

**ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 86/2**

**8899 SENATE JUDICIARY**

Senator Tim Kelly  
February 12, 1996  
Page -5-

same manner as the two decisions we have just discussed. The question would be whether a reduction from \$1,000 to \$500 is "narrowly tailored" to achieve the goal of preventing corruption and the appearance of corruption that may be associated with "large" contributions. A court would no doubt find it significant, as the Eighth Circuit court did in Carver, that in 1976 dollars a \$500 contribution really would be only 20 percent of the \$1,000 limit approved in Buckley. A court would probably also consider recent statistics showing patterns of campaign contributions. The Alaska Public Offices Commission staff in 1989 reported that for the 1988 election, nearly 31 percent of all contributions (not counting political parties and not counting candidates' personal contributions to their own campaigns) were more than \$500. 6/ Assuming that this percentage has not significantly decreased since 1988, it would tend to show that a limit of \$500 would adversely impact a large number of contributors. At the same time, the 1989 APOC report shows that nearly 29 percent of all contributions in 1988 were at precisely the legal limit of \$1,000. That might tend support the inference that these contributors were attempting to "buy" influence -- at

---

6/ "Impact of Reform Proposals on Campaign Funding Patterns in Alaska," was prepared in September of 1989 by the staff of the Alaska Public Offices Commission. We were informed by APOC staff that this is the most recent APOC publication that contains information concerning the relative amounts of contributions to candidates, although the raw data is certainly available to develop similar information for more recent elections.

Senator Tim Kelly  
February 12, 1996  
Page -6-

least that they were sending a message to candidates that they were willing to give the maximum amount that the law allowed.

Given these countervailing factors, it is difficult to predict with any degree of certainty how a court would decide this issue. On balance, the \$500 limit would probably be sustained, but it is a close question. 7/

2. \$250 Limit on Contributions to "Groups" (Proposed AS 15.13.070(a), Sec. 5 at page 2).

The Initiative proposes to limit contributions made to "groups" to \$250 per year. This limitation would, in our view, almost certainly be found unconstitutional. There are two problems associated with the proposed limit. The first concerns contributions to groups formed to support or oppose ballot propositions. The second relates to contributions to independent groups formed to support or oppose candidates. 8/

---

7/ It is worth noting that courts are willing to give legislative bodies a fair amount of deference in determining the precise dollar amount of limits on contributions that are necessary to prevent the appearance of corruption. Courts are less likely to give that same degree of deference in the case of limits imposed by initiative. As the Eighth Circuit noted in Carver, the process of enactment by a legislative body, "includes deliberation and an opportunity for compromise and amendment and usually committee studies and hearings. There are substantial reasons for according deference to legislative enactments that do not exist with respect to proposals adopted by initiative."

8/ Contributions to candidate groups that are "controlled" by the candidate are, under the Initiative, treated as if they are contributions made directly to the candidate, so the discussion here is not applicable to such "controlled" groups.

Senator Tim Kelly  
February 12, 1996  
Page -7-

The \$250 limit would clearly be unconstitutional as applied to contributions to groups formed for the purpose of supporting or opposing ballot propositions. 9/ The United States Supreme Court has held that states may not impose any monetary limitations on contributions to ballot proposition groups. Such limitations violate the First Amendment freedoms of association and expression, and the state interest in preventing corruption or the appearance of corruption simply has no meaning outside the context of candidates or candidate groups. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290<sup>9</sup> (1981).

We also believe the \$250 limit might well be found unconstitutional even as applied to contributions made to independent candidate groups. As already stated, courts have generally recognized only one purpose as sufficient to justify limits on contributions -- the prevention of corruption or the appearance of corruption associated with large contributions to candidates and the inference of an improper "quid pro quo" that such large contributions raise. While it is debatable whether a \$500 limit on contributions to candidates is too low to satisfy

---

9/ The Initiative does not distinguish between groups formed to support or oppose candidates and groups formed to support or oppose ballot propositions. A "group" is defined in the Initiative as "any combination of two or more 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 . . . ." See, proposed amendments to AS 15.13.130(4), Sec. 14 at page 7.

Senator Tim Kelly  
February 12, 1996  
Page -8-

the requirement that valid limits must be "narrowly tailored" to achieve their purpose, it appears much more clear that the \$250 amount would be found to be too low to have any real impact on preventing corruption or the appearance of corruption. In our view, an Alaska court (either state or federal) would follow the reasoning and conclusion reached by the Eighth Circuit in Carver. Moreover, quite apart from the Carver rationale, the \$250 limit on group contributions is particularly suspect in light of the higher limits permitted by the Initiative for individual contributions. If a \$500 limit is sufficient in the minds of the Initiative sponsors to prevent whatever appearance of corruption might attend contributions given directly to a candidate, what possible justification could there be to imposing a much lower limit on a person's right to contribute to an independent candidate "group," which is, at the very least, one step removed from the candidate.

It may be that the underlying purpose of the \$250 limit as applied to candidate groups is to reduce the proliferation of independent candidate groups as well as their effectiveness by making it more difficult for such groups to raise money. However, no court has ever held that that purpose will support a

Senator Tim Kelly  
February 12, 1996  
Page -9-

limitation on campaign contributions. 10/ Similarly, no court has ever held that campaign contributions can be limited in order to "level the playing field" between those with large financial resources and those without. 11/ We seriously doubt that a \$250 limit on contributions to candidate groups would be sustained.

3. Limits on Contributions to and from Political Parties  
(Proposed AS 15.13.070(a), Sec. 5 at page 2).

The Initiative proposes to limit individual contributions to political parties to \$5,000 per year and to limit political parties' contributions to \$50,000 a year for statewide candidates and \$5,000 a year for all other candidates. Our research has not

---

10/ It is not even clear that a court would find such a purpose to be legitimate, let alone "important," since its only objective would be to restrict a person's right to political association. In fact, the Court in Buckley cited the proliferation of political action groups as one reason for justifying the \$1,000 limit on individuals' contributions to candidates, since that limit would not have an appreciable effect on people's ability to participate in the political process through independent political committees. Buckley v. Valeo, 424 U.S. at 28 and n. 31.

11/ In Citizens Against Rent Control v. City of Berkeley, the Court stated:

Buckley also made clear that contributors cannot be protected from the possibility that others will make larger contributions:

[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.

454 U.S. at 295.

Senator Tim Kelly  
February 12, 1996  
Page -10-

disclosed any cases in which the issue of limitations on contributions to and by political parties has been raised. Based on the First Amendment analysis that the courts have developed over the years, however, we believe these limitations are extremely vulnerable to a successful constitutional attack. As we have already noted, limits on contributions must be justified in terms of preventing corruption or the appearance of corruption. Political parties, by their nature, are considerably more broad based and diffused in terms of the interests they promote and advocate than most other "groups." We fail to see any link between contributions made to political parties or contributions made by political parties and the kind of corruption or appearance of corruption that contribution limits may legitimately attempt to prevent.

The only thing that we think might save these limitations would be some evidence that individual contribution limits are being circumvented by means of "pass through" contributions where a candidate who receives a party contribution is made aware of the fact that the source of the contribution was an identified individual. A court might be willing to uphold limitations on contributions to and by political parties if it were shown to be necessary to maintain the integrity of the individual limits on

Senator Tim Kelly  
February 12, 1996  
Page -11-

contributions to candidates. 12/

4. Ban on Contributions by Corporations and Other Organizations and Associations (Proposed AS 15.13.070(a), Sec. 5 at page 2).

The Initiative provides that only individuals and "groups" may contribute to candidates, and specifically prohibits contributions to candidates from any "corporation, partnership, firm, labor union, association, organization, business trust or surety, or publicly funded entity that does not satisfy the definition of group." 13/ The same section of the Initiative also prohibits corporations and the other listed entities from making contributions to a "group" or a political party. These prohibitions, in our view have some serious constitutional problems. We will first address the problems as they relate to the prohibitions on corporations and then the prohibitions as they relate to other associations and organizations.

(a) Corporations.

The first problem concerning the prohibitions against corporate contributions stems from the Initiative's failure to

---

12/ Four members of the United States Supreme Court viewed this as a significant factor in upholding limits on contributions to a multi-candidate independent political group. California Medical Association v. Federal Election Commission, 453 U.S. 182 (1979-80) (1981).

13/ As noted above, the Initiative defines a "group" as a combination of individuals whose principal and major purpose is to influence the outcome of elections, and does not distinguish between candidate groups and ballot proposition groups.

Senator Tim Kelly  
February 12, 1996  
Page -12-

distinguish between contributions to candidate groups and groups formed to support or oppose ballot propositions. The United States Supreme Court has held that states may not prohibit corporations (whether for profit or non-profit) from contributing to groups formed for the purpose of supporting or opposing ballot propositions. First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978). <sup>14/</sup> The Initiative's prohibition against corporations making contributions to groups organized to support or oppose ballot propositions is, therefore, clearly unconstitutional. It is equally clear, in our view, that the ruling in Bellotti covers all other associations and organizations.

The second problem concerns the prohibition against contributions by corporations to candidates or candidate groups. It is true that courts have upheld statutes prohibiting corporations from making contributions to candidates as well as to candidate groups, <sup>15/</sup> but it is important to review the rationale of those decisions before reaching any conclusions about the specific provisions of this Initiative. The rationale

---

<sup>14/</sup> The state law at issue in Bellotti actually prohibited only expenditures by corporations concerning ballot propositions. However, in later decisions, the Court has cited Bellotti as holding that the First Amendment prohibits states from banning corporate contributions related to ballot proposition elections as well as expenditures. Citizens Against Rent Control V. City of Berkeley, 454 U.S. at 297-98.

<sup>15/</sup> Federal Election Commission v. Right to Work Committee, 459 U.S. 197 (1982).

Senator Tim Kelly  
February 12, 1996  
Page -13-

for prohibiting corporate contributions was well articulated in the case of Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990), where the United States Supreme Court upheld a Michigan statute prohibiting corporations from making independent expenditures to support or oppose candidates. The prohibition was challenged by the Michigan Chamber of Commerce -- a non-profit corporation whose membership consisted largely of for-profit corporations. The Court found that the prohibition was justified on the ground that corporations (even non-profit ones) are able, through the state-conferred corporate structure, to amass large amounts of money in their general treasuries through membership dues and investors; when corporations use that money for political contributions or independent expenditures, it distorts the political process since the money is not a reflection of actual public support for the corporation's political agenda.

While upholding the prohibition, the Court suggested that one of the reasons it was willing to do so was that the Michigan statute did not totally prohibit all corporate political activity; it specifically allowed corporations to contribute to candidates and make independent candidate expenditures through the formation of segregated political funds or committees to which people might contribute, knowing that the corporation will be using the money for political purposes. There is no similar provision in the Initiative. In fact, as drafted, the Initiative

Senator Tim Kelly  
February 12, 1996  
Page -14-

may prohibit corporations from forming segregated political action committees. 16/ Unless corporations are permitted to engage in political activity through the use of segregated "groups" or funds, we think that a court would be more reluctant to uphold a prohibition against corporate contributions to candidates or candidate groups. 17/

(b) Other Organizations and Associations.

The same rationale that supports restrictions on corporate political activity applies to other similar types of organizations and associations. Labor unions, for example, have for many years been prohibited by federal law from using general treasury funds to influence the outcome of candidate elections regardless of whether the union is a corporation. It is less clear, however, whether a State may impose the kinds of restrictions on contributions and expenditures that are valid as to corporations and labor unions on all organizations and

---

16/ The Initiative's definition of a "group" that is eligible to contribute to candidates and make independent candidate expenditures includes only "combinations" of two or more "individuals," which would seem to prohibit corporations from forming separate groups and segregated funds for candidate contributions and expenditures. "Individual" is defined in the current campaign financing statutes as "a natural person." AS 15.13.130(7).

17/ The Initiative also prohibits anyone other than an individual or "group" from making independent expenditures supporting or opposing candidates. See, proposed AS 15.13.075, Sec. 6 at page 5. The analysis we have provided concerning contributions to candidates would be equally applicable to this prohibition against independent expenditures by corporations.

