

ALASKA LEGISLATURE COMMITTEES, 2005-2006

11681 HOUSE STATE AFFAIRS

- **Cigarette Industry Argument: We don't know if this will save a single life.**

Fact: Dr. John R. Hall, Jr., of the Fire Analysis & Research Division of the National Fire Protection Association, estimates that up to 1,000 lives could have been saved each year across the nation if lower ignition strength cigarettes had been required in every state in the mid-1980s when the Federal study was released. Today, best estimates are still that most fire deaths involving lighted tobacco products would be prevented by this legislation, which would mean many hundreds of lives saved every year. New York does not yet have data on how many lives its lower ignition strength cigarette law has saved or how many cigarette-ignited fires have been prevented, but data on some post-legislation incidents is beginning to trickle in. That still-anecdotal data indicate that cigarettes involved in smoking fire fatalities in New York since its regulation took effect are not the lower ignition strength cigarettes, but rather were purchased either out-of-state or over the Internet (which are not required to comply with New York's law) or were left from before the rule went into effect.

- **Cigarette Industry Argument: State cigarette tax revenue will evaporate.**

Fact: The HSPH researchers reviewed New York tax data for six months after the implementation of the new law. They found the lower ignition strength cigarettes appeared to have no effect on sales of cigarettes in New York. NASFM President and New York State Fire Administrator James A. Burns concurred with the analysis, saying the state has not lost revenue.

- **Cigarette Industry Argument: By requiring lower ignition strength cigarettes, we risk making cigarettes more toxic.**

Fact: The HSPH research found the majority of toxic compounds were no different between the smoke of the New York and Massachusetts brands that were tested. Five compounds were slightly higher, but no evidence exists that the small increases affect the already highly toxic nature of cigarette smoke.

In addition, The New York State Office of Fire Prevention and Control (OFPC), which developed the New York State lower ignition strength cigarette regulation, consulted with the New York State Department of Health to consider whether cigarettes manufactured in accordance with the regulation may reasonably result in increased health risks to consumers. The Department of Health advised that cigarettes complying with the fire safety standards set forth in the regulation were not expected to significantly change the inherently high risks associated with cigarette smoking. (This determination was based upon the existing information available on banded cigarettes, the only technology known to OFPC at that time that could feasibly meet the performance standard).

- **Cigarette Industry Argument:** We don't know how to make a fire-safe cigarette.

Fact: Chief John Mucier of the New York State OFPC, who coordinated promulgation of New York's rule, recently told NASFM's Science Advisory Committee that New York's goal was to make cigarettes less likely to ignite upholstered furniture or mattresses. New York's rule resulted in industry's developing a technically and commercially practical method of designing cigarettes. This has been done, at least in some cases, by using banded paper that interrupts the burning of cigarettes when they are not being actively smoked.

- **Cigarette Industry Argument:** There isn't enough of the special paper to implement the fire-safe cigarette laws in more than a few states.

Fact: The cigarette industry has already reworked its practices to produce the lower ignition strength cigarettes for New York. Since the industry is already doing this for New York, making the cigarettes for additional states should be much easier.

- **Cigarette Industry Argument:** The law discriminates against mom and pop retailers.

Fact: The New York requirement applies in all retail sales in the state, so there is no discrimination on the size of the retailer. The HSPH study found that cigarette sales in New York have not diminished since the new regulation has taken effect.

- **Cigarette Industry Argument:** Upholstered furniture and mattresses are the real problems.

Fact: Fire safety is about redundancy in safety measures, and cigarettes should not get a free pass. We need to try to prevent fires by addressing ignition sources and fuels, as well as human behavior, and we need to have smoke alarms and sprinklers in place in case our efforts at preventing fires fail.

Upholstered furniture and mattresses have had enhanced cigarette resistance for decades, thanks to an industry standard in the first case and an early regulation of the U.S. Consumer Product Safety Commission (CPSC) in the second. There is an active rulemaking within CPSC to make residential upholstered furniture more resistant to open flame and even more resistant to cigarette ignitions. There are also active rulemakings at the CPSC to address open-flame ignitions of mattresses and bedding. But these rulemakings will not be completed for another few years. Even after they are implemented, it may be decades before every American household has fire-resistant furniture and mattresses because these items aren't purchased on a regular basis. Cigarettes are purchased and used much more quickly than furniture. Lower ignition strength cigarettes can therefore have a positive effect on the fire problem much sooner.

- **Cigarette Industry Argument: Alcohol and drug abuse are the real problems.**

Fact: The mixing of drugs and alcohol with cigarette smoking increases the likelihood of a fatal fire. However, focusing only on behavioral issues and neglecting what can be done to make cigarettes less fire-prone is extremely dangerous.

Personal responsibility may be an argument for the smoker who kills himself in one of these fires. But what about the innocent people – children, spouses, parents, visitors – who are killed in fires started by someone else's careless behavior? According to NFPA, one in four victims is not the smoker whose cigarette ignited the fatal fire. They deserve to be protected, too.

We in the fire service are committed to educating the public about safe practices, but we cannot count on the war against drugs and alcohol to solve this problem. Changing human behavior is extremely difficult, but changing the cigarette to make it less likely to ignite a fire is something that cigarette manufacturers know how to do – and they are doing it in New York State. Shouldn't the citizens of every state be given the same opportunity to avoid being killed in a cigarette-ignited fire?

- **Cigarette Industry Argument: The lack of fire sprinklers is the real problem.**

Fact: Fire sprinklers in every American home would definitely improve overall fire safety, and is a good way to ensure redundancy of safety measures. However, fire sprinklers extinguish fires once they occur, which means that we have failed to prevent the fire. Smoke alarms are also necessary in homes to alert people when fires do occur, but they do nothing to prevent fires, either. Also, if the cigarette falls near the head of a sleeping smoker, the smoldering fire can produce enough carbon monoxide to kill him or her before there is enough heat from the burning chair/bed to activate the sprinkler.

- **Cigarette Industry Argument: An uneducated public is the real problem.**

Fact: Local fire departments and other community safety officials do a very good job of informing the public about fire safety. Despite these public safety campaigns, cigarette fire deaths are still far too common. Part of the problem is that even with education, someone who is impaired by alcohol or drug use is less likely to remember a fire safety lesson. And, as stated earlier, education does not save the innocent victims who are killed in cigarette-ignited fires just because they happened to be in the same residence at the time the fire occurred.

Philip Morris USA

February 7, 2006

Policies, Practices & Positions

Reduced Cigarette Ignition Propensity

Philip Morris USA supports the enactment of federal legislation that would create a uniform, national standard for reduced cigarette ignition propensity (RCIP). A national standard would apply to all cigarette brand styles sold in the country, thereby avoiding the potential distribution of non-compliant product between the states. It also would avoid inconsistent and potentially conflicting state regulations, thereby avoiding an undue burden on interstate commerce.

We have been working to support legislation at the federal level to institute a nationwide standard with the goal of reducing smoking-related fires started by carelessly handled cigarettes. We believe that any federal standard developed on this issue should allow for the creation of a reduced cigarette ignition propensity standard that does not increase the known health risks of smoking and is acceptable to adult consumers.

Despite efforts to address this issue at the federal level, a few states have considered legislation that would require tobacco manufacturers to comply with separate standards irrespective of any federal efforts. Local or state regulation of reduced cigarette ignition propensity standards could lead to a patchwork of differing, inconsistent and even contradictory requirements across the country. We believe federal legislation would be preferable to enacting potentially inconsistent state standards because:

- *First*, the U.S. Consumer Products Safety Commission which would likely be the agency mandated to implement a standard at the federal level, has been developing expertise on cigarette ignition propensity for many years. Thus, the Commission already has the resources and expertise to perform the necessary scientific work that needs to be done in order to successfully implement a reduced cigarette ignition propensity standard; and
- *Second*, because state and local initiatives will inevitably lead to conflicting standards, they would likely impose substantial burdens on interstate commerce. Cigarettes are manufactured for nationwide distribution in a small number of factories; it simply is not practical to try to make a number of different versions of each brand to satisfy differing performance standards.

New York State is the only state to date that has enacted a law establishing its own reduced cigarette ignition propensity standard. This law was passed in August 2000, and the state has devoted substantial resources to develop and then administer the regulatory standard. PM USA submitted extensive technical comments to NY as it was developing the state's new standard which was implemented in June 2004. PM USA will continue to provide input to NY officials concerning a range of complex technical issues that should be addressed in implementing and evaluating the standards.

Philip Morris USA welcomes legislation that would set a national standard in this area and will continue to work to make reasonable and effective federal legislation a reality.

Visit These Sections
For More Info.

PM USA's Legislative
Action Guide: Tips on
how to communicate with
elected officials (pdf 128
KB)

**ALASKA STATE
FIREFIGHTERS ASSOCIATION**

P.O. Box 22092 • Juneau, AK 99802

February 3, 2006


The Alaska State Firefighters Association supports House Bill 413, introduced by Representative Reggie Joule, legislation relating to cigarette fire safety.

Cigarettes are the #1 cause of fatal fires in the U.S., taking 700 to 800 lives a year. Annually, property losses from fires caused by cigarettes run into the hundreds of millions of dollars. Statistical data of fire related death in Alaska parallels those of the U.S.

The State of New York introduced similar legislation in 2004. Although it is too early to draw conclusions, trends show a significant reduction in loss of life and property as a result of the reduced number of fires caused by cigarettes. With cigarettes related to 25% percent of the cause of fatal fires in Alaska, we believe safe cigarette legislation in Alaska would save Alaskan lives.

In addition to saving Alaskan lives and property, the safest fire for Alaska's emergency responders is the one that was prevented.

Sincerely,



Carol R. Reed

President

Alaska State Firefighters Association

ALASKA FIRE CHIEF'S ASSOCIATION

2358 Bradway Road, North Pole, AK 99705

EIN #92-0098649

Phone: (907) 488-3400

FAX: (907) 488-6118



DATE: February 9, 2006
TO: State Affairs Committee
FROM: Alaska Fire Chiefs Association
SUBJECT: Support HB 413 (Joule) Fire Safe Cigarettes

Dear State Affairs Committee:

The Alaska Fire Chiefs Association, the largest membership of fire service managers in Alaska, is dedicated to serving the needs and issues that face Alaska's fire service. We would like to inform you that Alaska Chiefs strongly supports the Fire Safe Cigarette Act (HB 413) and encourage your YES vote when this legislation comes before you on this Committee and the House floor.

HB 413 will prohibit the sale, manufacture, or distribution of cigarettes in Alaska that do not meet fire safe standards established by the American Society of Testing and Materials (ASTM).

Careless smoking is the leading cause of fire deaths in Alaska. From 1995 to 2004, careless smoking, as the fire cause, resulted in 27.6% of all fire deaths in Alaska. This type of fire killed 45 people in Alaska during the past 10 years.

These costs are simply too great. Fortunately, an effective solution to this problem lies within your reach. California, New York and Vermont have already passed similar legislation to protect their residents. We hope that you will do your part to accomplish the same in Alaska.

On behalf of the 129 members of the Alaska Fire Chiefs Association, we thank you for considering our support, and we hope that you will vote YES on HB 413 – a life saving piece of legislation.

Sincerely,

A handwritten signature in black ink, which appears to read "Warren Cummings", is written over a horizontal line.

Warren Cummings
President, Alaska Fire Chiefs Association

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

February 10, 2006

SUBJECT: CSHB 413(STA) relating to the burning capability of cigarettes
(Work Order No. 24-LS1495G)

TO: Representative Paul Seaton
Attn: Louie

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

Please be aware that "oath" pulls in the definition of "oath" found at AS 01.10.070. That definition states that "oath" includes "affirmation or declaration." "Declaration" by itself does not appear to qualify as a sworn statement. However, "oath" is covered in the perjury statutes without another definition, so using "oath" in this bill does not appear to allow a person to avoid a perjury conviction.

Since this bill has passed out of committee, please pass this memo along to the next committee of record.

If I may be of further assistance, please advise.

TLB:lmb
06-052.lmb

Enclosure

HB

438

Representative Jay Ramras
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V-Chair, Economic Develop.
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House State Affairs
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Alaska State Legislature



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House District 10

House of Representatives

Sponsor Statement **House Bill 438**

“An Act relating to initiative, referendum, and recall petitions; and providing for an effective date”

Using his experience from this past summer, Representative Jay Ramras has introduced legislation to reform the initiative, referendum, and recall process. House Bill 438 adds language to existing statutes, which would tighten the requirements for circulators, ensuring that they not be registered to vote in any other states. HB 438 will put into law that petition circulators can only be paid those monies authorized under statute, and that circulators cannot “double dip” at the trough by also collecting administrative fees.

