Unless the voters in a municipality have voted to exempt the municipality, then for municipalities with a population of more than 1000 people, the procedures, standards, and other requirements of AS 15.13 are minimum requirements. Both the Initiative and each of the two bills would require that municipal election campaigns in those municipalities be conducted at least in accordance with the requirements of AS 15.13.

<sup>2/</sup> In almost all cases, it appears that the Anchorage municipal election will be conducted under revisions to AS 15.13 and other provisions made by the Initiative or by one or the other of two legislative measures.

The effective date of an initiative is determined with reference to article XI, section 6, that is, it becomes effective 90 days after certification of the results of the election at which it was approved. Typically, the results of a general election are

(continued...)

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As a general rule, whether with reference to the Initiative or to either of the principal measures now receiving legislative consideration, statutes are presumed to operate prospectively only, and will not be applied to matters arising before their enactment unless a contrary legislative intent appears, either expressly or by necessary implication. Hood v. State, Workmen's Compensation Board, 574 P.2d 811, 813 - 814 (Alaska 1978), Pan Alaska Trucking, Inc. v. Crouch, 773 P.2d 947, 949 (Alaska 1989).<sup>2/</sup> However, procedural changes in the law that do not affect substantive rights may be applied retroactively. Matanuska Maid, Inc. v. State, 620 P.2d 182, 186 - 187 (Alaska 1980).

Under either the Initiative or one or the other of the two pending measures, more stringent limitations, restrictions, and constraints to be imposed on election campaign financing are clearly substantive. They would come into effect on the effective date of the vehicle--the Initiative or the legislative bill--imposing the limitation or constraint. Until the appropriate effective date of a change in the law, candidates for municipal office are subject to current law. Consequently, candidates now are free to conduct election campaign financing efforts in ways that, on the appropriate effective date, would become illegal.

So, for example, under current law, the maximum contribution that an individual may make to a municipal candidate is \$1000; within limits not here relevant, corporations, partnerships, associations, and organizations are free to make contributions to the candidates; and candidates may obtain contributions from nonresidents of the state. However, after the effective date of the Initiative, for example, the ceiling on individual contributions to a municipal candidate drops to \$500; corporations, partnerships, associations, and organizations, among others, are barred from making election campaign contributions at all; and nonresidents' contributions may not be accepted. Nothing in the Initiative may be said

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(...continued)

certified about December 1 following the election. So, Initiative 95 CFPO, if left on the November general election ballot and approved, would have approximately a March 1, 1997, effective date.

Each of the two principal legislative measures now receiving consideration, CSHB 368 (Judiciary) and CSSB 191 (State Affairs), specifically sets out a January 1, 1997, effective date. However, if, under the two bills, the effective date section is not approved by a two-thirds majority, then the measures' provisions would take effect 90 days after becoming law, or approximately late September or early October of this year, that is, before this year's general election.

<sup>2/</sup> In addition, in a provision that reflects the general rule, AS 01.10.090 relates that statutes enacted are not retrospective unless expressly so declared in the Act.

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to compel someone who is a candidate<sup>4/</sup> for mayor to refrain from raising amounts in excess of \$500 (but not in excess of the current maximum of \$1000) from individual contributors until the date the law changes and reduces the maximum permissible contribution to a municipal campaign. Nothing compels that candidate from refusing to accept contributions from corporations, partnerships, associations, and organizations, or from nonresidents of the state until the date that the law changes and bars those contributions entirely.

More to the point of your inquiry, nothing compels a candidate, who, having raised these amounts and tapped these sources, to have to make refunds to contributors whose contributions, once legal, have, by operation of the Initiative or one or the other of the legislative measures, subsequently exceeded the reduced maximums or otherwise have become illegal. To so require, it seems to me, would be to be contrary to the reasonable expectations of the candidate and the candidate's contributors.

Your inquiry also implicates the status of election campaign finance contributions and other assets held by a candidate as of the day before the effective date of the Initiative or of an election campaign finance reform measure enacted into law. Neither the Initiative nor either of the two measures in their current form explicitly addresses the handling of amounts raised and held by a candidate before the taking effect of the changes made by the Initiative or measure.

Again, I do not read either the Initiative or the legislation as necessarily implying that the election campaign finance reforms are to be given retrospective effect. Applying the principles of the cases cited, it would be my judgment that, as to money raised by a candidate before a change in the law and being held by the candidate as of the effective date of the change in law, unless to do so would be to give retrospective effect to a substantive change in law that defeated the reasonable expectations of the parties, the changes in law apply to thereafter require that the campaign balance on hand be subsequently handled in accordance with the law as it is amended.

What that means, in my view, is this:

-- if, on the day before the effective date of the change in law, a candidate has money on hand that, on and after the effective date, the candidate could not otherwise properly accept and use as a campaign contribution, the candidate is not compelled to offer refunds; however, ~~and~~ after that date of the change in law, to the extent that more restrictive, more stringent limitations attach to the expenditure or use of campaign funds on hand, those more

---

<sup>4/</sup> I here use the term "candidate" to include not only formally declared candidates but also anyone who, by filing with the Alaska Public Offices Commission under the appropriate regulation, indicates an intention to raise money in order to campaign as a candidate for the mayoral office.

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restrictive, more stringent provisions apply and the amounts on hand become subject to those provisions;

-- if, on or before the day before the effective date of the change in law, a candidate borrowed money pledging campaign contributions as a source of loan repayment, notwithstanding new prohibitions and limitations on use of campaign contributions imposed on and after that date of the change in law, it seems to me that the application of the case decisions may allow the candidate to use excess contributions to meet the debt obligation. See Norton v. Alcoholic Beverage Control Board, 695 P.2d 1090, 1093 (Alaska 1985) (superseded statute under which, while it was in effect, parties to a liquor license transfer provided security for debt payment remained applicable to retransfer of liquor license to avoid giving substantive retrospective effect of the later enactment).

\*

Two cautions:

First, to all who expect to campaign in the Anchorage mayoral campaign, keep complete records. Those records should be kept in a way that there is no ambiguity as to when contributions were received, obligations incurred, and expenditures paid or accrued. Since the Municipality's mayoral election campaign period will in all likelihood overlap the change in law, the completeness and accuracy of the records may be critical to a definitive determination as to whether a transaction required to be recorded and reported was consistent with applicable law.

Second, although I am the legislative attorney assigned responsibility for drafting HB 368 and SB 191, I cannot provide you with a definitive opinion on the question. To obtain conclusive guidance concerning the interplay between the Initiative, or either of the bills, and current law that you may fully rely on, candidates considering the Anchorage mayoral race would be well advised to check with the Executive Director of the Alaska Public Offices Commission, Karen Boorman (in consultation with the Department of Law) and, because the question involves election campaign financing in the context of a municipal election, from the Office of the Anchorage Municipal Attorney, Mary Hughes.

\*

JBC:glc  
96-212.glc

CS FOR SENATE BILL NO. 191(STA)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS KELLY, Phillips

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to election campaigns, election campaign financing, the  
2 oversight and regulation of election campaigns by the Alaska Public Offices  
3 Commission, the activities of lobbyists that relate to election campaigns, the  
4 definitions of offenses of campaign misconduct, and to the use of the net  
5 proceeds of charitable gaming activities in election campaigns; and providing for  
6 an effective date."

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

8 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that, under existing  
9 laws,

10 (1) campaigns for elective public office last too long, are often uninformative,  
11 and are too expensive;

12 (2) highly qualified citizens are dissuaded from running for public office due to  
13 the high cost of election campaigns;

1 (3) organized special interests are responsible for raising a significant portion of  
2 all election campaign funds and may thereby gain an undue influence over election campaigns  
3 and elected officials, particularly incumbents;

4 (4) incumbents enjoy a distinct advantage in raising money for election  
5 campaigns, and many elected officials raise and carry forward huge surpluses from one campaign  
6 to the next, to the disadvantage of challengers;

7 (5) because, under existing laws, candidates are completely free to convert  
8 campaign funds to personal income, there is great potential for bribery and political corruption;  
9 and

10 (6) penalties for violations of the existing campaign finance laws are far too  
11 lenient to deter misconduct.

12 (b) It is the purpose of this Act to substantially revise Alaska's election campaign  
13 finance laws in order to restore the public's trust in the electoral process and to foster good  
14 government.

15 \* Sec. 2. AS 05.15.150(a) is amended to read:

16 (a) The authority to conduct the activity authorized by this chapter is contingent  
17 upon the dedication of the net proceeds of the charitable gaming activity to the awarding  
18 of prizes to contestants or participants and to political, educational, civic, public,  
19 charitable, patriotic, or religious uses in the state. "Political, educational, civic, public,  
20 charitable, patriotic, or religious uses" means uses benefiting persons either by bringing  
21 them under the influence of education or religion or relieving them from disease,  
22 suffering, or constraint, or by assisting them in establishing themselves in life, or by  
23 providing for the promotion of the welfare and well-being of the membership of the  
24 organization within their own community, or through aiding candidates for public office  
25 or groups that support candidates for public office, or by erecting or maintaining public  
26 buildings or works, or lessening the burden on government, but does not include

27 (1) the direct or indirect payment of any portion of the net proceeds of  
28 a bingo or pull-tab game to a lobbyist registered under AS 24.45; [OR]

29 (2) the erection, acquisition, improvement, maintenance, or repair of real,  
30 personal, or mixed property unless it is used exclusively for one or more of the permitted  
31 uses; or

32 (3) the direct or indirect payment of any portion of the net proceeds

1 of a charitable gaming activity, except the proceeds of a raffle and lottery,

2 (A) to aid candidates for public office or groups that support  
3 candidates for public office;

4 (B) to a political party or to an organization affiliated with  
5 a political party; or

6 (C) to a group, as that term is defined in AS 15.13.400, that  
7 seeks to influence the outcome of an election.

8 \* Sec. 3. AS 15.13.010(a) is amended to read:

9 (a) This chapter applies

10 (1) in every election for governor, lieutenant governor, a member of the  
11 state legislature, a delegate to a constitutional convention, or judge seeking electoral  
12 confirmation;

13 (2) [~~IT ALSO APPLIES~~] to every candidate for election to a municipal  
14 office in a municipality with a population of more than 1,000 inhabitants according to  
15 the latest United States census figures or estimates of population certified as correct for  
16 administrative purposes by the Department of Community and Regional Affairs unless  
17 the municipality has exempted itself from the provisions of this chapter; a [~~A~~]  
18 municipality may exempt its elected municipal officers from the requirements of this  
19 chapter if a majority of the voters voting on the question at a regular election, as defined  
20 by AS 29.71.800(20), or a special municipality-wide election called for that purpose,  
21 votes [~~VOTE~~] to exempt its elected municipal officers from the requirements of this  
22 chapter; the [~~THE~~] question of exemption from the requirements of this chapter may  
23 be submitted by the governing body by ordinance or by initiative election. [~~THIS~~  
24 CHAPTER DOES NOT PROHIBIT A MUNICIPALITY FROM REGULATING BY  
25 ORDINANCE CAMPAIGN CONTRIBUTIONS AND EXPENDITURES.]

26 \* Sec. 4. AS 15.13.010 is amended by adding a new subsection to read:

27 (c) This chapter does not prohibit a municipality from regulating by ordinance  
28 election campaign contributions and expenditures in municipal elections, or from  
29 regulating those campaign contributions and expenditures more strictly than provided in  
30 this chapter.

31 \* Sec. 5. AS 15.13.040(a) is amended to read:

32 (a) Except as provided in (g) of this section, each [~~EACH~~] candidate shall

1 make a full report, upon a form prescribed by the commission, listing the date and  
2 amount of all expenditures made by the candidate, the total amount of all contributions,  
3 including all funds contributed by the candidate, and for all contributions in excess of  
4 \$100 in the aggregate a year, the name, address, principal occupation, and employer of  
5 the contributor and the date and amount contributed by each contributor. The report  
6 shall be filed in accordance with AS 15.13.110 and shall be certified correct by the  
7 candidate or campaign treasurer.

8 \* Sec. 6. AS 15.13.040(d) is amended to read:

9 (d) Every individual, person, or group making a contribution or expenditure shall  
10 make a full report, upon a form prescribed by the commission, of the following  
11 contributions or expenditures:

12 (1) any contribution of cash, goods, or services valued at more than \$250  
13 a year to any group or candidate; or

14 (2) unless exempted from reporting by (h) of this section, any  
15 expenditure whatsoever for advertising in newspapers or other periodicals, on radio, or  
16 on television; or, for the publication, distribution, or circulation of brochures, flyers, or  
17 other campaign material for any candidate or ballot proposition or question.

18 \* Sec. 7. AS 15.13.040 is amended by adding new subsections to read:

19 (g) The provisions of (a) of this section do not apply if a candidate

20 (1) indicates, on a form prescribed by the commission, an intent not to  
21 raise and not to expend more than \$2,500 in seeking election;

22 (2) accepts contributions totaling not more than \$2,500 in seeking  
23 election; and

24 (3) makes expenditures totaling not more than \$2,500 in seeking  
25 election.

26 (h) The provisions of (d)(2) of this section do not apply to one or more  
27 expenditures made by an individual acting independently of any group and  
28 independently of any other individual if the expenditures

29 (1) cumulatively do not exceed \$250 during a calendar year; and

30 (2) are made only for billboards, signs, or printed material concerning  
31 a ballot proposition or question.

32 \* Sec. 8. AS 15.13.050 is amended to read:

1           Sec. 15.13.050. REGISTRATION BEFORE EXPENDITURE [GROUPS].  
2     Before [EACH GROUP, BEFORE] making an expenditure in support [ON BEHALF]  
3     of [,] or in opposition to [,] a candidate or before making an expenditure in support  
4     of or in opposition to a ballot proposition or question. each person, publicly-  
5     funded entity, or group [A CONTRIBUTION TO A CANDIDATE] shall register, on  
6     forms provided by the commission, with the commission. If the group intends to  
7     support or oppose only one candidate, or to contribute to or expend on behalf of, or  
8     in opposition to, one candidate 33 1/3 [50] percent or more of its funds, the name of  
9     the candidate shall be a part of the name of the group. Promptly upon receiving the  
10    registration, the commission shall notify the candidate of the group's organization and  
11    intent.

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

13           Sec. 15.13.065. WHO MAY MAKE CONTRIBUTIONS. (a) Individuals,  
14    groups, and political parties may make contributions to a candidate. An individual  
15    may make a contribution to a group or to a political party.

16           (b) A political party may contribute to a subordinate unit of the political party,  
17    and a subordinate unit of a political party may contribute to the political party of  
18    which it is a subordinate unit.

19           Sec. 15.13.067. WHO MAY MAKE EXPENDITURES. Only the following  
20    may make an expenditure in an election for candidates for elective office:

21           (1) the candidate;

22           (2) individuals who are registered under AS 15.13.050; and

23           (3) a group that, if required by AS 15.13.050 to register, is registered,

24    or a group not required to register under AS 15.13.050.

25 \* Sec. 10. AS 15.13.070 is repealed and reenacted to read:

26           Sec. 15.13.070. LIMITATIONS ON AMOUNT OF POLITICAL  
27    CONTRIBUTIONS. (a) An individual or group may make contributions, subject only  
28    to the limitations of this chapter and AS 24.45, including the limitations on the  
29    maximum amounts set out in this section.

30           (b) An individual may contribute not more than

31           (1) \$500 per year to a candidate, or to a person who conducts a write-in

1 campaign as a candidate;

2 (2) \$250 per year to a group that is not a political party;

3 (3) \$5,000 per year to a political party.

4 (c) A group that is not a political party may contribute not more than \$1,000  
5 per year

6 (1) to a candidate, or to a person who conducts a write-in campaign as  
7 a candidate; or

8 (2) to another group or to a political party.

9 (d) A political party may contribute to a candidate, or to a person who  
10 conducts a write-in campaign, for the following offices an amount not to exceed

11 (1) \$100,000 per year, if the election is for governor or lieutenant  
12 governor;

13 (2) \$15,000 per year, if the election is for the state senate;

14 (3) \$10,000 per year, if the election is for the state house of  
15 representatives; and

16 (4) \$5,000 per year, if the election is for

17 (A) delegate to a constitutional convention;

18 (B) judge seeking retention; or

19 (C) municipal office.

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

21 Sec. 15.13.072. RESTRICTIONS ON SOLICITATION AND ACCEPTANCE  
22 OF CONTRIBUTIONS. (a) A candidate or a person who has filed with the  
23 commission the document necessary to permit the person to incur election-related  
24 expenses under AS 15.13.100 may not solicit or accept a contribution from

25 (1) a person not authorized by law to make a contribution;

26 (2) an individual who is not a resident of the state at the time the  
27 contribution is made except as provided in (b) of this section;

28 (3) a group organized under the laws of another state, resident in  
29 another state, or whose participants are not residents of this state at the time the  
30 contribution is made; or

31 (4) a person registered as a lobbyist if the contribution violates

1 AS 15.13.074(f) or AS 24.45.121(a)(8).

2 (b) A candidate or a person who has filed with the commission the document  
3 necessary to permit the person to incur election-related expenses under AS 15.13.100  
4 may solicit or accept contributions from an individual who is not a resident of the state  
5 at the time the contribution is made if the amounts contributed by individuals who are  
6 not residents do not exceed

7 (1) \$20,000, if the candidate or person is seeking the office of governor  
8 or lieutenant governor;

9 (2) \$4,000, if the candidate or person is seeking the office of state  
10 senator;

11 (3) \$2,000, if the candidate or person is seeking the office of state  
12 representative.

13 (c) A candidate or a person who has filed with the commission the document  
14 necessary to permit the person to incur election-related expenses under AS 15.13.100,  
15 or a group, may not solicit or accept a cash contribution that exceeds \$100.