Senator Tim Kelly  
February 12, 1996  
Page -15-

associations. Restrictions on the use of general treasury funds by corporations and labor unions have been upheld because, as noted above, the Court was satisfied that these entities have a great potential for "amassing wealth" from sources unrelated to political support, which can be used unfairly to distort the political process. The United States Supreme Court has also indicated that it is not the corporate form as such that supports the restrictions, but the potential for distorting the process. In Federal Election Commission v. Massachusetts Citizens for Life, 479 U.S. 238 (1986), for instance, the Court noted that:

[B]usiness corporations . . . are by far the most prominent example of entities that enjoy legal advantages enhancing their ability to accumulate wealth. That Congress does not at present seek to regulate every possible type of firm fitting this description does not undermine its justification for regulating corporations. Rather, Congress' decision represents the "careful legislative adjustment of the federal electoral laws, in a 'cautious advance, step by step.'" 18/

This rationale suggests that federal and state governments could impose restrictions on the political activities of entities that have the same potential that corporations have for amassing large amounts of commercial wealth. However, the Initiative makes no distinctions based on an organization's ability to accumulate wealth; it simply bans all associations and organizations from making contributions (and independent expenditures) regardless of

---

18/ Federal Election Commission v. Massachusetts Citizens for Life, 479 U.S. at 258 n. 11.

Senator Tim Kelly  
February 12, 1996  
Page -16-

whether the associations and organizations are even commercial enterprises and regardless of whether they have the same potential for amassing wealth through public stock offerings or membership dues that many corporations and labor unions have. In our view, this blanket prohibition is not "narrowly tailored" to achieve either the goal of preventing corruption or the goal of ensuring that large amounts of commercially obtained wealth do not unfairly compete in the marketplace of ideas. <sup>19/</sup> Consequently, we believe that the Initiative's prohibition against contributions to candidates and independent candidate groups (as well as independent expenditures) by associations and organizations is vulnerable to a successful constitutional challenge.

5. Disbursement of Campaign Assets After Election (Proposed AS 15.13.073, Sec. 6 at page 4).

The Initiative contains a provision requiring that, after certain authorized post-election expenditures have been made, <sup>20/</sup>

---

<sup>19/</sup> Even if some restrictions were permissible on entities other than corporations, we believe that an outright prohibition on contributions and expenditures would probably have to be limited to the use of general treasury funds, with some authorization for the entities to create segregated funds or committees.

<sup>20/</sup> Authorized post-election expenditures include paying bills for expenses incurred during the campaign, for post-election fund raising needed to pay off campaign debts, unconditional donations to a political party or government, donations to charitable organizations and repayment of certain loans to the campaign.

Senator Tim Kelly  
February 12, 1996  
Page -17-

any campaign funds remaining after 60 days following the general election automatically escheat to the state and must be delivered to the Department of Revenue. A similar provision was struck down in a recent decision of the United States Court of Appeals for the Eighth Circuit. In Shrink Missouri Government PAC v. Maupin, 71 F.3d 1422 (1995), the Court invalidated a Missouri provision that required candidates, within 90 days after an election, to turn over any excess campaign funds either to the Missouri Ethics Commission or to contributors. The Court found that the requirement significantly interfered with a candidate's right to political speech by precluding a candidate from using funds raised during a one election campaign in any future campaigns. Viewing the provision as a limitation on political expenditures, the Court applied the strictest type of test and found that the State had not demonstrated that the provision was narrowly tailored to serve a compelling government interest. 21/

A similar restriction on the use of campaign funds was also struck down by the Ninth Circuit Court of Appeals in Service Employees International Union v. Fair Political Practices Commission, 955 F.2d 1312 (9th Cir. 1992). At issue was a California statute that in effect prohibited a candidate from

---

21/ In reviewing limitations on political expenditures, as opposed to political contributions, the Courts have applied a more stringent test. While limits on political contributions may be justified by "important" state interests, limits on political expenditures may be justified only by "compelling" state interests. Buckley v. Valeo.

Senator Tim Kelly  
February 12, 1996  
Page -18-

using campaign funds raised for one election to be spent on future races. The only governmental interest asserted to support the prohibition was to prevent contributors from being misled. Finding that the statute operated as an expenditure limitation, the Court ruled that the prohibition was not narrowly tailored to serve a compelling state interest, noting that the interest in preventing contributors from being misled could be served simply by requiring candidates to inform contributors that their contributions might be spent on future races.

6. Prohibition on Contributions by Candidates to Other Candidates and to Groups (Proposed AS 15.13.072(7)).

The Initiative imposes a number of restrictions on the kinds of expenditures that a candidate may make using campaign funds. For the most part, the prohibitions are directed against using campaign funds for non-political purposes, and as such would not interfere with a candidate's First Amendment rights of political speech. That is not the case, however, with the Initiative's prohibition against a candidate using campaign funds to make a contribution to another candidate or to a group. In Service Employees International Union v. Fair Political Practices Commission, 955 F.2d 1312 (9th Cir. 1992), the Court held that a provision prohibiting candidates from using campaign funds for contributions to other candidates was invalid. The Court applied the Buckley v. Valeo rationale that the potential for corruption or the appearance of corruption stems only from "large"

contributions. Since the statute at issue banned all contributions (even small ones), the Court held that the prohibition failed the "'rigorous' test used in Buckley" because it was not narrowly tailored to achieve the asserted purpose. 22/ The Court noted that any concerns about "unintended use of contributors' money can be met 'by . . . simply requiring that contributors be informed that their money may be used for such a purpose.'" 23/ We believe that this ruling would apply as well to the use of campaign funds to contribute to a candidate group or to a ballot proposition group.

8. Prohibition on Contributions from One Group to Another (Proposed AS 15.13.070(a), Sec. 5 at page 2).

The Initiative prohibits a "group" from making a contribution to another "group." Based on in our earlier discussion of cases indicating limits on contributions to groups formed to support or oppose ballot propositions, we believe that a prohibition against a "group" using campaign funds to contribute to a ballot proposition group would probably be unconstitutional. And so long as groups are limited in the amounts they may contribute to candidates directly, we see no justification in a total ban on groups contributing to candidate

---

22/ Service Employees International Union v. Fair Political Practices Commission, 955 F.2d at 1323.

23/ Service Employees International Union v. Fair Political Practices Commission, 955 F.2d at 1322.

Senator Tim Kelly  
February 12, 1996  
Page -20-

groups. Groups should be no more limited than individuals in the amounts they can contribute to other candidate groups. It may be that there is some legitimate state interest in ensuring that contributors to a group are not misled about the uses to which their money will be put. However, as noted above, that interest can be achieved simply by requiring groups to inform contributors that their contributions may be used by the group to make contributions to other groups.

8. Prohibition on Contributions by Non-residents (Proposed AS 15.13.070(b), Sec. 5 at page 2).

The Initiative prohibits a candidate from accepting a contribution from an individual who is not an Alaska resident at the time the contribution is made. It also prohibits a candidate from receiving a contribution from a group "organized under the laws of another state, resident of another state, or whose participants are not residents" of Alaska at the time the contribution is made. We believe that both of these restrictions are unconstitutional.

Our research has disclosed no case from any jurisdiction in which a court has held that state borders can be barriers to the right to associate for political purposes through financial contributions to a candidate. The Initiative's prohibition against non-resident contributions clearly operates to restrict the rights of non-residents to engage in political activity in Alaska. Its constitutionality, then, must be tested under the

Senator Tim Kelly  
February 12, 1996  
Page -21-

Buckley v. Valeo analysis -- that is, whether the prohibition is "narrowly tailored" to achieve an "important" state interest. In our view, a prohibition against non-resident contributions cannot not be justified as a means of preventing corruption or the appearance of corruption, since non-residents would be prohibited under the Initiative from making even small contributions. 24/ The only other conceivably legitimate justification might be the potential for massive amounts of non-resident contributions to unfairly "overwhelm" the electoral process in Alaska -- a justification similar to the one used for prohibiting the use of corporate general funds for political activities.

It is true, of course, that Alaska has a very small population relative to the rest of the nation, and if huge numbers of non-residents having no real stake in the policies adopted by Alaska's public officials sought to affect the outcome of elections in Alaska there might be some cause for concern. However, this potential is largely theoretical and breaks down under any real scrutiny. For one thing, there are non-residents whose interests are directly and seriously affected by policies made by Alaska elected officials. 25/ There seems no legitimate

---

24/ Non-residents would be prohibited from making large contributions by the same limitations on contributions that apply to residents.

25/ Non-residents who do business in Alaska or own property in Alaska come immediately to mind, to say nothing of non-resident individuals and groups who may wish to promote issues such as the right to life, pro-choice, and the environment.

reason to ban them from participating in the election process by making contributions to candidates they believe will protect or promote their interests. <sup>26/</sup> Non-residents who have little or no stake in Alaska's executive and legislative policy making will have correspondingly little or no incentive to contribute money to those who seek to shape it through public office. If there is concern that public officials should be more responsive to residents than to non-resident interests, that concern can be met through requiring that non-resident contributions be disclosed. Alaska voters can then judge whether the amount of non-resident contributions received by a particular candidate is sufficient to question that candidate's loyalty to interests that may be perceived as "purely" Alaskan.

---

<sup>26/</sup> In Vanatta v. Keisling, 899 F.Supp. 488 (D. Ore. 1995), a federal district court invalidated a law restricting the total amount of contribution that a candidate in one election district could accept from out-of-district residents. The court held that the restriction could not be upheld under the Buckley approved rationale of preventing corruption, noting that:

[T]he Measure prohibits non-corrupt, out-of-district contributors from politically associating with candidates running for state office. Elected officials in state offices impact all state residents, not just the candidate's constituents within his election district. Therefore, the Measure impairs out-of-district residents from associating with a candidate for state office who, if elected, will have a real and direct impact on those persons.

Id. at 497. We believe this reasoning applies with equal force to out of state residents.

Senator Tim Kelly  
February 12, 1996  
Page -23-

9. Prohibition on Lobbyist Contributions to Candidates  
Outside of Lobbyist's Election District (Proposed AS  
15.13.070(c), Sec. 5 at page 2).

The Initiative would prohibit a lobbyist from contributing to a legislative candidate outside the election district in which the lobbyist is entitled to vote. We believe that this prohibition raises many of the same questions that are raised by the prohibition against non-resident contributions. <sup>27/</sup> The prohibition against cross-district contributions by lobbyists cannot, in our view, be justified as a means of preventing corruption or the appearance of corruption, because lobbyists (like all other individuals) are not permitted to make "large" contributions to any single candidate. It is conceivable that the prohibition is intended to prevent lobbyists from attempting to enhance their "collective" influence or access in the legislature by contributing to large numbers of legislative candidates. The legitimacy of this justification is severely undercut, of course, by the fact that lobbyists are subject to the same contribution limits as all other individuals -- limits that are imposed precisely to prevent influence buying and "quid pro quo" arrangements. In the end, though, we doubt that lobbyists can be subject to any greater restrictions on their

---

<sup>27/</sup> Vanatta v. Keisling, for instance, applies directly to prohibitions on cross-district contributions.

First Amendment rights than other persons, including a restriction on cross-district contributions. 28/

10. Treble Penalties in Direct Superior Court Actions  
(Proposed AS 15.13.120(d), Sec. 10 at page 6).

The Initiative permits a person who believes a violation of the campaign financing laws or regulations has occurred, to bring an action in superior court seeking injunctive relieve and civil penalties. A person may also file an administrative complaint with the Alaska Public Offices Commission for the imposition of

---

28/ In Fair Political Practices Commission v. Superior Court of Los Angeles County, 599 P.2d 46, 53 (Cal. 1979), the California Supreme Court invalidated a statute prohibiting lobbyists from making any monetary contribution to candidates, noting, "The governmental interests held to warrant restrictions on [political activities by government employees] . . . have no greater application to lobbyists than to other private campaign contributors." In a similar vein, a federal district court invalidated a prohibition against lobbyists providing volunteer services to candidates' campaigns, noting:

Defendants have shown no basis for finding that volunteering by lobbyists threatens the integrity of the political process any more than volunteering by other citizens, such as environmental activists, insurance executives, or lawyers . . . . These individuals may be just as much in the public eye, may have as much at stake in the legislative process, and may be equally motivated to associate closely with elected public officials, but there is no question that the state cannot interfere with their right to do volunteer work in political campaigns without violating their constitutional rights.

Barker v. State of Wisconsin Ethics Board, 841 F.Supp. 255, 260 (W.D. Wisc. 1993).