Having spent a lot of time working on the 90 Day Legislative Session Initiative, including working with circulators, the Division of Elections, and the citizens of Alaska, Representative Ramras found that the newly instigated statues remain vague on specific issues that are addressed in this bill.

HB 438 will establish penalties for both sponsors who pay circulators and circulators who receive compensation, which are not permitted under statute. Optional training offered by the Division of Elections will become mandatory for sponsors. Sponsors will then become responsible for instructing their circulators as to the law. Sponsors will also be allowed to submit up to 2000 signatures for pre-qualification prior to filing the petition, which will help assure that rural Alaska is as relevant to the process as urban Alaska.

HB 438 will also serve to amend the recall process; by stating that a recall petition cannot be filed within 270 days from the termination date of the official's term of office. Additionally, a sponsor may file the petition only if signed by qualified voters equal in number to 30 percent of those who voted in the previous general election in the official's district.

This bill will serve as an excellent vehicle to improve the petition process in Alaska.

24-LS1344U
Kurtz
4/7/06

CS FOR HOUSE BILL NO. 438()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1.** AS 15.45 is amended by adding new sections to read:

5 **Article 1. General Provisions Relating to Petitions.**

6 **Sec. 15.45.001. Qualifications of circulator.** To circulate a petition booklet, a
7 person shall be

- 8 (1) a citizen of the United States;
- 9 (2) 18 years of age or older; and
- 10 (3) a resident of the state as determined under AS 15.05.020.

11 **Sec. 15.45.003. Circulation; prohibitions.** (a) A petition may be circulated
12 only in person in the state.

13 (b) A circulator may not receive payment or agree to receive payment that is
14 greater than \$1 a signature, and a person or an organization may not pay or agree to

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1 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
2 petition. However, a person or organization may reimburse a circulator for itemized,
3 direct expenses for travel, food, and lodging, and other reimbursable costs specified in
4 regulation incurred by the circulator while circulating a petition.

5 (c) A person or organization may not knowingly pay, offer to pay, or cause to
6 be paid money or other valuable thing to a person to sign or refrain from signing a
7 petition.

8 (d) A person or organization that violates (b) or (c) of this section is guilty of a
9 class B misdemeanor.

10 (e) A person who pays a circulator and a circulator who receives
11 compensation other than that permitted under (b) of this section are liable to the state
12 for a civil fine of \$1 for each signature gathered by the circulator on a petition.

13 (f) In determining the sufficiency of a petition, the lieutenant governor, or in
14 the case of a recall petition, the director, may not count subscriptions on a petition

15 (1) circulated by a circulator who is not in compliance with (b) of this
16 section; or

17 (2) by an initiative, referendum, or recall committee that is not in
18 compliance with the requirements of AS 15.13.

19 (g) In this section,

20 (1) "organization" has the meaning given in AS 11.81.900;

21 (2) "other valuable thing" has the meaning given in AS 15.56.030;

22 (3) "person" has the meaning given in AS 11.81.900.

23 **Sec. 15.45.005. Mandatory training.** (a) Before circulating a petition, each
24 committee shall participate in training offered by the division of elections explaining
25 the legal requirements for petitions.

26 (b) Before giving a petition to a circulator, the sponsors shall instruct the
27 circulator on the legal requirements for petitions.

28 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
29 shall be certified by an affidavit by the person who personally circulated the petition.
30 In determining the sufficiency of the petition, the lieutenant governor, or, in the case
31 of a recall petition, the director, may not count subscriptions on petitions not properly

1 certified at the time of filing or, in the case of a recall petition, corrected before the
2 subscriptions are counted. The affidavit must state in substance

3 (1) that the person signing the affidavit meets the residency, age, and
4 citizenship qualifications for circulating a petition under AS 15.45.001;

5 (2) that the person is the only circulator of that petition;

6 (3) that the signatures were made in the circulator's actual presence;

7 (4) that, to the best of the circulator's knowledge, the signatures are the
8 signatures of the persons whose names they purport to be;

9 (5) that, to the best of the circulator's knowledge, the signatures are of
10 persons who were qualified voters on the date of signature;

11 (6) that the circulator has not entered into an agreement with a person
12 or organization in violation of AS 15.45.003(b);

13 (7) that the circulator has not violated AS 15.45.003(c) with respect to
14 that petition;

15 (8) whether the circulator has received payment or agreed to receive
16 payment for the collection of signatures on the petition, and, if so, the name of each
17 person or organization that has paid or agreed to pay the circulator for collection of
18 signatures on the petition; and

19 (9) that the circulator was instructed by the sponsors on the legal
20 requirements for circulating and filing the petition.

21 **Sec. 15.45.008. Advance verification of subscriptions.** The sponsors may,
22 before filing a petition, submit individual numbered petitions containing up to a total
23 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
24 determine whether each subscription submitted for review is that of a qualified voter
25 and notify the sponsors of the number of signatures of qualified voters from each
26 district in the petitions submitted. The director shall assess and the sponsors shall pay
27 a fee of \$1 for each subscription submitted under this section.

28 **Sec. 15.45.009. Cost estimates.** (a) The lieutenant governor shall prepare the
29 cost estimate required under AS 15.45.090(a) based on a fiscal note prepared by the
30 department or departments affected, that sets out the information required by
31 AS 24.08.035(c).

1 (b) The lieutenant governor shall prepare the cost estimate required under
2 AS 15.45.320(a)(4).

3 (c) The director shall prepare the cost estimate required under
4 AS 15.45.560(a)(4).

5 (d) The department shall, by regulation, establish a process for initiative,
6 referendum, and recall committees to dispute the cost estimates prepared under this
7 section, allowing committees to prepare a statement of dispute for publication on the
8 division's Internet website. If a committee disputes a cost estimate prepared under this
9 section, a statement to that effect shall be included in each petition booklet, along with
10 a notice that a copy of the committee's statement of dispute, if any, is available for
11 review on the division's Internet website.

12 (e) A committee aggrieved by a cost estimate prepared under this section may
13 bring an action in the superior court to have the cost estimate reviewed within 30 days
14 after the date on which the lieutenant governor, or, in the case of a recall petition, the
15 director notifies the committee of the completion of the cost estimate.

16 * Sec. 2. AS 15.45.500 is amended to read:

17 **Sec. 15.45.500. Form of application.** The application must include

18 (1) the name and office of the person to be recalled;

19 (2) the grounds for recall described in particular in not more than 200
20 words;

21 (3) the printed name, the signature, the address, and a numerical
22 identifier of qualified voters equal in number to 10 percent of those who voted in the
23 preceding general election in the state or in the senate or house district of the official
24 sought to be recalled, 100 of whom will serve as sponsors; each signature page must
25 include a statement that the qualified voters signed the application with the name and
26 office of the person to be recalled and the statement of grounds for recall attached;
27 [AND]

28 (4) the designation of a recall committee consisting of three of the
29 qualified voters who subscribed to the application and shall represent all sponsors and
30 subscribers in matters relating to the recall; the designation must include the name,
31 mailing address and signature of each committee member; and

1 **(5) a certification by each member of the recall committee, under**
2 **penalty of perjury, that the facts alleged in the application are true to the best of**
3 **the member's knowledge.**

4 * **Sec. 3.** AS 15.45.510 is amended by adding a new subsection to read:

5 (b) In this section,

6 (1) "corruption" means an act done by a person who is subject to recall
7 under AS 15.45.470 with an intent to give some advantage inconsistent with official
8 duty and the rights of others;

9 (2) "incompetence" means the lack of ability to perform the official's
10 required duties;

11 (3) "lack of fitness" means the existence of a long-term physical or
12 mental disability that seriously impairs the official's ability to perform the duties of the
13 office;

14 (4) "neglect of duties" means failure to perform a duty of office
15 established by law.

16 * **Sec. 4.** AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
17 15.45.580, and 15.45.600 are repealed.

18 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

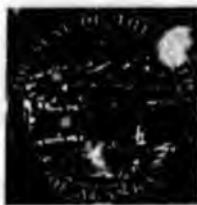
20 **TRANSITION.** A proposed initiative, referendum, or recall for which an application
21 was filed with the lieutenant governor or the director before the effective date of the Act is
22 subject to the provisions of AS 15.45 as they existed on the day before the effective date of
23 this Act.

24 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade

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Alaska State Legislature



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House District 10

House of Representatives

House Bill 438 (version 24-LS1344L)

Sectional Summary

"An Act relating to initiative, referendum, and recall petitions; and providing for an effective date."

Section 1. AS 15.45.105 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

Section 2. AS 15.45.110(c) Circulation of petition; prohibitions and penalty. This section is amended to add that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for any work other than those stated in subsection (c), including administrative work

Section 3. AS 15.45.110 Circulation of petition; prohibitions and penalty. New subsections are added to state as follows:

(g) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (c) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator.

(h) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (c) of this section.

Section 4. AS 15.45.115 Mandatory training. This section makes it mandatory for every committee applying for or circulating a petition to attend training on the legal requirements for initiative petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

Section 5. AS 45.130 Certification of circulator. Adds to the certifying affidavit on the petition that, the circulator of an initiative petition is not registered to vote in any other state and that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.010 – 15.45.245.

Section 6. Adds Section 15.45.135 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the

initiative petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 7. AS 15.45.335 **Qualifications of circulator of a referendum.** Adds that a person who circulates a petition booklet shall not be registered to vote in any other state.

Section 8. AS 15.45.340(b) **Circulation of petition; prohibitions and penalty.** This section is amended to add that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for any work other than those stated in subsection (c), including administrative work

Section 9. AS 15.45.340 **Circulation of petition; prohibitions and penalty.** New subsections are added to state as follows:

(g) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (c) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator.

(h) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (c) of this section.

Section 10. AS 15.45.345 **Mandatory training.** This section makes it mandatory for every committee applying for or circulating a referendum petition to attend training on the legal requirements for initiative petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

Section 11. AS 15.45.360 **Certification of circulator.** Adds to the certifying affidavit on the petition that, the circulator of a referendum petition is not registered to vote in another state and that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.250 – 15.45.465.

Section 12. AS 15.45.365 **Advance verification of subscriptions.** This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the referendum petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 13. AS 15.45.490 **Time of filing application.** Adds that an application for recall may not be filed during last 270 days of the term of office of a state public official.

Section 14. AS 15.45.500 **Form of application.** Changes the number of qualified voters that must sign the petition from 10 to 20 percent of those who voted in the preceding general election in the district of the official sought to be recalled. Each member of the recall committee, under penalty of perjury, must also make a certification that the facts alleged in the application are true to the best of their knowledge.

Section 15. AS 15.45.510 **Grounds for recall.** A new subsection is added defining "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 16. AS 15.45.550 **Bases of denial of certification.** Adds that the director shall deny certification of a recall upon determining that the application was filed within less than 270 days of the termination of the official's term of office.

Section 17. AS 15.45.575 **Qualifications of circulator.** Adds that person who circulates a recall petition may not be registered to vote in any other state.

Section 18. AS 15.45.580(b) **Circulation; prohibitions.** is amended to add that a circulator may receive up to \$15 to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for work other than collecting signatures, including administrative work

Section 19 AS 15.45.580 **Circulation; prohibitions.** new subsections are added as follows:
(f) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (b) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator.

(g) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (b) of this section.

Section 20. AS 15.45.585 **Mandatory training.** a new section is added making it mandatory for every committee applying for or circulating a recall petition shall attend training on the legal requirements for petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

Section 21. AS 15.45.600 **Certification of circulator** Adds to the certifying affidavit on the petition that, the circulator of a recall petition is not registered to vote in another state and that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.470 – 15.45.720.

Section 22. AS 15.45.605 **Advance verification of subscriptions.** This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the recall petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 23. AS 15.45.610 **Filing of Petition.** Amends that a recall petition cannot be filed within less than 270 days from the termination of the state official's term of office and that the sponsor may file the petition only if signed by qualified voters equal in number to 30 percent of those who voted in the previous general election in the official's district.

Section 24. AS 15.45.630 **Bases for determining the petition was improperly filed.** Conforming language to Section 23. States that the petition was improperly filed upon determining that the petition was filed within less than 270 days of the termination of the office of the official subject to recall.

Section 25. AS 15.45.640 Submission of supplementary petition. States that a supplementary petition may not be filed later than 270 days before the official's office termination date.

Section 26. Uncodified law is amended to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as it existed on the day before the effective date of this Act.

Section 27. States that this Act takes effect immediately.