16 (d) A person, or a person acting directly or indirectly on behalf of that person,  
17 may not solicit or accept a contribution

18 (1) before the date for which contributions may be made as determined  
19 under AS 15.13.074(c)(1) - (3); or

20 (2) later than the day after which contributions may not be made as  
21 determined under AS 15.13.074(c)(4).

22 (e) A candidate or a person who has filed with the commission the document  
23 necessary to permit the person to incur election-related expenses under AS 15.13.100  
24 may not solicit or accept a contribution if the legislature is convened in a regular or  
25 special legislative session, and the candidate or person is a member of the legislature,  
26 or employed by a legislator or employed as a member of the legislator's staff or as a  
27 member of the staff of a legislative committee.

28 Sec. 15.13.074. PROHIBITED CONTRIBUTIONS. (a) A person may not  
29 make a contribution if the making of the contribution would violate this chapter.

30 (b) A person may not make a contribution anonymously, using a fictitious  
31 name, or using the name of another.

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(c) A person may not make a contribution

(1) to a candidate for governor or lieutenant governor or a person who files with the commission the document necessary to permit the person to incur certain election-related expenses as authorized by AS 15.13.100 for governor or lieutenant governor, when the office is to be filled at a general election, before the later of the following dates:

(A) the date the person

(i) becomes a candidate; or

(ii) files with the commission the document necessary to permit the person to incur certain election-related expenses as authorized by AS 15.13.100; or

(B) January 1 of the year of the general election;

(2) to a candidate for the state legislature or a person who files with the commission the document necessary to permit the person to incur certain election-related expenses as authorized by AS 15.13.100 for the state legislature, when the office is to be filled at a general election, before the later of the following dates:

(A) the date the person

(i) becomes a candidate; or

(ii) files with the commission the document necessary to permit the person to incur certain election-related expenses as authorized by AS 15.13.100; or

(B) June 1 of the year of the general election;

(3) to a candidate or a person who files with the commission the document necessary to permit the person to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the later of the following dates:

(A) the date the person

(i) becomes a candidate; or

(ii) files with the commission the document necessary to permit the person to incur certain election-related expenses as authorized by AS 15.13.100;

1 (B) is five months before the date of the general or regular  
2 municipal election or that is before the date of the proclamation of the special  
3 election at which the person seeks election to public office; or

4 (4) to any candidate later than the 45th day

5 (A) after the date of a primary election if the person

6 (i) has been nominated at the primary election or is  
7 running as a write-in candidate; and

8 (ii) is not opposed at the general election;

9 (B) after the date of the primary election if the person was not  
10 nominated at the primary election; or

11 (C) after the date of the general election, or after the date of a  
12 municipal or municipal runoff election, if the person was opposed at the  
13 general, municipal, or municipal runoff election.

14 (d) A person may not make a contribution to a candidate or a person who is  
15 prohibited by AS 15.13.072(d) from accepting it.

16 (e) A person may not make a cash contribution that exceeds \$100.

17 (f) An individual required to register as a lobbyist under AS 24.45 may not  
18 make a contribution to a candidate for the legislature at any time the individual is  
19 subject to the registration requirement under AS 24.45 and for one year after the date  
20 of the individual's initial registration or its renewal. However, the individual may  
21 make a contribution under this section to a candidate for the legislature in a district in  
22 which the individual is registered to vote or will be registered to vote on the date of  
23 the election. An individual who is subject to the restrictions of this subsection shall  
24 report to the commission, on a form provided by the commission, each contribution  
25 made while required to register as a lobbyist under AS 24.45. This subsection does  
26 not apply to a representational lobbyist as defined in regulations of the commission.

27 (g) Notwithstanding AS 15.13.070, a candidate for governor or lieutenant  
28 governor and a group that is not a political party and that, under the definition of the  
29 term "group," is presumed to be controlled by a candidate for governor or lieutenant  
30 governor, may not make a contribution to a candidate for another office, to a person  
31 who conducts a write-in campaign as a candidate for other office, or to another group

1 of amounts received by that candidate or controlled group as contributions between  
2 January 1 and the date of the general election of the year of a general election for an  
3 election for governor and lieutenant governor. This subsection does not prohibit

4 (1) the group described in this subsection from making contributions  
5 to the candidates for governor and lieutenant governor whom the group supports; or

6 (2) the governor or lieutenant governor, or the group described in this  
7 subsection, from making contributions under AS 15.13.116(a)(3)(A).

8 (h) A corporation, company, partnership, firm, labor union, association,  
9 organization, business trust or surety, or publicly funded entity that does not satisfy the  
10 definition of group in AS 15.13.400 may not make a contribution to a candidate.

11 Sec. 15.13.076. AUTHORIZED RECIPIENTS OF CONTRIBUTIONS. A  
12 contribution to a

13 (1) candidate may be received only by

14 (A) the candidate; or

15 (B) the candidate's campaign treasurer or a deputy campaign  
16 treasurer;

17 (2) group may be received only by the group's campaign treasurer or  
18 a deputy treasurer.

19 Sec. 15.13.078. CONTRIBUTIONS AND LOANS FROM THE CANDIDATE.

20 (a) Except as limited by (c) of this section, the provisions of this chapter do not  
21 prohibit a candidate from giving any amount of the candidate's own money or other  
22 thing of value to the campaign of the candidate. Donations made by the candidate to  
23 the candidate's own campaign shall be reported as contributions in accordance with  
24 AS 15.13.040 and 15.13.110.

25 (b) Except as limited by (c) of this section, the provisions of this chapter do  
26 not prohibit a candidate from lending any amount to the campaign of the candidate.  
27 Loans made by the candidate shall be reported as contributions in accordance with  
28 AS 15.13.040 and 15.13.110. However, the candidate may not

29 (1) recover, under this section and AS 15.13.116(a)(5), the amount of  
30 a loan made by the candidate to the candidate's own campaign that exceeds

31 (A) \$25,000, if the candidate ran for governor or lieutenant

1 governor;

2 (B) \$10,000, if the candidate ran for

3 (i) the legislature; or

4 (ii) delegate to a constitutional convention;

5 (C) \$10,000, if the candidate was a judge seeking retention;

6 (D) \$5,000, if the candidate ran in a municipal election; or

7 (2) repay a loan that the candidate has made to the candidate's own  
8 campaign unless, within five days of making the loan, the candidate notifies the  
9 commission, on a form provided by the commission, of the candidate's intention to  
10 repay the loan under AS 15.13.116(a)(5).

11 (c) On and after the date determined under AS 15.13.110 as the last day of the  
12 period ending three days before the due date of the report required to be filed under  
13 AS 15.13.110(a)(1) and until the date of the election for which the report is filed, a  
14 candidate may not give or loan, or both, to the candidate's campaign the candidate's  
15 money or other thing of value of the candidate in an amount that exceeds \$5,000.

16 (d) The provisions of this section apply only to the person who is a candidate,  
17 as that term is defined by AS 15.13.400(1)(A), and do not apply to authorize a  
18 contribution or loan under this section by a person described in the definition of the  
19 term "candidate" under AS 15.13.400(1)(B)

20 \* Sec. 12. AS 15.13.080 is amended to read:

21 Sec. 15.13.080. STATEMENT BY CONTRIBUTOR. (a) Each of the  
22 following shall file statements as required by this section:

23 (1) an individual who contributes to a candidate

24 (A) more than [A PERSON OR GROUP CONTRIBUTING TO  
25 A CANDIDATE OVER] \$250; or

26 (B) [CONTRIBUTING] goods or services [TO A CANDIDATE]  
27 with a value of more than \$250;

28 (2) an individual who, during the period between the 90th day before  
29 an election and the date of the election, contributes to more than one group and  
30 whose aggregate contributions to all groups, in money or in the value of goods and  
31 services, or both, exceed \$1,000 per year [TO INFLUENCE THE ELECTION OF A  
32 CANDIDATE SHALL FURNISH THE COMMISSION A SIGNED STATEMENT, ON

1 A FORM MADE AVAILABLE BY THE COMMISSION].

2 (b) An individual required to file a contributor's statement under (a) of this  
3 section shall file on a form made available by the commission. The statement must

4 (1) identify the contributor and the candidate and all groups  
5 receiving contributions:

6 (2) [SHALL] itemize the contributions and goods; and

7 (3) state that the contributor is not [A PERSON OR GROUP] prohibited  
8 by law from contributing and that the contribution consists of funds or property  
9 belonging to the contributor and has not been given or furnished by another person or  
10 group.

11 (c) The contributor's statement shall be filed with the commission by the  
12 contributor no later than 10 days after the contribution is made. [A COPY OF THE  
13 STATEMENT SHALL BE FURNISHED THE CANDIDATE, CAMPAIGN  
14 TREASURER, OR DEPUTY CAMPAIGN TREASURER AT THE TIME THE  
15 CONTRIBUTION IS MADE.]

16 \* Sec. 13. AS 15.13 is amended by adding new sections to read:

17 Sec. 15.13.082. LIMITATIONS ON EXPENDITURES. (a) A candidate or  
18 group may not make an expenditure in cash that exceeds \$100 unless the candidate, or  
19 the campaign treasurer or deputy campaign treasurer, obtains from the person to whom  
20 the expenditure is made a written receipt and files a copy of the receipt with the  
21 commission.

22 (b) A candidate or group may not make an expenditure unless the source of the  
23 expenditure has been disclosed as required by this chapter.

24 (c) If a candidate receives a contribution in the form of cash, check, money  
25 order, or other negotiable instrument and is subject to being reported to the commission  
26 under this chapter, the candidate may neither expend the contribution nor, in the case of  
27 a negotiable instrument, convert it to cash unless the candidate, campaign treasurer, or  
28 deputy campaign treasurer first records the following information for disclosure to the  
29 commission:

30 (1) the name, address, principal occupation, and employer of the  
31 contributor; and

32 (2) the date and amount of the contribution.

1           Sec. 15.13.084. PROHIBITED EXPENDITURES. A person may not make an  
2 expenditure anonymously, using a fictitious name, or using the name of another.

3           Sec. 15.13.086. AUTHORIZED MAKERS OF EXPENDITURES. An  
4 expenditure

5                   (1) authorized by AS 15.13.067(1) by or in behalf of a candidate may be  
6 made only by

7                           (A) the candidate; or

8                           (B) the candidate's campaign treasurer or a deputy campaign  
9 treasurer;

10                   (2) authorized by AS 15.13.067(3) by or in behalf of a group may be  
11 made only by the group's campaign treasurer.

12 \* Sec. 14. AS 15.13.090 is amended by adding a new subsection to read:

13                   (b) The provisions of (a) of this section do not apply when the advertisement

14                           (1) is paid for by an individual acting independently of any group and  
15 independently of any other individual;

16                           (2) is made concerning a ballot proposition or question; and

17                           (3) is made for

18                                   (A) a billboard or sign; or

19                                   (B) printed material other than an advertisement made in a  
20 newspaper or other periodical.

21 \* Sec. 15. AS 15.13.110(a) is amended to read:

22                   (a) Each candidate and group shall make a full report in accordance with  
23 AS 15.13.040 for the period ending three days before the due date of the report and  
24 beginning on the last day covered by the most recent previous report. If the report is a  
25 first report, it shall cover the period from the beginning of the campaign to the date three  
26 days before the due date of the report. If the report is a report due February 15, it shall  
27 cover the period beginning on the last day covered by the most recent previous report  
28 or on the day that the campaign started, whichever is later, and ending on December 31  
29 of the prior year. The report shall be filed

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

- 1 (2) one week before the election;
- 2 (3) 10 days after the election; and
- 3 (4) February 15 for expenditures made and contributions received that
- 4 were not reported during the previous year, including, if applicable, all amounts
- 5 expended from a legislative office account established under AS 15.13.116(a)(9), or
- 6 when expenditures were not made or contributions were not received during the previous
- 7 year.

8 \* Sec. 16. AS 15.13.110(b) is amended to read:

9 (b) Each contribution [OR EXPENDITURE] that exceeds \$250 and that is made

10 within nine days of the election shall be reported to the commission by date, amount, and

11 contributor [OR RECIPIENT] within 24 hours of receipt [OR EXPENDITURE] by the

12 candidate, group, [OR] campaign treasurer, or deputy campaign treasurer.

13 \* Sec. 17. AS 15.13.110(c) is amended to read:

14 (c) [THE REPORTS OF CANDIDATES SHALL BE FILED WITH THE

15 COMMISSION'S CENTRAL OFFICE.] All reports required by this chapter shall be

16 filed with the commission's central office and shall be kept open to public inspection.

17 Within 30 days after each election, the commission shall prepare a summary of each

18 report which shall be made available to the public at cost upon request. Each summary

19 shall use uniform categories of reporting.

20 \* Sec. 18. AS 15.13 is amended by adding new sections to read:

21 Sec. 15.13.112. USES OF CAMPAIGN CONTRIBUTIONS HELD BY

22 CANDIDATE OR GROUP. (a) Except as otherwise provided, campaign contributions

23 held by a candidate or group may be used only to pay the expenses of the candidate or

24 group, and the campaign expenses incurred by the candidate or group, that reasonably

25 relate to election campaign activities, and in those cases only as authorized by this

26 chapter.

- 27 (b) Campaign contributions held by a candidate or group may not be
- 28 (1) used to give a personal benefit to the candidate or to another person;
  - 29 (2) converted to personal income of the candidate;
  - 30 (3) loaned to a person;
  - 31 (4) knowingly used to pay more than the fair market value for goods or
  - 32 services purchased for the campaign;

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(5) used to pay a criminal fine; or

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

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

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

(c) Campaign contributions held by a candidate may not be contributed to another candidate or to a group.

Sec. 15.13.114. DISPOSITION OF PROHIBITED CONTRIBUTIONS. (a) A candidate or group that receives and accepts a contribution given in violation of AS 15.13.072 or 15.13.074 shall immediately, upon discovery that the contribution is prohibited, return it to the contributor. If the contribution cannot be returned in the same form, the equivalent value of the contribution shall be returned.

(b) An anonymous contribution is forfeited to the state unless the contributor is identified within five days of its receipt. Money that forfeits to the state under this subsection shall be delivered immediately to the Department of Revenue for deposit in the general fund.

Sec. 15.13.116. DISBURSEMENT OF CAMPAIGN ASSETS AFTER ELECTION. (a) A candidate who, after the date of the general, special, municipal, or municipal runoff election or after the date the candidate withdraws as a candidate, whichever comes first, holds unused campaign contributions shall distribute the amount held within 60 days. The distribution may only be made to

(1) pay bills incurred for expenditures reasonably related to the campaign and the winding up of the affairs of the campaign, and to pay expenditures associated with post-election fund raising that may be needed to raise funds to pay off campaign debts;

(2) pay for a victory or a thank you party costing less than \$500, or to give a thank you gift of a value of less than \$50 to a campaign employee or volunteer;

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- (3) make donations, without condition, to
  - (A) a political party;
  - (B) the state's general fund;
  - (C) a municipality of the state; or
  - (D) the federal government;

(4) make donations, without condition, to organizations qualified as charitable organizations under 26 U.S.C. 501(c)(3), provided the organization is not controlled by the candidate or a member of the candidate's immediate family;

(5) repay loans from the candidate to the candidate's own campaign under AS 15.13.078(b);

(6) repay contributions to contributors, but only if repayment of the contribution is made pro rata in approximate proportion to the contributions made, using one of the following, as the candidate determines:

- (A) to all contributors;
- (B) to contributors who have made contributions most recently;

or

(C) to contributors who have made larger contributions;

(7) establish a fund for, and from that fund to pay, attorney fees or costs incurred in the prosecution or defense of an administrative or civil judicial action that directly concerns a challenge to the victory or defeat of the candidate in the election;

(8) transfer all or a portion of the unused campaign contributions to an account for a future election campaign; a transfer under this paragraph is limited to

- (A) \$50,000, if the transfer is made by a candidate for governor or lieutenant governor;
- (B) \$10,000, if the transfer is made by a candidate for the state senate;
- (C) \$5,000, if the transfer is made by a candidate for the state house of representatives; and
- (D) \$5,000, if the transfer is made by a candidate for an office not described in (A) - (C) of this paragraph;

(9) transfer all or a portion of the unused campaign contributions to a legislative office account; a transfer under this paragraph is subject to the following:

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1 (A) the authority to transfer is limited to candidates who are  
2 elected to the state legislature;

3 (B) the legislative office account established under this paragraph  
4 may be used only for expenses associated with the candidate's serving as a  
5 member of the legislature;

6 (C) all amounts expended from the legislative office account shall  
7 be annually accounted for under AS 15.13.110(a)(4); and

8 (D) a transfer under this paragraph is limited to \$2,500 per  
9 election district represented by the candidate elected to the state legislature  
10 multiplied by the number of years in the term to which the candidate is elected.

11 (b) After a general, special, municipal, or municipal runoff election, a candidate  
12 may retain the ownership of personal property, except money, that was acquired by and  
13 for use in the campaign. The current fair market value of the property retained may  
14 not exceed a total of \$2,500, exclusive of one computer and one printer. All other  
15 property shall be disposed of, or sold and the sale proceeds disposed of, in accordance  
16 with (a) or (c) of this section.

17 (c) Property remaining after disbursements are made under (a) - (b) of this  
18 section is forfeited to the state. Within 30 days, the candidate shall deliver the property  
19 to the Department of Revenue. The Department of Revenue shall deposit any money  
20 received into the general fund and dispose of any other property in accordance with law.