Senator Tim Kelly  
February 12, 1996  
Page -25-

civil penalties. 29/ The Initiative sets out a schedule of civil penalties for statutory and regulatory violations, ranging from \$1.00 per day to \$50.00 per day, depending on the duration of the violation and up to \$500 per day for a knowing or intentional violation. 30/ If the complaint is filed with the Commission, civil penalties are imposed as set out in the schedule. 31/ If the complaint is filed in superior court and the court finds a violation to have occurred, the court may (and if there is a knowing violation the court must) impose triple the amount of civil penalties provided in the schedule of penalties. 32/ In our view, the treble penalties provision is clearly unconstitutional.

The Equal Protection Clause of both the Alaska and United States Constitutions prohibits states from treating persons differently without at the least demonstrating that the difference in treatment is reasonable, not arbitrary, and fairly and substantially related to some legitimate government interest. 33/ In this case, a candidate who knowingly violates a provision of the campaign finance laws or regulations will pay one set of

---

29/ See, proposed AS 15.13.120(e), Sec. 10 at page 6.

30/ See, proposed AS 15.13.125(a), Sec. 10 at page 6.

31/ See, proposed AS 15.13.125(a), Sec. 10 at page 6.

32/ See, proposed AS 15.13.125(d), Sec. 10 at page 7.

33/ Sonneman v. Knight, 790 P.2d 702 (1990).

Senator Tim Kelly  
February 12, 1996  
Page -26-

penalties if the complaint happens to be brought before the Commission and three times that amount if the complaint happens to be brought in the superior court. Precisely the same behavior, then, may be punished more severely depending only on the forum in which complainant seeks to have the behavior adjudicated. We cannot conceive of a legitimate state interest that would justify such an arbitrary scheme of differential penalties. 34/

---

34/ Although beyond the scope of your opinion request, we nonetheless feel compelled to point out what may be the obvious - that an enforcement regime that permits violations to be adjudicated in the first instance either administratively or judicially is going to cause enormous problems both for the Public Offices Commission and for the Court System. It is not unlikely that a complaint concerning the very same violation might be filed by one person with the Commission and by another person with the superior court. Which proceeding takes precedence? What if different facts are presented in the administrative proceeding from those presented in the superior court, resulting in different outcomes? We see no reason to depart from the normal procedure of allowing the administrative agency charged with enforcement of a statute to make the initial adjudicatory findings, subject to judicial review. We are also concerned with the wisdom of allowing complainants to seek injunctive relief in the superior court in an area where freedom of expression and association will frequently be involved.

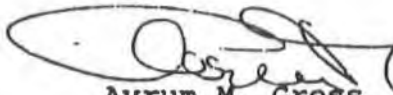
Senator Tim Kelly  
February 12, 1996  
Page -27-


Conclusion.

We hope this review has given you some understanding of the constitutional issues raised by the pending Initiative. We would be happy to meet with you, with other legislators and legislative committees to answer any further questions you may have.

Very truly yours,

GROSS & BURKE

  
Avrum M. Gross

  
Susan A. Burke

AMG:SAB:ps

A M E N D M E N T

To CSSB 191 (STA)

Page 25, lines 19 - 21: Delete all material and insert the following:

"Except as provided in AS 15.56.014 and 15.56.016, a person commits the crime of campaign misconduct in the first degree if the person knowingly engages in conduct that violates a provision of AS 15.13 or a regulation adopted under authority of AS 15.13.";

Page 26, line 10: Delete all material after "or";

Page 26, lines 11 and 12: Delete all material and insert the following:

"that a reasonable person would construe as damaging to the candidate's reputation for honesty, integrity, or the candidate's qualifications to serve if elected to office.";

Page 26, lines 13 and 14: Delete all material;

Page 26, line 18: After "degree" insert "if"

Page 26, line 19 and 20: Delete all material and insert the following:

"(1) the person violates a provision of AS 15.13 or a regulation adopted under AS 15.13; or";

Page 26, line 21: Delete "if";

Page 26, line 24: Delete "intentionally";

Page 26, line 31: Delete ", 15.56.014(a)(4),";

Page 27, line 5: Delete "terms" and insert "term";

Page 27, line 6 and 7: Delete all material and insert the following:

"knowingly" has the meaning given in AS 11.81.900(a)."

CURRENT LAW	INITIATIVE	CS DATED 2/28/96
Contributions from Individuals \$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.
Contributions from Parties No limits	\$5,000/yr. to legislative candidate \$50,000/yr. to Gov. or Lt. Gov. candidate	\$10,000/yr. to House cand.; \$15,000 to Senate; \$5,000/yr. to others; \$100,000/yr. to Gov./Lt. Gov. cand.
Contributions not from Individuals (i.e. corps, unions) \$1,000/yr. contrib. limit. Unlimited to groups or parties.	Prohibited.	Same as initiative.
Contributions from groups of individuals \$1,000/yr. to a candidate	\$500/yr. to a candidate	\$1,000/yr. to a candidate.
Lobbyists 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
When money can be raised 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.
Personal use of campaign funds No restrictions. Unlimited funds may be converted to pers. income.	Prohibited	Transfer of \$5,000 (House) or \$10,000 (Senate) to office account allowed.
Carryforward of campaign surpluses 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.
Out-of-state contributions No special restrictions	Prohibited	Out-of-state contributions allowed up to \$2,000 (House), \$3,000 (Senate) or \$20,000 (Gov./Lt. Gov.)
Independent expenditures No restrictions	Only individuals, political groups and political parties could make "independent" expenditures	Same as initiative.
Public funds No clear restrictions	Use of public funds for campaigns involving candidates is prohibited.	Same as initiative.
Serious violations 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.
Civil penalties Min. civil penalty is \$10/violation	Civil penalties increase depending on significance and length of a violation	Civil penalty maximums would increase.
Power to enforce 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

SEC.	SUBJECT--INITIATIVE	SENATE--CSSB 191(STA) (3/20-VERSION K)	HOUSE--CSHB 368(JUD) (3/27-VERSION K)
1	<b>Findings and Purpose</b> Findings: six Purpose: reform campaign finance laws.	(Uncodified) Similar to initiative (Uncodified) Similar to initiative	Bills are similar or same. Bills are similar or same.
2	<b>Municipal Regulation</b> Municipalities can regulate elections "more strictly" than in this chapter.	(NEW 15.13.010(e)) Similar to initiative	Bills are similar or same.
3	<b>Contribution Requirements</b> Candidate must have name, address, occupation and employer of contributor. Exemption=campaigns of \$1000 or less.	(AMENDED 15.30.040(a)) Similar to initiative  (NEW 15.13.040(g)) Exemption=\$2500 or less	Bills are similar or same. Bills are similar or same.
4	<b>Who May Make Expenditures</b> Candidate, individual or group may expend re. the candidate unless expenditure is independent Expendor must register.  Ballot proposition expendor must register	(NEW 15.13.067) Similar to initiative  (AMEND 15.13.050) Registration before expenditure, NOT contribution registration Reduces naming requirement from 50% to 33 1/3%	Bills are similar or same.  Bills are similar or same.
5	<b>Direct Contributions and Expenditures; Timing, Amount and Form of Payment</b>  Individual may contribute to group Individuals and groups may contribute to candidate  No solicitation from company, union, trust, business that is not a group  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	(NEW 15.13.065) Individual may contribute to group or party Individual, group or party may contribute to candidate Party may contribute to sub unit and vice versa  (NEW 15.13.074(h)) Companies, unions, trusts, etc may not contribute  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	Bills are similar, individual or group may contribute to group or party. Individual, group or party may contribute to candidate. Party may contribute to sub unit and vice versa.  No similar language  Bills are similar or same  Bills are similar or same  Bills are similar or same

SEC.	SUBJECT--INITIATIVE	SENATE--CSSB 191(STA) (3/20-VERSION K)	HOUSE--CSHB 368(JUD) (3/27-VERSION K)
	To political party: individual may give up to \$5000; prohibits group to party contributions, prohibits party to party contributions	To political party: Individual may give up to \$5000, group may give up to \$1000, allows party to party contributions	Bills are similar or same.
	<b>Non-resident Contributions</b> Prohibited	(NEW 15 30 072(a)(b) Limited to: \$20,000 for governor, Lt. governor, \$4000 Senate, \$2000 House.	Bills are similar... \$20,000 for governor, Lt governor; \$3000 Senate; \$2000 House, municipal or other candidates
	<b>Lobbyist's Contributions</b> Prohibited outside of lobbyist's district	(NEW 15 13 074(f) Similar to initiative.	Bills are similar or same.
	<b>When Contributions Can Be Accepted</b> 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 of election year, others=5 months before election. Lengthens to 45 days after election.	Bills are similar or same.
	<b>Honoraria, Contributions, Sessions</b> Prohibits contributions or honoraria during sessions. No honoraria after filing	(NEW 15 13 155 ) Honoraria language modified (NEW 15 13 074(c) Allows governor and Lt governor to raise funds during sessions (NEW 15 13 072(e) No solicitation during sessions for legislative incumbents	Bills are similar or same Bills are similar or same Bills are similar or same
	<b>Miscellaneous Provisions Re: Contributions and Expenditures</b> Candidate can contribute "any sum" to candidate's own campaign	(NEW 15 13 078(a) Similar to initiative.	Bills are similar or same
	No cash contributions over \$25	(NEW 15 13 074(e) No cash contributions over \$100.	Bills are similar or same
	No similar provision.	NEW 15 13 074(g) Candidates for governor, Lt governor may not contribute to other candidates from Jan. 1 through general election	No similar provision
	No cash expenditures over \$100 unless written receipt is obtained for APOC	(NEW 15 13 082(a) Similar to initiative.	Bills are similar or same
	No anonymous contributions, expenditures. Immediate return	(NEW 15 13 074 & 084) Similar to initiative. NEW 15 13 114) Similar to initiative	Bills are similar or same Bills are similar or same
	Contributions can be received and expenditures made only by candidate, treasurer or deputy	(NEW 15 13 086) Similar to initiative. (NEW 15 13 076) Similar to initiative	Bills are similar or same.

SEC.	SUBJECT-INITIATIVE	SENATE--CSSB 191(STA) (3/20-VERSION K)	HOUSE--CSHB 368(JUD) (3/27-VERSION K)
	<p>Every expenditure must be disclosed.</p> <p>APOC to index every 5 years.</p>	<p>(NEW 15.13.082(b) Similar to initiative</p> <p>Deleted.</p>	<p>Bills are similar or same.</p> <p>Deleted.</p>
6	<p><b>Loans From Family or Candidate</b> Family loan up to \$1000 is not a contribution and need not be repaid. Over \$1000 is contribution.</p> <p>No similar provision.</p> <p><b>Prohibited Use of Funds</b> Personal benefit, personal income, loans, fines, other candidates, exceed FMV.</p> <p><b>Disbursement of Assets After Election</b> To pay bills; \$500 for thank you party, donation to political party, G.F., federal government, charity, repay loans; legal fees, runoffs. Property retained may not exceed \$2500. No carry forward of funds.</p> <p><b>Independent Expenditures Regarding Ballot Propositions</b> Permitted in accordance with law.</p> <p><b>Independent Expenditures For or Against Candidates</b> Permitted for individual or group. Must be reported. Limited in what contributions can be accepted. Disclaimer required.</p> <p><b>Educational Activities</b> Permitted in accordance with law.</p> <p><b>Use of Public Funds</b> Prohibited re. candidates. Allowed for ballot propositions if specifically appropriated or for non-partisan information. Must report.</p>	<p>(NEW 15.13.078) Candidate can give or loan any amount, reported as contribution. Limited recovery.</p> <p>(NEW 15.13.078(c) No personal contribution of more than \$5000 at end of campaign.</p> <p>(NEW 15.13.112) Similar to initiative</p> <p>!</p> <p>(NEW 15.13.116) Similar to initiative but authorizes pro rata repayment to contributors, carry forward of \$50,000 for governor, \$10,000 Senate, \$5000 House or other candidates; transfer to office use of \$5000 House, \$20,000 Senate. Property retained may not exceed \$2500 plus computer.</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>	<p>Bills are similar or same.</p> <p>Bills are similar or same.</p> <p>Bills are similar or same.</p> <p>Bills are similar... HB 368 limits Senate carry forward to \$7500; limits Senate transfer to office use to \$10,000. No computer reference.</p> <p>Bills are similar or same.</p> <p>Bills are similar or same.</p> <p>Bills are similar or same.</p> <p>Bills are similar or same.</p>