COMPARISON OF BILL VERSIONS CSHB 438\R AND HB 438\L

CSHB 438\R	HB 438\L
<p>Sec. 1. AS 15.13.030 Duties of the commission. This section is amended to have APOC enforce the provisions of AS 15.45.003 and collect civil fines due under AS 15.45.003(e).</p>	
<p>Sec. 2. AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.</p>	<p>Section 1. AS 15.45.105 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.</p>
<p>AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b), including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor, or in the case of a recall petition, the director. Also, states that in determining the sufficiency of a petition, the lieutenant governor, or in the case of a recall petition, the director, may not count subscriptions on a petition circulated by a circulator who violated this section.</p>	<p>Section 2. AS 15.45.110(c) Circulation of petition; prohibitions and penalty. This section is amended to add that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. Also, states that a initiative petition circulator may not receive payment for any work other than those stated in subsection (c), including administrative work</p>
<p>AS 15.45.005 Mandatory training. This section makes it mandatory for every committee circulating a petition to participate in training offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.</p>	<p>Section 4. AS 15.45.115 Mandatory training. Consolidated under AS 15.45.005 in version\R.</p>

COMPARISON OF BILL VERSIONS CSHB 438\R AND HB 438\L

CSHB 438\R	HB 438\L
<p>AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on petition booklets that the circulator was instructed by the sponsors as to the legal requirements of AS 15.45.001 – 15.45.003, and that the circulator of a petition is not registered to vote in any other state, and that the circulator was instructed by the sponsors on the legal requirements for circulating and filing the petition.</p>	<p>Section 3. AS 15.45.110 Circulation of petition; prohibitions and penalty. New subsections are added to state as follows: (g) States that a person who pays a circulator and a circulator who receives compensation other than those permitted under (c) of this section are both liable to the state for a civil fine of \$1 for each signature gathered by the circulator. (h) States that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (c) of this section.</p>
<p>AS 15.45.008 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.</p>	<p>Section 6. Add's Section 15.45.135 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed under AS 15.45.140. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.</p>
<p>AS 15.45.009 Cost Estimates. Adds that the department shall, by regulation, establish a process to dispute the cost estimates prepared under this section, allowing committees to prepare a statement of dispute for publication on the division's website. If a committee disputes the cost estimate, a statement to that effect shall be included in the petition booklet, along with a notice that a copy of the dispute is available on the department's website. This section also adds that a committee aggrieved by a cost estimate prepared under this section may bring an action in superior court to have the cost estimate reviewed within 30 days after the date on which the director notifies the committee of completion of the estimate.</p>	<p>Not included in version\L</p>

COMPARISON OF BILL VERSIONS CSHB 438\R AND HB 438\L

CSHB 438 \R	HB 438 \L
Section 3. AS 15.45.500(5) states that each member of a recall committee, under penalty of perjury, must state on their application that the facts alleged in the application are true to the best of the member's knowledge.	Section 16 AS 15.45.550 Bases of denial of certification removed.
Section 4. AS 15.45.510 defines in this section the four grounds for recalls, "corruption", "incompetence", "lack of fitness", and "neglect of duties".	Section 17 AS 15.45.575 Qualifications of Circulator. Consolidated under AS 15.45.007
Section 5. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1.	Section 18 AS 15.45.580(b) Circulation; prohibitions. Consolidated under AS 15.45.003.
Section 6. This section is a transition section amending the Uncodified law to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as they existed on the day before the effective date of this Act.	Section 19 AS 15.45.580 Not used. This section was somewhat encompassed but stated differently in Section 1 of version\R
Section 7. States that this Act takes effect immediately.	Section 20 Mandatory training. Consolidated under AS 15.45.005 in version\R
	Section 21 Certification of Circulator. Is consolidated under AS 15.45.001
	Section 22 Advance verification of subscriptions. Consolidated under AS 15.45.008
	Section 23 Filing of Petition. Deleted from HB438 \R
	Section 24 Bases for determining the petition was improperly filed. Deleted from HB438 \R
	Section 25 Submission of supplementary petition. Deleted from HB 438 \R
	Section 16. Same as Section 6 of HB 438 \R
	Section 17. Same as Section 7 of HB 438 \R

24-LS1344R
Kurtz
4/3/06

CS FOR HOUSE BILL NO. 438()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1. AS 15.13.030 is amended to read:**

5 **Sec. 15.13.030. Duties of the commission.** The commission shall

6 (1) develop and provide all forms for the reports and statements
7 required to be made under this chapter, AS 24.45, and AS 39.50;

8 (2) prepare and publish a manual setting out uniform methods of
9 bookkeeping and reporting for use by persons required to make reports and statements
10 under this chapter and otherwise assist candidates, groups, and individuals in
11 complying with the requirements of this chapter;

12 (3) receive and hold open for public inspection reports and statements
13 required to be made under this chapter and, upon request, furnish copies at cost to
14 interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); [AND]

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50; and

(11) enforce the provisions of AS 15.45.003(b) and collect civil fines due under AS 15.45.003(e).

* Sec. 2. AS 15.45 is amended by adding new sections to read:

Article 1. General Provisions Relating to Petitions.

Sec. 15.45.001. Qualifications of circulator. To circulate a petition booklet, a person shall be

(1) a citizen of the United States;

(2) 18 years of age or older;

(3) a resident of the state as determined under AS 15.05.020; and

~~(4) not registered to vote in any other state~~

Sec. 15.45.003. Circulation; prohibitions. (a) A petition may be circulated only in person in the state.

(b) A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to

#4

[Handwritten box]

[Handwritten circle with question mark]

connecting
Amend
deletes lines 26 + 27

[Handwritten circle with '1']

Does APOC have
the administrative
structure to
collect fines

Do fines go to BF
or stay with APOC

1 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
 2 petition. In addition to \$1 a signature, a person or organization may pay a circulator
 3 and a circulator may receive up to \$15 to cover the cost of ^{only reimbursement for ~~that~~ ~~unreimbursed~~ ~~expenses~~} meals for each day that the
 4 circulator travels ^{as determined appropriate by the regulation} more than 100 miles from the circulator's home in the course of
 5 circulating the petition if the circulator certifies, on a form prescribed by and filed with
 6 the Alaska Public Offices Commission, that the circulator has traveled more than 100
 7 miles from the circulator's home on the day for which the payment is received. A
 8 person or organization may not pay a circulator and a circulator may not receive any
 9 payment

- 10 (1) other than that specified in this subsection for circulating a petition;
- 11 (2) for any work other than collecting signatures, including
- 12 administrative work, relating to the petition for which the circulator is collecting
- 13 signatures.

14 (c) A person or organization may not knowingly pay, offer to pay, or cause to
 15 be paid money or another valuable thing to a person to sign or refrain from signing a
 16 petition.

17 (d) A person or organization that violates (b) or (c) of this section is guilty of a
 18 class B misdemeanor.

19 (e) A person who ^{knowingly} pays a circulator and a circulator who ^{knowingly} receives
 20 compensation other than that permitted under (b) of this section are liable to the state
 21 for a civil fine of \$1 for each signature gathered by the circulator on a petition.

22 (f) In determining the sufficiency of a petition, the lieutenant governor, or in
 23 the case of a recall petition, the director, may not count subscriptions on a petition

24 (1) circulated by a circulator who is not in compliance with (b) of this
 25 section; or

26 (2) by an initiative, referendum, or recall committee that is not in
 27 compliance with the requirements of AS 15.13.

28 (g) In this section,

- 29 (1) "organization" has the meaning given in AS 11.81.900;
- 30 (2) "other valuable thing" has the meaning given in AS 15.56.030;
- 31 (3) "person" has the meaning given in AS 11.81.900.

Can we
legally do this?

Judicially

= 2

conceptual
Amendment
Delete line 22 to 26

2

1

1 **Sec. 15.45.005. Mandatory training.** (a) Before circulating a petition, each
2 committee shall participate in training offered by the division of elections explaining
3 the legal requirements for petitions.

4 (b) Before giving a petition to a circulator, the sponsors shall instruct the
5 circulator on the legal requirements for petitions.

6 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
7 shall be certified by an affidavit by the person who personally circulated the petition.
8 In determining the sufficiency of the petition, the lieutenant governor, or, in the case
9 of a recall petition, the director, may not count subscriptions on petitions not properly
10 certified at the time of filing or, in the case of a recall petition, corrected before the
11 subscriptions are counted. The affidavit must state in substance

12 (1) that the person signing the affidavit meets the residency, age, and
13 citizenship qualifications for circulating a petition under AS 15.45.001;

14 (2) that the person is the only circulator of that petition;

15 (3) that the signatures were made in the circulator's actual presence;

16 (4) that, to the best of the circulator's knowledge, the signatures are the
17 signatures of the persons whose names they purport to be;

18 (5) that, to the best of the circulator's knowledge, the signatures are of
19 persons who were qualified voters on the date of signature;

20 (6) that the circulator has not entered into an agreement with a person
21 or organization in violation of AS 15.45.003(b); ←

22 (7) that the circulator has not violated AS 15.45.003(c) with respect to
23 that petition.

24 (8) whether the circulator has received payment or agreed to receive
25 payment for the collection of signatures on the petition, and, if so, the name of each
26 person or organization that has paid or agreed to pay the circulator for collection of
27 signatures on the petition;

28 (9) that the circulator is not registered to vote in another state; and

29 (10) that the circulator was instructed by the sponsors on the legal
30 requirements for circulating and filing the petition.

31 **Sec. 15.45.008. Advance verification of subscriptions.** The sponsors may,

1 before filing a petition, submit individual numbered petitions containing up to a total
2 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
3 determine whether each subscription submitted for review is that of a qualified voter
4 and notify the sponsors of the number of signatures of qualified voters from each
5 district in the petitions submitted. The director shall assess and the sponsors shall pay
6 a fee of \$1 for each subscription submitted under this section.

7 **Sec. 15.45.009. Cost estimates.** (a) The lieutenant governor shall prepare the
8 cost estimate required under AS 15.45.090(a) based on a fiscal note prepared by the
9 department or departments affected, that sets out the information required by
10 AS 24.08.035(c).

11 (b) The lieutenant governor shall prepare the cost estimate required under
12 AS 15.45.320(a)(4).

13 (c) The director shall prepare the cost estimate required under
14 AS 15.45.560(a)(4).

15 (d) The department shall, by regulation, establish a process for initiative,
16 referendum, and recall committees to dispute the cost estimates prepared under this
17 section, allowing committees to prepare a statement of dispute for publication on the
18 division's Internet website. If a committee disputes a cost estimate prepared under this
19 section, a statement to that effect shall be included in each petition booklet, along with
20 a notice that a copy of the committee's statement of dispute, if any, is available for
21 review on the division's Internet website.

22 (e) A committee aggrieved by a cost estimate prepared under this section may
23 bring an action in the superior court to have the cost estimate reviewed within 30 days
24 after the date on which the lieutenant governor, or, in the case of a recall petition, the
25 director notifies the committee of the completion of the cost estimate.

26 * **Sec. 3.** AS 15.45.500 is amended to read:

27 **Sec. 15.45.500. Form of application.** The application must include

- 28 (1) the name and office of the person to be recalled;
- 29 (2) the grounds for recall described in particular in not more than 200
30 words;
- 31 (3) the printed name, the signature, the address, and a numerical

July

1 identifier of qualified voters equal in number to 10 percent of those who voted in the
2 preceding general election in the state or in the senate or house district of the official
3 sought to be recalled, 100 of whom will serve as sponsors; each signature page must
4 include a statement that the qualified voters signed the application with the name and
5 office of the person to be recalled and the statement of grounds for recall attached;
6 [AND]

7 (4) the designation of a recall committee consisting of three of the
8 qualified voters who subscribed to the application and shall represent all sponsors and
9 subscribers in matters relating to the recall; the designation must include the name,
10 mailing address, and signature of each committee member; and

11 (5) a certification by each member of the recall committee, under
12 penalty of perjury, that the facts alleged in the application are true to the best of
13 the member's knowledge.

14 * Sec. 4. AS 15.45.510 is amended by adding a new subsection to read:

15 (b) In this section,

16 (1) "corruption" means an act done by a person who is subject to recall
17 under AS 15.45.470 with an intent to give some advantage inconsistent with official
18 duty and the rights of others;

19 (2) "incompetence" means the lack of ability to perform the official's
20 required duties;

21 (3) "lack of fitness" means the existence of a long-term physical or
22 mental disability that seriously impairs the official's ability to perform the duties of the
23 office;

24 (4) "neglect of duties" means failure to perform a duty of office
25 established by law.

26 * Sec. 5. AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
27 15.45.580, and 15.45.600 are repealed.

28 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION. A proposed initiative, referendum, or recall for which an application
31 was filed with the lieutenant governor or the director before the effective date of the Act is

1 subject to the provisions of AS 15.45 as they existed on the day before the effective date of
2 this Act.