21 \* Sec. 19. AS 15.13.120(d) is repealed and reenacted to read:

22 (d) Whenever a person believes a violation of this chapter or a regulation  
23 adopted under this chapter has occurred or is occurring, the person may file an  
24 administrative complaint with the commission under (e) of this section. If, after 60 days  
25 following the filing of the complaint, the commission staff has not completed a report  
26 of a preliminary investigation as authorized by commission regulation adopted under  
27 AS 15.13.030(10) or AS 24.60.220, the person may file an action in the superior court  
28 seeking injunctive relief and civil penalties under AS 15.13.125. However, an action  
29 may not be commenced in the superior court under this subsection after two years have  
30 elapsed from the date of the alleged violation. The plaintiff in a superior court action  
31 shall serve the attorney general and the commission with a copy of the summons and  
32 complaint. The commission, represented by the attorney general, may intervene in the

1 action.

2 \* Sec. 20. AS 15.13.120(e) is repealed and reenacted to read:

3 (e) A member of the commission, the commission's executive director, or a  
4 person who believes a violation of a provision of this chapter or a regulation adopted  
5 under this chapter has occurred, may file an administrative complaint with the  
6 commission. The commission shall expeditiously make an investigation of the  
7 complaint. If a member of the commission has filed the complaint, the member may not  
8 participate as a commissioner in any proceeding of the commission with respect to the  
9 complaint. After affording a person notice and an opportunity for hearing, if the  
10 commission finds that the person has engaged in or is about to engage in an act or  
11 practice that constitutes or will constitute a violation of a provision of this chapter or a  
12 regulation adopted under this chapter, the commission shall enter an order requiring the  
13 violation to cease and to be remedied, and shall assess civil penalties under  
14 AS 15.13.125. An action may not be commenced by the commission under this  
15 subsection after four years have elapsed from the date of the alleged violation. The  
16 commission's exercise of jurisdiction under this subsection is not exclusive. A person  
17 who files a complaint under this subsection may withdraw it at any time and, unless  
18 more than two years have elapsed since the date of the alleged violation, proceed under  
19 (d) of this section.

20 \* Sec. 21. AS 15.13.125 is amended to read:

21 Sec. 15.13.125. CIVIL PENALTY: LATE FILING OF REQUIRED REPORTS.  
22 A person who fails to file a properly completed and certified report within the time  
23 required by AS 15.13.040(f), 15.13.110(a)(1), (3), or (4), or 15.13.110(f) is subject to a  
24 civil penalty of not more than \$50 [\$10] a day for each day the delinquency continues  
25 as determined by the commission subject to right of appeal to the superior court. A  
26 person who fails to file a properly completed and certified report within the time required  
27 by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$500  
28 [\$50] a day for each day the delinquency continues as determined by the commission  
29 subject to right of appeal to the superior court. An affidavit stating facts in mitigation  
30 may be submitted to the commission by a person against whom a civil penalty is  
31 assessed. However, the imposition of the penalties prescribed in this section or in  
32 AS 15.13.120 does not excuse that person from filing reports required by this chapter.

1 \* Sec. 22. AS 15.13.125 is amended by adding new subsections to read:

2 (b) When an administrative complaint has been filed under AS 15.13.120(e), the  
3 commission shall give the person against whom the complaint has been filed due notice  
4 and an opportunity to be heard. If, at the conclusions of the hearing, the commission  
5 determines that the person against whom the complaint was filed engaged in the alleged  
6 violation, the commission shall assess

7 (1) civil penalties under (a) of this section;

8 (2) the commission's costs of investigation and adjudication; and

9 (3) reasonable attorney fees.

10 (c) The commission's determination under (b) of this section may be appealed  
11 to the superior court under AS 44.62 (Administrative Procedure Act).

12 (d) When an action has been filed in the superior court under AS 15.13.120(d),  
13 upon proof of the violation, the court

14 (1) shall enter a judgment in the amount of three times the amount of the  
15 civil penalty authorized to be collected by (a) of this section; however, if the court finds  
16 that, in committing the violation, the person against whom the action was brought did  
17 not act knowingly and took action to correct the violation within five days after it  
18 occurred, the court may enter a judgment in the amount of the civil penalty authorized  
19 by (a) of this section; and

20 (2) shall award reasonable attorney fees and costs to the prevailing party.

21 (e) A person who filed a civil action under AS 15.13.120(d), upon proof of the  
22 violation by the person against whom the action was filed, may execute on the judgment  
23 and is entitled to half of any amount recovered as a civil penalty exclusive of any  
24 attorney fees and costs awarded by the court. The remainder of any amount recovered  
25 as a civil penalty shall be deposited in the state's general fund.

26 (f) If the commission or superior court finds that the violation was not a repeat  
27 violation or was not part of a series or pattern of violations, was inadvertent, was quickly  
28 corrected, and had no adverse effect on the campaign of another, the commission or the  
29 court may

30 (1) suspend imposition of the penalties; and

31 (2) order the penalties set aside if the person does not engage in a similar  
32 violation for a period of one year.

1 \* Sec. 23. AS 15.13 is amended by adding new sections to read:

2 Sec. 15.13.135. INDEPENDENT EXPENDITURES FOR OR AGAINST  
3 CANDIDATES. (a) Only an individual or group may make an independent expenditure  
4 supporting or opposing a candidate for election to public office. An independent  
5 expenditure supporting or opposing a candidate for election to public office shall be  
6 reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other  
7 requirements of this chapter.

8 (b) An individual or group who makes independent expenditures for a mass  
9 mailing, for distribution of campaign literature of any sort, for a television, radio,  
10 newspaper or magazine advertisement, or any other communication that supports or  
11 opposes a candidate for election to public office

12 (1) shall comply with AS 15.13.090; and

13 (2) shall place the following statement in the mailing, literature,  
14 advertisement, or other communication so that it is readily and easily discernible:

15 This NOTICE TO VOTERS is required by Alaska law. (I/we)  
16 certify that this (mailing/literature/advertisement) is not authorized, paid  
17 for, or approved by the candidate.

18 Sec. 15.13.137. RESTRICTIONS ON CONTRIBUTIONS TO INDIVIDUALS  
19 MAKING INDEPENDENT EXPENDITURES FOR OR AGAINST CANDIDATES.  
20 An individual who makes an independent expenditure supporting or opposing a candidate  
21 may not accept a contribution to help pay for the expenditure from another individual  
22 or group that exceeds the amount an individual may contribute to a group under  
23 AS 15.13.070(b)(2).

24 Sec. 15.13.140. INDEPENDENT EXPENDITURES FOR OR AGAINST  
25 BALLOT PROPOSITION OR QUESTION. (a) This chapter does not prohibit a person,  
26 or a publicly funded entity, from making independent expenditures in support of or in  
27 opposition to a ballot proposition or question.

28 (b) An independent expenditure for or against a ballot proposition or question

29 (1) shall be reported in accordance with AS 15.13.040 and 15.13.100 -  
30 15.13.110 and other requirements of this chapter; and

31 (2) may not be made if the expenditure is prohibited by AS 15.13.145.

32 Sec. 15.13.145. MONEY OF THE STATE AND ITS POLITICAL

1 SUBDIVISIONS. (a) Except as provided in (b) and (c) of this section, each of the  
2 following may not use money held by the entity to influence the outcome of the election  
3 of a candidate to a state, municipal, municipal runoff, or federal office:

4 (1) the state, its agencies, and its corporations;

5 (2) the University of Alaska and its Board of Regents;

6 (3) municipalities, school districts, and regional educational attendance  
7 areas, or another political subdivision of the state; and

8 (4) an officer or employee of an entity identified in (1) - (3) of this  
9 subsection.

10 (b) Money held by an entity identified in (a)(1) - (3) of this section may be used  
11 to influence the outcome of an election concerning a ballot proposition or question, but  
12 only if the funds have been specifically appropriated for that purpose by a state law or  
13 a municipal ordinance.

14 (c) Money held by an entity identified in (a)(1) - (3) of this section may be used

15 (1) to disseminate information about the time and place of an election  
16 and to hold an election;

17 (2) to provide the public with nonpartisan information about a ballot  
18 proposition or question or about all the candidates seeking election to a particular public  
19 office.

20 (d) When expenditure of money is authorized by (b) or (c) of this section and  
21 is used to influence the outcome of an election, the expenditures shall be reported to the  
22 commission in the same manner as an individual is required to report under  
23 AS 15.13.040.

24 Sec. 15.13.150. ELECTION EDUCATIONAL ACTIVITIES NOT  
25 PROHIBITED. This chapter does not prohibit a person from engaging in educational  
26 election-related communications and activities, including

27 (1) the publication of the date and location of an election;

28 (2) the education of students about voting and elections;

29 (3) the sponsorship of open candidate debate forums;

30 (4) participation in get-out-the-vote or voter registration drives that do  
31 not favor a particular candidate, political party, or political position;

32 (5) the dissemination of the views of all candidates running for a

1 particular office.

2 Sec. 15.13.155. RESTRICTIONS ON EARNED INCOME AND HONORARIA.

3 (a) A candidate for the state legislature, for governor, or for lieutenant governor,  
4 including a person campaigning as a write-in candidate for the office, may not

5 (1) seek or accept compensation for personal services that involves  
6 payments that are not commensurate with the services rendered taking into account the  
7 higher rates generally charged by specialists in a profession; or

8 (2) accept a payment of anything of value, except for actual and  
9 necessarily incurred travel expenses, for an appearance or speech; this paragraph does  
10 not apply to the salary paid to the candidate for making an appearance or speech as part  
11 of the candidate's normal course of employment.

12 (b) Notwithstanding (a) of this section, a candidate for the state legislature, for  
13 governor, or for lieutenant governor, including a person campaigning as a write-in  
14 candidate for the office, may accept a payment for an appearance or speech if the  
15 appearance or speech is not connected with the person's status as a state official or as a  
16 candidate.

17 Sec. 15.13.400. DEFINITIONS. In this chapter,

18 (1) "candidate"

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

23 (B) when used in a provision of this chapter that limits or  
24 prohibits the donation, solicitation, or acceptance of campaign contributions, or  
25 limits or prohibits an expenditure, includes

26 (i) a candidate's campaign treasurer and a deputy  
27 campaign treasurer;

28 (ii) a member of the candidate's immediate family;

29 (iii) a person acting as agent for the candidate;

30 (iv) the candidate's campaign committee; and

31 (v) a group that makes expenditures or receives  
32 contributions with the authorization or consent, express or implied, or

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under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "contribution"

(A) means a 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 that 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 for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

(i) 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;

(ii) services provided by an accountant or other person to prepare reports and statements required by this chapter; or

(iii) ordinary hospitality in a home;

(4) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

1 (B) does not include a candidate's filing fee or the cost of  
2 preparing reports and statements required by this chapter;

3 (5) "group" means

4 (A) every state and regional executive committee of a political  
5 party; and

6 (B) any combination of two or more individuals acting jointly  
7 who organize for the principal purpose to influence the outcome of one or more  
8 elections and who take action the major purpose of which is to influence the  
9 outcome of an election; a group that makes expenditures or receives contributions  
10 with the authorization or consent, express or implied, or under the control, direct  
11 or indirect, of a candidate shall be considered to be controlled by that candidate;  
12 a group whose major purpose is to further the nomination, election, or candidacy  
13 of only one person, or intends to expend more than 50 percent of its money on  
14 a single candidate, shall be considered to be controlled by that candidate and its  
15 actions done with the candidate's knowledge and consent unless, within 10 days  
16 from the date the candidate learns of the existence of the group the candidate  
17 files with the commission, on a form provided by the commission, an affidavit  
18 that the group is operating without the candidate's control; a group organized for  
19 more than one year preceding an election and endorsing candidates for more than  
20 one office or more than one political party is presumed not to be controlled by  
21 a candidate; however, a group that contributes more than 50 percent of its money  
22 to or on behalf of one candidate shall be considered to support only one  
23 candidate for purposes of AS 15.13.070, whether or not control of the group has  
24 been disclaimed by the candidate:

25 (6) "immediate family" means the spouse, parents, children, including a  
26 stepchild and an adoptive child, and siblings of an individual;

27 (7) "independent expenditure" means an expenditure that is made without  
28 the direct or indirect consultation or cooperation with, or at the suggestion or the request  
29 of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy  
30 campaign treasurer, or another person acting as a principal or agent of the candidate;

31 (8) "individual" means a natural person;

32 (9) "person" has the meaning given in AS 01.10.060, and includes a labor

1 union;

2 (10) "political party" means

3 (A) an organized group of voters that represents a political  
4 program and that nominated a candidate for governor who received at least  
5 three percent of the total votes cast at any one of the last five preceding general  
6 elections for governor;

7 (B) a subordinate unit of the organized group of voters  
8 qualifying as a political party under (A) of this paragraph if, consistent with the  
9 rules or bylaws of the political party, the unit conducts or supports campaign  
10 operations in a municipality, neighborhood, election district, or precinct; and

11 (C) an organization that, by virtue of the rules or bylaws of the  
12 organized group of voters qualifying as a political party under (A) of this  
13 paragraph, is affiliated with the political party;

14 (11) "publicly funded entity" means a person, other than an individual,  
15 that receives half or more of the money on which it operates during a calendar year from  
16 government, including a public corporation.

17 \* Sec. 24. AS 15.56 is amended by adding new sections to read:

18 Sec. 15.56.012. CAMPAIGN MISCONDUCT IN THE FIRST DEGREE. (a)  
19 A person commits the crime of campaign misconduct in the first degree if the person  
20 intentionally violates a provision of AS 15.13 or a regulation adopted under authority of  
21 AS 15.13.

22 (b) Violation of this section is a corrupt practice.

23 (c) Campaign misconduct in the first degree is a class A misdemeanor.

24 Sec. 15.56.014. CAMPAIGN MISCONDUCT IN THE SECOND DEGREE. (a)  
25 A person commits the crime of campaign misconduct in the second degree if the person  
26 (1) knowingly circulates or has written, printed or circulated a letter,  
27 circular, or publication relating to an election, to a candidate at an election, or an election  
28 proposition or question without the name and address of the author appearing on its face;  
29 (2) except as provided by AS 15.13.090(b), knowingly prints or publishes  
30 an advertisement, billboard, placard, poster, handbill, paid-for television or radio  
31 announcement, or other communication intended to influence the election of a candidate  
32 or outcome of a ballot proposition or question without the words "paid for by" followed

1 by the name and address of the candidate, group, or individual paying for the advertising  
2 or communication and, if a candidate or group, with the name of the campaign chair;

3 (3) knowingly writes or prints and circulates, or has written, printed and  
4 circulated, a letter, circular, bill, placard, poster or advertisement in a newspaper, on  
5 radio or television

6 (A) containing false factual information relating to a candidate for  
7 an election;

8 (B) that the person knows to be false; and

9 (C) that would provoke a reasonable person under the  
10 circumstances to a breach of the peace or damages the candidate's reputation for  
11 honesty, integrity, or the candidate's qualifications to serve if elected to office;  
12 or

13 (4) knowingly violates a provision of AS 15.13 or a regulation adopted  
14 under AS 15.13.

15 (b) Violation of this section is a corrupt practice.

16 (c) Campaign misconduct in the second degree is a class B misdemeanor.

17 Sec. 15.56.016. CAMPAIGN MISCONDUCT IN THE THIRD DEGREE. (a)

18 A person commits the crime of campaign misconduct in the third degree

19 (1) if the person recklessly or with criminal negligence violates a  
20 provision of AS 15.13 or a regulation adopted under AS 15.13; or

21 (2) if, during the hours the polls are open and after election judges have  
22 posted warning notices as required by AS 15.15.170 or at the required distance in the  
23 form and manner prescribed by the chief municipal elections official in a local election,  
24 the person intentionally is within 200 feet of an entrance to a polling place, and

25 (A) violates AS 15.15.170; or

26 (B) circulates cards, handbills, or marked ballots, or posts  
27 political signs or posters relating to a candidate at an election or election  
28 proposition or question.

29 (b) Campaign misconduct in the third degree is a violation.

30 Sec. 15.56.018. APPLICABILITY OF CAMPAIGN MISCONDUCT  
31 PROVISIONS. (a) For purposes of AS 15.56.012(a), 15.56.014(a)(4), and  
32 15.56.016(a)(1), each day a violation continues constitutes a separate offense.

1 (b) When a person is convicted of violating AS 15.56.012, in addition to  
2 imposition of a sentence as authorized by AS 12.55.015, notwithstanding  
3 AS 12.55.015(c), the court shall order suspension, for a period of one year, of any  
4 license held by the defendant that allows the defendant to do business in the state.

5 Sec. 15.56.019. DEFINITIONS. In AS 15.56.012 - 15.56.018, the terms  
6 "intentionally," "knowingly," "recklessly," and "with criminal negligence" have the  
7 meanings given in AS 11.81.900(a).

8 \* Sec. 25. AS 24.45.121(a) is amended to read:

9 (a) A lobbyist may not

10 (1) engage in any activity as a lobbyist before registering under  
11 AS 24.45.041;

12 (2) do anything with the intent of placing a public official under personal  
13 obligation to the lobbyist or to the lobbyist's employer;

14 (3) intentionally deceive or attempt to deceive any public official with  
15 regard to any material fact pertinent to pending or proposed legislative or administrative  
16 action;

17 (4) cause or influence the introduction of a legislative measure solely for  
18 the purpose of thereafter being employed to secure its passage or its defeat;

19 (5) cause a communication to be sent to a public official in the name of  
20 any fictitious person or in the name of any real person, except with the consent of that  
21 person;

22 (6) accept or agree to accept any payment in any way contingent upon  
23 the defeat, enactment, or outcome of any proposed legislative or administrative action;

24 (7) serve as a member of a state board, or commission, if the lobbyist's  
25 employer may receive direct economic benefit from a decision of that board or  
26 commission;

27 (8) serve as a campaign manager or director, serve as a campaign  
28 treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a  
29 fund-raising event, directly or indirectly collect contributions for, or deliver  
30 contributions to, a candidate or otherwise [ACTIVELY] engage in the fund-raising  
31 activity of a legislative campaign or campaign for governor or lieutenant governor  
32 if the lobbyist has registered, or is required to register as a lobbyist, under this

1 chapter, during the calendar year; this paragraph does not apply to a representational  
2 lobbyist as defined in the regulations of the Alaska Public Offices Commission, and does  
3 not prohibit a lobbyist from making personal contributions to a candidate as authorized  
4 by AS 15.13 or personally advocating on behalf of a candidate;

5 (9) offer, solicit, initiate, facilitate, or provide to or on behalf of a person  
6 covered by AS 24.60, during a legislative session, a gift, other than food or beverage for  
7 immediate consumption;

8 (10) make or offer a gift or a campaign contribution whose acceptance  
9 by the person to whom it is offered would violate AS 24.60.