SEC.	SUBJECT--INITIATIVE	SENATE--CSSB 191(STA) (3/20-VERSION K)	HOUSE--CSHB 368(JUD) (3/27-VERSION K)
7	<b>Contributor's Statement</b> Mandatory for \$1000 aggregate in last 90 days of election. Copy to candidate.	(AMEND 15.13.010) Maintains \$1000 but deletes copy to candidate.	Bills are similar or same.
8	<b>Reports to APOC</b> Clarifies that group and deputy must report like candidate.	(AMEND 15.13.110 (b)(c) Similar to initiative but removes requirement that expenditures be reported on 24-hour reports.	Bills are similar or same.
9	<b>Penalty for Violation</b> Misdemeanor penalty repealed	Repealed in Sec. 27.	Bills are similar or same.
10	<b>Citizen Suits</b> Any person (including APOC) may sue in superior court within 2 years or file complaint with APOC within 4 years	(R & R 15.13.120(d) Person must file complaint with APOC first. APOC has 60 days to respond.	Bills are similar. APOC has 90 days to initiate and 120 days to respond.
11	<b>Civil Penalties</b> Establishes sliding scale tier to aggravating and mitigating factors. Increases penalties over existing law. Allows treble penalties, fees and costs to be assessed.	(AMEND 15.13.125) Omits sliding scale and raises dollar penalties. (NEW 15.13.125(b-f) Sets out penalty-assessment instructions.	Bills are similar or same. Bills are similar or same.
12	<b>Other Laws and Severability</b> Construe to avoid federal conflict. Each word-section is severable. If court says persons other than individuals can contribute, this chapter still binds.	(Sec. 28 Uncodified) Similar to initiative. (Sec. 30 Uncodified) Similar to initiative. (Sec. 29 Uncodified) Similar to initiative.	Bills are similar or same. Bills are similar or same. Bills are similar or same.
13	<b>Definition of "Candidate"</b> Candidate=treasurer, deputy, family, agent, group, etc.	(NEW 15.13.400) Similar to initiative.	Bills are similar or same.
14	<b>Definition of "Group"</b> Includes any combination of individuals <u>organizing</u> or acting to influence election.	(NEW 15.13.400) Similar to initiative.	Bills are similar or same.
15	<b>Definitions Added to Sec. .130</b> Defines: Commission, Honorarium, Immediate Family, Independent Expenditure, Political Party	(NEW 15.13.400) Defines all 11 items except Honorarium. Adds 'Publicly Funded Entity'. Adds 'Minor Party,' 'Subordinate Unit' and 'Affiliated Organization' to definition of Political Party.	Bills are similar. HB 368 adds 'Group' to definition of person; omits 'affiliated organization' in definition of Political Party.

SEC.	SUBJECT-INITIATIVE	SENATE--CSSB 191(STA) (3/20-VERSION K)	HOUSE--CSHB 368(JUD) (3/27-VERSION K)
16	<b>Serious Violations</b> 'Intentional' violation becomes Class C felony, 'knowing' 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 for 'intentional,' B for 'knowing.'	Bills are similar. HB 368 rewords section at request of Dept. of Law.
17	<b>Loss of Business License</b> Violation means loss of business license plus possible other penalties.	(NEW 15.56.018) Similar to initiative.	Bills are similar. HB 368 rewords section at request of Dept. of Law.
18	<b>For-Profit Lobbyists</b> May not deliver or raise funds.	(AMEND 24 25 121(A)(8) Similar to initiative.	Bills are similar or same.
19	<b>Effective Date</b> 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 certification )	January 1, 1997 !	Bills are similar. HB 368 makes July 1, 1996 the effective date for 15 13.112(b)(1 & 2) personal use of campaign funds.
NA	<b>Printed Material Disclaimer for Ballot Proposition</b> Initiative 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>	Bills are similar or same.
NA	<b>Disclaimer for Independent Expenditures</b> Initiative silent.	(NEW 15 13 090(b) Adds exemption due to <u>McIntyre</u> as noted above	Bills are similar or same.
NA	<b>Contribution Between Political Party and Subordinate Unit</b> Party to party contributions prohibited.	(NEW 15 13 065) Contributions between political party and subordinate unit are authorized.	Bills are similar or same.
NA	<b>Deadline for Candidates Losing Primary to Receive and Expend Funds</b> Initiative silent.	(NEW 15 13 074(c)(4)(B) Allows losing primary candidates to receive and expend 45 days after primary.	Bills are similar or same.
NA	<b>Charitable Gaming</b> Initiative silent.	(AMENDS 05 15 150(a) Only proceeds from raffles can support campaigns, parties, groups	Bills are similar or same.
NA	<b>Conditional Effect</b> Initiative silent.	(Uncodified) Either the bill or the initiative may become law, not both	Bills are similar or same.

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### ALASKA PUBLIC OFFICES COMMISSION

April 11, 1996

The Honorable Robin Taylor, Chair  
Senate Judiciary Committee  
Alaska State Legislature  
State Capitol, Room 30  
Juneau, Alaska 99801

Re: CSSB 191(STA)

Dear Mr. Chair:

Thank you for the opportunity to submit these comments. The Alaska Public Offices Commission has had the opportunity to review the legislation before your committee and offers the attached technical and substantive amendments.

Please let me know if you have any questions or concerns regarding the Commission's recommendations. I will be attending the hearing scheduled for Monday, April 15, at 1:30 pm.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

  
Brooke Miles  
Juneau Branch Administrator

TONY KNOWLES, GOVERNOR

2221 E. NORTHERN LIGHTS, ROOM 128  
ANCHORAGE, ALASKA 99508-4149  
PHONE: (907) 276-4176  
FAX: (907) 276-7018  
e-mail: First Name\_Last Name@admin.state.ak.us

P.O. BOX 110222  
JUNEAU, ALASKA 99811-0222  
PHONE: (907) 465-4864  
FAX: (907) 465-4832

PROPOSED AMENDMENTS

BILL NO. C88B191(STA)

The Commission proposes the following technical and substantive amendments to CSSB191(STA):

Page 4, line 18. Section 7. AS 18.13.040. The Commission supports this exemption at a \$1000.00 threshold. A \$2500.00 exemption would eliminate most municipal reporting.

Page 12, line 15. Section 14. AS 15.13.090(b). This section refers to subsection AS 15.13.090(a) which does not exist in current code and has not been established by this section.

Page 15, line 11. Section 18. AS 15.13.112(c). Subsection (c) should read: "Campaign contributions held by a candidate may not be contributed to another candidate or to a group other than a political party." This change would eliminate a conflict between this subsection and AS 15.13.116(a)(3)(A) and AS 15.13.074(g)(2).

Page 15, line 13. Section 18. AS 15.13.114. Disposition of Prohibited Contributions. This section applies to both candidates and groups but the cross-referenced violations (AS 15.13.072 and .074) only specify candidates and persons not groups do not give sufficient guidance to groups on the nature of prohibited contributions. By amending AS 15.13.074(a)(b) and (c) page 7 lines 28 and 30 and page 9, line 16 to "A person or group", this would be corrected.

Page 17, line 21. Section 19. AS 15.13.120(d). The Commission recommends the following wording for the next two sections as a more workable procedure. This establishes a reasonable time period to evaluate a complaint, eliminates the concerns regarding concurrent jurisdiction but allows the public an opportunity to take a complaint to court if the commission can't or won't open an investigation.

Section 19. AS 15.13.120(d) is repealed and reenacted to read:

(d) A member of the commission, the commission's executive director, a person or group who believes a violation of this chapter or a regulation adopted under it has occurred may file an administrative complaint with the commission within four years of the date of the alleged violation. If a member of the commission has filed the complaint, that member may not participate as a commissioner in any

proceeding of the commission with respect to the complaint. If the commission accepts the complaint and opens a preliminary investigation, it shall do so within 90 days of the filing date of the complaint and shall investigate the complaint. After affording the respondent notice and an opportunity to be heard, if the commission finds that the respondent has engaged in or is about to engage in an act or practice that constitutes or will constitute a violation 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. A commission order may be appealed to the superior court.

Page 18, line 2. Section 20. AS 15.13.120(e). The Commission recommends the following wording . See preceding comments.

Section 20. AS 15.13.120(e) is repealed and reenacted to read:

(e) If the commission does not open a preliminary investigation within 90 days of the filing date of the complaint, the complaint is rejected. A filer whose complaint is rejected may file a complaint in superior court alleging a violation of this chapter by a person, group or entity. A complaint may not be filed in superior court under this subsection if more than four years have elapsed from the date of the alleged violation. Nothing in this subsection creates a private cause of action against the commission.

Page 18, line 20. Section 21. AS 15.13.125. This section establishes civil penalties for most late or incomplete reports as well as letters of intent and write in candidacies. There are, however, no civil penalties specified for late registration statements. (Adding references to AS 15.13.050 and .060 would accomplish this.) There are also no references and therefore no civil penalties for late or incomplete individual contribution reports (AS 15.13.080 and .040(d)), independent expenditure reports (AS 15.13.040(d)), missing identifications of communication (AS 15.13.090) as well as no civil penalties for the new prohibitions and requirements that are specified in this bill.

This section should be identified as AS 15.13.125(a) as (b) has been established in the bill but (a) has not.

Page 21, line 3. Section 23. AS 15.13.145. Money of the State and Its Political Subdivisions. The inclusion of a candidate for federal office in the list of prohibited uses for state funds may conflict with federal jurisdiction of federal elections.

Page 22, line 2. Section 23. AS 15.13.155. This section establishes restrictions on honorarium and earned income. It will be difficult to enforce as nothing beyond what is already required in AS 39.50 and AS 24.60 regarding personal financial disclosure is required here. Reporting periods under current laws cover the previous calendar year and only AS 24.60 requires amounts and then only in some circumstances. In addition no penalties exist for this section in AS 15.13.

Page 24, line 6 Section 23. AS 15.13.400(11), AS 15.13.050, AS 15.13.140. Although there is a new definition, it is still unclear as to what "publicly funded entity" refers. If "person" has the meaning in AS 01.10.060 and includes association, corporation, organization, company, labor union, natural person, etc., and the "state and its political subdivisions" includes state agencies, the University, state corporations, municipalities, school districts and REAAS, what entity does not already fall under these categories?

9-LS1260R  
C.ienoweth  
4/18/96

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

BY

Offered:  
Referred:

Sponsors: 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, the activities of lobbyists that  
3 relate to election campaigns, the definitions of offenses of campaign misconduct,  
4 and to the use of the net proceeds of charitable gaming activities in election  
5 campaigns; and providing for an effective date."

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

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

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

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

13 (3) organized special interests are responsible for raising a significant portion of

1 all election campaign funds and may thereby gain an undue influence over election campaigns  
2 and elected officials, particularly incumbents;

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

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

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

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

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

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

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

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

31 (3) the direct or indirect payment of any portion of the net proceeds  
32 of a charitable gaming activity, except the proceeds of a raffle and lottery,

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

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

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

7 • Sec. 3. AS 15.13.010(a) is amended to read:

8 (a) This chapter applies

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

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

25 • Sec. 4. AS 15.13.010 is amended by adding new subsections to read:

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

30 (d) This chapter does not limit the authority of a person to make contributions  
 31 to influence the outcome of a voter proposition submitted to the public for a vote at a  
 32 municipal election. In this subsection, in addition to its meaning under AS 15.13.065(b),

1 "proposition" means a municipal reclassification, proposal to adopt or amend a home rule  
2 charter, a unification proposal, a boundary change proposal, or the approval of an  
3 ordinance when approval by public vote is a requirement for the ordinance.

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

5 (a) Except as provided in (g) of this section, each [EACH] candidate shall  
6 make a full report, upon a form prescribed by the commission, listing the date and  
7 amount of all expenditures made by the candidate, the total amount of all contributions,  
8 including all funds contributed by the candidate, and for all contributions in excess of  
9 \$100 in the aggregate a year, the name, address, principal occupation, and employer of  
10 the contributor and the date and amount contributed by each contributor. The report  
11 shall be filed in accordance with AS 15.13.110 and shall be certified correct by the  
12 candidate or campaign treasurer.

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

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

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

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

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

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

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

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

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

31 (h) The provisions of (d)(2) of this section do not apply to one or more  
32 expenditures made by an individual acting independently of any group and

1 independently of any other individual if the expenditures

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

3 (2) are made only for billboards, signs, or printed material concerning  
4 a ballot proposition.