3 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c)

Conceptual Amendment on HB 433\R #[#]5
By Ramras
4/6/06

- Page 5, Line 7. Delete "prepare" and insert "provide to the committee"
- Page 5, Line 11. Delete "prepare" and insert "provide to the committee"
- Page 5, Line 13. Delete "prepare" and insert "provide to the committee"

6 page 3 line 22 - 27
delete see if.

Gardner
Catto

Conceptual Amendment to HB 438 \R
By Seaton
4/5/06

1

Page 2 line 26 and line 27
Delete all material in (3) and (4)

Adopted

#2 Adopt

Conceptual Amendment Number 2 to HB 438 \R
By Seaton
4/5/06

Page 3 line 3

Delete all material beginning with "recieve" through page 3 line 13

Insert:

... only receive additional reimbursement for itemized, direct expenses incurred while circulating a petition as delineated by regulation."

set forth in

~~Raunas~~
~~Greenberg~~
~~Gardner.~~

Conceptual Amendment Number # 3 to HB 438 VR
By Seaton
4/5/06

Page 4 line 28
Delete all material in section (9)

Annech

Representative Jay Ramras
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Co-Chair, Economic Develop.
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House State Affairs
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Alaska State Legislature



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House District 10

House of Representatives

House Bill 438 (version 24-LS1344\R) Sectional Summary

“An Act relating to initiative, referendum, and recall petitions; and providing for an effective date.”

Section 1. AS 15.13.030 **Duties of the commission.** This section is amended to have APOC enforce the provisions of AS 15.45.003 and collect civil fines due under AS 15.45.003(e).

Section 2. AS 15.45 is amended by adding a new section to read:

Article 1. General Provisions Relating to Petitions

AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b), including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor, or in the case of a recall petition, the director. Also, states that in determining the sufficiency of a petition, the lieutenant governor, or in the case of a recall petition, the director, may not count subscriptions on a petition circulated by a circulator who violated this section.

AS 15.45.005 Mandatory training. This section makes it mandatory for every committee circulating a petition to participate in training offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on petition booklets that the circulator was instructed by the sponsors as to the legal requirements of AS 15.45.001 – 15.45.003, and that the circulator of a petition is not registered to vote in any other state, and that

the circulator was instructed by the sponsors on the legal requirements for circulating and filing the petition.

AS 15.45.008 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

AS 15.45.009 Cost Estimates. Adds that the department shall, by regulation, establish a process to dispute the cost estimates prepared under this section, allowing committees to prepare a statement of dispute for publication on the division's website. If a committee disputes the cost estimate, a statement to that effect shall be included in the petition booklet, along with a notice that a copy of the dispute is available on the department's website. This section also adds that a committee aggrieved by a cost estimate prepared under this section may bring an action in superior court to have the cost estimate reviewed within 30 days after the date on which the director notifies the committee of completion of the estimate.

Section 3. AS 15.45.500(5) states that each member of a recall committee, under penalty of perjury, must state on their application that the facts alleged in the application are true to the best of the member's knowledge.

Section 4. AS 15.45.510 defines in this section the four grounds for recalls, "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 5. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1.

Section 6. This section is a transition section amending the uncodified law to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as they existed on the day before the effective date of this Act.

Section 13. States that this Act takes effect immediately.

24-LS1344P
Kurtz
3/24/06

CS FOR HOUSE BILL NO. 438()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1.** AS 15.13.030 is amended to read:

5 **Sec. 15.13.030. Duties of the commission.** The commission shall

6 (1) develop and provide all forms for the reports and statements
7 required to be made under this chapter, AS 24.45, and AS 39.50;

8 (2) prepare and publish a manual setting out uniform methods of
9 bookkeeping and reporting for use by persons required to make reports and statements
10 under this chapter and otherwise assist candidates, groups, and individuals in
11 complying with the requirements of this chapter;

12 (3) receive and hold open for public inspection reports and statements
13 required to be made under this chapter and, upon request, furnish copies at cost to
14 interested persons;

1 (4) compile and maintain a current list of all filed reports and
2 statements;

3 (5) prepare a summary of each report filed under AS 15.13.110 and
4 make copies of this summary available to interested persons at their actual cost;

5 (6) notify, by registered or certified mail, all persons who are
6 delinquent in filing reports and statements required to be made under this chapter;

7 (7) examine, investigate, and compare all reports, statements, and
8 actions required by this chapter, AS 24.45, and AS 39.50;

9 (8) prepare and publish a biennial report concerning the activities of
10 the commission, the effectiveness of this chapter, its enforcement by the attorney
11 general's office, and recommendations and proposals for change; the commission shall
12 notify the legislature that the report is available;

13 (9) adopt regulations necessary to implement and clarify the provisions
14 of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62
15 (Administrative Procedure Act); [AND]

16 (10) consider a written request for an advisory opinion concerning the
17 application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50; and

18 (11) enforce the provisions of AS 15.45.003(b) and collect civil fines
19 due under AS 15.45.003(e).

20 * Sec. 2. AS 15.45 is amended by adding new sections to read:

21 **Article 1. General Provisions Relating to Petitions.**

22 **Sec. 15.45.001. Qualifications of circulator.** To circulate a petition booklet, a
23 person shall be

24 (1) a citizen of the United States;

25 (2) 18 years of age or older;

26 (3) a resident of the state as determined under AS 15.05.020; and

27 (4) not registered to vote in any other state.

28 **Sec. 15.45.003. Circulation; prohibitions.** (a) A petition may be circulated
29 only in person in the state.

30 (b) A circulator may not receive payment or agree to receive payment that is
31 greater than \$1 a signature, and a person or an organization may not pay or agree to

1 pay an amount that is greater than \$1 a signature, for the collection of signatures on a
2 petition. In addition to \$1 a signature, a person or organization may pay a circulator
3 and a circulator may receive up to \$15 to cover the cost of meals for each day that the
4 circulator travels more than 100 miles from the circulator's home in the course of
5 circulating the petition if the circulator certifies, on a form prescribed by and filed with
6 the Alaska Public Offices Commission, that the circulator has traveled more than 100
7 miles from the circulator's home on the day for which the payment is received. A
8 person or organization may not pay a circulator and a circulator may not receive any
9 payment

10 (1) other than that specified in this subsection for circulating a petition;

11 (2) for any work other than collecting signatures, including
12 administrative work, relating to the petition for which the circulator is collecting
13 signatures.

14 (c) A person or organization may not knowingly pay, offer to pay, or cause to
15 be paid money or another valuable thing to a person to sign or refrain from signing a
16 petition.

17 (d) A person or organization that violates (b) or (c) of this section is guilty of a
18 class B misdemeanor.

19 (e) A person who pays a circulator and a circulator who receives
20 compensation other than that permitted under (b) of this section are liable to the state
21 for a civil fine of \$1 for each signature gathered by the circulator on a petition.

22 (f) In determining the sufficiency of a petition, the lieutenant governor, or in
23 the case of a recall petition, the director, may not count subscriptions on a petition

24 (1) circulated by a circulator who is not in compliance with (b) of this
25 section; or

26 (2) by an initiative, referendum, or recall committee that is not in
27 compliance with the requirements of AS 15.13.

28 (g) In this section,

29 (1) "organization" has the meaning given in AS 11.81.900;

30 (2) "other valuable thing" has the meaning given in AS 15.56.030;

31 (3) "person" has the meaning given in AS 11.81.900.

1 **Sec. 15.45.005. Mandatory training.** (a) At least once during each two-year
2 period between general elections, each committee applying for or circulating a petition
3 during that period shall attend training offered by the division of elections explaining
4 the legal requirements for petitions.

5 (b) Before giving a petition to a circulator, the sponsors shall instruct the
6 circulator on the legal requirements for petitions.

7 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
8 shall be certified by an affidavit by the person who personally circulated the petition.
9 In determining the sufficiency of the petition, the lieutenant governor, or, in the case
10 of a recall petition, the director, may not count subscriptions on petitions not properly
11 certified at the time of filing or corrected before the subscriptions are counted. The
12 affidavit must state in substance

13 (1) that the person signing the affidavit meets the residency, age, and
14 citizenship qualifications for circulating a petition under AS 15.45.001;

15 (2) that the person is the only circulator of that petition;

16 (3) that the signatures were made in the circulator's actual presence;

17 (4) that, to the best of the circulator's knowledge the signatures are the
18 signatures of the persons whose names they purport to be;

19 (5) that, to the best of the circulator's knowledge, the signatures are of
20 persons who were qualified voters on the date of signature;

21 (6) that the circulator has not entered into an agreement with a person
22 or organization in violation of AS 15.45.003(b);

23 (7) that the circulator has not violated AS 15.45.003(c) with respect to
24 that petition;

25 (8) whether the circulator has received payment or agreed to receive
26 payment for the collection of signatures on the petition, and, if so, the name of each
27 person or organization that has paid or agreed to pay the circulator for collection of
28 signatures on the petition;

29 (9) that the circulator is not registered to vote in another state; and

30 (10) that the circulator was instructed by the sponsors on the legal
31 requirements for circulating and filing the petition.

1 **Sec. 15.45.009. Advance verification of subscriptions.** The sponsors may,
2 before filing a petition, submit individual numbered petitions containing up to a total
3 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
4 determine whether each subscription submitted for review is that of a qualified voter
5 and notify the sponsors of the number of signatures of qualified voters from each
6 district in the petitions submitted. The director shall assess and the sponsors shall pay
7 a fee of \$1 for each subscription submitted under this section.

8 * **Sec. 3.** AS 15.45.090(a) is amended to read:

9 (a) If the application is certified, the lieutenant governor shall prepare a
10 sufficient number of sequentially numbered petitions to allow full circulation
11 throughout the state. Each petition must contain

12 (1) a copy of the proposed bill if the number of words included in both
13 the formal and substantive provisions of the bill is 500 or less;

14 (2) an impartial summary of the subject matter of the bill;

15 (3) a statement of minimum costs to the state associated with
16 certification of the initiative application and review of the initiative petition, excluding
17 legal costs to the state and the costs to the state of any challenge to the validity of the
18 petition;

19 (4) an estimate of the cost to the state of implementing the proposed
20 law, based on a fiscal note, prepared by the department or departments affected,
21 that sets out the information required by AS 24.08.035(c); and, if the initiative
22 committee disputes the estimate, a statement to that effect as well as a notice that
23 a copy of the committee's statement of dispute, if any, is available from the
24 division for review;

25 (5) the statement of warning prescribed in AS 15.45.100;

26 (6) sufficient space for the printed name, a numerical identifier, the
27 signature, the date of signature, and the address of each person signing the petition;
28 and

29 (7) other specifications prescribed by the lieutenant governor to ensure
30 proper handling and control.

31 * **Sec. 4.** AS 15.45.240 is amended by adding a new subsection to read:

1 (b) Any person aggrieved by a cost estimate prepared for purposes of
2 AS 15.45.090(a)(4) may bring an action in the superior court to have the cost estimate
3 reviewed within 30 days after the date on which notice of the written cost estimate
4 prepared under AS 15.45.090(a)(4) is delivered to the director.

5 * Sec. 5. AS 15.45.320(a) is amended to read:

6 (a) The lieutenant governor shall prepare a sufficient number of sequentially
7 numbered petitions to allow full circulation throughout the state. Each petition must
8 contain

9 (1) a copy of the act to be referred if the number of words included in
10 both the formal and substantive provisions of the act is 500 or less;

11 (2) the statement of approval or rejection;

12 (3) a statement of minimum costs to the state associated with
13 certification of the referendum application and review of the referendum petition,
14 excluding legal costs to the state and the costs to the state of any challenge to the
15 validity of the petition;

16 (4) an estimate of the cost to the state of voter approval or rejection of
17 the act, and, if the referendum committee disputes the estimate, a statement to
18 that effect as well as a notice that a copy of the committee's statement of dispute,
19 if any, is available from the division for review;

20 (5) an impartial summary of the subject matter of the act;

21 (6) the statement of warning prescribed in AS 15.45.330;

22 (7) sufficient space for the printed name, a numerical identifier, the
23 signature, the date of signature, and the address of each person signing the petition;
24 and

25 (8) other specifications prescribed by the lieutenant governor to ensure
26 proper handling and control.

27 * Sec. 6. AS 15.45.460 is amended by adding a new subsection to read:

28 (b) Any person aggrieved by a cost estimate prepared for purposes of
29 AS 15.45.320(a)(4) may bring an action in the superior court to have the cost estimate
30 reviewed within 30 days after the date on which notice of the written cost estimate
31 prepared under AS 15.45.320(a)(4) is delivered to the director.