10 \* Sec. 26. AS 24.60.031(b) is amended to read:

11 (b) In this section, "contribution" has the meaning given in AS 15.13.400  
12 [AS 15.13.130].

13 \* Sec. 27. AS 15.13.120(a), 15.13.130; AS 15.56.010, and 15.56.020 are repealed.

14 \* Sec. 28. CONSTRUCTION AND APPLICATION. Each provision of this Act shall be  
15 construed to avoid a conflict with any federal law that, under the supremacy clause of art. VI  
16 of the United States Constitution, prevails over the state provision.

17 \* Sec. 29. APPLICABILITY OF AS 15.13 TO PERSONS OTHER THAN INDIVIDUALS.  
18 If a court determines that, under the federal or state constitutions, persons who are not  
19 individuals must be allowed to contribute to candidates or groups, then the requirements,  
20 monetary limitations, and restrictions of AS 15.13 are applicable to those persons.

21 \* Sec. 30. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the  
22 application thereof to any person or circumstance, is held invalid, the remainder of this Act and  
23 the application to other persons or circumstances is not affected thereby.

24 \* Sec. 31. TAKING EFFECT OF ACT MADE CONDITIONAL. Sections 1 - 30 of this Act  
25 take effect only if, under art. XI, sec. 4, Constitution of the State of Alaska, and AS 15.45.210,  
26 the lieutenant governor determines that secs. 1 - 30 of this Act are substantially the same as the  
27 law proposed to be enacted by the Initiative entitled "An Initiative relating to election campaign  
28 financing and the Alaska Public Offices Commission; and providing for an effective date,"  
29 identified by the division of elections as Initiative Petition 95 CFPO, filed with the lieutenant  
30 governor by the Initiative sponsors under AS 15.45.140 on December 15, 1995.

31 \* Sec. 32. If secs. 1 - 30 of this Act take effect, they take effect January 1, 1997.



# STATE OF ALASKA

## THE ALASKA STATE LEGISLATURE

### House of Representatives

#### Representative Jeannette James

Chair of House State Affairs Committee

Capitol Building

Juneau, AK 99801-2197

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# memo:

March 12, 1996

To: Rep. Brian Porter, Chair Judiciary Committee

From: Jeannette James

Re: HB 368 Campaign Finance Reform

Please schedule HB 368 for a hearing at your earliest opportunity.

The Bill is the same as the initiative petition submitted for the November ballot, it has been rewritten by Legislative staff attorneys. It currently a House State Affairs CS.

One way or another there will be action on this issue this year. There will be a ballot vote by the people in November, or a bill that is substantially the same must be passed by the Legislature. I believe the enactment of this type of law should be open to the public via the committee process, therefore I prefer the Legislative approach.

"An Initiative relating to election campaign financing and the Alaska Public Offices Commission; and providing for an effective date."

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA :**

\* Section 1. FINDINGS AND PURPOSE. The people of the State of Alaska find that under existing laws:

- (a) Campaigns for elective public office last too long, are often uninformative, and are too expensive;
- (b) Highly qualified citizens are dissuaded from running for public office due to the high cost of campaigns;
- (c) Organized special interests are responsible for raising a significant portion of all campaign funds, and may thereby gain an undue influence over campaigns and elected officials, particularly incumbents;
- (d) Incumbents enjoy a distinct advantage in raising campaign funds, and many elected officials raise and carry forward huge surpluses from one campaign to the next, to the disadvantage of challengers;
- (e) Because under current laws candidates are completely free to convert campaign funds to personal income, there is great potential for bribery and political corruption; and
- (f) Penalties for violations of the existing campaign finance laws are far too lenient to deter misconduct.

Therefore, it is the purpose of this Act to substantially reform Alaska's campaign finance laws in order to restore the public's trust in the electoral process and to foster good government.

\* Sec. 2. AS 15.13.010(a) is amended to read:

(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, or from doing so more strictly than provided by this chapter.

\* Sec. 3. AS 15.13.040 is amended by adding new subsections (g) and (h) to read:

(g) If the contribution is made in cash, check, money order or other negotiable instrument and must be reported to the commission under this chapter, a candidate may neither spend it nor in the case of a negotiable instrument convert it to cash until the name, address, principal occupation, and employer of the contributor and the date and amount of the contribution are recorded for inclusion in any reports which must be filed with the commission.

(h) the provisions of (a) of this section do not apply to a candidate if the candidate:  
(1) on a form prescribed by the commission, indicates an intent not to raise and not to spend more than \$1,000 in seeking election;  
(2) accepts contributions totaling \$1,000 or less in seeking election; and  
(3) makes expenditures totaling \$1,000 or less in seeking election.

\* Sec. 4. AS 15.13.050(a) and (b) are amended to read:

Sec. 15.13.050. [GROUPS] WHO MAY MAKE EXPENDITURES. (a) Only the candidate, an individual or a group may make an expenditure concerning the election of the candidate. Unless the expenditure is an independent expenditure, an individual or group

expenditure is a contribution to the candidate subject to the limitations and prohibitions of this chapter.

(b) Each [GROUP] person and publicly funded entity, before making an expenditure [ON BEHALF OF, OR IN OPPOSITION TO] in support of or in opposition to a ballot proposition or question or in support of or in opposition to a candidate shall register, on forms provided by the commission, with the commission.

\* Sec. 5. AS 15.13.070 is repealed and reenacted to read:

Sec. 15.13.070. DIRECT CONTRIBUTIONS AND EXPENDITURES; TIMING, AMOUNT AND FORM OF PAYMENT. (a) Only an individual may make contributions to a group. Only individuals and groups may make contributions to a candidate. A candidate may not solicit or accept a contribution from any other person. No corporation, company, partnership, firm, labor union, association, organization, business trust or surety, or publicly funded entity which does not satisfy the definition of group in AS 15.13.130(4)(b) may make a contribution to a candidate. Subject to the other limitations of this section and AS 15.13 and AS 24.45, individuals and groups may make contributions only as follows:

	to a candidate for the legislature, for a municipal office, for constitutional convention delegate, or for retention in judicial office, or to any one who campaigns as a write-in candidate for any of these offices↓	to a candidate for governor or lieutenant governor, or to any one who campaigns as a write-in candidate for either of these offices↓	to a group↓	to a political party↓
(1) An individual may contribute→→	not more than \$500 per year.	not more than \$500 per year.	not more than \$250 per year.	not more than \$5,000 per year.
(2) A group which is not a political party may contribute →→	not more than \$500 per year.	not more than \$500 per year.	(contributions prohibited)	(contributions prohibited)
(3) A political party may contribute→→	not more than \$5,000 per year.	not more than \$50,000 per year.	(contributions prohibited)	(contributions prohibited)

(b) A candidate may not accept a contribution from an individual who is not a resident of the state of Alaska at the time the contribution is made. A candidate may not accept a contribution from a group organized under the laws of another state, resident of another state, or whose participants are not residents of the state of Alaska at the time the contribution is made.

(c) An individual required to register as a lobbyist under AS 24.45 may not make a contribution to a candidate for the legislature at any time the individual is subject to the registration requirement under AS 24.45 and for one year after the date of initial registration or its renewal, except that the individual may make a contribution under this section to a candidate for the legislature in a district in which the individual is or will be entitled to vote on the date of the election. An individual subject to the restrictions of this subsection must separately report to the commission, on a form provided by the commission, each contribution made while required to register under AS 24.25. A representational lobbyist, as defined in 2 AAC 50.511(a), is not subject to the limitations or requirements of this subsection.

(d) No candidate, or any other person acting directly or indirectly on the candidate's behalf, may solicit, contribute to, or accept a campaign contribution:

(1) more than 11 months before the general or municipal election in which the candidate intends to seek election to a public office;

(2) before the date upon which the candidate files for nomination for a specified elective public office, or files a letter of intent with the commission to run for a specified elective public office, or files a declaration of candidacy with the lieutenant governor to run for a specified elective public office; and

(3) more than 30 days after the general or municipal election in which the candidate runs against another candidate, or more than 30 days after a primary election if the candidate is not opposed in the general election.

(e) No candidate may solicit or accept:

(1) a campaign contribution or an honorarium during a special or regular session of the legislature or during a constitutional convention if the candidate is a member of the legislature, a delegate to the constitutional convention, the governor, the lieutenant governor, or a member of the governor's, lieutenant governor's or a legislator's staff; or

(2) an honorarium at any time after the candidate files for nomination for a specified elective public office, files a letter of intent with the commission to run for a specified elective public office, or files a declaration of candidacy with the lieutenant governor to run for a specified elective public office.

No person may give a campaign contribution or honorarium in violation of this subsection.

(f) This chapter does not prohibit a candidate from contributing any sum of the candidate's own money or other thing of value to candidate's own campaign. The candidate must report these contributions in accordance with AS 15.13.040 and 15.13.110.

(g) An individual may not make a contribution in cash or by cash payment in an amount over \$25. A candidate or group may not accept a contribution in cash or by cash payment in an amount over \$25.

(h) A candidate or group may not make an expenditure in cash or by cash payment in an amount over \$100 unless a written receipt is obtained and filed with the commission.

(i) No person may make a campaign contribution or incur a campaign expenditure, directly or indirectly, anonymously, in a fictitious name, or in the name of another. A candidate or group receiving a prohibited contribution shall return it to the contributor immediately upon discovery that the contribution is prohibited. If the contribution cannot be returned in the same form, the equivalent value of the contribution shall be returned. An anonymous contribution escheats to the state unless the contributor is identified within 5 days of its receipt. Any moneys which escheat to the state shall be delivered immediately to the Department of Revenue for deposit in the general fund.

(j) Contributions to a candidate or group may be received only by, and expenditures may be made on behalf of the candidate or group only by, the candidate, or the candidate's or group's campaign treasurer or deputy campaign treasurer.

(k) No campaign expenditure of any type whatsoever shall be made by any candidate or group, or their campaign treasurer or deputy campaign treasurer, unless the source is disclosed as required by the provisions of this chapter.

(l) Five years after the effective date of this act, and every five years thereafter, the commission shall review the dollar limitations in this section and may adjust them to reflect any significant net inflation or deflation which has occurred during the immediately preceding five years. Any adjustment shall be adopted by regulation. In reviewing the dollar limitations, the commission shall use a recognized governmental index for measuring the occurrence of inflation or deflation in the purchase of consumer goods.

\* Sec. 6. AS 15.13 is amended by adding new sections to read:

Sec. 15.13.071. LOANS/CONTRIBUTIONS FROM FAMILY MEMBERS. (a) Loans to a candidate's campaign from a member of a candidate's immediate family are not contributions if in the aggregate the loans do not exceed \$1000 in a calendar year, are not given to the family member by another person under an agreement that they be loaned or donated to the candidate's campaign, and are documented in writing as loans at the time made. A loan under this section may not be repaid unless the candidate first files an authentic copy of the loan document with the commission. A loan document filed with the commission is a public record. If a loan or loans from a family member exceeds \$1,000 in the aggregate in a calendar year, the amount in excess of \$1000 is a contribution subject to the limitations and reporting requirements governing contributions of this chapter.

(b) A candidate may not repay a loan or contribution the candidate makes to the candidate's own campaign unless within five days of making the loan or contribution the candidate notifies the commission, on a form it provides, of the candidate's intention to repay the loan or contribution from campaign funds.

(c) Repayments under this section must be consistent with AS 15.13.073.

Sec. 15.13.072. PROHIBITED USES OF CAMPAIGN FUNDS. Contributions may only be used to pay candidate and campaign expenses reasonably related to campaign activities. Contributions may not otherwise be:

- (1) used to give a personal benefit to the candidate or any other person;
- (2) converted to personal income of the candidate;
- (3) loaned to any person;
- (4) knowingly used to pay more than the fair market value for goods or services purchased for the campaign;
- (5) used to pay a criminal fine;
- (6) used to pay civil penalties, except that civil penalties assessed under this chapter may be paid with campaign funds if authorized by a court or the commission after it first determines
  - (a) the candidate, campaign treasurer, and deputy campaign treasurer did not cause or participate in the violation and exercised a reasonable level of oversight over the campaign, and
  - (b) the candidate, campaign treasurer, and deputy campaign treasurers cooperated in the revelation of the violation and in its immediate correction; or
- (7) used to make contributions to another candidate or to a group.

Sec. 15.13.073. DISBURSEMENT OF CAMPAIGN ASSETS AFTER ELECTION. (a) A candidate with campaign funds remaining after the date of the general or municipal election or after the date the candidate withdraws as a candidate, whichever comes first, must distribute the funds within sixty days, but only as follows:

- (1) to pay any bills incurred for expenditures reasonably related to the campaign and the winding up of the affairs of the campaign, and to pay expenditures associated with post-election fund raising which may be needed to raise funds to pay off campaign debts;
- (2) to pay for a victory or a thank-you party costing less than \$500, or to give a thank you gift of a value of less than \$50 to a campaign employee or volunteer;
- (3) to make donations, without condition, to a political party as defined in AS 15.60.0101(20), to the state's general fund, to a municipality of the state, or to the federal government;
- (4) to make donations, without condition, to organizations qualified as charitable organizations under 26 U.S.C. § 501(c)(3), provided the organization is not controlled by the candidate or a member of the candidate's immediate family;
- (5) to repay loans from immediate family members made under AS 15.13.071, or to repay loans or contributions from the candidate to the candidate's own campaign in the amount of not more than \$5,000 for a municipal office campaign, \$10,000 for a legislative, judicial retention, or constitutional convention delegation campaign, or \$25,000 for a gubernatorial campaign; or
- (6) to establish a fund for, and to pay attorney's fees or costs incurred in, the prosecution or defense of an administrative or civil judicial action which directly concerns a challenge to the victory or defeat of the candidate in the election.

(b) A candidate may spend campaign funds raised in a general, municipal or special election campaign in the candidate's runoff election campaign following the election in which the winner was not decided.

(c) After a general, municipal, special or runoff election, a candidate may retain the ownership of personal property, except moneys, which was acquired by and for use in the campaign, such as office furniture, files, campaign literature, and the like. The total value of the property retained may not exceed \$2500. All other property must be disposed of, or sold and the sale proceeds disposed of, in accordance with (a) of this section.

(d) Any property remaining after disbursements are made under this section automatically escheats to the state. Within 30 days the candidate must deliver the property to the Department of Revenue, and the department will deposit any moneys received into the general fund and dispose of any other property in accordance with state law.

Sec. 15.13.074. EXPENDITURES FOR OR AGAINST BALLOT PROPOSITION OR QUESTION. This chapter does not prohibit any person, or a publicly funded entity, from making independent expenditures in support of or in opposition to a ballot proposition or question. Such expenditures must be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter, and otherwise be consistent with AS 15.13.077.

Sec. 15.13.075. INDEPENDENT EXPENDITURES FOR OR AGAINST CANDIDATES. (a) Only an individual or group may make independent expenditures supporting or opposing a candidate for election to public office. Such expenditures must be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) An individual who makes an independent expenditure supporting or opposing a candidate may not accept a contribution to help pay for the expenditure from any other individual or group in excess of the amount an individual may contribute to a group under AS 15.13.073.

(c) In addition to complying with AS 15.13.090, an individual or group who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper or magazine advertisement, or any other communication which supports or opposes a candidate for election to public office must place the following statement in the mailing, literature, advertisement or other communication so that it is readily and easily discernible: "This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate."

Sec. 15.13.076. ELECTION EDUCATIONAL ACTIVITIES. Nothing in this chapter is intended to prohibit any person from engaging in educational election-related communications and activities, such as the publication of the date and location of an election, the education of students about voting and elections, the sponsorship of open candidate debate forums, participation in get out the vote or voter registration drives that do not favor any particular candidate, political party, or political position, or the equal dissemination of the views of all candidates running for a particular office.

Sec. 15.13.077. USE OF PUBLIC FUNDS PROHIBITED. (a) No person, the state, its agencies, and its corporations, the University of Alaska and its Board of Regents, municipalities, school districts and regional educational attendance areas, or any other political subdivision of the state may use public funds to influence the outcome of the election of a candidate to a state, municipal, or federal office.

(b) Public funds may be used to influence the outcome of an election concerning a ballot proposition or question but only if the funds are specifically appropriated for that purpose by a statute or a municipal ordinance.

(c) Public funds may be used to disseminate information about the time and place of an election and to hold an election. Public funds may be used to provide the public with nonpartisan information about a ballot proposition or question or about all the candidates seeking election to a particular public office.

(d) A public entity, and any other person, which spends public funds seeking to influence the outcome of an election must report the expenditures to the commission in the same manner as an individual under AS 15.13.040.

\* Sec. 7. AS 15.13.080 is amended to read:

Sec. 15.13.080. STATEMENT BY CONTRIBUTOR. [A] An individual [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. An individual who contributes to more than one group within ninety days of an election and whose total contributions in money, or in the value of goods and services, in aggregate to all groups exceeds \$1000 in a calendar year, shall also furnish a statement, on a form made available by the commission. The statement shall identify the contributor and the candidate and all groups who received contributions, 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 groups or candidate, or the groups' or candidate's campaign treasurer[,] or deputy campaign treasurer at the time the contribution is made.