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

6 Sec. 15.13.050. REGISTRATION BEFORE EXPENDITURE [GROUPS].

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

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

17 Sec. 15.13.065. CONTRIBUTIONS. (a) A political party may contribute to a  
18 subordinate unit of the political party, and a subordinate unit of a political party may  
19 contribute to the political party of which it is a subordinate unit.

20 (b) Except for reports required by AS 15.13.040 and 15.13.110 and except for  
21 the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the provisions  
22 of AS 15.13.010 - 15.13.116 do not only to limit the authority of a person to make  
23 contributions to influence the outcome of a ballot proposition. In this subsection, in  
24 addition to its meaning in AS 15.60.010, "proposition" includes an issue placed on a  
25 ballot to determine whether

26 (1) a constitutional convention shall be called;

27 (2) a debt shall be contracted;

28 (3) an advisory question shall be approved or rejected; or

29 (4) a municipality shall be incorporated.

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

32 (1) the candidate;

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

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

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

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

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

9 (b) An individual may contribute not more than

10 (1) \$500 per year to a candidate, to a person who conducts a write-in  
11 campaign as a candidate, or to a group that is not a political party;

12 (2) \$5,000 per year to a political party.

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

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

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

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

20 (1) \$100,000 per year, if the election is for governor or lieutenant  
21 governor;

22 (2) \$15,000 per year, if the election is for the state senate;

23 (3) \$10,000 per year, if the election is for the state house of  
24 representatives; and

25 (4) \$5,000 per year, if the election is for

26 (A) delegate to a constitutional convention;

27 (B) judge seeking retention; or

28 (C) municipal office.

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

30 Sec. 15.13.072. RESTRICTIONS ON SOLICITATION AND ACCEPTANCE  
31 OF CONTRIBUTIONS. (a) A candidate or an individual who has filed with the  
32 commission the document necessary to permit that individual to incur election-related

1 expenses under AS 15.13.100 may not solicit or accept a contribution from a person not  
2 authorized by law to make a contribution.

3 (b) A candidate or an individual who has filed with the commission the  
4 document necessary to permit the individual to incur election-related expenses under  
5 AS 15.13.100, or a group, may not solicit or accept a cash contribution that exceeds  
6 \$100.

7 (c) An individual, or one acting directly or indirectly on behalf of that individual,  
8 may not solicit or accept a contribution

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

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

13 (d) A candidate or an individual who has filed with the commission the  
14 document necessary to permit that individual to incur election-related expenses under  
15 AS 15.13.100 may not solicit or accept a contribution if the legislature is convened in  
16 a regular or special legislative session, and the candidate or individual is a member of  
17 the legislature, or employed by a legislator or employed as a member of the legislator's  
18 staff or as a member of the staff of a legislative committee.

19 Sec. 15.13.074. PROHIBITED CONTRIBUTIONS. (a) A person or group may  
20 not make a contribution if the making of the contribution would violate this chapter.

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

23 (c) A person or group may not make a contribution

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

29 (A) the date the individual

30 (i) becomes a candidate; or

31 (ii) files with the commission the document necessary to  
32 permit the individual to incur certain election-related expenses as

1 authorized by AS 15.13.100; or

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

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

7 (A) the date the individual

8 (i) becomes a candidate; or

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

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

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

17 (A) the date the individual

18 (i) becomes a candidate; or

19 (ii) files with the commission the document necessary to  
20 permit that individual to incur certain election-related expenses as  
21 authorized by AS 15.13.100;

22 (B) is five months before the date of the general or regular  
23 municipal election or that is before the date of the proclamation of the special  
24 election at which the candidate or individual seeks election to public office; or

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

26 (A) after the date of a primary election if the candidate

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

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

30 (B) after the date of the primary election if the candidate was not  
31 nominated at the primary election; or

32 (C) after the date of the general election, or after the date of a

1 municipal or municipal runoff election, if the candidate was opposed at the  
2 general, municipal, or municipal runoff election.

3 (d) A person or group may not make a contribution to a candidate or a person  
4 or group who is prohibited by AS 15.13.072(c) from accepting it.

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

6 (f) A corporation, labor union, or publicly funded entity that does not satisfy  
7 the definition of group in AS 15.13.400 may not make a contribution to a candidate.

8 Sec. 15.13.076. AUTHORIZED RECIPIENTS OF CONTRIBUTIONS. A  
9 contribution to a

10 (1) candidate may be received only by

11 (A) the candidate; or

12 (B) the candidate's campaign treasurer or a deputy campaign  
13 treasurer;

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

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

17 (a) The provisions of this chapter do not prohibit the person who is a candidate from  
18 giving any amount of the candidate's own money or other thing of value to the  
19 campaign of the candidate. Donations made by the candidate to the candidate's own  
20 campaign shall be reported as contributions in accordance with AS 15.13.040 and  
21 15.13.110.

22 (b) The provisions of this chapter do not prohibit the person who is a  
23 candidate from lending any amount to the campaign of the candidate. Loans made by  
24 the candidate shall be reported as contributions in accordance with AS 15.13.040 and  
25 15.13.110. However, the candidate may not

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

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

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

31 (i) the legislature; or

32 (ii) delegate to a constitutional convention;

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

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

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

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

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

16 \* Sec. 12. § 15.13.080 is amended to read:

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

19 (1) an individual who contributes to a candidate

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

must

(1) identify the contributor and the candidate and all groups receiving contributions;

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

(3) 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.

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

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

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

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

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

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

(2) the date and amount of the contribution.

Sec. 15.13.084. PROHIBITED EXPENDITURES. A person may not make an

1 expenditure

2 (1) anonymously, unless the expenditure is

3 (A) paid for by an individual acting independently of any group  
4 and independently of any other individual;

5 (B) made to influence the outcome of a ballot proposition as  
6 that term is defined by AS 15.13.065(b); and

7 (C) made for

8 (i) a billboard or sign; or

9 (ii) printed material, other than an advertisement made  
10 in a newspaper or other periodical;

11 (2) using a fictitious name or using the name of another.

12 Sec. 15.13.086. AUTHORIZED MAKERS OF EXPENDITURES. An  
13 expenditure

14 (1) authorized by or in behalf of a candidate may be made only by

15 (A) the candidate; or

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

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

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

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

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

24 (2) is made to influence the outcome of a ballot proposition as that  
25 term is defined by AS 15.13.065(b); and

26 (3) is made for

27 (A) a billboard or sign; or

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

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

31 (a) Each candidate and group shall make a full report in accordance with  
32 AS 15.13.040 for the period ending three days before the due date of the report and

1 beginning on the last day covered by the most recent previous report. If the report is a  
2 first report, it shall cover the period from the beginning of the campaign to the date three  
3 days before the due date of the report. If the report is a report due February 15, it shall  
4 cover the period beginning on the last day covered by the most recent previous report  
5 or on the day that the campaign started, whichever is later, and ending on December 31  
6 of the prior year. The report shall be filed

7 (1) 30 days before the election; however, this report is not required if the  
8 deadline for filing a nominating petition or declaration of candidacy is within 30 days  
9 of the election;

10 (2) one week before the election;

11 (3) 10 days after the election; and

12 (4) February 15 for expenditures made and contributions received that  
13 were not reported during the previous year, including, if applicable, all amounts  
14 expended from a legislative office account established under AS 15.13.116(a)(9), or  
15 when expenditures were not made or contributions were not received during the previous  
16 year.

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

18 (b) Each contribution [~~OR EXPENDITURE~~] that exceeds \$250 and that is made  
19 within nine days of the election shall be reported to the commission by date, amount, and  
20 contributor [~~OR RECIPIENT~~] within 24 hours of receipt [~~OR EXPENDITURE~~] by the  
21 candidate, group, [~~OR~~] campaign treasurer, or deputy campaign treasurer.

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

23 (c) [~~THE REPORTS OF CANDIDATES SHALL BE FILED WITH THE~~  
24 ~~COMMISSION'S CENTRAL OFFICE.~~] All reports required by this chapter shall be  
25 filed with the commission's central office and shall be kept open to public inspection.  
26 Within 30 days after each election, the commission shall prepare a summary of each  
27 report which shall be made available to the public at cost upon request. Each summary  
28 shall use uniform categories of reporting.

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

30 Sec. 15.13.112. USES OF CAMPAIGN CONTRIBUTIONS HELD BY  
31 CANDIDATE OR GROUP. (a) Except as otherwise provided, campaign contributions  
32 held by a candidate or group may be used only to pay the expenses of the candidate or

1 group, and the campaign expenses incurred by the candidate or group, that reasonably  
2 relate to election campaign activities, and in those cases only as authorized by this  
3 chapter.

4 (b) Campaign contributions held by a candidate or group may not be

5 (1) used to give a personal benefit to the candidate or to another person;

6 (2) converted to personal income of the candidate;

7 (3) loaned to a person;

8 (4) knowingly used to pay more than the fair market value for goods or  
9 services purchased for the campaign;

10 (5) used to pay a criminal fine; or

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

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

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

20 Sec. 15.13.114. DISPOSITION OF PROHIBITED CONTRIBUTIONS. (a) A  
21 candidate or group that receives and accepts a contribution given in violation of  
22 AS 15.13.072 or 15.13.074 shall immediately, upon discovery that the contribution is  
23 prohibited, return it to the contributor. A candidate or group that receives and accepts  
24 a contribution in excess of the limitation on contributions set out in AS 15.13.070 shall  
25 immediately, upon discovery of the prohibited excess contribution, return the excess to  
26 the contributor. If the contribution or excess amount cannot be returned in the same  
27 form, the equivalent value of the contribution or excess amount shall be returned.

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

32 Sec. 15.13.116. DISBURSEMENT OF CAMPAIGN ASSETS AFTER

1 ELECTION. (a) A candidate who, after the date of the general, special, municipal, or  
2 municipal runoff election or after the date the candidate withdraws as a candidate,  
3 whichever comes first, holds unused campaign contributions shall distribute the amount  
4 held within 60 days. The distribution may only be made to

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

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

11 (3) make donations, without condition, to

12 (A) a political party;

13 (B) the state's general fund;

14 (C) a municipality of the state; or

15 (D) the federal government;

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

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

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

24 (A) to all contributors;

25 (B) to contributors who have contributed most recently; or

26 (C) to contributors who have made larger contributions;

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

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

32 (A) \$50,000, if the transfer is made by a candidate for governor

1 or lieutenant governor;

2 (B) \$10,000, if the transfer is made by a candidate for the state  
3 senate;

4 (C) \$5,000, if the transfer is made by a candidate for the state  
5 house of representatives; and

6 (D) \$5,000, if the transfer is made by a candidate for an office  
7 not described in (A) - (C) of this paragraph;

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

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

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

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

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

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

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

30 • Sec. 19. AS 15.13.120(d) is repealed and reenacted to read:

31 (d) A member of the commission, the commission's executive director, or a  
32 person or group who believes a violation of this chapter or a regulation adopted under

1 this chapter has occurred or is occurring may file an administrative complaint with the  
2 commission within four years of the date of the alleged violation. If a member of the  
3 commission has filed the complaint, that member may not participate as a commissioner  
4 in any proceeding of the commission with respect to the complaint. If the commission  
5 accepts the complaint and opens a preliminary investigation, it shall do so within 90 days  
6 of the filing date of the complaint and shall investigate the complaint. After affording  
7 the respondent notice and an opportunity to be heard, if the commission finds that the  
8 respondent has engaged in or is about to engage in an act or practice that constitutes or  
9 will constitute a violation of this chapter or a regulation adopted under it, the commission  
10 shall enter an order requiring the violation to be ceased or to be remedied, and shall  
11 assess civil penalties under AS 15.13.125. A commission order may be appealed to the  
12 superior court by either the complainant or respondent within 30 days. The commission  
13 or the commission's executive director shall promptly report to the attorney general  
14 concerning any acts or practices that may constitute violations of this chapter or  
15 regulations adopted under this chapter, or concerning the violation of any order of the  
16 commission.