1 * Sec. 7. AS 15.45.500 is amended to read:

2 **Sec. 15.45.500. Form of application.** The application must include

3 (1) the name and office of the person to be recalled;

4 (2) the grounds for recall described in particular in not more than 200
5 words;

6 (3) the printed name, the signature, the address, and a numerical
7 identifier of qualified voters equal in number to 10 percent of those who voted in the
8 preceding general election in the state or in the senate or house district of the official
9 sought to be recalled, 100 of whom will serve as sponsors; each signature page must
10 include a statement that the qualified voters signed the application with the name and
11 office of the person to be recalled and the statement of grounds for recall attached;

12 [AND]

13 (4) the designation of a recall committee consisting of three of the
14 qualified voters who subscribed to the application and shall represent all sponsors and
15 subscribers in matters relating to the recall; the designation must include the name,
16 mailing address, and signature of each committee member; and

17 (5) a certification by each member of the recall committee, under
18 penalty of perjury, that the facts alleged in the application are true to the best of
19 the member's knowledge.

20 * Sec. 8. AS 15.45.510 is amended by adding a new subsection to read:

21 (b) In this section,

22 (1) "corruption" means an act done by a person who is subject to recall
23 under AS 15.45.470 with an intent to give some advantage inconsistent with official
24 duty and the rights of others;

25 (2) "incompetence" means the lack of ability to perform the official's
26 required duties;

27 (3) "lack of fitness" means the existence of a long-term physical or
28 mental disability that seriously impairs the official's ability to perform the duties of the
29 office;

30 (4) "neglect of duties" means failure to perform a duty of office
31 established by law.

1 * Sec. 9. AS 15.45.560(a) is amended to read:

2 (a) The director shall prepare a sufficient number of sequentially numbered
3 petitions to allow full circulation throughout the state or throughout the senate or
4 house district of the official sought to be recalled. Each petition must contain

5 (1) the name and office of the person to be recalled;

6 (2) the statement of the grounds for recall included in the application;

7 (3) a statement of minimum costs to the state associated with
8 certification of the recall application, review of the recall petition, and conduct of a
9 special election, excluding legal costs to the state and the costs to the state of any
10 challenge to the validity of the petition;

11 (4) an estimate of the cost to the state of recalling the official; and, if
12 the recall committee disputes the estimate, a statement to that effect as well as a
13 notice that a copy of the committee's statement of dispute, if any, is available
14 from the division for review;

15 (5) the statement of warning required in AS 15.45.570;

16 (6) sufficient space for the printed name, a numerical identifier, the
17 signature, the date of signature, and the address of each person signing the petition;
18 and

19 (7) other specifications prescribed by the director to ensure proper
20 handling and control.

21 * Sec. 10. AS 15.45.720 is amended by adding a new subsection to read:

22 (b) Any person aggrieved by a cost estimate prepared for purposes of
23 AS 15.45.560(a)(4) may bring an action in the superior court to have the cost estimate
24 reviewed within 30 days after the date on which notice of the written cost estimate
25 prepared under AS 15.45.460(a)(4) is delivered to the director.

26 * Sec. 11. AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
27 15.45.580, and 15.45.600 are repealed.

28 * Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION. A proposed initiative, referendum, or recall for which an application
31 was filed with the lieutenant governor or the director before the effective date of the Act is

1 subject to the provisions of AS 15.45 as they existed on the day before the effective date of
2 this Act.

3 * **Sec. 13.** This Act takes effect immediately under AS 01.10.070(c).

Representative Jay Ramras
Co-Chair, House Resources
Co-Chair, Economic Develop.
Tourism & Trade

House State Affairs
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Alaska State Legislature



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House District 10

House of Representatives

House Bill 438 (version 24-LS1344\A)

Sectional Summary

"An Act relating to initiative, referendum, and recall petitions; and providing for an effective date."

Section 1. AS 15.13.030 Duties of the commission. This section is amended to have APOC enforce the provisions of AS 15.45.003 and collect civil fines due under AS 15.45.003(e).

Section 2. AS 15.45 is amended by adding a new section to read:

Article 1. General Provisions Relating to Petitions

AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b), including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor, or in the case of a recall petition, the director. Also, states that in determining the sufficiency of a petition, the lieutenant governor, or in the case of a recall petition, the director, may not count subscriptions on a petition circulated by a circulator who violated this section.

AS 15.45.005 Mandatory training. This section makes it mandatory for every committee applying for or circulating a petition to attend training offered by the division of elections on the legal requirements for petitions, and that sponsors are responsible for instructing circulators as to the legal requirements.

AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on the petition that the circulator was instructed by the sponsors as to the legal requirements of AS 15.45.001 – 15.45.003, that the circulator of a petition is not registered to vote in any other state, and that the

circulator was instructed by the sponsors on the legal requirements for circulating and filing the petition.

AS 15.45.009 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 3. AS 15.45.090(a)(4) allows the initiative committee to dispute the fiscal note by providing the department with a statement to that effect, which will be available from the department for review.

Section 4. AS 15.45.240 is amended by adding a new subsection: Allowing any person that is aggrieved by a cost estimate prepared for the purposes of AS 15.45.090(a)(4) may bring an action in the superior court to have the cost estimate reviewed within 30 days.

Section 5. AS 15.45.320(a) is amended to add that the petition will state that the fiscal note is in dispute and that a copy of the committee's statement of dispute is available from the department.

Section 6. AS 15.45.320(a)(4) is amended to allow any person that is aggrieved by a cost estimate of a referendum prepared for the purposes of AS 15.45.090(a)(4) to bring an action in the superior court and to have the cost estimate reviewed within 30 days.

Section 7. AS 15.45.500(5) states that each member of a recall committee, under penalty of perjury, must state on their application that the facts alleged in the application are true to the best of the member's knowledge.

Section 8. AS 15.45.510 defines in this section the four grounds for recalls, "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 9. AS 15.45.560(a)(4) is amended to add that the petition will state that the fiscal note is in dispute and that a copy of the committee's statement of dispute is available from the department.

Section 10. AS 15.45.720 is amended to allow any person that is aggrieved by a cost estimate of a recall prepared for the purposes of AS 15.45.090(a)(4) to bring an action in the superior court to have the cost estimate reviewed within 30 days.

Section 11. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1.

Section 12. Uncodified law is amended to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as it existed on the day before the effective date of this Act.

Section 13. States that this Act takes effect immediately.

*No time left
on division to
verify signature*

24-LS1344\X
Kurtz
2/22/06

CS FOR HOUSE BILL NO. 438()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to initiative, referendum, and recall petitions; and providing for an**
2 **effective date."**

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

4 *** Section 1. AS 15.45 is amended by adding new sections to read:**

5 **Article 1. General Provisions Relating to Petitions.**

6 **Sec. 15.45.001. Qualifications of circulator.** To circulate a petition booklet, a
7 person shall be

- 8 (1) a citizen of the United States;
- 9 (2) 18 years of age or older;
- 10 (3) a resident of the state as determined under AS 15.05.020; and
- 11 (4) not registered to vote in any other state.

12 **Sec. 15.45.003. Circulation; prohibitions.** (a) A petition may be circulated
13 only in person throughout the state. However, in the case of a petition to recall a
14 member of the state legislature, a petition may be circulated only in person in the

senate or house district represented by the official sought to be recalled.

(b) A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition. In addition to \$1 a signature, a person or organization may pay a circulator and a circulator may receive up to \$15 to cover the cost of meals for each day that the circulator travels more than 100 miles from the circulator's home in the course of circulating the petition if the circulator certifies, on a form prescribed by the division of elections, that the circulator has traveled more than 100 miles from the circulator's home on the day for which the payment is received. A person or organization may not pay a circulator and a circulator may not receive any payment

- (1) other than that specified in this subsection for circulating a petition;
- (2) for any work other than collecting signatures, including administrative work, relating to the petition for which the circulator is collecting signatures.

(c) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.

(d) A person or organization that violates (b) or (c) of this section is guilty of a class B misdemeanor.

(e) A person who pays a circulator and a circulator who receives compensation other than that permitted under (b) of this section are liable to the state for a civil fine of \$1 for each signature gathered by the circulator on a petition filed with the lieutenant governor.

(f) In determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (b) of this section.

(g) In this section,

- (1) "organization" has the meaning given in AS 11.81.900;
- (2) "other valuable thing" has the meaning given in AS 15.56.030;
- (3) "person" has the meaning given in AS 11.81.900.

could be covered in 07 (6)

who will assess & collect HOC?

1 **Sec. 15.45.005. Mandatory training.** (a) At least once during each two-year
2 period between general elections, the division of elections shall offer training
3 explaining the legal requirements for petitions. Each committee applying for or
4 circulating a petition during that period shall attend the training.

5 (b) Before giving a petition to a circulator, the sponsors shall instruct the
6 circulator on the legal requirements for petitions.

7 **Sec. 15.45.007. Certification of circulator.** Before being filed, each petition
8 shall be certified by an affidavit by the person who personally circulated the petition.
9 In determining the sufficiency of the petition, the lieutenant governor may not count
10 subscriptions on petitions not properly certified at the time of filing or corrected before
11 the subscriptions are counted. The affidavit must state in substance

12 (1) that the person signing the affidavit meets the residency, age, and
13 citizenship qualifications for circulating a petition under AS 15.45.001;

14 (2) that the person is the only circulator of that petition;

15 (3) that the signatures were made in the circulator's actual presence;

16 (4) that, to the best of the circulator's knowledge, the signatures are their
17 signatures of the persons whose names they purport to be;

18 (5) that, to the best of the circulator's knowledge, the signatures are of
19 persons who were qualified voters on the date of signature;

20 (6) that the circulator has not entered into an agreement with a person
21 or organization in violation of AS 15.45.003(b);

22 (7) that the circulator has not violated AS 15.45.003(c) with respect to
23 that petition;

24 (8) whether the circulator has received payment or agreed to receive
25 payment for the collection of signatures on the petition, and, if so, the name of each
26 person or organization that has paid or agreed to pay the circulator for collection of
27 signatures on the petition;

28 (9) that the circulator is not registered to vote in another state; and

29 (10) that the circulator was instructed by the sponsors on the legal
30 requirements for circulating and filing the petition.

31 **Sec. 15.45.009. Advance verification of subscriptions.** The sponsors may,

1 before filing a petition, submit individual numbered petitions containing up to a total
2 of 2,000 subscriptions to the director for review. The director shall, within 45 days,
3 determine whether each subscription submitted for review is that of a qualified voter
4 and notify the sponsors of the number of signatures of qualified voters from each
5 district in the petitions submitted. The director shall assess and the sponsors shall pay
6 a fee of \$1 for each subscription submitted under this section.

7 * Sec. 2. AS 15.45.490 is amended to read:

8 **Sec. 15.45.490. Time of filing application.** An application may not be filed
9 during the first 120 days or the last 270 days of the term of office of any state public
10 official subject to recall.

11 * Sec. 3. AS 15.45.500 is amended to read:

12 **Sec. 15.45.500. Form of application.** The application must include

13 (1) the name and office of the person to be recalled;

14 (2) the grounds for recall described in particular in not more than 200
15 words;

16 (3) the printed name, the signature, the address, and a numerical
17 identifier of qualified voters equal in number to 20 [10] percent of those who voted in
18 the preceding general election in the state or in the senate or house district of the
19 official sought to be recalled, 100 of whom will serve as sponsors; each signature page
20 must include a statement that the qualified voters signed the application with the name
21 and office of the person to be recalled and the statement of grounds for recall attached;
22 [AND]

23 (4) the designation of a recall committee consisting of three of the
24 qualified voters who subscribed to the application and shall represent all sponsors and
25 subscribers in matters relating to the recall; the designation must include the name,
26 mailing address, and signature of each committee member; and

27 (5) a certification by each member of the recall committee, under
28 penalty of perjury, that the facts alleged in the application are true to the best of
29 the member's knowledge.

30 * Sec. 4. AS 15.45.510 is amended by adding a new subsection to read:

31 (b) In this section,

1 (1) "corruption" means an act done by a person who is subject to recall
2 under AS 15.45.470 with an intent to give some advantage inconsistent with official
3 duty and the rights of others;

4 (2) "incompetence" means substantial inability to perform the duties of
5 office;

6 (3) "lack of fitness" means the existence of a long-term physical or
7 mental disability that seriously impairs the official's ability to perform the duties of the
8 office;

9 (4) "neglect of duties" means failure to perform a duty of office
10 established by law.

11 * Sec. 5. AS 15.45.550 is amended to read:

12 **Sec. 15.45.550. Bases of denial of certification.** The director shall deny
13 certification upon determining that

14 (1) the application is not substantially in the required form;

15 (2) the application was filed during the first 120 days of the term of
16 office of the official subject to recall or within less than 270 [180] days of the
17 termination of the term of office of any official subject to recall;

18 (3) the person named in the application is not subject to recall; or

19 (4) there is an insufficient number of qualified subscribers.