\* Sec. 8. AS 15.13.110(b) and (c) are amended to read:

(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 group, candidate or campaign treasurer or deputy campaign treasurer.

(c) [THE REPORTS OF CANDIDATES SHALL BE FILED WITH THE COMMISSION'S CENTRAL OFFICE.] All reports required by this chapter shall be filed with the commission's central office and 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.

\* Sec. 9. AS 15.13.120(a) is repealed.

\* Sec. 10. AS 15.13.120(d) and (e) are repealed and readopted to read:

(d) Any person who believes a violation of this chapter or a regulation adopted under this chapter occurred or is occurring may file an action in superior court seeking injunctive relief and civil penalties under AS 15.13.125, or may file a complaint with the commission under (e) of this section. No action may be commenced under this subsection after two years have elapsed from the date of the alleged violation. The plaintiff in a superior court action shall serve the Attorney General and the commission with a copy of the Summons and Complaint. The commission, represented by the Attorney General, shall have the right to intervene in any such action.

(e) A member of the commission, the commission's director, or any other person who believes a violation of a provision of this chapter or a regulation adopted under it has occurred, may file an administrative complaint with the commission. The commission shall expeditiously make an investigation of the complaint. If a member of the commission has filed the complaint, then the member shall not participate as a commissioner in any proceedings of the commission with respect to the complaint. After affording a person due notice and an opportunity for a hearing, if the commission finds that the person has engaged in or is about to engage in an act or practice which constitutes or will constitute a violation of a provision of this chapter or a regulation adopted under it, the commission shall enter an order requiring the violation to cease and to be remedied, and shall assess civil penalties under AS 15.13.125. No action may be commenced by the commission under this subsection after four years have elapsed from the date of the alleged violation. The commission's exercise of jurisdiction under this subsection is not exclusive. A person who files a complaint under this subsection may withdraw it at any time and proceed under (d) of this section.

\* Sec. 11. AS 15.13.125 is repealed and readopted to read:

Sec. 15.13.125. CIVIL PENALTIES. (a) A person who violates a provision of this chapter or a regulation adopted under this chapter is subject to a minimum civil penalty of

- (1) not less than \$1 nor more than \$10 per day for the 1st through the 10th day of a violation,
- (2) not less than \$10 nor more than \$50 per day for the 11th through the 20th day of a violation, and
- (3) not less than \$50 per day for each day a violation continues more than 20 days.

A person who violates a provision of this chapter or a regulation adopted under this chapter which continues more than 20 days is subject to a maximum civil penalty for each negligent or reckless violation of not more than \$250 per violation per day, and for each knowing or intentional violation of not more than \$500 per violation per day. Penalties assessed under this subsection (a) may be trebled under (d) of this section.

(b) In establishing the appropriate level of penalties under subsection (a), the commission or superior court may consider

- (1) as aggravating factors, whether the violator recklessly, knowingly or intentionally caused or participated in the violation, whether the violation was part of a series or pattern of violations in the same or past campaigns, and whether the violation may have caused any damage to the election campaign of another; and
- (2) as mitigating factors, whether the violator corrected the violation within 5 days after it occurred, and the violator's remedial conduct, if any, taken to correct the violation before the election and taken to prevent future violations.

If the commission or superior court finds that the violation was not a repeat violation or part of a series or pattern of violations, was inadvertent, was quickly corrected, and had no adverse effect on the campaign of another, it may suspend imposition of the penalties and forgive them if there are no similar violations for a period of one year.

(c) The commission, after the filing of an administrative complaint by any citizen under AS 15.13.120(d), by a member of the commission, or by the director of the commission, and after giving a respondent due notice and an

opportunity to be heard, shall upon proof of the complaint against a respondent assess civil penalties under (a) of this section, the commission's costs of investigation and adjudication, and reasonable attorney's fees. Any final administrative decision made by the commission under this subsection may be appealed to the superior court within 30 days.

(d) A superior court, upon the proof of a violation of this chapter in an action brought by a citizen under AS 15.13.120(d), shall adjudge against the defendant civil penalties under this section, which penalties shall be trebled, and shall award reasonable attorney's fees and costs to the prevailing party. The superior court may elect not to treble the civil penalties only upon proof that the violator did not knowingly cause the violation and corrected it within five days after it occurred. A complaining citizen may execute on the judgment and is entitled to 50% of any sums recovered, after reimbursement of any attorney's fees and costs awarded by the court. The remaining 50% of any sums recovered shall be delivered to the Department of Revenue for deposit in the state's general fund.

\* Sec. 12. AS 15.13 is amended to add a new section to read:

Sec. AS 15.13.126 OTHER LAWS; SEVERABILITY. (a) Each provision of this Act shall be construed to avoid conflicts with any federal law that might otherwise prevail under the U.S. Constitution, Art. VI (Supremacy Clause).

(b) Each word, sentence, paragraph and subparagraph, section and subsection of this act is severable. If a court of competent jurisdiction determines that a particular word, sentence, paragraph, subparagraph, section or subsection of this act is invalid, such determination shall not affect the validity of any other word, sentence, paragraph, subparagraph, section or subsection.

(c) In the event that a court determines that the federal or state constitution requires that persons other than individuals be allowed to contribute to candidates or groups, the requirements, monetary limitations and restrictions of this chapter shall nonetheless bind such other persons.

\* Sec. 13. AS 15.13.130(1) is amended to read.

Sec. 15.13.130. DEFINITIONS. In this chapter,  
(1) "candidate"

(a) 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 for any of these offices;

(b) when a provision of this chapter limits or prohibits the donation, solicitation or acceptance of campaign contributions, or limits or prohibits the expenditure of campaign funds, then "candidate" includes in addition to the individual who is the candidate, a candidate's campaign treasurer and any deputy campaign treasurer, a member of the candidate's immediate family, a person acting as agent for the candidate, the campaign or a campaign committee, and any group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate;

\* Sec. 14. AS 15.13.130(4) is amended to read:

(4) "group" means

(a) every state and regional executive committee of a political party and [ , IN ADDITION, MEANS]

(b) any combination of two or more [PERSONS OR] individuals acting jointly who organize for the principal and major purpose to influence the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the

candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 per cent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate.

\* Sec. 15. AS 15.13.130 is amended by adding new paragraphs to read:

(8) "commission" means the Alaska Public Office Commission;

(9) "honorarium" means a payment of money or anything of value by any person to a public official or to any other individual as consideration for an appearance, speech, or article made in connection with the duties of the public official or because of the individual's candidacy for a public office; "honorarium" does not include the payment of a salary or an expense reimbursement to which the recipient might otherwise be entitled as an employee of the person;

(10) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(11) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or any other person acting as a principal or agent of the candidate;

(12) "political party" has the meaning given in AS 15.60.010(20);

\* Sec. 16. AS 11.56 is amended to add a new section to read:

Sec. AS 11.56.870. A person who

(1) intentionally violates a provision of AS 15.13, or a regulation adopted under AS 15.13 is guilty of a Class C felony.

(2) knowingly violates a provision of AS 15.13 or a regulation adopted under AS 15.13 is guilty of a Class A misdemeanor.

(3) recklessly or negligently violates a provision of AS 15.13 or a regulation adopted under AS 15.13 is subject to a minimum penalty in the amount of \$300 but not more than \$1,000 per violation.

For the purposes of this subsection, each day a violation continues constitutes a separate offense.

\* Sec. 17. AS 12.55.015 is amended by adding a new subsection to read:

(d) Upon the judgment of conviction of a person under AS 11.56.870 for an intentional violation of a provision of AS 15.13 or a regulation adopted under it, the person shall forfeit any license to do business in the State of Alaska for a period of one year in addition to other penalties which may be imposed by law .

\* Sec. 18. AS 24.45.121(a)(8) is amended to read:

(a) A lobbyist may not

(8) serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a fund-raising event, directly or indirectly collect contributions for, or deliver contributions to, a candidate, or otherwise [ACTIVELY] engage in the fund-raising activity of a legislative campaign or campaign for governor or lieutenant governor if the lobbyist has registered or is required to register during the calendar year; this paragraph does not apply to a representational lobbyist as defined in the regulations of the Alaska Public Offices Commission, and does not prohibit a lobbyist from making personal contributions in conformance with AS 15.13 or personally advocating on behalf of a candidate;

\* Sec. 19. If enacted by the Legislature, this Act shall take effect immediately. If enacted by the vote of the people in a statewide election in accordance with article XI, section 6 of the Alaska Constitution, then this Act's effective date shall be determined in accordance with article XI, section 6 of the Alaska Constitution.

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

No. 1  
Bill Version: CSHB 368(STA)  
(H) Publish Date: 3/12/96

Revision Date: \_\_\_\_\_  
Title: "An Act relating to election campaigns, election campaign financing, the oversight and regulation of election campaigns..."  
Sponsor: Rep. James  
Requestor: (H) STA

Department Affected: Administration  
BRU: PUBLIC OFFICES COMMISSION  
Component: PUBLIC OFFICES COMMISSION  
COMPONENT SERIAL NO. 70

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	144.6	144.6	94.0	94.0	94.0	94.0
TRAVEL	2.5	0	2.5	0	0	0
CONTRACTUAL	18.0	2.0	1.2	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	17.7	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>144.6</b>	<b>144.6</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	144.6	144.6	94.0	94.0	94.0	94.0
1005 GF/Program Receipts	0	0	0	0	0	0
1037 GF/Mental Health	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>144.6</b>	<b>144.6</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>

Estimate of any current year (FY 96) cost: \$1.2

POSITIONS:

FULL-TIME	3	3	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED.

Prepared by: Karen Boorman  
Division: Public Offices Commission

Phone: 276-4176  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Bover  
Agency: Department of Administration

Date: 2/1/96

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FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 368

ANALYSIS: (continued)

1. Assumption

This expenditure detail is based upon the assumption that HB 368 will have an effective date during the 1996 election cycle.

2. Program Summary

This bill would require extensive education of all candidates and contributors of the new limits on contributions, expenditures and behavior. New manuals and forms would be necessary to provide immediate help. Regulations, civil penalty assessments, advisory opinions and adjudication of complaints would provide long term guidance. The computer tracking system would have to be significantly upgraded to accommodate the increased number of registrations and reports as well as the new and significantly expanded civil penalty structure.

a. Positions

1. An investigator III/associate coordinator would write advisory opinions, handle complex civil penalty assessments and inquiries from the public, train candidates and contributors and investigate complaints.
2. An administrative clerk III would be responsible for processing filed reports, statements and registrations as well as accurate and prompt input of data about contributors' and candidates' registering and reporting. This position would assign work to and supervise an existing administrative clerk II; answer inquiries from the public about APOC's expanded databases; and compose reports of contribution, expenditure and candidate activity.
3. A regulations specialist II would draft regulations interpreting this bill's new provisions for consideration by the commission and the Department of Law. This position would also draft new forms and manuals. This is a two year position.

b. Other expenditures

Travel costs cover training in Fairbanks, Barrow, Kenai and Ketchikan as well as an additional commission teleconference to approve new manuals and forms. Contractual costs cover printing and mailing new manuals and forms, additional office space for two years, and reprogramming the current computer tracking system. Equipment costs cover computer equipment for the new positions as well as an improved backup and storage system. Funds in two election years for newspaper ads in six communities would tell the public of the new limitations.

c. Funding

Undesignated revenue to the general fund from civil penalties is likely to increase, but the amount of any increase is speculative. Any increased revenue would go to the general fund, not APOC.

## CAMPAIGN FINANCING INITIATIVE

SEC.	SUBJECT	INITIATIVE	DRAFT COMMITTEE SUBSTITUTE...2/27	COMMENT
1	Findings and Purpose	Findings: six.  Purpose: to reform campaign finance laws.	(Uncodified) Similar to initiative.  (Uncodified) Similar to initiative.	
2	Municipal Regulation	Municipalities can regulate elections "more strictly" than in this chapter.	(NEW 15.13.010(c)) Similar to initiative.	
3	Contribution Requirements	Name, address, occupation, employer of contributor must be filed with APOC before expenditure. Exception=\$1000 or less.	(NEW 15.13.040) Similar to initiative except ceiling for small campaigns raised to \$2500.	
4	Who May Make Expenditures	Expendor must register with APOC  Candidate, individual or group may make independent expenditure..	(AMEND 15.13.050) Registration before expenditure; NOT contribution registration. (NEW 15.13.067). Similar to initiative.	
5	Direct Contributions and Expenditures; Timing, Amount and Form of Payment	To legislative, judicial, municipal candidates: . individual may give up to \$500; . group may give up to \$500; . party may give up to \$5000.  To governor or Lt. governor candidates: . individual may give up to \$500; . group may give up to \$500; . party may give up to \$50,000.  To a group: . individual may give up to \$250; . prohibits group to group contributions; . prohibits party to group contributions.  To political party: . individual may give up to \$5000; . prohibits group to party contributions; . prohibits party to party contributions.	To legislative, judicial, municipal candidates: . individual may give up to \$500; . group may give up to \$1000; . party may give up to \$10,000 to House, \$15,000 to Senate, \$5000 to other candidates.  To governor or Lt. governor candidates: . individual may give up to \$500; . group may give up to \$1000; . party may give up to \$100,000.  To a group: . individual may give up to \$250; . group may give up to \$1000; . party may give up to \$1000.  To political party: . individual may give up to \$5000; . group may give up to \$1000; . Allows part to party contributions.	

## CAMPAIGN FINANCING INITIATIVE

SEC.	SUBJECT	INITIATIVE	DRAFT COMMITTEE SUBSTITUTE...2/27	COMMENT
6	<p><b>Loans from Family or Candidate</b></p> <p><b>Prohibited Use of Funds</b></p> <p><b>Disbursement of Assets After Election</b></p> <p><b>Expenditures Regarding Ballot Propositions</b></p> <p><b>Expenditures For or Against Candidates</b></p> <p><b>Educational Activities</b></p> <p><b>Use of Public Funds</b></p>	<p>Family loan up to \$1000 is not contribution; need not be repaid. Candidate can recover only limited amount of loan(s) made to self.</p> <p>Personal benefit, personal income, loans, fines, other candidates, exceed fair market value.</p> <p>To pay bills; \$500 for thank you party; donation to political party, general fund, federal government; charity; repay loans; legal fees; runoffs. Property retained may not exceed \$2500. No carry forward of funds.</p> <p>Permitted in accordance with law.</p> <p>Permitted in accordance with law. Disclaimer.</p> <p>Permitted in accordance with law.</p> <p>Prohibited for or against candidates. Allowed on ballot propositions if specifically appropriated and for non-partisan information. Must report to APOC</p>	<p>(NEW 15.13.078) Loan provision omitted; limited to candidate's own money. Similar to initiative.</p> <p>(NEW 15.13.112) Similar to initiative. Adds "immediate return" language.</p> <p>(NEW 15.13.116) Similar to initiative but authorizes pro rata repayment to contributors; carry forward of \$50,000 for governor, \$7500 Senate, \$5000 House or other candidates; transfer to office use of \$5000 House, \$10,000 Senate.</p> <p>(NEW 15.13.140) Similar to initiative.</p> <p>(NEW 15.13.135 &amp; .137) Similar to initiative.</p> <p>(NEW 15.13.150) Similar to initiative.</p> <p>(NEW 15.13.145) Similar to initiative.</p>	
7	<b>Contributor's Statement</b>	Mandatory for anyone with \$1000 aggregate in last 90 days of election. Copy to candidate.	(AMEND 15.13.080) Maintains \$1000 but deletes copy to candidate.	
8	<b>Reports to APOC</b>	Clarifies that groups and deputies must also report like contributions.	(AMEND 15.13.110 (b)(c) Similar to initiative but removes requirement that expenditures be reported on 24-hour reports.	
9	<b>Penalty for Violation</b>	Misdemeanor penalty repealed.	Repealed in Sec. 27.	

## CAMPAIGN FINANCING INITIATIVE

SEC.	SUBJECT	INITIATIVE	DRAFT COMMITTEE SUBSTITUTE...2/27	COMMENT
10	Citizen Suits	Any person (including APOC) may sue in superior court within 2 years or file complaint with APOC.	(R & R 15.13.120(d) Person must file complaint with APOC first. APOC has 60 days to respond.	
	APOC Action	APOC may file administrative action within 4 years.	(R & R 15.13.120(e) Similar to initiative.	
11	Civil Penalties	Establishes sliding scale tied to aggravating and mitigating factors. Increases penalties over existing law. Treble penalties, allowing fees and court costs may be assessed.	(AMEND 15.13.125) Omits sliding scale and raises dollar penalties. (NEW 15.13.125(b) Sets out penalty-assessment instructions.	
12	Other laws; severability	Construe to avoid federal conflict. Each word-section is severable. If court says persons other than individuals can contribute, this chapter still binds.	(Uncodified) Similar to initiative. (Uncodified) Similar to initiative. (Uncodified) Similar to initiative.	
13	Definition of "Candidate"	Candidate=treasurer, deputy, family, agent, group, etc.	(NEW 15.13.400) Similar to initiative.	
14	Definition of "Group"	Includes any combination of individuals <u>organizing</u> or acting to influence election.	(NEW 15.13.400) Similar to initiative.	
15	Definitions Added to Sec. .130	Adds to 130: Commission, Honorarium, Immediate Family, Independent Expenditure, Political Party.	(NEW 15.13.400) Defines all 11 items except Honorarium. Adds 'Publicly Funded Entity.' Adds 'Minor Parties' to definition of Political Party.	
16	Serious Violations	'Intentional' violation becomes Class C felony; 'knowing' violation becomes Class A misdemeanor; 'reckless' becomes \$1000 maximum.	(NEW 15.56) Reduces felony penalties by one level from initiative so that most severe penalty is Class A misdemeanor.	
17	Loss of Business License	Means loss of business license plus possible other penalties.	Similar to initiative.	
18	For-Profit Lobbyists	May not deliver or raise funds for candidates.	(AMEND 24.25.121(A)(B) Similar to initiative.	
19	Effective Date	Immediate...if enacted by legislature. Determined by Constitution...if approved by voters. (NOTE: AS 15.45.220 says an initiative becomes law 90 days after election certification.)	January 1, 1997.	