17 • Sec. 20. AS 15.13.120(c) is repealed and reenacted to read:

18 (c) If the commission does not open a preliminary investigation within 90 days  
19 of the filing date of the complaint or complete action on the complaint within 120 days  
20 of the filing, the complaint is rejected. A complainant whose complaint is rejected may  
21 file a complaint in superior court alleging a violation of this chapter by a person charged  
22 in the administrative complaint. The superior court summons and complaint shall be  
23 served on the commission and the attorney general. The state shall have the right to  
24 intervene in a timely manner. A complaint may not be filed in superior court under this  
25 subsection if more than two years have elapsed from the date of the alleged violation.  
26 This subsection does not create a private cause of action against the commission.

27 • Sec. 21. AS 15.13.125 is amended to read:

28 Sec. 15.13.125. CIVIL PENALTY: LATE FILING OF REQUIRED REPORTS.

29 A person who fails to file a properly completed and certified report within the time  
30 required by AS 15.13.040(d) - (f), 15.13.050, 15.13.060(b) - (d), 15.13.080(c)  
31 [AS 15.13.040(f), 15.13.110(a)(1), (3), or (4), (e), or (f) [OR 15.13.110(f)] is subject  
32 to a civil penalty of not more than \$50 [\$10] a day for each day the delinquency

1 continues as determined by the commission subject to right of appeal to the superior  
2 court. A person who fails to file a properly completed and certified report within the  
3 time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not  
4 more than \$500 (\$50) a day for each day the delinquency continues as determined by the  
5 commission subject to right of appeal to the superior court. A person who violates a  
6 provision of this chapter, except a provision requiring filing of a report within a  
7 time required as otherwise specified in this subsection, is subject to a civil penalty  
8 of not more than \$50 a day for each day the violation continues as determined by  
9 the commission, subject to right of appeal to the superior court. An affidavit stating  
10 facts in mitigation may be submitted to the commission by a person against whom a civil  
11 penalty is assessed. However, the imposition of the penalties prescribed in this section  
12 or in AS 15.13.120 does not excuse that person from filing reports required by this  
13 chapter.

14 • Sec. 22. AS 15.13.125 is amended by adding new subsections to read:

15 (b) When an administrative complaint has been filed under AS 15.13.120(d), the  
16 commission shall give the person against whom the complaint has been filed due notice  
17 and an opportunity to be heard. If, at the conclusions of the hearing, the commission  
18 determines that the person against whom the complaint was filed engaged in the alleged  
19 violation, the commission shall assess

20 (1) civil penalties under (a) of this section,

21 (2) the commission's costs of investigation and adjudication, and

22 (3) reasonable attorney fees.

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

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

29 (1) suspend imposition of the penalties, and

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

32 (e) A party who has filed a civil action under AS 15.13.120(e)

- 1 (1) is not entitled to trial by jury on the civil action;  
2 (2) is not entitled to be represented by legal counsel at public expense.

3 \* Sec. 23. AS 15 13 is amended by adding new sections to read:

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

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

14 (1) shall comply with AS 15.13.090; and

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

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

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

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

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

31 (1) shall be reported in accordance with AS 15.13.040 and 15.13.100 -

1 15.13.110 and other requirements of this chapter; and

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

3 Sec. 15.13.145. MONEY OF THE STATE AND ITS POLITICAL  
4 SUBDIVISIONS. (a) Except as provided in (b) and (c) of this section, each of the  
5 following may not use money held by the entity to influence the outcome of the  
6 election of a candidate to a state or municipal office:

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

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

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

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

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

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

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

21 (2) to provide the public with nonpartisan information about a ballot  
22 proposition or question or about all the candidates seeking election to a particular  
23 public office.

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

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

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

- 1 (2) the education of students about voting and elections;  
2 (3) the sponsorship of open candidate debate forums;  
3 (4) participation in get-out-the-vote or voter registration drives that do  
4 not favor a particular candidate, political party, or political position;  
5 (5) the dissemination of the views of all candidates running for a  
6 particular office.

7 Sec. 15.13.155. RESTRICTIONS ON EARNED INCOME AND  
8 HONORARIA. (a) A candidate for the state legislature, for governor, or for  
9 lieutenant governor, including a person campaigning as a write-in candidate for the  
10 office, may not

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

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

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

23 Sec. 15.13.400. DEFINITIONS. In this chapter,

24 (1) "candidate"

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

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

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

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

(iv) the candidate's campaign committee; and

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

- 1 (i) influencing the nomination or election of a candidate  
2 or of any individual who files for nomination at a later date and  
3 becomes a candidate;
- 4 (ii) use by a political party;
- 5 (iii) the payment by a person other than a candidate or  
6 political party of compensation for the personal services of another  
7 person that are rendered to a candidate or political party; or
- 8 (iv) influencing the outcome of a ballot proposition or  
9 question;
- 10 (B) does not include a candidate's filing fee or the cost of  
11 preparing reports and statements required by this chapter;
- 12 (5) "group" means
- 13 (A) every state and regional executive committee of a political  
14 party; and
- 15 (B) any combination of two or more individuals acting jointly  
16 who organize for the principal purpose to influence the outcome of one or more  
17 elections and who take action the major purpose of which is to influence the  
18 outcome of an election; a group that makes expenditures or receives  
19 contributions with the authorization or consent, express or implied, or under the  
20 control, direct or indirect, of a candidate shall be considered to be controlled  
21 by that candidate; a group whose major purpose is to further the nomination,  
22 election, or candidacy of only one person, or intends to expend more than 50  
23 percent of its money on a single candidate, shall be considered to be controlled  
24 by that candidate and its actions done with the candidate's knowledge and  
25 consent unless, within 10 days from the date the candidate learns of the  
26 existence of the group the candidate files with the commission, on a form  
27 provided by the commission, an affidavit that the group is operating without  
28 the candidate's control; a group organized for more than one year preceding an  
29 election and endorsing candidates for more than one office or more than one  
30 political party is presumed not to be controlled by a candidate; however, a  
31 group that contributes more than 50 percent of its money to or on behalf of one

1 candidate shall be considered to support only one candidate for purposes of  
2 AS 15.13.070, whether or not control of the group has been disclaimed by the  
3 candidate;

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

6 (7) "independent expenditure" means an expenditure that is made  
7 without the direct or indirect consultation or cooperation with, or at the suggestion or  
8 the request of, or with the prior consent of, a candidate, a candidate's campaign  
9 treasurer or deputy campaign treasurer, or another person acting as a principal or agent  
10 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  
13 labor union and a 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  
25 from 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 Except as provided in AS 15.56.014 and 15.56.016, a person commits the crime of  
29 campaign misconduct in the first degree if the person knowingly engages in conduct  
30 that violates a provision of AS 15.13 or a regulation adopted under authority of  
31 AS 15.13.

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

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

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

4 (a) A person commits the crime of campaign misconduct in the second degree if the  
5 person

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

10 (2) except as provided by AS 15.13.090(b), knowingly prints or  
11 publishes an advertisement, billboard, placard, poster, handbill, paid-for television or  
12 radio announcement or other communication intended to influence the election of a  
13 candidate or outcome of a ballot proposition or question without the words "paid for  
14 by" followed by the name and address of the candidate, group or individual paying for  
15 the advertising or communication and, if a candidate or group, with the name of the  
16 campaign chair;

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

20 (A) containing false factual information relating to a candidate  
21 for an election;

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

23 (C) that would provoke a reasonable person under the  
24 circumstances to a breach of the peace or that a reasonable person would  
25 construe as damaging to the candidate's reputation for honesty, integrity, or the  
26 candidate's qualifications to serve if elected to office.

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

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

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

30 A person commits the crime of campaign misconduct in the third degree if

31 (1) the person violates a provision of AS 15.13 or a regulation adopted

1 under AS 15.13; or

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

6 (A) violates AS 15.15.170; or

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

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

11 Sec. 15.56.018. APPLICABILITY OF CAMPAIGN MISCONDUCT  
12 PROVISIONS. (a) For purposes of AS 15.56.012(a) and 15.56.016(a)(1), each day  
13 a violation continues constitutes a separate offense.

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

18 Sec. 15.56.019. DEFINITION. In AS 15.56.012 - 15.56.018, the term  
19 "knowingly" has the meaning given in AS 11.81.900(a).

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

21 (a) A lobbyist may not

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

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

26 (3) intentionally deceive or attempt to deceive any public official with  
27 regard to any material fact pertinent to pending or proposed legislative or  
28 administrative action;

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

31 (5) cause a communication to be sent to a public official in the name

1 of any fictitious person or in the name of any real person, except with the consent of  
2 that person;

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

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

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

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

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

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

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

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

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

30 \* Sec. 29. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the  
31 application thereof to any person or circumstance, is held invalid, the remainder of this Act

1 and the application to other persons or circumstances is not affected thereby.

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

9 \* Sec. 31. If secs. 1 - 29 of this Act take effect, they take effect January 1, 1997.

**SB**

**194**

SENATE BILL NO. 194

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATORS KELLY, Phillips, Leman, Pearce, Green

Introduced: 1/8/96

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to  
2 sentencing for those offenses; and amending Rule 702(a), Alaska Rules of  
3 Evidence."

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

5 \* Section 1. AS 11.41.110(a) is amended to read:

6 (a) A person commits the crime of murder in the second degree if

7 (1) with intent to cause serious physical injury to another person or  
8 knowing that the conduct is substantially certain to cause death or serious physical  
9 injury to another person, the person causes the death of any person;

10 (2) the person knowingly engages in conduct that results in the death  
11 of another person under circumstances manifesting an extreme indifference to the value  
12 of human life; [OR]

13 (3) acting either alone or with one or more persons, the person commits  
14 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first

1 degree, sexual assault in the second degree, burglary in the first degree, escape in the  
2 first or second degree, or robbery in any degree and, in the course of or in furtherance  
3 of that crime, or in immediate flight from that crime, any person causes the death of  
4 a person other than one of the participants; or

5 *good* (4) acting for the benefit of, at the direction of, or in association  
6 with a criminal street gang, the person commits or attempts to commit a crime  
7 that is a felony and, in the course of or in furtherance of that crime or in  
8 immediate flight from that crime, any person committing or attempting to commit  
9 the crime causes the death of another person other than one of the participants.

10 \* Sec. 2. AS 11.61.195(a) is amended to read:

11 (a) A person commits the crime of misconduct involving weapons in the  
12 second degree if the person [KNOWINGLY]

13 (1) knowingly possesses a firearm during the commission of an offense  
14 under AS 11.71.010 - 11.71.040; [OR]

15 (2) knowingly violates AS 11.61.200(a)(1) and is within the grounds  
16 of or on a parking lot immediately adjacent to

17 (A) a public or private preschool, elementary, junior high, or  
18 secondary school without the permission of the chief administrative officer of  
19 the school or district or the designee of the chief administrative officer; or

20 (B) a center, other than a private residence, licensed under  
21 AS 47.33 or AS 47.35 or recognized by the federal government for the care of  
22 children; or

23 (3) participates as a member of a criminal street gang and, acting  
24 for the benefit of, at the direction of, or in association with a criminal street gang  
25 or any of its members, the person knowingly discharges a firearm from a  
26 propelled vehicle while the vehicle is being operated and under circumstances  
27 manifesting a reckless disregard for a risk of damage to property or a risk of  
28 physical injury to a person. *Adds more elements than can prove*

29 \* Sec. 3. AS 11.61.200(a) is amended to read:

30 (a) A person commits the crime of misconduct involving weapons in the third  
31 degree if the person

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person

1 has been convicted of a felony by a court of this state, a court of the United States,  
2 or a court of another state or territory, unless the person has written authorization to  
3 live in a dwelling in which there is a concealable weapon described in this paragraph  
4 from a court of competent jurisdiction or from the head of the law enforcement agency  
5 of the community in which the dwelling is located; or

6 (11) discharges a firearm from a propelled vehicle while the vehicle is  
7 being operated in circumstances other than described in AS 11.61.195(a)(3).