20 * Sec. 6. AS 15.45.610 is amended to read:

21 **Sec. 15.45.610. Filing of petition.** A petition may not be filed within less than
22 270 [180] days of the termination of the term of office of a state public official subject
23 to recall. The sponsor may file the petition only if signed by qualified voters equal in
24 number to 30 [25] percent of those who voted in the preceding general election in the
25 state or in the senate or house district of the official sought to be recalled.

26 * Sec. 7. AS 15.45.630 is amended to read:

27 **Sec. 15.45.630. Bases for determining the petition was improperly filed.**
28 The director shall notify the committee that the petition was improperly filed upon
29 determining that

30 (1) there is an insufficient number of qualified subscribers; or

31 (2) the petition was filed within less than 270 [180] days of the

1 termination of the term of office of the official subject to recall.

2 * Sec. 8. AS 15.45.640 is amended to read:

3 **Sec. 15.45.640. Submission of supplementary petition.** Upon receipt of
4 notice that the filing of the petition was improper, the committee may amend and
5 correct the petition by circulating and filing a supplementary petition. The
6 supplementary petition must be filed not later than 270 days before [WITHIN 20
7 DAYS OF THE DATE THAT NOTICE WAS GIVEN, IF FILED WITHIN LESS
8 THAN 180 DAYS OF] the termination of the term of office of the person subject to
9 recall.

10 * Sec. 9. AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575,
11 15.45.580, and 15.45.600 are repealed.

12 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **TRANSITION.** A proposed initiative, referendum, or recall for which an application
15 was filed with the lieutenant governor before the effective date of the Act is subject to the
16 provisions of AS 15.45 as they existed on the day before the effective date of this Act.

17 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

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MEMORANDUM

March 15, 2006

SUBJECT: Issues relating to HB 438
(CSHB 438(), (Work Order No. 24-LS1344X))

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Kathryn L. Kurtz *KLK*
Assistant Revisor

You have asked several questions about the above noted draft.

Constitutionality

I have not noted any constitutional issues with this draft other than those discussed below. Please note that the potential for legal challenge is always present, and there may be constitutional issues I have not anticipated.

Page 4, line 9

You noted that page 4, line 9 only inserts a reference to 270 days, and does not delete text referring to 180 days. That is because there is no language in the current AS 15.45.490 relating to the end of the term of office, in contrast to subsequent statutory sections.

Gathering signatures in the district

Under the proposed AS 15.45.003, yes, it would be a class B misdemeanor to gather signatures on a recall petition at a location across the street from but not within the district represented by the official sought to be recalled. This is consistent with the language of the current AS 15.45.580.

Constitutional rights of signers

Yes, potentially the constitutional right of voters to enact laws by initiative, established in Article XI, sec. 1, Constitution of the State of Alaska, may be infringed by the provision at page 2, lines 25 - 27 (instructing the lieutenant governor not to count signatures collected by a circulator who has violated the compensation rules).

Courts have been sympathetic to states refusing to count signatures on a petition based on a violation of certification requirements similar to Alaska's, and have found that certification requirements are important to prevent fraud and preserve the integrity of the initiative process. *See for example Loontjer v. Robinson*, 670 N.W.2d 301 (Neb. 2003) (where sponsors failed to submit a sworn statement including the addresses of the

Representative Jay Ramras
March 15, 2006
Page 2

sponsors, the initiative petition was held to be legally insufficient); *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75 (Me. 2002) (where a circulator lied about his identity, the veracity of other statements on his affidavit was called into question and invalidation of the signatures he collected was upheld).

However, this new provision may be more susceptible to a court challenge than the existing language, as it may be less central to safeguarding the initiative process against fraud and deception than the certification requirement. What is at stake here is the constitutional right of the voters to enact laws by the initiative, established in Article XI, sec. 1 of the Constitution of the State of Alaska. The Alaska Supreme Court has held that the right of initiative should be liberally construed to permit exercise of that right. *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979). I cannot predict the outcome of a legal challenge to this new provision on this basis.

Raising the recall bar

You are correct that Article XII, sec. 8 provides that "[p]rocedures and grounds for recall shall be prescribed by the legislature."

KLK:med
06-218.med

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
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House District 10

House of Representatives

House Bill 438 (version 24-LS1344\X)

Sectional Summary

“An Act relating to initiative, referendum, and recall petitions; and providing for an effective date.”

Section 1. AS 15.45

Article 1. General Provisions Relating to Petitions

AS 15.45.001 Qualifications of circulator. This section is amended to read that in order to circulate a petition a person shall not be registered to vote in any other state.

AS 15.45.003 Circulation; prohibitions. This section is added to state that a circulator may receive up to \$15 a day to cover the cost of meals for each day the circulator travels more than 100 miles from their home in the course of circulating the petition. States that an initiative petition circulator may not receive payment for any work other than those stated in subsection (b) including administrative work. A person or organization that violates this section is guilty of a class B misdemeanor. A person who pays a circulator and a circulator who receives compensation other than those permitted are both liable for a civil fine of \$1 per signature on a petition filed with the lieutenant governor. Also, states that in determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated this section.

AS 15.45.005 Mandatory training. This section makes it mandatory for every committee applying for or circulating a petition to attend training on the legal requirements for petitions, offered by the division of elections, and that sponsors are responsible for instructing circulators as to the legal requirements.

AS 15.45.007 Certification of circulator. Adds to the certifying affidavit on the petition that, the circulator of a petition is not registered to vote in any other state, that the circulator was instructed by the sponsors on the legal requirements of AS 15.45.001 – 15.45.003.

AS 15.45.009 Advance verification of subscriptions. This section allows the sponsors to get up to 2,000 subscriptions qualified by the director prior to the initiative petition being filed. The sponsors shall pay a fee of \$1 for each subscription submitted under this section.

Section 2. AS 15.45.490 **Time of filing application.** Adds that an application for recall may not be filed during last 270 days of the term of office of a state public official.

Section 3. AS 15.45.500 **Form of application.** Changes the number of qualified voters that must sign the petition from 10 to 20 percent of those who voted in the preceding general election in the district of the official sought to be recalled. Each member of the recall committee, under penalty of perjury, must certify that the facts alleged in the application are true to the best of their knowledge.

Section 4. AS 15.45.510 **Grounds for recall.** A new subsection is added defining "corruption", "incompetence", "lack of fitness", and "neglect of duties".

Section 5. AS 15.45.550 **Bases of denial of certification.** Adds that the director shall deny certification of a recall upon determining that the application was filed within less than 270 days of the termination of the official's term of office.

Section 6. AS 15.45.610 **Filing of Petition.** Amends that a recall petition cannot be filed within less than 270 days from the termination of the official's term of office and that the sponsor may file the petition only if signed by qualified voters equal in number to 30 percent of those who voted in the previous general election in the official's district.

Section 7. AS 15.45.630 **Bases for determining the petition was improperly filed.** Conforming language to Section 23. States that the petition was improperly filed upon determining that the petition was filed within less than 270 days of the termination of the office of the official subject to recall.

Section 8. AS 15.45.640 **Submission of supplementary petition.** States that a supplementary petition may not be filed later than 270 days before the official's office termination date.

Section 9. Repeals AS 15.45.105, 15.45.110, 15.45.130, 15.45.335, 15.45.340, 15.45.360, 15.45.575, 15.45.580, and 15.45.600. Due to the fact that these sections are now consolidated under Article 1. **General Provisions Relating to Petitions.**

Section 10. Uncodified law is amended to say that an application filed prior to the effective date of this Act is subject to AS 15.45 as it existed on the day before the effective date of this Act.

Section 11. States that this Act takes effect immediately.

Jane Pierson

From: Whitney Brewster [whitney_brewster@gov.state.ak.us]
Sent: Wednesday, March 08, 2006 5:01 PM
To: Jane Pierson
Cc: Annette Kreitzer
Subject: Re: HB 438

Hi Jane,

I just wanted to get you my comments on this latest draft of HB 438. Once you've had a chance to review them, I'd be happy to meet with you, Annette and the attorneys to talk through the bill. My comments are as follows:

1. Page 1, line 11 - This requirement may run afoul of the Buckley decision.
2. Page 1, line 13 - I know this is already current law, but I want to make sure everyone is aware that this essentially confines a circulator strictly to the boundaries of the district and would prevent the circulator from collecting signatures at the local supermarket (although many residents of a district may frequent it) if it is not exactly within the district boundaries.
3. Page 2, line 8 - "On a form prescribed by the division" - The Division would prefer that another form not be created. 15.45.007(6) in this draft already covers this by requiring the circulator to certify "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.003(b)."
4. Page 2, line 19 - Who will enforce this?
5. Page 2, line 21 - Who will assess and collect this fine?
6. Page 2, line 25 - The Lt. Governor is not able to determine the sufficiency of a petition in the case of a recall. That duty lies with the Director of the Division of Elections. HB 94 that passed last year incorrectly changed the law. It is incorrect as a Lt. Governor should not have the ability to determine the sufficiency of a recall petition if he or she is the subject of that recall.
7. Page 3, line 1 - I wonder if mandatory training runs afoul of any court cases or is unconstitutional.
8. Page 3, line 9 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.
9. Page 3, line 28 - Again, this may run afoul of the Buckley decision.
10. Page 4, line 2 - This review will require additional staff time and a fiscal note reflecting this staff time will be required.
11. Page 4, line 5 - These fees will go to the General Fund and will not benefit the Division of Election's budget.
12. Page 4, line 17 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.
13. Page 4, line 27 - Who enforces this if an individual of the recall committee certifies that the facts alleged are true, but knows that they are not?
14. Page 5, line 1 - Where are these definitions based on?
15. Page 5, line 24 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.
16. Page 6, line 14 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

Sincerely,
Whitney

Response To Comments By The Division Of Elections on HB438

1. **Page 1, line 11 - This requirement may run afoul of the Buckley decision.**
(4) not registered to vote in any other state.

This will ultimately have to be determined by the Department of Law. However, it is already law that a person may not be registered to vote in multiple jurisdictions, AS 15.07.060(a)(5). This provision does not state that a person must be registered to vote in Alaska. It corresponds with current law stating that signature gatherers be residents of the state. Furthermore, to knowingly make a false statement while applying for voter registration is voter misconduct in the second degree under AS 15.56.050, and a class A misdemeanor. Voting in another state is inconsistent with claiming Alaska residency for purposes of AS 15.05.020. The purpose of this provision is to prevent "professional signature gatherers" from coming to Alaska to collect signatures on petitions. Under Buckley, Alaska cannot require circulators to be registered voters, there is some risk that prohibiting them from being registered voters in another state will be interpreted as unconstitutional burden on political expression.

2. **Page 1, line 13 - I know this is already current law, but I want to make sure everyone is aware that this essentially confines a circulator strictly to the boundaries of the district and would prevent the circulator from collecting signatures at the local supermarket (although many residents of a district may frequent it) if it is not exactly within the district boundaries.**

"However, in the case of a petition to recall a member of the state legislature, a petition may be circulated only in person in the senate or house district represented by the official sought to be recalled."

This is current law, the idea being that the petition be brought before the people who it affects.

3. **Page 2, line 8 - "On a form prescribed by the division" - The Division would prefer that another form not be created. 15.45.007(6) in this draft already covers this by requiring the circulator to certify "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.003(b)."**

"on a form prescribed by the division of elections, that the circulator has traveled more than 100 miles from the circulator's home on the day for which the payment is received."

This would reduce the fiscal note on the bill and may already be covered under AS 15.45.022(b).

4. Page 2, line 19 - Who will enforce this?

"(d) a person or organization that violates (b) or (c) of this section is guilty of a class B misdemeanor."

There are already provisions under AS 15.45.100, 15.45.330, and AS 15.45.570 that defines crimes of a class B misdemeanor for signers of a petition. Why is it not possible for whoever currently enforces these statutes will to also enforce this provision?

5. Page 2, line 21 - Who will assess and collect this fine?

6. Page 2, line 25 - The Lt. Governor is not able to determine the sufficiency of a petition in the case of a recall. That duty lies with the Director of the Division of Elections. HB 94 that passed last year incorrectly changed the law. It is incorrect as a Lt. Governor should not have the ability to determine the sufficiency of a recall petition if he or she is the subject of that recall.

(f) In determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on a petition circulated by a circulator who violated (b) of this section."

This should be changed to reflect that the division and not the Lt. Governor should be able to determine the sufficiency of a recall petition if he or she is the subject of that recall.

7. Page 3, line 1 - I wonder if mandatory training runs afoul of any court cases or is unconstitutional.

This is a question for the Department of Law. However, my office has not found any cases on point.