## CAMPAIGN FINANCING INITIATIVE

SEC.	SUBJECT	INITIATIVE	DRAFT COMMITTEE SUBSTITUTE...2/27	COMMENT
NA	Printed Material Disclaimer for Ballot Proposition	Silent	(AMEND 15.13.040(d) Exempts from reporting printed-material expenditures less than \$250 re: ballot propositions. Result of <u>McIntyre v. Ohio Elections Commission</u> .	
NA	Disclaimer for Independent Expenditures	Silent	(NEW 15.13.090(b) Adds exemption due to <u>McIntyre</u> as noted above.	
NA	Contribution Between Political Party and Subordinate Unit	Silent	(NEW 15.13.065) Contributions between political party and subordinate unit are authorized.	
NA	Deadline for Candidates Losing Primary to Receive and Expend Funds	Silent	(NEW 15.13.074(c)(4)(B) Allows losing primary candidates to receive and expend 45 days after primary.	
NA	Charitable Gaming	Silent	(AMENDS 05.15.150(a) Only proceeds from raffles can support campaigns, parties, groups.	
NA	Conditional Effect	Silent	(Uncodified) Either the bill or the initiative may become law, not both.	

CURRENT LAW	INITIATIVE	CS DATED 2/28/96
<b>Contributions from Individuals</b> \$1000/yr. limit; No limits to political parties or groups.	\$500/yr. to a candidate \$250/yr. to a group \$5,000/yr. to a political party	Same as initiative.
<b>Contributions from Parties</b> No limits	\$5,000/yr. to legislative candidate \$50,000/yr. to Gov. or Lt. Gov. candidate	\$10,000/yr. to House candd; \$15,000 to Senate; \$5,000/yr. to others; \$100,000/yr. to Gov./Lt. Gov. cand.
<b>Contributions not from Individuals (I.e. corps, unions)</b> \$1,000/yr. contrib. limit. Unlimited to groups or parties.	Prohibited.	Same as initiative.
<b>Contributions from groups of individuals</b> \$1,000/yr. to a candidate	\$500/ yr. to a candidate	\$1,000/yr. to a candidate.
<b>Lobbyists</b> No special restrictions on contributions	A for-profit lobbyist could contribute only to a legislative candidate running in the lobbyist's district of residence.	Same as initiative
<b>When money can be raised</b> No starting or ending point	A candidate could not accept a contribution 11 months before, or more than 30 days after the election.	June 1 to 45 days after the election for legislative candidates; Jan. 1 to 45 days after the election for Gov./Lt. Gov. Others: 5 mo. prior to 45 days after.
<b>Personal use of campaign funds</b> No restrictions. Unlimited funds may be converted to pers. income.	Prohibited.	Transfer of \$5,000 (House) or \$10,000 (Senate) to office account allowed.
<b>Carryforward of campaign surpluses</b> Unlimited surplus funds may be carried over to future campaigns.	Prohibited.	Transfer of \$5,000 (House), \$7,500 (Senate), or \$50,000 (Gov./Lt. Gov.) to next campaign allowed.
<b>Out-of-state contributions</b> No special restrictions	Prohibited.	Out-of-state contributions allowed up to \$2,000 (House), \$3,000 (Senate) or \$20,000 (Gov./Lt. Gov.)
<b>Independent expenditures</b> No restrictions.	Only individuals, political groups and political parties could make "independent" expenditures.	Same as initiative.
<b>Public funds</b> No clear restrictions	Use of public funds for campaigns involving candidates is prohibited.	Same as initiative.
<b>Serious violations</b> All minor misdemeanors	Intentional violations would be Class C felonies, and knowing violations would be Class A misdemeanors.	Penalties would be reduced by one step so the most severe penalty would be a Class A misdemeanor.
<b>Civil penalties</b> Min. civil penalty is \$10/violation	Civil penalties increase depending on significance and length of a violation.	Civil penalty maximums would increase.
<b>Power to enforce</b> Only a state agency, APOC, can enforce the campaign finance and disclosure laws	Both APOC and citizens could sue in Superior Court for injunctive relief and civil penalties.	Citizen suits allowed only after complaint to APOC

## CAMPAIGN FINANCING INITIATIVE

SEC.	SUBJECT	INITIATIVE	DRAFT COMMITTEE SUBSTITUTE...2/27	COMMENT
		No non-resident contributions.	(NEW 15.30.072(a)(b) Limits non-resident contributions: \$20,000 for governor, lt. governor, \$3000 Senate; \$2000 House.	
		No out-of-district contributions by for-profit lobbyists.	(NEW 15.13.074(f) Similar to initiative.	
		Candidate can accept money 11 months before, and 30 days after, election.	(NEW 15.13.074) Shortens fund-raising prior to election: governor=Jan. 1 of election year; legislature=June 1; others=5 months. Lengthens to 45 days after election.	
		No contributions or honoraria during sessions. No honoraria after declaration of candidacy.	Honoraria language modified. (NEW 15.13.155) Allows governor and lt. governor to raise funds during sessions. (NEW 15.13.072(e) No solicitation during sessions, incumbents or challengers.	
		Candidate can contribute "any sum" to candidate's own campaign.	(NEW 15.13.078) Similar to initiative.	
		No cash contributions over \$25.	(NEW 15.13.074(e) No cash contributions over \$100 = current law.	
		No cash expenditures over \$100 unless written receipt is obtained for APOC.	(NEW 15.13.082(a) Similar to initiative.	
		No anonymous contributions or expenditures.	(NEW 15.13.084) Similar to initiative.	
		Contributions received and expenditures made only by candidate, treasurer or deputy.	(NEW 15.13.086) Similar to initiative.	
		Every expenditure must be disclosed.	(NEW 15.13.082(b) Similar to initiative.	
		APOC indexes dollar amounts every 5 years.	Deleted.	

CURRENT LAW	INITIATIVE	CS DATED 2/28/96
<b>Contributions from individuals</b> \$1,000/yr. limit; No limits to political parties or groups.	\$500/yr. to a candidate \$250/yr. to a group \$5,000/yr. to a political party	Same as initiative.
<b>Contributions from parties</b> No limits.	\$5,000/yr. to legislative candidate \$50,000/yr. to Gov. or Lt. Gov. candidate. <i>1 state wide</i>	\$10,000/yr. to House or other candidates \$15,000/yr. to Senate cand. \$100,000/yr. to Gov./Lt. Gov. candidate.
<b>Contributions not from individuals (i.e. corps, unions)</b> \$1,000/yr. contrib. limit. Unlimited to groups or parties.	Prohibited.	Same as initiative.
<b>Contribution from groups of individuals</b> \$1,000/yr. to a candidate.	\$500/ yr. to a candidate.	\$1,000/yr. to a candidate
<b>Lobbyists</b> No special restrictions on contributions.	A for-profit lobbyist could contribute only to a legislative candidate running in the lobbyist's district of residence.	Same as initiative.
<b>When money can be raised</b> No starting or ending point.	A candidate could not accept a contribution 11 months before, or more than 30 days after the election.	June 1 to 45 days after the election for legislative candidates; Jan. 1 to 45 days after the election for Gov./Lt. Gov.; 5 months before to 45 days after for other candidates.
<b>Personal use of campaign funds</b> No restrictions. Unlimited funds may be converted to personal income.	Prohibited.	Transfer of \$5,000 (House) or \$10,000 (Senate) to office account allowed.

<b>Carry forward of campaign surpluses</b> Unlimited surplus campaign funds may be carried over to future campaigns.	Prohibited.	Transfer of \$5,000 (House), \$7,500 (Senate), or \$50,000 (Gov./Lt. Gov.) to next campaign allowed.
<b>Out-of-state contributions</b> No special restrictions.	Prohibited.	Out-of-state contributions allowed up to \$2,000 (House), \$3,000 (Senate) or \$20,000 (Gov./Lt. Gov.).
<b>Independent expenditures</b> No restrictions.	Only individuals, political groups, and political parties could make "independent" expenditures.	Same as initiative.
<b>Public funds</b> No clear restrictions.	Use of public funds for campaign activities involving candidates would be prohibited.	Same as initiative.
<b>Serious violations</b> All minor misdemeanors.	Intentional violations would be Class C felonies, and knowing violations would be Class A misdemeanors.	Penalties would be reduced by one step so the most severe penalty would be a Class A misdemeanor.
<b>Civil penalties</b> Minimum civil penalty is \$10 per violation.	Civil penalties would increase, depending on the significance and length of a violation.	Civil penalty maximums would increase.
<b>Power to enforce</b> Only a state agency, APOC (Alaska Public Offices Commission), can enforce the campaign finance and disclosure laws.	Both APOC and citizens could sue in Superior Court for injunctive relief and civil penalties.	Citizen suits allowed only after complaint to APOC.

DIVISION OF LEGAL AND RESEARCH SERVICES  
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HB 368 Campaign Reform

MEMORANDUM

November 8, 1995

**SUBJECT:** Constitutional/legal problems with Initiative 95CFPO (Work Order No. 9-LS1348\A)

**TO:** Representative Jeannette James  
Attn: Walt Wilcox

**FROM:** Jack Chenoweth  
Legislative Counsel

Initiative 95 CFPO, relating to election campaigns, election campaign financing, and the Alaska Public Offices Commission, is in circulation.<sup>1/</sup> This is a review of the constitutional problems that attend the Initiative.

The Initiative does not affect elections for President and Vice-President of the United States or the contests for seats in the United States Congress.<sup>2/</sup> In elections to decide public offices, the races for governor/lieutenant governor, for the state legislature, judicial retention elections, constitutional convention delegate contests, and municipal elections would be covered.

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<sup>1/</sup> The petition application for the Initiative was submitted to the Lieutenant Governor on April 3, 1995, and the application certified on April 20. Petition booklets were distributed to the initiative committee on May 11. Completed signature books are due not later than May 11, 1996 (that day being a Saturday, the deadline is extended to Monday, May 13, 1996). AS 15.45.140. However, if the measure is win a place on the November, 1996, general election ballot, the completed signature books must be returned not later than 10 a.m., Monday, January 8, 1996. AS 15.45.190.

<sup>2/</sup> Under 2 U.S.C. 453, the provisions of the Federal Election Campaign Act "supersede and preempt any provision of State law with respect to election to Federal office."

Representative Jeannette James

November 8, 1995

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Constitutional questions:

I

Limitations on expenditures in behalf of and on contributions to the campaigns of candidates:

The Initiative's proposed amendment of AS 15.13.050(a) [section 4] limits the making of expenditures related to the election of a candidate. Those expenditures may be made only by the candidate, by individuals, and by groups. The amended definition of a "group" includes only political parties and combinations of individuals "organiz[ed] for the principal and major purpose to influence the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election . . . ." AS 15.13.130(4)[(B)] [section 14]. There is an exception that allows groups to continue to make "independent expenditures," <sup>3/</sup> AS 15.13.050(a) [first clause of second sentence, section 4] and AS 15.13.075(a) and (b) [part of the Initiative's section 6].

The Initiative's proposed amendment of AS 15.13.070(a) [section 5] limits the making of contributions. Only individuals would be able to make contributions to a group, and only individuals and groups would be able to make contributions to candidates. Candidates could not solicit and accept contributions from entities other than individuals and groups. Corporations, companies, partnerships, firms, unions, associations, and similar organizations could participate in the electoral process only by first qualifying as "groups."

The Initiative's proposed amendment of AS 15.13.070(b) sets a limitation on a candidate's acceptance of contributions from individuals and groups. Candidates may not accept contributions from individuals and groups that are not residents of the state when the contribution is made. The Initiative's proposed amendment of AS 15.13.070(c), specifically addressing contributions of lobbyists, adds a further restriction: a lobbyist may not contribute to a state legislative race except for a race in a state house election district or state senate district in which the lobbyists lives.

In summary, under the Initiative, many existing organizations that support campaigns with non-cash, in-kind contributions would be constrained to continue the practice and would appear to be first required to establish separate "groups" organized specifically for the purpose of participating in election campaign financing. Non-residents' participation in the

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<sup>3/</sup> Proposed AS 15.13.130(11), part of the Initiative's section 15, would define "independent expenditure" as

an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or any other person acting as a principal or agent of the candidate;

Representative Jeannette James  
November 8, 1995  
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financing of election campaigns would also be eliminated, and lobbyists could not contribute to legislative races outside the lobbyist's district of residence.

Taken altogether, these restrictions and limitations on campaign contributions and expenditures implicate the rights of speech and association guaranteed by the First Amendment to the United States Constitution that are made applicable to states by the Fourteenth Amendment of the United States Constitution, and implicate comparable rights of free speech that are guaranteed by article I, section 5 of the Alaska Constitution and of the right to assemble guaranteed by article I, section 6 of the Alaska Constitution.

The leading decision in this area, Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659, 96 S.Ct. 612 (1975), has been supplemented by a series of subsequent decisions that particularly bear on troublesome questions of expenditure limitations allowable under the First Amendment.

Because legislated limitations on expenditures "impose direct and substantial restraints on the quantity of political speech," Buckley, 424 U.S. at 39, the federal constitutional test of expenditure limitations is one of strict scrutiny, the toughest standard. Generally, because regulation of campaign finances burden First Amendment rights of free speech and association, they will survive strict scrutiny only if it is shown that they serve a compelling governmental interest and have been narrowly drawn. State regulation of campaign finances can be sustained if the state demonstrates a sufficiently important interest and employs means chosen to avoid unnecessary abridgment of first amendment rights. Buckley, 424 U.S. at 25. In Buckley, the Court recognized that there was a compelling state interest in regulating campaign financing to prevent corruption or the appearance of corruption. The Court further distinguished between restrictions on contributions, finding that these pose a lesser threat to the First Amendment, and restrictions on campaign expenditures, which the Court found as directly burdening speech. Buckley considered and generally sustained limitations imposed by the Federal Election Campaign Act of 1971, as amended, on campaign contributions and other election campaign reforms, but set aside, as violative of the First Amendment, (1) limitations on **contributions** to, or, more accurately, in point of fact, **expenditures** by, a candidate's own campaign that are made by the candidate and the candidate's family, and (2) limitations on **expenditures** made by others relative to a candidate (that is, limitations on "indirect contributions" or, more precisely, "indirect expenditures" made apart from the contributions given directly to a candidate).

Buckley is not the last word in this area. The United States Supreme Court has periodically revisited the topic of constitutionally permissible restraints on campaign expenditures and drawn out the topic. Subsequent decisions have taken the discussion of permissible expenditure restrictions further.

In First National Bank of Boston v. Bellotti, 435 U.S. 765, 55 L.Ed.2d 707, 98 S.Ct. 1407 (1978), the Supreme Court invalidated a Massachusetts statute prohibiting corporations

Representative Jeannette James

November 8, 1995

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operating in the state from making contributions or expenditures to influence the outcome of a **referendum question** apart from a question that materially affected the corporation's interests. The question in Bellotti turned on participation in the debate over a public issue. The court left open the question of whether, and to what extent, the speech of a corporation, that is, the financial support that a corporation might contribute, could be made subject to restrictions when the question was one of candidacy for public office.

In Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 480, 84 L.Ed.2d 455, 105 S.Ct. 1459 (1985), commonly referred to as NCPAC, the Supreme Court invalidated, as a violation of the First Amendment's guarantees of free speech and association, a provision of federal law that made it a criminal offense for an independent political committee to expend more than a pre-set amount in its efforts to support a presidential candidate. The court based its decision on the right of contributors--chiefly persons making small contributions--to join together and to use the device of a political action committee to serve as a vehicle of expression for its views.

Finally, the court has reached different conclusions in its disposition of the question of how a corporation may make use of corporate funds to make election campaign contributions. In Federal Election Commission v. Massachusetts Citizens for Life, 479 U.S. 238, 93 L.Ed.2d 539, 107 S.Ct. 616 (1986), the court struck down a requirement of the Federal Election Campaign Act that prevented a Massachusetts nonprofit corporation that opposed abortion from using its money to make expenditures in connection with an election for public office by limiting the making of those expenditures to those drawn from a separate fund financed from voluntary contributions. Four years later, in Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 108 L.Ed.2d 652, 110 S.Ct. 1391 (1990), the court found that a similar restriction in the Michigan Campaign Finance Act that prevented use of corporate money to make expenditures in conjunction with state candidate elections did not constitute a First Amendment violation, defending the restriction as both justified by a compelling state interest and sufficiently narrowly tailored to meet that interest without foreclosing the corporation's participation in the electoral and political process.

Bellotti protects a corporation's ability to make contributions and expenditures relating to ballot propositions, but inferentially leaves open the possibility of expenditure regulation when election campaigns concern a choice of candidates. NCPAC protects the right of persons to come together under the umbrella of a political action committee to make expenditures in support of one or more candidates who support the members' common views. Austin generally recognizes the authority to lawmakers to regulate the involvement of corporations in candidates' campaigns. Out of these decisions, the Initiative's sponsors and supporters have drawn a proposal relating to campaign expenditures that is calculated to survive First Amendment scrutiny.

The series of decisions that have followed Buckley may support the sponsors' efforts. Additionally, though these matters are subject to the tests established for First Amendment

Representative Jeannette James  
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questions, even if the relevant provisions of the Initiative survive First Amendment scrutiny, examination by the Alaska Supreme Court under the comparable state constitutional provisions may yield a different result.