8 \* Sec. 4. AS 11.61.210(a) is amended to read:

9 (a) A person commits the crime of misconduct involving weapons in the fourth  
10 degree if the person

11 (1) possesses on the person, or in the interior of a vehicle in which the  
12 person is present, a firearm when the person's physical or mental condition is impaired  
13 as a result of the introduction of an intoxicating liquor or a controlled substance into  
14 the person's body in circumstances other than described in AS 11.61.200(a)(7);

15 (2) discharges a firearm from, on, or across a highway;

16 (3) discharges a firearm with reckless disregard for a risk of damage  
17 to property or a risk of physical injury to a person in circumstances other than  
18 described in AS 11.61.195(a)(3);

19 (4) manufactures, possesses, transports, sells, or transfers metal  
20 knuckles;

21 (5) manufactures, sells, or transfers a switchblade or a gravity knife;

22 (6) knowingly sells a firearm or a defensive weapon to a person under  
23 18 years of age;

24 (7) other than a preschool, elementary, junior high, or secondary school  
25 student, knowingly possesses a deadly weapon or a defensive weapon, without the  
26 permission of the chief administrative officer of the school or district or the designee  
27 of the chief administrative officer, within the buildings of, on the grounds of, or on the  
28 school parking lot of a public or private preschool, elementary, junior high, or  
29 secondary school or while participating in a school-sponsored event, except that a  
30 person 21 years of age or older may possess

31 (A) a deadly weapon, other than a loaded firearm, in the trunk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; [OR]

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession; or

(9) participating as a member of a criminal street gang and acting for the benefit of, at the direction of, or in association with a criminal street gang or any of its members, knowingly remains in a propelled vehicle after another criminal street gang member present in the vehicle has violated AS 11.61.195(a)(3).

• Sec. 5. AS 11.61 is amended by adding new sections to read:

ARTICLE 3. CRIMINAL STREET GANGS.

Sec. 11.61.300. PARTICIPATION IN CRIMINAL STREET GANG. (a) A

person commits the crime of participation in a criminal street gang if the person

(1) actively participates in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity; and

(2) knowingly engages in conduct to promote, further, or assist in any conduct by a member of that gang that constitutes an offense punishable as a felony.

SZTS Law Book

1 (b) In this section, "pattern of criminal gang activity" means the commission  
2 or attempted commission, within the preceding three years, for the benefit of, at the  
3 direction of, or in association with the members of the criminal street gang, two or  
4 more offenses punishable as a felony.

5 (c) Participation in a criminal street gang is a class C felony.

6 Sec. 11.61.305. FORFEITURE OF PROPERTY UPON CONVICTION. (a)  
7 Upon conviction under AS 11.41.110(a)(4), AS 11.61.195(a), or 11.61.300, the  
8 following shall be forfeited to the state:

9 (1) a deadly weapon and ammunition that may be used with the deadly  
10 weapon that

11 (A) is owned or possessed by a person who actively participated  
12 in a criminal street gang during the criminal gang activity that provided the  
13 basis for the offender's conviction; or

14 (B) was acquired during the course of a pattern of criminal gang  
15 activity for which the offender was convicted;

16 (2) the property of the offender who led, organized, supervised, or  
17 managed the criminal street gang

18 (A) constituting, or derived from, proceeds the offender  
19 obtained, directly or indirectly, as the result of the criminal gang activity that  
20 provided the basis for the offender's conviction; and ~~or~~ }

21 (B) used, or intended to be used, in any manner or part, to  
22 commit, or to facilitate the commission of, the criminal gang activity.

23 \* Sec. 6. AS 11.81.900(b) is amended by adding a new paragraph to read:

24 (59) "criminal street gang" means a group of three or more persons

25 (A) who have in common a name or identifying sign, symbol,  
26 tattoo or other physical marking, style of dress, or use of hand signs; and

27 (B) who, individually, jointly, or in combination, have  
28 committed or attempted to commit, within the preceding three years, for the  
29 benefit of, at the direction of, or in association with the group, two or more  
30 offenses under any of, or any combination of, the following

31 (i) AS 11.41; or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

(ii) a felony offense.

• Sec. 7. AS 12.25 is amended by adding a new section to read:

Sec. 12.25.034. ARREST WITHOUT WARRANT FOR MISDEMEANOR OFFENSE INVOLVING CRIMINAL STREET GANG MEMBERSHIP. A peace officer may arrest a person without a warrant, whether or not the offense is committed in the presence of the officer, when the officer has probable cause to believe that the person to be arrested has violated AS 11.61.210(a)(9), if the violation is alleged to have occurred less than eight hours before the time of arrest.

• Sec. 8. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING TO CRIMINAL STREET GANG ACTIVITY. (a) In an action or proceeding under AS 11.41.110(a)(4), AS 11.61.195(a)(3), 11.61.210(a)(9), or 11.61.300 - 11.61.305, expert testimony is admissible to show particular conduct, status, and customs indicative of criminal street gangs, including

*Constitutional*

- (1) common characteristics of persons who are members of criminal street gangs;
- (2) rivalries between specific criminal street gangs;
- (3) common practices and operations of criminal street gangs and the members of those gangs;
- (4) social customs and behavior of members of criminal street gangs;
- (5) terminology used by members of criminal street gangs;
- (6) codes of conduct of particular criminal street gangs; and
- (7) the types of crimes that are likely to be committed by a particular criminal street gang or by criminal street gangs in general.

(b) In this section, "criminal street gang" has the meaning given in AS 11.81.900(b).

• Sec. 9. AS 12.55.125(b) is amended to read:

(b) A defendant convicted of

(1) [MURDER IN THE SECOND DEGREE.] attempted murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to

1 a definite term of imprisonment of at least five years but not more than 99 years;  
2 (2) murder in the second degree under AS 11.41.110(a)(1) - (3) shall  
3 be sentenced to a definite term of imprisonment of at least five years but not  
4 more than 99 years;

5 (3) murder in the second degree under AS 11.41.110(a)(4) shall be  
6 sentenced to a definite term of imprisonment of at least seven years but not more  
7 than 99 years.

8 \* Sec. 10. AS 12.45.037, added by sec. 8 of this Act, has the effect of amending Rule  
9 702(a), Alaska Rules of Evidence, to allow the admissibility of expert testimony to show  
10 criminal gang characteristics, activity, and practices by a person having that specialized  
11 knowledge based on the person's knowledge, skill, experience, training, or education.

12 \* Sec. 11. APPLICABILITY. This Act applies to an act that occurs on or after the  
13 effective date of this Act.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB194

Revision Date: \_\_\_\_\_  
 Title: An Act Relating to Offenses Associated  
with Criminal Street Gangs.  
 Sponsor: Senator Kelly et al  
 Requestor: Senate (JUD)

Dept. Affected: Health and Social Services  
 BRU: Family and Youth Services  
 Component: DFYS Central Office  
 COMPONENT SERIAL NO. 259  
 See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ( )						
-------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost:                     \$0.0

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

From the limited information available regarding street gangs, the Division cannot accurately assess the impact this bill would have on programs. However, it appears that it will be minimal.

Prepared by: L. Diane Worley *[Signature]* Phone: 465-3191  
 Division: Family & Youth Services Date: 01/16/96

Approved by Commissioner: Karen Priddy *[Signature]* Date: 1/15/96  
 Agency: Department of Health & Social Services

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 194

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...relating to offenses with criminal street gangs  
and the sentences for those offenses." BRU: Criminal Division  
 Sponsor: Senator Kelly Component: Criminal Division  
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill criminalizes participation in criminal street gangs. In so doing, the bill establishes several elements that would have to be proved in order to obtain a conviction. For this reason, the Department of Law believes that the bill's requirements are too complicated and provide too many defenses, making prosecution problematic. The bill also has the unintended potential effect of reducing the penalties for some gang related activities, which would otherwise be charged under accomplice liability provisions of current law.

Consequently, there will probably not be many prosecutions under the bill's provisions, if it is enacted. On those few occasions when the provisions are used, prosecution will be difficult and expensive.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 1/16/96  
 Date: 1/16/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 194

Revision Date: \_\_\_\_\_  
Title: "An Act relating to offenses associated with criminal street gangs..."  
Sponsor: Senator Kelly  
Requestor: Senate Judiciary

Department Affected: Administration  
BRU: Office of Public Advocacy  
Component: Office of Public Advocacy  
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There will undoubtedly be a fiscal impact to OPA on our criminal section and on our contractors, due to increased arrests and increased criminal litigation. It is not possible at this time to quantify this impact.

Prepared by Brant McGee, Public Advocate  
Division Office of Public Advocacy

Phone 274-1684  
Date \_\_\_\_\_

Approved by Commissioner Mark Boyer  
Agency Administration

Date 1/17/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 194

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to offenses associated with criminal street gangs..."  
 Sponsor: Senator Kelly  
 Requestor: (S) Judiciary

Department Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

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

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

**POSITIONS:**

FULL-TIME					
PART-TIME					
TEMPORARY					

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

There is no fiscal impact on the Public Defender Agency.

Prepared by: John B. Salemi, Director  
 Division: Public Defender Agency

Phone: (907) 264-4412  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 1/16/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSSB 194

Revision Date: February 28, 1996-  
Title: Crimes associated with criminal street gangs  
Sponsor: Senator Kelly  
Requestor: S. Judiciary

Dept. Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments  
COMPONENT SERIAL NO. 0799

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

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

This bill will not have a fiscal impact on the Division of Alaska State Troopers

Prepared By: Lt. Dan Lowden  
Division: Alaska State Troopers

Phone: 465-5505  
Date: February 28, 1996

Approved by Commissioner: *Ronald L. Otte*  
Agency: Ronald L. Otte, Department of Public Safety

Date: 2/28/96

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information call the Governor's Legislative Office

WORK DRAFT

WORK DRAFT

WORK DRAFT

9-I.S1313\U  
Chenoweth  
2/23/96

CS FOR SENATE BILL NO. 194( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS KELLY, Phillips, Lemon, Pearce, Green, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to  
2 sentencing for those offenses; relating to the offenses of murder in the second  
3 degree, an unclassified felony, misconduct involving weapons in the first degree,  
4 a class A felony, and misconduct involving weapons in the third degree, a class  
5 C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for  
6 an effective date."

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

8 \* Section J. AS 11.41.110(a) is amended to read:

- 9 (u) A person commits the crime of murder in the second degree if
- 10 (1) with intent to cause serious physical injury to another person or
- 11 knowing that the conduct is substantially certain to cause death or serious physical injury
- 12 to another person, the person causes the death of any person;
- 13 (2) the person knowingly engages in conduct that results in the death of

WORK DRAFT

WORK DRAFT

WORK DRAFT

1 another person under circumstances manifesting an extreme indifference to the value of  
2 human life; (OR)

3 (3) acting either alone or with one or more persons, the person commits  
4 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first  
5 degree, sexual assault in the second degree, burglary in the first degree, escape in the  
6 first or second degree, (OR) robbery in any degree, or misconduct involving a  
7 controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or  
8 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime, or in  
9 immediate flight from that crime, any person causes the death of a person other than one  
10 of the participants; or

11 (4) acting with a criminal street gang, the person commits or  
12 attempts to commit a crime that is a felony and, in the course of or in furtherance  
13 of that crime or in immediate flight from that crime, any person causes the death  
14 of a person other than one of the participants.

15 \* Sec. 2. AS 11.61 is amended by adding new sections to article 1 to read:

16 Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

17 (a) A person commits the crime of recruiting a gang member in the first degree if the  
18 person uses or threatens the use of force against a person or property to induce a person  
19 to participate in a criminal street gang or to commit a crime on behalf of a criminal street  
20 gang.

21 (b) Recruiting a gang member in the first degree is a class C felony.

22 Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND  
23 DEGREE. (a) A person commits the crime of recruiting a gang member in the second  
24 degree if the person is 18 years of age or older and, without force or the threat of force,  
25 encourages or recruits a person who is under 18 years of age and at least three years  
26 younger than the offerer to participate in a criminal street gang.

27 (b) Recruiting a gang member in the second degree is a class A misdemeanor.

28 \* Sec. 3. AS 11.61.190(a) is amended to read:

29 (a) A person commits the crime of misconduct involving weapons in the first  
30 degree if the person

31 (1) uses or attempts to use a firearm during the commission of an offense  
32 under AS 11.71.010 - 11.71.040; or

WORK DRAFT

WORK DRAFT

WORK DRAFT

1                                    (2) discharges a firearm from a propelled vehicle while the vehicle  
2                                    is being operated and under circumstances manifesting substantial and unjustifiable  
3                                    risk of physical injury to a person or damage to property.