8. Page 3, line 9 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

This should be changed to reflect that the division and not the Lt. Governor may not count subscriptions on recall petitions.

9. Page 3, line 28 - Again, this may run afoul of the Buckley decision.

(9) that the circulator is not registered to vote in another state

See answer to comment number one.

10. Page 4, line 2 - This review will require additional staff time and a fiscal note reflecting this staff time will be required.

"The sponsor may, before filing a petition, submit individual numbered petitions containing up to a total of 2,000 subscriptions to the director to review. The director shall within 45 days, determine whether each subscription submitted for review is that of a qualified voter and notify the sponsors of the number of signatures of qualified voters from each district in the petitions submitted. The director shall assess and the sponsors shall pay a fee of \$1 for each subscription submitted under this section."

This is understood, which is why a \$1 fee is to be paid for each subscription submitted under this section.

11. Page 4, line 5 - These fees will go to the General Fund and will not benefit the Division of Election's budget.

Yes.

12. Page 4, line 17 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.

Understood.

13. Page 4, line 27 - Who enforces this if an individual of the recall committee certifies that the facts alleged are true, but knows that they are not?

(5) a certification by each member of the recall committee, under penalty of perjury, that the facts alleged in the application are true to the best of the member's knowledge.

This should be enforced by APOC.

14. Page 5, line 1 - Where are these definitions based on? *

(b) In this section,

(1) "corruption" means an act done by a person who is subject to recall under AS 15.45.470 with an intent to give some advantage inconsistent with official duty and the rights of others;

(2) "incompetence" means substantial inability to perform the duties of office;

(3) "lack of fitness" means the existence of a long-term physical or mental disability that seriously impairs the official's ability to perform the duties of the office.

(4) "neglect of duties" means failure to perform a duty of office established by law.

These are definitions that were worked on by the drafter and the legislative legal department. They reflect the definitions in Black's Law Dictionary. These definitions

are not currently in statute. However, the drafter believes that they should be, especially when used for recalling public officials.

15. Page 5, line 24 - The increase in this percentage will require additional signatures to be qualified and will result in a fiscal note.

Yes.

16. Page 6, line 14 - Again, this is based on incorrect language currently in law allowing a Lt. Governor to determine the sufficiency of a recall petition.

Again, this will be changed to reflect the department when determining the sufficiency of a recall petition.

RECEIVED

SEP - 3 2004

Attorney Generals Office

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

VALLEY RESIDENTS FOR A CITIZEN
LEGISLATURE and TOM BAIRD,

Plaintiffs,

vs.

THE STATE OF ALASKA, Division of
Elections and LAURA A. GLAISER, Director
Of the Division of Elections,

Defendants,

SENATOR SCOTT OGAN,

Intervenor.

) Case No. 3AN-04-G6827 CI

ORDER REGARDING PENDING MOTIONS

Plaintiffs and Intervenor Senator Scott Ogan (hereinafter referred to jointly as plaintiffs) challenge the decision of the director of the Division of Elections that certified an application for a petition to recall Senator Ogan. The plaintiffs assert that the recall petition is legally insufficient for several reasons. Before the court is the plaintiffs' motion for injunctive relief, in which the plaintiffs seek an order from this court directing the Division of Elections to withdraw certification of the application for recall and void the recall petition. Both parties also filed motions for partial summary judgment. For the reasons expressed below, this court denies the plaintiffs' motion for injunctive relief and grants the defendants' motion for partial summary judgment.

RECEIVED

AUG 25 2004

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
3RD JUDICIAL DISTRICT
ANCHORAGE, ALASKA

FACTUAL BACKGROUND

Senator Ogan was elected in District H to the Alaska State Senate in November 2002.

On February 17, 2004, an application for the recall of Senator Ogan was filed with the Division of Elections. In its original form as submitted on that date, the application's stated grounds for recall were as follows:

Senator Scott Ogan demonstrated corruption in office by actively promoting legislation, directly benefiting business interests of his employer Evergreen Resources, (Evergreen), instead of protecting the private property and due process rights of his constituents.

Ogan's legislative activities enabled Evergreen to acquire coal bed methane (CBM) leases knowing it would deprive his Mat-Su Valley constituents of actual notice of leases and therefore their constitutional right to due process, demonstrating neglect of duty.

Ogan neglected his duties to constituents by promoting Evergreen in legislative committee, misstated important facts (3-28-03), and was even listed as Evergreen's corporate contact in its legislative materials submitted to the House Oil and Gas Committee hearing on HB 69.

Ogan did not abstain from voting on HB 69, which reduced local control over CBM development that directly benefited his employer, Evergreen.

Ogan's persistent and irreconcilable conflict of interest between his duties to his constituents and his activities as an Evergreen and CBM industry promoter demonstrate his inability to recognize his obvious conflict, a failure in ethical judgment that shows lack of fitness to serve in public office, incompetence, and neglect of duty.

[Ex. 3 to Plaintiff's TRO Memo. at 1.]

On April 9, 2004, Laura Glaiser, the director of the Division of Elections, certified the recall petition, but with several deletions to the statement of grounds. She informed

the recall sponsor that she had struck from the application "language that does not meet the particularity requirement or is a legal allegation asserting non-existent laws." [Ex. 4 to Plaintiff's TRO Memo. at 1.] Glasier's deletions were as follows:

Senator Scott Ogan demonstrated corruption in office by actively promoting legislation, directly benefiting business interests of his employer Evergreen Resources, (Evergreen), ~~instead of protecting the private property and due process rights of his constituents.~~

Ogan's legislative activities enabled Evergreen to acquire coal bed methane (CBM) leases knowing it would deprive his Mat-Su Valley constituents of actual notice of leases ~~and therefore their constitutional right to due process, demonstrating neglect of duty.~~

Ogan neglected his duties to constituents by promoting Evergreen in legislative committee, ~~misstated important facts (3-28-03),~~ and was even listed as Evergreen's corporate contact in its legislative materials submitted to the House Oil and Gas Committee hearing on HB 69.

Ogan did not abstain from voting on HB 69, which reduced local control over CBM development that directly benefited his employer, Evergreen.

Ogan's persistent and irreconcilable conflict of interest between his duties to his constituents and his activities as an Evergreen and CBM industry promoter demonstrate his inability to recognize his obvious conflict, a failure in ethical judgment that shows lack of fitness to serve in public office, ~~incompetence,~~ and neglect of duty.

On April 23, 2004, the Legislative Ethics Committee issued a Draft Advisory Opinion, in which it responded to hypothetical questions that had been posed to the committee by Senator Ogan.

On May 6, 2004, the plaintiffs filed this civil action. However, the plaintiffs did not file any motion in this action so as to bring the issue before the court until August 5, 2004, shortly after the recall sponsors had filed signed petitions with the Division of

Elections in an amount which, if approved, would be sufficient to place the recall petition on the November ballot.

On August 5, 2004, the plaintiffs filed a motion for a temporary restraining order and/or preliminary injunction. The following day, August 6, 2004, the defendants filed a motion seeking partial summary judgment for the defendants on the plaintiffs' claims for injunctive relief. The plaintiffs filed a cross-motion for summary judgment on these same claims on August 16, 2004. Neither party has sought summary judgment on the plaintiffs' due process claim. On August 19, 2004, Senator Ogan moved to intervene in the case, and the defendants filed a non-opposition to his intervention on that same date.

Oral argument on all pending motions was held on August 20, 2004. Senator Ogan's motion to intervene was granted at the outset of oral argument, and he then joined in the plaintiffs' motions.

Standard of Review

Summary judgment shall be granted if the record demonstrates that no material facts are genuinely disputed and a party is entitled to judgment as a matter of law. Civil Rule 56. If summary judgment is appropriate as to any claim, then a final decision on the merits is entered as to such claim and the issue of whether a preliminary injunction should be entered until a final decision is entered becomes moot with respect to that claim.

Neither side has sought summary judgment with respect to the plaintiffs' due process claim. Instead, plaintiffs have sought to enjoin the certification of the recall petition on a temporary basis while the due process issue is determined. Determination

of whether a preliminary injunction should be issued requires consideration of three factors: "(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues cannot be frivolous or obviously without merit." North Kenai Peninsula Road v. Kenai Peninsula Borough, 850 P.2d 636, 639 (Alaska 1993). "The 'serious and substantial question' standard applies only where the injury which will result from the . . . preliminary injunction can be indemnified by a bond or where it is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted." State v. United Cook Inlet Drift Ass'n., 815 P.2d 378 (Alaska 1991)(citations omitted). Otherwise, the plaintiffs must show "probable success on the merits" before a preliminary injunction can be issued. Id. at 379.

Legal Framework

Article XI, Section 8 of the Alaska Constitution provides as follows:

All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

The statutory provisions regarding the recall of legislators are set forth in Title 15 of the Alaska Statutes. In Alaska, state legislators are subject to recall only for specified reasons. AS 15.45.510, enacted in 1960, provides: "The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption." A recall petition, or application, is submitted to the director of the Division of Elections for review, where it is either certified or the recall committee is notified of the grounds for the director's refusal to certify the application. AS 15.45.540. AS 15.45.550 sets out the four bases for

denial of certification. Here, the plaintiffs assert that the recall application failed to meet one of these required bases in that statute: "The application is not substantially in the required form." AS 15.45.550(1). Any person aggrieved by a determination made by the director with respect to a recall application may seek judicial review of that determination pursuant to AS 15.45.720.

The Alaska Supreme Court has not directly addressed the statutory recall provisions for legislators set forth in Title 15 that are at issue in this litigation. However, that court has addressed the recall provisions for municipal officials contained in Title 29. Although the statutory grounds for recall are different for municipal officials than for state legislators,¹ the principles enunciated by the Alaska Supreme Court regarding the recall process in general should apply to the recall provisions of Title 15, particularly since the right to recall as to all elected officials emanates from the same constitutional provision. Specifically, the Alaska Supreme Court has held that recall statutes should be "liberally construed so that 'the people are permitted to vote and express their will' . . . The purposes of recall are therefore not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute." Meiners v. Bering Strait School District, 687 P.2d 287, 296 (Alaska 1984)(citations omitted). Further, the Supreme Court has recognized the "need to avoid wrapping the recall process in such a tight legal straitjacket that a legally sufficient recall petition could be prepared only by an attorney who is a specialist in election law matters." Id. at 301. "We emphasize that it is not [the court's] role, but rather that of the voters, to assess the truth or falsity of the allegations in the petition." Id. at 305, n.18.

¹ Cf. AS 29.26.250 and AS 15.45.510.
Valley Residents v. State, 3AN-04-6827 CI
Order re Pending Motions
Page 6 of 16

In their filings to this court, the plaintiffs assert six separate reasons in support of their motion to enjoin the certification of the recall petition. The plaintiffs' allegations are as follows:

- (1) The grounds stated in the recall application are not violations of law, nor do they constitute any of the statutory grounds for recall;
- (2) Since Senator Ogan's alleged conduct was in accordance with the Uniform Rules of the Legislature and the Legislative Ethics Code, permitting the recall application to go forward would violate the doctrine of separation of powers between the court and the legislature;
- (3) The grounds for recall are not alleged with sufficient particularity as required by statute, AS 15.45.500(2);
- (4) The Division of Elections improperly revised the recall application;
- (5) The recall supporters improperly used the recall effort in order to gain an advantage; and
- (6) The plaintiffs and Senator Ogan are entitled to a due process hearing to show that the factual allegations in the petition are false and misleading.

Each of these arguments is addressed below in turn.

1. Are the Recall Allegations Legally Sufficient?

Legislators in Alaska may only be recalled for one or more of the causes specified in AS 15.45.510: lack of fitness, incompetence, neglect of duties, or corruption. In reviewing the legal sufficiency of allegations in recall petitions, the court is

to "take the allegations as true" and "determine whether such facts constitute a prima facie showing" of the statutory grounds for recall. Von Stauffenberg v. Committee for Honest and Ethical School Bd., 903 P.2d 1055, 1059-60 (Alaska 1995).

Here, the director of the Division of Elections found that three of the four statutory bases had been adequately alleged by the recall applicants: corruption, neglect of duties, and lack of fitness. None of these terms are defined in the recall statutes. However, for purposes of the motions now before the court, the plaintiffs have accepted the defendants' definitions of those terms. [See Plaintiffs' Memo in Opp. to Partial Summary Judgment at 8.]

a. The recall petition is legally sufficient in alleging "corruption."

For purposes of this action, the parties have agreed that "corruption" in the context of recall of a legislator means (1) intentional conduct, (2) motivated by private self-interest, (3) in the performance of work as a legislator, and (4) that violates one or more provisions of the Legislative Ethics Act (AS 24.60.030 et. seq.) or other statutes intended to guard against corruption.² [Defendants' Opp. to Plaintiffs' Motion for Injunctive Relief at 17].