In an August 1, 1994. memo to former Lieutenant Governor Jack Coghill supplementing an earlier analysis, the attorney general's office concluded that the Initiative's efforts to regulate campaign expenditures are "in a constitutional grey area." That strikes me as a reasonable conclusion.

Eliminating nonresidents' contributions<sup>4/</sup> and setting particular restrictions on lobbyists' contributions<sup>5/</sup> to candidates in legislative races;

Here the Initiative appears to break new ground.

A handful of states require special handling of the reporting of contributions from out-of-state sources,<sup>6/</sup> but none, so far as I have been able to determine, has barred nonresidents' contributions altogether.

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<sup>4/</sup> See AS 15.13.070(b) of the Initiative's section 5.

<sup>5/</sup> See AS 15.13.070(c) of the Initiative's section 5.

<sup>6/</sup> According to the National Clearinghouse of the Federal Election Commission, Iowa, Kansas, and Oregon make special provision for the handling of nonresidents' contributions.

Iowa Code sec. 56.5(5) imposes special disclosure requirements on every committee or organization not domiciled in Iowa which makes a contribution to a candidate's committee or political committee domiciled in Iowa, unless the committee or organization makes disclosure under applicable federal law or the law of the state in which the committee or organization is domiciled.

Kansas Stat. sec. 25-4172 requires that certain nonresident entities--groups of at least three individuals and persons that are not individuals (other than political parties, corporations, or unions)--making election campaign contributions at the same time file special disclosure reports.

Oregon Rev. Stat. sec. 260.045 prohibits a candidate from accepting political campaign contributions of more than \$50 from an out-of-state political committee without meeting special disclosure requirements.

Similarly, there are few examples of restrictions placed on lobbyists' contributions.<sup>27</sup>

Surely the Initiative's proposals in these two related areas are dependent upon the greater latitude that the United States Supreme Court has given with respect to regulating election campaign **contributions** in contrast to expenditures. Of particular relevance is that portion of the Buckley decision that examined restrictions on contributions. While finding some marginal curtailment of the freedoms of expression and association, the court nevertheless concluded that the government had valid interests in limiting campaign contributions by individuals and groups to specific dollar amounts. Following Buckley, the Court has upheld provisions of the Federal Election Campaign Act setting limits on the amount that an individual or an unincorporated association might make to candidate political action committees. The court would sustain these limits against a First Amendment-based challenge when the court could find that the state had first demonstrated a conflict of interests sufficient to justify a deterrent effort, that the state's reasons for addressing the matter by abridging or curtailing the constitutional right was compelling, and that the abridgment or curtailment had been accomplished in the least restrictive manner possible.<sup>28</sup>

As to the constraints placed on lobbyists' contributions, while there are a handful of examples in which states have successfully prohibited certain classes of persons engaged in particular vocations from contributing to political parties or to candidates for public office, Schiller Park Colonial Inn, Inc. v. Berz, 349 N.E.2d 61 (Ill. 1976) (liquor licensees precluded from contributing to election campaign funds), Petition of Soto, 565 A.2d 1088 (N.J. Super. App. Div. 1989), cert. den. 496 U.S. 937, 110 S.Ct. 3216, 110 L.Ed.2d 664 (U.S. 1990) (casino key employee prohibited from making campaign contributions), efforts to extend similar campaign contribution prohibitions to lobbyists<sup>29</sup> have not been successful. So, for instance,

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<sup>27</sup> Wisconsin restricts lobbyists' contributions to candidates in legislative races, allowing contributions from lobbyists only after conclusion of the annual legislative session. Wisc. Stat. sec. 13.625(c).

<sup>28</sup> See, for example, the Court's decision in California Medical Association v. Federal Election Commission, 453 U.S. 182, 69 L.Ed.2d 567, 101 S.Ct. 2712 (1982). The Court's decision in California Medical buttressed the earlier analysis to the end that strict scrutiny would not be applied to limitations on contributions to candidates.

<sup>29</sup> There is ample authority to conclude that the government has an interest in regulating the activity of lobbying and those who engage in it. United States v. Hariss, 347 U.S. 612, 98 L.Ed. 989, 74 S.Ct. 808 (1954) (lobbyist regulation under the Federal Regulation of Lobbying Act, Minnesota State Ethical Practices Board v. National Rifle Assn., 761 F.2d 509 (8th Cir. 1985) (same under Minnesota Ethics in Government Act), Fritz v. Gordon, 517 P.2d 911 (Wash. 1974), app. dismissed 417 (continued...)

Representative Jeannette James  
November 8, 1995  
Page 7

in what is apparently the leading decision, Fair Political Practices Commission v. Superior Court of Los Angeles Cty., 599 P.2d 46 (Cal. 1989), cert. den. 444 U.S. 1049, 62 L.Ed.2d 736, 100 S.Ct. 740 (1980), a total prohibition against lobbyists' contributions to political campaigns was struck down as a violation of the associational freedom guaranteed by the First Amendment because the court determined that the statute had not been closely drawn to avoid unnecessary abridgment of associational freedoms. More recently, in Barker v. State of Wisconsin Ethics Board, 841 F.Supp. 255 (W.D. Wisc. 1993), the United States District Court invalidated, as not sufficiently narrowly tailored, a Wisconsin law that interfered with a lobbyist's right to volunteer unpaid personal services to a candidate for elective office.

My reading of these decisions is that the states retain some latitude in setting limitations on the facet of political activities represented by election campaign contributions. Whether that latitude is sufficient to allow a state absolutely to prohibit nonresidents' election campaign contributions and to bar lobbyists from making out-of-district campaign contributions in legislative contests<sup>10</sup> is problematical. The courts may readily conclude that either or both does not employ the requisite means closely drawn to avoid an unnecessary abridgment of the freedom of association. At the very least, these two provisions, relating to nonresidents' contributions and to lobbyists' contributions, should engender lively constitutional argument should the Initiative become law.

## II

The Initiative's AS 15.13.070(i) precludes the giving and acceptance of anonymous campaign contributions. The provision implicates the United States Supreme Court's recent decision in McIntyre v. Ohio Elections Commission, 63 U.S.L.W. 4279 (April 19, 1995), declaring unconstitutional, as a First Amendment violation, an Ohio law prohibiting the distribution of anonymous campaign literature that is intended to influence the decision of voters in an election. I am not able to say with certainty that the provision in the Initiative barring anonymous campaign contributions would also be found unconstitutional as a First Amendment violation. In point of fact, the provision may well survive First Amendment scrutiny, for the Supreme Court's opinion in McIntyre does discuss and distinguish campaign financing requirements under the Buckley and Bellotti decisions and concludes that the decisions in Buckley and Bellotti are not controlling. 63 U.S.L.W. at 4284 - 4285. That discussion implies that cases relating to the regulation of contributions to finance election campaigns, as indicia of indirect speech, are not necessarily dispositive of laws regulating

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(...continued)

U.S. 902, 41 L.Ed.2d 208, 94 S.Ct. 2596 (1974).

<sup>10</sup> In addition, as to lobbyists, there is a probable violation of constitutional provisions bearing on equal protection under the Fourteenth Amendment to the United States Constitution and under article I, section 1 of the Alaska Constitution.

distribution of election campaign materials as pure speech. I make no effort to resolve the issue, but only note the potential question presented.

### III

#### Disposition of civil penalties:

The Initiative's AS 15.13.125 provides for recovery of "civil penalties" for violations. Those civil penalties may be imposed by the superior court or by the Alaska Public Offices Commission, depending upon the forum before which the complaint was taken. When the violation is heard and disposed of before the superior court, then

. . . A complaining citizen may execute on the judgment and is entitled to 50% of any sums recovered after reimbursement of any attorney's fees and costs awarded by the court. The remaining 50% of any sums recovered shall be delivered to the Department of Revenue for deposit in the state's general fund.

Since the "civil penalty" is, in fact, penal in nature, <sup>11</sup> my sense is that the amount of the penalty imposed would be treated as the equivalent of a fine due the state, hence fully payable to the court or the agency imposing the levy for transmittal to the state general fund. In terms of constraints imposed by the state constitution, there is a some likelihood, in my judgment, that the attempt to shift a portion of the payment due in order to allow recovery of a portion of the civil penalty by the "complaining citizen" would be found to violate article IX, section 6, precluding transfer of public property except for a public purpose, and article IX, section 7 with its prohibition against dedicated funds.

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<sup>11</sup> I take a "civil penalty" to be a financial exaction, imposed by an authority that has the power to impose it, by way of punishment for an offense. For programs for which it is responsible, the Alaska Public Offices Commission already enjoys authority to levy and collect civil penalties. See AS 15.13.125 (civil penalty imposable for late filing of campaign disclosure report), AS 24.45.141 (civil penalty imposable for certain registration violations relating to regulation of lobbying), AS 39.50.135 (civil penalty imposable for late filing of financial disclosure reports). The ability of an administering agency to levy a civil penalty is not at issue.

Disposition of a portion of a civil penalty is not the same as ordering restitution.

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It is also arguable, I suppose, that the civil penalty disposition provisions might be found to be inconsistent with the provisions of article XI, section 7 of the state constitution insofar as it is used to "dedicate revenue" or to "prescribe [court] rules." <sup>12/</sup>

JBC:glc:pl

95-423.glc

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<sup>12/</sup> Under the first sentence of article XI, section 7 of the state constitution,

The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. . . .

The "dedication of revenue" concern in this section arises from the same basis as the prospective claim that the disposition of civil penalties provision violates article IX, section 7. The "court rule prescription" concern of this section would be implicated should the courts determine that substantive legal changes proposed in an Initiative that have the effect of amending a court rule may be set aside. On this particular point, the Initiative's directive that a complainant "is entitled to" recover a portion of "any sums recovered" from imposition of the civil penalty might be found by the courts to intrude upon a rule of practice or procedure or to establish a new rule of practice or procedure, either in violation of the prohibition described in article XI, section 7.

**DIVISION OF LEGAL AND RESEARCH SERVICES**

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Juneau, Alaska 99801-2105

HB 368 Sectional  
Campaign reform

**MEMORANDUM**

November 8, 1995

**SUBJECT:** Reform of the law regulating election campaign financing based on currently circulating initiative (Work Order No. 9-LS1348\A)

**TO:** Representative Jeannette James  
Attn: Walt Wilcox

**FROM:** Jack Chenoweth  
Legislative Counsel

This memo accompanies the draft of a bill to reform laws regulating election campaign financing. The model for the bill draft is Initiative 95CFPO, the currently-circulating initiative on the same topic. My changes to the initiative are substantial, but are offered with the intent of maintaining consistency with the requirements of the current edition of the Legislative Drafting Manual while presenting, in effect, "substantially the same measure" as has been proposed by the Initiative.

For that reason, I am providing explanation and comment.

**I. Comparative treatment of sections of Initiative in the bill:**

Here, then, is a summary of my handling of the Initiative material:

<b>Location in the Initiative</b>	<b>Treatment in the bill draft</b>
Sec. 1: Uncodified findings and purpose statement	-- Same --
Sec. 2: Relationship to municipal regulation	Secs. 2 and 3
Sec. 3: AS 15.13.040(g) AS 15.13.040(h)	AS 15.13.082(c), part of bill section 12 AS 15.13.040(g), set out in bill section 6

<b>Location in the Initiative</b>	<b>Treatment in the bill draft</b>
Sec. 4: AS 15.13.050(a), first sentence	AS 15.13.067, part of bill section 8
AS 15.13.050(a), second sentence	AS 15.13.135(a), part of bill section 19; definition of "contribution" in AS 15.13.400, part of bill section 19.
AS 15.13.050(b)	Reworked and set out as amendment of AS 15.13.050 in bill section 7
Sec. 5: AS 15.13.070(a), first two sentences	AS 15.13.065(a) and (b), part of bill section 8
same: third sentence	AS 15.13.072, part of bill section 10
same: fourth sentence	Implicit in the working of the bill, so not stated
same: information in block	AS 15.13.070, bill section 9
Sec. 5: AS 15.13.070(b)	AS 15.13.072(a)(2) and (3), part of bill section 10
Sec. 5: AS 15.13.070(c)	AS 15.13.074(f), part of bill section 10; amendment to AS 15.13.072(a)(14) and AS 24.45.121(a)(8)
Sec. 5: AS 15.13.070(d)	Material divided between AS 15.13.072(c), part of bill section 10, and AS 15.13.074(c) in the same bill section
Sec. 5: AS 15.13.070(e)	Material divided between AS 15.13.072(d), part of bill section 10, and AS 15.13.074(d) in the same bill section
Sec. 5: AS 15.13.070(f)	AS 15.13.078(a), part of bill section 10
Sec. 5: AS 15.13.070(g)	Material divided between AS 15.13.072(b), part of bill section 10, and AS 15.13.074(e) in the same bill section
Sec. 5: AS 15.13.070(h)	AS 15.13.082(a), part of bill section 12

<b>Location in the Initiative</b>	<b>Treatment in the bill draft</b>
Sec. 5: AS 15.13.070(i) first part  second part	Material divided between AS 15.13.074(b) and AS 15.13.084(e), both part of bill section 10 AS 15.13.114, part of bill section 15
Sec. 5: AS 15.13.070(j)	AS 15.13.076, part of bill section 10; and AS 15.13.086, part of bill section 12
Sec. 5: AS 15.13.070(k)	AS 15.13.082(b), added by bill section 12
Sec. 5: AS 15.13.070(l)	AS 15.13.030(11), added by bill section 4
Sec. 6: AS 15.13.071  AS 15.13.072 AS 15.13.073 AS 15.13.074 and AS 15.13.075 AS 15.13.076 AS 15.13.077	Made part of AS 15.13.078, part of bill section 10 AS 15.13.112, part of bill section 15 AS 15.13.116, part of bill section 12 Reworked and set out as AS 15.13.135 - 15.13.140, part of bill section 19 AS 15.13.150, part of bill section 19 AS 15.13.145, part of bill section 19
Sec. 7: AS 15.13.080	Same AS section amended, <u>see</u> bill section 11
Sec. 8: AS 15.13.110	Same AS section amended, <u>see</u> bill sections 13 and 14
Sec. 9: AS 15.13.120(a)	Repealed in bill section 23
Sec. 10: AS 15.13.120(d) and (e)	Same AS subsections amended, <u>see</u> bill sections 16 and 17
Sec. 11: AS 15.13.125	Handled in bill section 18
Sec. 12: AS 15.13.126(b)  AS 15.13.126(a) and (c)	Omitted: our statutes already contain a general severability provision (AS 01.10.030) Handled in bill sections 24 and 25

Representative Jeannette James

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<b>Location in the Initiative</b>	<b>Treatment in the bill draft</b>
Secs. 13 - 15: amendments	Handled in AS 15.13.400, definitions, part of bill section 19
Sec. 16: criminal violations	Handled in related Election Code criminal provisions, bill section 20
Sec. 17: license suspension	Handled in AS 15.56.018(b), part of bill section 20
Sec. 18: lobbyists	Handled as part of bill section 21

\*

## **II. General notes and comments about the draft:**

From a drafting perspective, consistent with the requirement that the bill be "substantially the same measure" as has been proposed by the Initiative, foremost of my concerns was trying to achieve more clarity through proper organization of the Initiative's material. I was particularly concerned that all of the changes proposed for insertion into what the Initiative identifies as a revised AS 15.13.070 be set out in a more understandable manner.

Please note the following:

Section 1 of the Initiative, the "Findings and Purpose" provision, is set out substantially as offered in the same-numbered section of the draft.

The material set out in section 2 of the material provided, amending the "Applicability" provision, is set out as offered. I divided the material, as I have done with drafts in previous years, between two subsections.<sup>1/</sup>

I understood the material in AS 15.13.040(g), in section 3 of the Initiative, as a limitation on expenditure of campaign contributions received in a certain manner ("cash, check, money order, or other negotiable instrument") and included the material with like matter in

---

<sup>1/</sup> As to subsection (c) of the draft, is the last clause ("or from regulating those campaign contributions and expenditures more strictly than provided in this chapter") intended to set a floor or minimum level of regulation? If it is, it probably ought to be restated to more clearly say that.

Representative Jeannette James  
November 8, 1995  
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AS 15.13.082(c), "Limitations on Expenditures." The limitation, as stated, applies only to a candidate. <sup>2//</sup>

The material set out in AS 15.13.040(h) in section 3 of the material provided appears as AS 15.13.040(g) of section 6 of the draft.

In section 4 of the Initiative, new language appears as proposed AS 15.13.050(a). I inserted it as an altogether new provision, AS 15.13.067, in bill section 8 of the draft. The second part of the new language directs that, unless an "independent expenditure," the expenditures are subject to the provisions of AS 15.13.

In the same section of the Initiative, revisions of AS 15.13.050 are proposed as a new subsection (b). I reworked that material in AS 15.13.050 in bill section 7 of this draft. The section set out in the material provided was incomplete as presented. Since "Groups" was bracketed, I concluded that "groups" were not to be addressed in that section and deleted the material that was omitted altogether. <sup>3//</sup>

Note that, in this same bill section of the Initiative, it was not required that contributors to groups first register. Also, the Initiative did not require registration before making a contribution to a ballot measure campaign, and this draft follows suit.

In section 5 of the Initiative, the revision of AS 15.13.070 was, in my judgment, so long as to be unwieldy. The material in the first two sentences of subsection (a) appears, in my draft, as AS 15.13.065 as a limitation on persons who may make contributions. The material in the third sentence of (a) is carried over into AS 15.13.072(a) in my draft as a limitation on a candidate's ability to solicit and accept contributions. The fourth sentence of (a) ("No

---

<sup>2//</sup> In this section:

It is my belief that this is a limitation that should also apply to a group and, therefore, AS 15.13.082(c) should be amended to include reference to a group.