4        • Sec. 4. AS 11.61.200(a) is amended to read:

5                                    (a) A person commits the crime of misconduct involving weapons in the third  
6                                    degree if the person

7                                    (1) knowingly possesses a firearm capable of being concealed on one's  
8                                    person after having been convicted of a felony or adjudicated a delinquent minor for  
9                                    conduct that would constitute a felony if committed by an adult by a court of this state,  
10                                    a court of the United States, or a court of another state or territory;

11                                    (2) knowingly sells or transfers a firearm capable of being concealed on  
12                                    one's person to a person who has been convicted of a felony by a court of this state, a  
13                                    court of the United States, or a court of another state or territory;

14                                    (3) manufactures, possesses, transports, sells, or transfers a prohibited  
15                                    weapon;

16                                    (4) knowingly sells or transfers a firearm to another whose physical or  
17                                    mental condition is substantially impaired as a result of the introduction of an  
18                                    intoxicating liquor or controlled substance into that other person's body;

19                                    (5) removes, covers, alters, or destroys the manufacturer's serial number  
20                                    on a firearm with intent to render the firearm untraceable;

21                                    (6) possesses a firearm on which the manufacturer's serial number has  
22                                    been removed, covered, altered, or destroyed, knowing that the serial number has been  
23                                    removed, covered, altered, or destroyed with the intent of rendering the firearm  
24                                    untraceable;

25                                    (7) violates AS 11.46.320 and, during the violation, possesses on the  
26                                    person a firearm when the person's physical or mental condition is impaired as a result  
27                                    of the introduction of an intoxicating liquor or controlled substance into the person's  
28                                    body;

29                                    (8) violates AS 11.46.320 or 11.46.330 by entering or remaining  
30                                    unlawfully on premises or in a propelled vehicle in violation of a provision of an order  
31                                    issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the  
32                                    person a defensive weapon or a deadly weapon, other than an ordinary pocketknife.

WORK DRAFT

WORK DRAFT

WORK DRAFT

1 (9) communicates in person with another in violation of AS 11.56.740  
2 and, during the communication, possesses on the person a defensive weapon or a deadly  
3 weapon, other than an ordinary pocketknife;

4 (10) resides in a dwelling knowing that there is a firearm capable of  
5 being concealed on one's person or a prohibited weapon in the dwelling if the person has  
6 been convicted of a felony by a court of this state, a court of the United States, or a  
7 court of another state or territory, unless the person has written authorization to live in  
8 a dwelling in which there is a concealable weapon described in this paragraph from a  
9 court of competent jurisdiction or from the head of the law enforcement agency of the  
10 community in which the dwelling is located; or

11 (11) discharges a firearm from a propelled vehicle while the vehicle is  
12 being operated in circumstances other than described in AS 11.61.190(a)(2).

13 \* Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

14 (59) "criminal street gang" means a group of three or more persons  
15 (A) who have in common a name or identifying sign, symbol,  
16 tattoo or other physical marking, style of dress, or use of hand signs; and  
17 (B) who, individually, jointly, or in combination, have committed  
18 or attempted to commit, within the preceding three years, for the benefit of, at  
19 the direction of, or in association with the group, two or more offenses under any  
20 of, or any combination of, the following:

- 21 (i) AS 11.41;
- 22 (ii) AS 11.46; or
- 23 (iii) a felony offense.

24 \* Sec. 6. AS 12.45 is amended by adding a new section to read:

25 Sec 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING TO  
26 CRIMINAL STREET GANG ACTIVITY. (a) In a criminal prosecution, expert  
27 testimony is admissible to show, in regard to a specific criminal street gang or criminal  
28 street gangs whose conduct is relevant to the case.

- 29 (1) common characteristics of persons who are members of the criminal  
30 street gang or criminal street gangs;
- 31 (2) rivalries between specific criminal street gangs;
- 32 (3) common practices and operations of the criminal street gang or

WORK DRAFT

WORK DRAFT

WORK DRAFT

- 1 criminal street gangs and the members of those gangs;
- 2 (4) social customs and behavior of members of the criminal street gang
- 3 or the criminal street gangs;
- 4 (5) terminology used by members of the criminal street gang or the
- 5 criminal street gangs;
- 6 (6) codes of conduct of the particular criminal street gang or criminal
- 7 street gangs; and
- 8 (7) the types of crimes that are likely to be committed by the particular
- 9 criminal street gang.
- 10 (b) In this section, "criminal street gang" has the meaning given in
- 11 AS 11.81.900(b).
- 12 \* Sec. 7. AS 12.55.015(a) is amended to read:
- 13 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
- 14 sentence on a defendant convicted of an offense, may singly or in combination
- 15 (1) impose a
- 16 (A) fine when authorized by law and as provided in
- 17 AS 12.55.035; or
- 18 (B) [A] day fine when authorized by law and as provided in
- 19 AS 12.55.036, if the court does not impose a term of periodic or continuous
- 20 imprisonment or place the defendant on probation;
- 21 (2) order the defendant to be placed on probation under conditions
- 22 specified by the court that may include provision for active supervision;
- 23 (3) impose a definite term of periodic imprisonment;
- 24 (4) impose a definite term of continuous imprisonment;
- 25 (5) order the defendant to make restitution under AS 12.55.045;
- 26 (6) order the defendant to carry out a continuous or periodic program of
- 27 community work under AS 12.55.055;
- 28 (7) suspend execution of all or a portion of the sentence imposed under
- 29 AS 12.55.080;
- 30 (8) suspend imposition of sentence under AS 12.55.085;
- 31 (9) order the forfeiture to the commissioner of public safety of a deadly
- 32 weapon that was in the actual possession of or used by the defendant during the

WORK DRAFT

WORK DRAFT

WORK DRAFT

1 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

2 (10) order the defendant, while incarcerated, to participate in or comply  
3 with the treatment plan of a rehabilitation program that is related to the defendant's  
4 offense or to the defendant's rehabilitation if the program is made available to the  
5 defendant by the Department of Corrections;

6 (11) order the forfeiture to the state of a motor vehicle, weapon,  
7 electronic communication device, or money or other valuables, used in or obtained  
8 through an offense that was committed for the benefit of, at the direction of, or in  
9 association with a criminal street gang.

10 \* Sec. 8. AS 12.55 is amended by adding a new section to read:

11 Sec. 12.55.137. PENALTIES FOR GANG ACTIVITIES PUNISHABLE AS  
12 MISDEMEANORS. (a) If a person commits an offense that would be a class B  
13 misdemeanor and the person committed the offense for the benefit of, at the direction of,  
14 or in association with a criminal street gang, the offense is a class A misdemeanor.

15 (b) If a person commits an offense that would be a class A misdemeanor and the  
16 person committed the offense for the benefit of, at the direction of, or in association with  
17 a criminal street gang, the offense is a class C felony.

18 \* Sec. 9. AS 12.55.155(c) is amended by adding a new paragraph to read:

19 (29) the defendant committed the offense for the benefit of, at the  
20 direction of, or in association with a criminal street gang.

21 \* Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

22 (14) "criminal street gang" has the meaning given in AS 11.81.900(b).

23 \* Sec. 11. AS 12.45.037, added by sec. 6 of this Act, has the effect of amending Rule 702(a),  
24 Alaska Rules of Evidence, to allow the admissibility of expert testimony to show criminal gang  
25 characteristics, activity, and practices by a person having that specialized knowledge based on  
26 the person's knowledge, skill, experience, training, or education.

27 \* Sec. 12. APPLICABILITY. This Act applies to an act that occurs on or after the effective  
28 date of this Act, except that references to previous offenses refer to acts occurring before, on,  
29 or after the effective date of this Act.

30 \* Sec. 13. This Act takes effect September 1, 1996.

Senator Taylor--

The "U" version of the CS is the most recent version and contains only technical changes to the last draft version "R". It does not include any substantive changes.

I have been working hard to accomodate everyone on this bill. The A.G.'s office is happy, the Anchorage Police Department is happy, and I believe everyone is happy except for the Public Defenders. It is as close to consensus as I can get.

Jack Chenoweth, Annie Carpeneti, and myself will be in Anchorage to testify. Thanks for all of you help.

*T. J. Jancan*

Sherman

• Make it a crime to recruit a gang member if the person uses or threatens to use force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a street gang. This crime would constitute a class C felony. This crime of

9-LS1313R  
Chenoweth  
2/22/96

CS FOR SENATE BILL NO. 194( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS KELLY, Phillips, Leman, Pearce, Green, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to  
2 sentencing for those offenses; relating to the offenses of murder in the second  
3 degree, an unclassified felony, misconduct involving weapons in the first degree,  
4 a class A felony, and misconduct involving weapons in the third degree, a class  
5 C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for  
6 an effective date."

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

8 \* Section 1. AS 11.41.110(a) is amended to read:

- 9 (a) A person commits the crime of murder in the second degree if
- 10 (1) with intent to cause serious physical injury to another person or
- 11 knowing that the conduct is substantially certain to cause death or serious physical injury
- 12 to another person, the person causes the death of any person;
- 13 (2) the person knowingly engages in conduct that results in the death of

1 another person under circumstances manifesting an extreme indifference to the value of  
2 human life; [OR]

3 (3) acting either alone or with one or more persons, the person commits  
4 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first  
5 degree, sexual assault in the second degree, burglary in the first degree, escape in the  
6 first or second degree, [OR] robbery in any degree, or misconduct involving a  
7 controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or  
8 11.71.040(a)(1) or (2) and, in the course of or in furtherance of th t crime, or in  
9 immediate flight from that crime, any person causes the death of a person other than one  
10 of the participants; or

11 (4) acting with a criminal street gang, the person commits or  
12 attempts to commit a crime that is a felony and, in the course of or in furtherance  
13 of that crime or in immediate flight from that crime, any person causes the death  
14 of another person other than one of the participants.

15 \* Sec. 2. AS 11.61 is amended by adding new sections to article 1 to read:

16 Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

17 (a) A person commits the crime of recruiting a gang member in the first degree if the  
18 person uses or threatens the use of force against a person or property to induce another  
19 person to participate in a criminal street gang or to commit a crime on behalf of a  
20 criminal street gang.

21 (b) Recruiting a gang member in the first degree is a class C felony.

22 Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND  
23 DEGREE. (a) A person commits the crime of recruiting a gang member in the second  
24 degree if the person is over 18 years of age and, without force or the threat of force,  
25 encourages or recruits a person who is under 18 years of age and at least three years  
26 younger than the offender to participate in a criminal street gang.

27 (b) Recruiting a gang member in the second degree is a class A misdemeanor.

28 \* Sec. 3. AS 11.61.190(a) is amended to read:

29 (a) A person commits the crime of misconduct involving weapons in the first  
30 degree if the person

31 (1) uses or attempts to use a firearm during the commission of an offense  
32 under AS 11.71.010 - 11.71.040; or

1                    (2) discharges a firearm from a propelled vehicle while the vehicle  
2                    is being operated and under circumstances manifesting substantial and unjustifiable  
3                    risk of physical injury to a person or damage to property.

4 \* Sec. 4. AS 11.61.200(u) is amended to read:

5                    (a) A person commits the crime of misconduct involving weapons in the third  
6                    degree if the person

7                    (1) knowingly possesses a firearm capable of being concealed on one's  
8                    person after having been convicted of a felony or adjudicated a delinquent minor for  
9                    conduct that would constitute a felony if committed by an adult by a court of this state,  
10                    a court of the United States, or a court of another state or territory;

11                    (2) knowingly sells or transfers a firearm capable of being concealed on  
12                    one's person to a person who has been convicted of a felony by a court of this state, a  
13                    court of the United States, or a court of another state or territory;

14                    (3) manufactures, possesses, transports, sells, or transfers a prohibited  
15                    weapon;

16                    (4) knowingly sells or transfers a firearm to another whose physical or  
17                    mental condition is substantially impaired as a result of the introduction of an  
18                    intoxicating liquor or controlled substance into that other person's body;

19                    (5) removes, covers, alters, or destroys the manufacturer's serial number  
20                    on a firearm with intent to render the firearm untraceable;

21                    (6) possesses a firearm on which the manufacturer's serial number has  
22                    been removed, covered, altered, or destroyed, knowing that the serial number has been  
23                    removed, covered, altered, or destroyed with the intent of rendering the firearm  
24                    untraceable;

25                    (7) violates AS 11.46.320 and, during the violation, possesses on the  
26                    person a firearm when the person's physical or mental condition is impaired as a result  
27                    of the introduction of an intoxicating liquor or controlled substance into the person's  
28                    body;

29                    (8) violates AS 11.46.320 or 11.46.330 by entering or remaining  
30                    unlawfully on premises or in a propelled vehicle in violation of a provision of an order  
31                    issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the  
32                    person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;