Here, the recall application alleges that Senator Ogan actively promoted the ~~interests of his employer to the detriment of his constituents in his capacity as a~~ legislator. Defendants assert that this conduct alleges a violation of AS 24.60.100, which provides in relevant part that "a legislator . . . may not represent another person for compensation before an agency, committee, or other entity of the legislative branch."

² Cf. AS 24.60.010(6): "no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to a situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment."

This court agrees with the defendants' analysis. Taking the allegations as true, which this court is required to do under the applicable law, the application provides sufficient detail to allege a violation of AS 24.60.100 constituting "corruption."

b. The recall petition is legally sufficient in alleging "neglect of duty."

Defendants have defined "neglect of duty" as the nonperformance of a duty of office established by applicable law. In this regard, the recall application states that Senator Ogan had neglected his duties in three ways: (1) by enabling Evergreen to acquire coal-bed methane leases knowing it would deprive his constituents of notice and their constitutional rights to due process; (2) by promoting Evergreen in legislative committee; and (3) by failing to recognize an obvious conflict of interest between his duties to his constituents and those to his employer. The director of the Division of Elections found that the second and third of these allegations amounted to legally sufficient allegations of neglect of duty. The director deleted the first allegation, finding that this allegation, even if true, would not constitute "neglect of duty."

AS 24.60.010 of the Legislative Ethics Act (LEA) provides, "a fair and open government requires that legislators . . . conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest." To this end, AS 24.60.030(a)(1) prohibits legislators from accepting "a benefit other than official compensation for the performance of public duties." By allegedly taking action in violation of the statutory standards of conduct set forth in the LEA, Senator Ogan is alleged to have neglected his duties, which in this context overlaps with the ground of "corruption." Irrespective of

the overlap, the petition as approved is legally sufficient in its allegation of "neglect of duty."

c. The recall petition is legally sufficient in alleging "lack of fitness."

The defendants have defined "lack of fitness" as unsuitability for office demonstrated by specific facts related to the recall target's conduct in office. [Def. Opp. to Inj. Relief at 26.] Here, the recall applicants have asserted that Senator Ogan undertook official conduct for private gain, while failing to recognize the detriment to his constituents of that official conduct. The allegations, which all relate specifically to the alleged conflict between Senator Ogan's loyalty to his employer and to his constituents, are legally sufficient grounds for "lack of fitness" under AS 15.45.510.

2. The doctrine of separation of powers is inapplicable.

Plaintiffs argue that this court should enjoin the Division's actions because the Uniform Rules of the Legislature required Senator Ogan to vote on HB 69. Also, the plaintiffs have asserted that the Advisory Opinion of the Legislative Ethics Committee should be dispositive.

The Advisory Opinion was based on a set of hypotheticals presented to the Committee by Senator Ogan. It is not dispositive of this specific legal dispute. Moreover, the Opinion concluded with the admonition that "you should strictly separate the work that you are otherwise compensated for in your private life from your actions as a public official." It is this alleged failure by Senator Ogan to separate his work for Evergreen from his legislative duties that forms the underlying basis of the recall applicants' claim. [Def. Opp. to Inj. Relief, Ex.2, page 9].

Nor are the Uniform Rules applicable. Those rules preclude a legislator from abstaining on a vote for the final passage of a bill "unless the [legislative body] for special reasons permits a member to abstain." Uniform Rule 34(b). Here, Senator Ogan does not expressly indicate that he requested to abstain from the vote on HB 69 when the bill came before the entire Senate. See Ogan Aff. at 10. Moreover, the Legislative Ethics Act refers to the Uniform Rules' requirement to vote over a legislator's objection in cases where the legislator "has an equity or ownership interest in a business." See AS 24.60.030(g). The recall applicants' petition here is not based on a claim that Senator Ogan had an equity or ownership interest in Evergreen. Rather, it is based on an allegation that Senator Ogan was representing the interests of his employer, Evergreen, in his actions before and within the legislature, rather than representing the interests of his constituents -- conduct which is precluded by AS 24.60.100. Unlike AS 24.60.030, there is no Uniform Rules reference in AS 24.60.100 that could require a legislator to vote after seeking abstention when that legislator was allegedly representing another person for compensation before the agency or committee.

3. The grounds for recall are alleged with sufficient particularity.

The Plaintiffs also assert that the Division erred in approving the recall petition because the grounds for recall were not alleged with sufficient particularity. AS 15.45.500(2) requires that "the grounds for recall [be] described in particular in not more than 200 words."

In von Stauffenberg, 903 P.2d 1055, the Alaska Supreme Court held that allegations in a school board recall petition lack sufficient particularity. There, the

petitioners had alleged that the school board members had violated Alaska law by meeting in an improper, closed-door executive session to discuss retention of a school employee. Since Alaska law expressly permits school boards to meet in executive session while discussing certain personnel issues, the court held that the allegations were legally insufficient. Moreover, with executive sessions for such personnel issues expressly permitted by statute, the court founds that the allegations lacked sufficient particularity when they failed to explain why entering into executive session violated Alaska law.

This court does not read von Stauffenberg to require recall petitioners to state the precise statute(s) that are alleged to have been violated in all instances. To do so would create the type of "artificial technical hurdle" and "tight legal straitjacket" that the Supreme Court proscribed in Meiners, 687 P.2d at 296, 301. Unlike Von Stauffenberg, the alleged conduct of Senator Ogan that formed the basis of the petition is not expressly authorized by statute. The recall petition has sufficient particularity in these circumstances.

4. The recall application is legally sufficient as revised.

Plaintiffs also assert that the recall election should be enjoined because the Division improperly edited the recall petition. "Important considerations of public policy favor an approach that places all legally sufficient charges on the recall ballot to avoid erecting 'artificial technical hurdles' to recall and allow the process to operate in a way that permits the electorate to express its will." Matanuska Elec. Ass'n v. Rewire the Bd., 36 P.3d 685, 693 (Alaska 2001)(quoting Meiners, 687 P. 2d at 291).

Here, the Division did not change any of the words in the recall application. However, it did delete several words and phrases it concluded were legally insufficient. As the defendants note, it is primarily the recall sponsors – not the target of the recall – who are most affected when the Division deletes language from the application, and it is those sponsors who can either submit a new petition for review, seek judicial review of the Division's deletions, or proceed with the petition as amended. The impact of deletions on the recall target is far less substantial, so long as standing alone, the remainder of the petition can be given legal effect. Since this court has already concluded that the petition as approved by the Division was legally sufficient, the plaintiffs' challenge to the Division's deletions is without merit.

5. The motives of the recall supporters are not a relevant consideration for judicial review of the recall petition.

Plaintiffs also argue that the recall election should be enjoined because "the recall supporters have used the recall as a weapon to coerce illegal legislative conduct." [Plaintiffs' Memo. for Inj. at 21.] But analysis of the motivations of citizens behind a recall petition is outside the scope of judicial review of the petition. Moreover, as defendants correctly note, each of the sponsors and signatories of a recall petition may well have different motivations. Rather, in reviewing allegations in recall petitions, this court is to accept the allegations as true and determine whether such alleged facts constitute a prima facie showing of grounds for recall. See von Stauffenberg, 903 P.2d at 1059.

6. Plaintiffs are not entitled to a preliminary injunction pending a judicial determination as to whether Alaska's constitutional right to due process entitles the plaintiffs to an evidentiary hearing as to the truth or falsity of the allegations in the recall petition.

The plaintiffs and Senator Ogan assert that they are entitled to a due process hearing to show that the factual allegations in the recall petition are false and misleading. The interface between the constitutional right to due process, on the one hand, and the constitutional right to recall elected officials, on the other hand, has not been resolved by the Alaska Supreme Court.³ Simply stated, to what extent should a judge make a preliminary determination as to the truth or falsity of allegations in a recall petition that is legally sufficient on its face before the petition is submitted to the voters?

The defendants did not seek summary judgment on the plaintiffs' due process claim. Nor did the plaintiffs address the issue directly in their summary judgment pleadings. Accordingly, the court will not grant summary judgment to either party on the due process claim at this time. Instead, the issue will be discussed in the context of the plaintiffs' motion seeking issuance of a preliminary injunction that would halt the recall certification pending determination of the due process claim.

In balancing the hardships, the constitutional right of citizens to seek the recall of their elected officials is of a high magnitude. As the Alaska Supreme Court noted in Meiners, the constitutional provision for recall, together with the rights of initiative and referendum, "give voters a check on the activities of their elected officials above and beyond their power to elect another candidate when the incumbent's term expires." 687 P.2d at 294. "Like the initiative and referendum, the recall process is fundamentally a part of the political process." Id. at 296. Thus, even if Senator Ogan has a protected due process right to a legislative position for a specified term, he acceded to that

³ In von Stauffenberg, 903 P.2d at 1061, the Alaska Supreme Court declined to consider this due process issue because it was raised for the first time on appeal, rather than before the trial court. See also Meiners, 687 P.2d at 304, n.7.

legislative position subject to the constitutional right of Alaska's citizens to seek his recall before the end of the specified term. And permitting the recall issue to go before the voters in Senate District H does not necessarily mean that Senator Ogan is faced with irreparable harm. Rather, it will be for the voters of that district to exercise their constitutional right on the recall question, and only after Senator Ogan is accorded his statutory right to provide to the voters his justification for his conduct in office. See AS 15.45.680. Moreover, the recall statutes, with their requirements that the petition specify the grounds for recall with sufficient particularity and their provision for judicial review, accord a measure of procedural protections to the incumbent prior to the electorate's substantive consideration of the recall petition. In considering whether to issue a preliminary injunction, this court finds that the balance of hardships tips decidedly in favor of the constitutional right of the electorate to consider a petition to recall an elected official in a timely manner.

Moreover, given the repeated holdings of the Alaska Supreme Court that in evaluating recall petitions, courts are not to assess the truth or falsity of the allegations, this court finds that the plaintiffs have failed to demonstrate probable success on the merits on this due process claim. "The political nature of the recall makes the legislative process, rather than judicial statutory interpretation, the preferable means of striking the balances necessary to give effect to the Constitutional command that elected officials shall be subject to recall." Meiners, at 296. There is no statutory provision for an evidentiary hearing before a judge to assess the validity of the recall allegations. Therefore, the certification of the recall petition will not be enjoined on the basis of the due process challenge raised by the plaintiffs.

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Conclusion

For the foregoing reasons, the court GRANTS the defendants' motion for summary judgment on Counts I through III of the plaintiffs' complaint, and DENIES the plaintiffs' motion for a preliminary injunction with respect to Count IV of the plaintiffs' complaint.

DATED this 24th day of August, 2004.

Sharon Gleason
SHARON L. GLEASON
Judge of the Superior Court

I certify that on 8-24-04
a copy of the above was mailed to each of
the following at their addresses of record:

[Signature]
Administrative Assistant

Redo audio

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April 6, 2006

The Honorable Paul Seaton
Chair, House State Affairs Committee
State House of Representatives
State Capitol, Room 102
Juneau, AK 99801

Re: HB 438 (Initiative, Referendum, Recall Petitions)

Dear Representative Seaton:

At the April 6, 2006, House State Affairs Committee meeting the committee requested advice from our office on an additional question regarding HB 438. At that meeting the Committee was considering a new work draft CS for HB 438: 24-LS1344\R, Kurtz, 4/3/06.

The committee's question concerned the requirement set out in proposed AS 15.45.061(3), on page 2, at line 26, that a petition circulator be "a resident of the state as determined under AS 15.05.020." The committee asked: "If an individual who is registered to vote in another state moves to Alaska, and intends to establish residency here, lives in Alaska for an extended period of time, but does not register to vote in Alaska, can this individual attain Alaska residency under AS 15.05.020?"

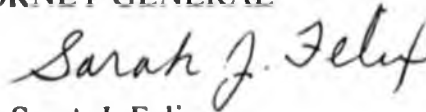
We believe that the answer to this question is "yes." AS 15.05.020(6) provides that a person who votes in another state's election loses Alaska residency;

the statute does not require that a person who is registered to vote in another state loses Alaska residency for voting purposes.

Do not hesitate to contact me if I can be of further assistance to your committee on this matter.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL



By: Sarah J. Felix
Assistant Attorney General

SJF/cjh

cc: Kevin Jardell, Legislative Liaison
Office of the Governor

Annette Kreitzer, Chief of Staff
Whitney Brewster, Director, Division of Elections
Office of the Lieutenant Governor

Deborah Behr, Legislation and Regulations Attorney
Randy Ruaro, Legislative Liaison
Attorney General's Office