Supplying a definition of "other negotiable instrument" would be a useful addition.

Finally, as a policy inquiry: Is there any other kind of contribution--perhaps excepting "in-kind" contributions--that would come to a candidate (or group) in a form other than in cash, a check, a money order, or a negotiable instrument? If there is not, then perhaps the definition of "contribution" at the end of the draft should be rewritten to say something about making this applicable to all contributions.

<sup>2//</sup> In this section--and elsewhere in the draft--what is a "publicly-funded entity"? A definition would help.

Representative Jeannette James  
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Page 6

corporation, company . . . ") is implicit in the definition of who may contribute and therefore is not restated.

Having addressed these provisions, I opted to confine AS 15.13.070 to the material in the block chart set out in subsection (a) of the material provided.

Of the material set out in the remainder of AS 15.13.070 of the Initiative--subsections (b) - (k)--that was provided, I tried to collect relevant material and set it out as follows:

-- I understood subsection (b) of the material as a limitation on acceptable contributions and set it out in AS 15.13.072(a)(2) and (3);

-- Subsection (c) appears as AS 15.13.074(f) in proposed bill section 10 of this draft;

-- Subsection (d) involved both solicitations and acceptance of contributions and making contributions; to the extent the limitation was imposed on solicitation and acceptance of contributions, I reworked the language and set it out as AS 15.13.072(c); to the extent the limitation imposed the making of a contribution, it is set out in AS 15.13.074(c);<sup>4//</sup>

-- Subsection (e) of the material provided is given similar treatment, i.e. split between AS 15.13.072(d) and 15.13.074(d) of the draft;

-- Subsection (f) of the material provided appears as AS 15.13.078(a) of the draft;

-- Subsection (g) of the material, setting a \$25 limit on cash contributions, is split between AS 15.13.072(b) and 15.13.074(e);

-- Subsection (h) of the material, setting a limit of \$100 on cash expenditures without a receipt, is a limitation on expenditures, addressed in AS 15.13.082(a) of the draft;

-- The first part of subsection (i) of the material, relating to fictitious contributions and expenditures, is similarly split between AS 15.13.074(b) and 15.13.084; the balance of the material is treated with in proposed AS 15.13.114, except that I have altered "escheats to the state" to "forfeiture" of the property in question;

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<sup>4//</sup> In AS 15.13.072(c), it was not clear to me that the restriction imposed on solicitation is one that is to be imposed on "a person" or on "a candidate"; I treated it as one imposed on "a person".

In that same subsection, and elsewhere in the draft, reference to "letter of intent" appears as "document necessary to permit the person to incur certain election-related expenses as authorized by AS 15.13.100," for that section is, in fact, the statutory basis for letters of intent.

-- Subsection (j) of the material is addressed in AS 15.13.076 of the draft; and

-- Subsection (k) appears, with other material treating with campaign expenditures, in AS 15.13.082(b) of the draft.

Finally, before leaving AS 15.13.070 as offered in the material of the Initiative, note that I add the "revision of dollar values" provision of AS 15.13.070(l) as an additional duty of the Alaska Public Offices Commission under AS 15.13.030, in bill section 4 of the draft. <sup>5//</sup>

Section 6 of the Initiative touches on a number of matters.

-- Proposed AS 15.13.071--loans and contributions from family members--is combined with the earlier topic of "loans from the candidate to the candidate's own campaign" in proposed AS 15.13.078.

-- Proposed AS 15.13.072--prohibited uses of campaign funds--is set out substantially as presented in AS 15.13.112 of the draft.

-- Proposed AS 15.13.073--campaign asset disbursement--appears as AS 15.13.116 of the draft.

-- Proposed AS 15.13.074 and 15.13.075 appear as AS 15.13.135, 15.13.137, and 15.13.140 of the draft.

-- Proposed AS 15.13.076--election educational activities--is AS 15.13.150 in the bill draft.

-- AS 15.13.077--use of "public funds" prohibited--is AS 15.13.145 of the draft. <sup>6//</sup>

Bill section 11 of the draft revises AS 15.13.080 substantially as the Initiative directs.

Bill sections 13 and 14 of the draft revise AS 15.13.110 in line with the Initiative's proposed changes, and bill sections 16 and 17 of the draft similarly address the changes sought to be made in AS 15.13.120.

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<sup>5//</sup> On this point, please understand that there are other dollar limitations expressed in AS 15.13 that, because of the way this is drafted, the Alaska Public Offices Commission would not have authority to change.

<sup>6//</sup> In drafting the bill out of the Initiative, I don't have a clue as to what may be intended by a "public fund" but I did my best to pin it down to "money held by" the state and its political subdivisions. I readily admit that, both as offered and as drafted, there is a lot of room for argument and disagreement.

Representative Jeannette James  
November 8, 1995  
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In bill section 18 of the draft, I overhaul the "civil penalties" provision. Here, I am concerned that the revision inserts criminal law sentencing concepts--"aggravating and mitigating circumstances"--into what is essentially intended to operate as a non-criminal process, but, while that may be poor policy or bad drafting, it is, in and of itself, not necessarily a fatal flaw. In addition, I stumbled my way through the differential statutes of limitations--two years for the civil and administrative actions brought by private persons, but four years for the commission review--and tried to harmonize them as best I could. <sup>2/</sup>

I ignored a portion of section 12 of the Initiative. We don't need a severability provision--see AS 01.10.030. The remainder is made part of the bill, sections 24 and 25, but I think it is arguable that these provisions don't particularly add anything that won't be otherwise developed by the courts.

As to sections 13 - 15 of the Initiative, please note that I opted to restate the definitions applicable to this chapter in their entirety as a new section, AS 15.13.400, while repealing the existing provision, AS 15.13.130.

AS 15.13 is part of the Alaska Election Code. See AS 15.60.020. The Code already contains some criminal provisions. See AS 15.56. I incorporate the criminal provisions identified in bill section 16 of the Initiative in AS 15.56 rather than in AS 11. Note that much of the material in AS 15.56.012 - 15.56.019 is in current law. There are some constitutional issues concerning current law which will be addressed in a separate memo.

\*

Here are some questions that are left on the table:

In the matter of loans, AS 15.13.078 in the draft: May others besides the candidate's family make loans to a candidate? I could not answer that question from the Initiative, but I think the answer, in context, is "no." However, whether the answer to that question is "yes" or "no," something should be stated to that effect.

In the matter of receipt of contributions and making of expenditures in the 30 day period following the final election, as this is drafted, there is no time limit for the candidate who is

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<sup>2/</sup> The distinction between the two is somewhat indefensible and should be replaced by a period of limitations that is common to both actions.

Further as to this approach, the opportunity to decide whether to go before the Alaska Public Offices Commission or to go to court is left to the complainant. As written, one could, I think, move back and forth between the two available remedies. That, it seems to me, could be criticized as an unnecessary redundancy and a misapplication of scarce resources.

Representative Jeannette James

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unopposed in the general election--who does not face a write-in. We've limited the operation of the law, in both instances, to a candidate who has been opposed at that election, but not if the candidate was unopposed. It seems to me that something should be done with that.

The Initiative makes no reference to court rule changes. I have also not noted court rule changes for intervention (last sentence of AS 15.13.120(d) in bill sec. 16) or attorney's fees (AS 15.13.125(f)(2) in bill sec. 18), so that if this bill passes, the court rules will remain unaffected.

JBC:pl

95-184.plm

Enclosure

**DEPARTMENT OF ADMINISTRATION**

OFFICE OF THE COMMISSIONER

P.O. BOX 110200  
JUNEAU, ALASKA 99811-0200  
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January 31, 1996

The Honorable Jeannette James  
Chair  
House State Affairs Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Madam Chair:

The Commission reviewed HB 368 and SSHB 317 at a teleconference January 29. Enclosed are their analyses of the bills including fiscal and other impacts, concerns, and suggestions for amendments. The Commission's position overall is to support both bills with amendments. 4865

Thank you for your consideration of the Commission's ideas and concerns. Brooke Miles of APOC's Juneau office will be attending the hearings of the Committee and is available to answer questions or provide information. Likewise, I am available to testify or to assist the Committee in whatever way would be helpful.

Sincerely,

*Karen Boorman*

Karen Boorman *for*  
Executive Director

cc: Representative David Finkelstein  
Commissioner Denton Pearson  
Commissioner Sandra Stillion  
Commissioner James Adams  
Commissioner Marj O'Reilly  
Commissioner Julie Benson  
Pat Pourchot

**FISCAL NOTE**

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 368

Revision Date: \_\_\_\_\_  
Title: "An Act relating to election campaigns, election campaign financing, the oversight and regulation of election campaigns..."  
Sponsor: Rep. James  
Requestor: (H) STA

Department Affected: Administration  
BRU: PUBLIC OFFICES COMMISSION  
Component: PUBLIC OFFICES COMMISSION  
COMPONENT SERIAL NO. 70

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

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	144.6	144.6	94.0	94.0	94.0	94.0
TRAVEL	2.5	0	2.5	0	0	0
CONTRACTUAL	18.0	2.0	1.2	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	17.7	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>144.6</b>	<b>144.6</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>

<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	144.6	144.6	94.0	94.0	94.0	94.0
1005 GF/Program Receipts	0	0	0	0	0	0
1037 GF/Mental Health	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>144.6</b>	<b>144.6</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>	<b>94.0</b>

Estimate of any current year (FY 96) cost: \$1.2

**POSITIONS:**

FULL-TIME	3	3	2	2	2	2
PART-TIME						
TEMPORARY						

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

SEE ATTACHED.

Prepared by: Karen Boorman  
Division: Public Offices Commission

Phone: 276-4176  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 2/1/96

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## FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 368

### ANALYSIS: (continued)

#### 1. Assumption

This expenditure detail is based upon the assumption that HB 368 will have an effective date during the 1996 election cycle.

#### 2. Program Summary

This bill would require extensive education of all candidates and contributors of the new limits on contributions, expenditures and behavior. New manuals and forms would be necessary to provide immediate help. Regulations, civil penalty assessments, advisory opinions and adjudication of complaints would provide long term guidance. The computer tracking system would have to be significantly upgraded to accommodate the increased number of registrations and reports as well as the new and significantly expanded civil penalty structure.

#### a. Positions

1. An investigator III/associate coordinator would write advisory opinions, handle complex civil penalty assessments and inquiries from the public, train candidates and contributors and investigate complaints.
2. An administrative clerk III would be responsible for processing filed reports, statements and registrations as well as accurate and prompt input of data about contributors' and candidates' registering and reporting. This position would assign work to and supervise an existing administrative clerk II; answer inquiries from the public about APOC's expanded databases; and compose reports of contribution, expenditure and candidate activity.
3. A regulations specialist II would draft regulations interpreting this bill's new provisions for consideration by the commission and the Department of Law. This position would also draft new forms and manuals. This is a two year position.

#### b. Other expenditures

Travel costs cover training in Fairbanks, Barrow, Kenai and Ketchikan as well as an additional commission teleconference to approve new manuals and forms. Contractual costs cover printing and mailing new manuals and forms, additional office space for two years, and reprogramming the current computer tracking system. Equipment costs cover computer equipment for the new positions as well as an improved backup and storage system. Funds in two election years for newspaper ads in six communities would tell the public of the new limitations.

#### c. Funding

Undesignated revenue to the general fund from civil penalties is likely to increase, but the amount of any increase is speculative. Any increased revenue would go to the general fund, not APOC.

## BILL ANALYSIS

BILL NO. HB 368

Section 1. Findings and Purpose: The Legislature finds several shortcomings with campaigns: they are too long; their high cost is a deterrent to highly qualified citizens to run; they create the possibility that organized special interests may gain undue influence; incumbents have a fund raising advantage over newcomers; great potential for bribery and corruption exists; and current penalties for violating campaign finance laws are too lenient to deter misconduct. This bill seeks to remedy these shortcomings, thereby restoring confidence in the electoral process and fostering good government.

Section 2. AS 15.13.010(a) This rewording does not change the current statute which allows municipalities to exempt themselves.

Section 3. AS 15.13.010(c) Municipalities could regulate campaign financing in municipal elections as long as the municipal requirement was at least as strict as state law.

Section 4. AS 15.13.030 The commission would adjust (either upward or downward) the limits for contributions, loans and cash expenditures every five years using a recognized government index as a guide.

Promulgating new regulations every five years is a cumbersome, time consuming process resulting in rapidly shifting and confusing limits. It would be necessary to revise the manuals, clarify statutes and re-educate contributors and candidates every five years.

Sections 5 and 6. AS 15.13.040(a) and AS 15.13.040(g) Read together, these sections would exempt state and municipal candidates upon filing an exemption form, from reporting campaign finance activity if the campaign is under \$1000.00.

This would eliminate unnecessary reporting by small campaigns and is a practice the commission has allowed by policy for municipal candidates.

Section 7. AS 15.13.050 Publicly funded entities and persons (people, associations, labor unions, and companies but not groups) would have to register with APOC before making an expenditure concerning a candidate or ballot question or a contribution to a candidate.

This appears inconsistent with Section 8 of this bill, which prohibits publicly funded entities, associations, labor unions and companies from contributing to candidates. It also appears inconsistent with Section 19 of this bill, which prohibits publicly funded entities, associations, labor unions and companies from making an independent expenditure concerning a candidate. It also appears inconsistent with AS 15.13.076(2) in Section 10 of this bill; groups would not be required to register and name their

treasurers and deputy treasurers, but only a group's treasurer and deputy treasurers may accept contributions. Groups which are concerned with only one candidate would no longer be required to include the candidate's name in the group's name. It appears that Section 7 should include candidates, individuals, and groups, not persons, to be consistent.

Section 8. AS 15.13.065,.067 The only legal contributors to groups would be people. Associations, labor unions, municipalities, companies and other groups could not contribute to groups. Based on current practice this would probably limit groups in using charitable gaming proceeds, as most gaming permits are held by associations which contribute charitable gaming proceeds to an affiliated group. Statewide parties and their subdivisions couldn't transfer funds among themselves. The only legal contributors to candidates would be people and groups. Associations, labor unions, municipalities and companies could not contribute to candidates. Only people and groups could make independent expenditures concerning candidates. Associations, labor unions, municipalities, school districts and companies could not. As Section 7 would not require any group to register, it is unclear why (b) of this section refers to groups which are required to register.

Section 9. AS 15.13.070 People could legally contribute \$500.00 each year to a candidate; \$5000.00 each year to a party; and \$250.00 to every other group. Political parties could legally contribute \$50,000.00 each year to a candidate in a state-wide race and \$5000.00 to every other candidate. Other groups could legally contribute \$500.00 to a candidate.

This section relies on a different interpretation of political party than the one which the commission now uses. Currently the commission views the party and each of its subdivisions as a separate party. This interpretation is based on the definition of "group" in AS 15.13.130(4).

Section 10. AS 15.13.072,.074 Candidates could not solicit or accept contributions from unauthorized individuals or groups, contributions from non-Alaska residents, most out of state groups (including for example, national Democratic and Republican Parties as well as labor union PACs which receive contributions from non-Alaskan members), and cash contributions over \$25. The earliest contributions could be accepted is 11 months before the state general election (or municipal election). The latest contributions could be accepted is the day of the state general election (or municipal election), if unopposed or 30 days after the general or municipal election if opposed. This section does not appear to address candidates who have lost the election in the primary.

Candidates for the legislature could not solicit or accept contributions from lobbyists during their registration and one year afterwards unless the lobbyist is or will be registered to vote in the candidate's district. Lobbyists would be prohibited from making contributions to legislative candidates outside their district, and would have to report all their contributions to the commission.

The governor, lieutenant governor, legislators and their staffs could neither solicit nor accept contributions during legislative sessions; the governor, lieutenant governor and the legislators would be prohibited from soliciting or accepting honoraria during session. Contributions and honoraria made during these prohibited times would be illegal, as would cash contributions over \$25.00.

The time restrictions on receiving contributions leave little time to retire debt, pay accrued expenditures, and reconcile bank accounts.

AS 15.13.076,.078 Candidates, their campaign treasurer and deputy treasurers and a groups's treasurer and deputy treasurers are the only ones authorized to receive contributions. While candidates could loan their campaigns as much as they wish, they could recover only \$25,000.00 if they run for statewide office, \$10,000.00 for other state races, and \$5,000.00 for municipal races. Family members who loan money to a candidate could recover only \$1,000.00. This last provision establishes a contributions limit for family members different from that of other contributors.

Section 11. AS 15.13.080 People who contribute over \$250.00 to a candidate or who contribute over \$1000.00 a year to all groups and who also contribute to more than one group in the 90 days preceding an election would file a contributor statement with the commission within 10 days of making the contribution.

It is unclear why part (a) requires only individuals (people) to file a contributor statement and part (b) makes the same requirement of persons, a broader category. Part (d) is unclear because contributions are not filed with the commission. It will be difficult for the contributor to give a copy of the contributor statement to a group or its treasurer or campaign treasurer if the identity of groups' officers is not required to be publicly disclosed under Section 7 AS 15.13.050.

Section 12. AS 15.13.082,.084,.086 A candidate or group would have to get a receipt for cash expenditures over \$100.00 and file a copy with the commission. Candidates and groups would have to record information about the source of each contribution before spending or converting it to cash. Expenditures made anonymously or in the name of another would be prohibited. Only candidates, campaign treasurers and their deputies could make expenditures for a candidate; only the campaign treasurer (whose identity would not necessarily be publicly disclosed) could make expenditures for a group.

Section 13. AS 15.13.110(b) Groups as well as candidates would have to file 24 hour reports; deputy treasurers would be authorized to file them. Basically the same as current law.

Section 14. AS 15.13.110(c) All reports must be filed with the commission's Anchorage office. This wording doesn't change the current statute.