12163 HOUSE JUDICIARY

-------ADDITIONAL ANNEDOTAL VIEWS AND SUPPORT ---------------------

Look at the history of atrocities and wars alone by errant leaders and despots; By their use and abuse of the publics assets an might

A Magnitude of consequences
A Consensus of opinions

It is imperative we as a peoples determine a harsh and fearful consequence for those who commit public betrayal.

No doubt there some will attempt to belittle, demean, bemoan, minimize the need, mitigate, castigate, by calling this declaration mean spirited, vindictive, malevolent, Ill willed, without foundation, ostracize, or in some other quasi-intellectual dialogue attempt to declare its foundation is too vague;

This proposed determination and findings of "Honorable or less Than Honorable" act does not deny or restrict; It simply says that the voting general public gets to make the determination as to the conduct of a public servant. The same elected or appointed official who ask for the publics trust should have faith that the public is quite capable of ferreting out the truth.
This conduct act is really an extension of the foundational values we use every day in our family lives, jury decisions, homes, and legal systems

And I would suggest to you that the foundation of this declaration is a reflection of the fundamental laws of the fabric of our society which are based on faith on trust in each other; as it is a relationship, in our families,

Cont......

I realize I am a simple man without much education and there may be need for reconsideration of its declaration; But, it seems to me that someone has to begin the discussion;
That we are on the edge of a new society, a better society,

This is my contribution and I am eager, anxious and excited to hear the dialogue of our larger collective society in its review to obtain a greater degree of leadership

Selective enforcement or application on public servants ?? All societies have done this.

As we hold those of the police to hold a higher standard,

The soldier in the military – military code of conduct
The reverend or priest in his faith and perseverance
Matrimony ---- vows of marriage
A doctor in practice
Etc.............
Based on a collective contribution of taxes from a society

Attached to the Above Notes:
Let it be known that I realize we need to address or redesign some of the political infrastructure used to elect our public officials..
how they are accessible to us..
their compensation terms...
their time or terms spent in office..
how in divisive times we can pole our general citizenry for resolution....
the role of parties and their affects on the representation of issues...
how we can terminate or remove them from office asap procedurally....
And the influential power of the incumbency,
as well as the penalties above such as :
No doubt, others I have not mentioned.

----

1) declare a public state wide video channel as an official election channel and require the officials to be sworn in before their political commentary and other standards

2) It is necessary to establish a c-span type channel or channels for Alaska so that we as a state wide community may watch our public officials conduct business in an accessible manner of oversight.

3) and more is needed – I am time restricted !

Paul D. Kendall ______________________date __________1-4-07

Look, I know its hard to be a public servant and / or a politician also; But. Something has to be done. We can't go on this way and remain a viable society. (We need to increase the salary a politician makes so he/she can support their loved ones and still serve a calling— that also, would encourage more persons to be involved enough to run for office, plus many other improvements ---)

We have to make a stand somewhere to set an example for the rest

END ---------

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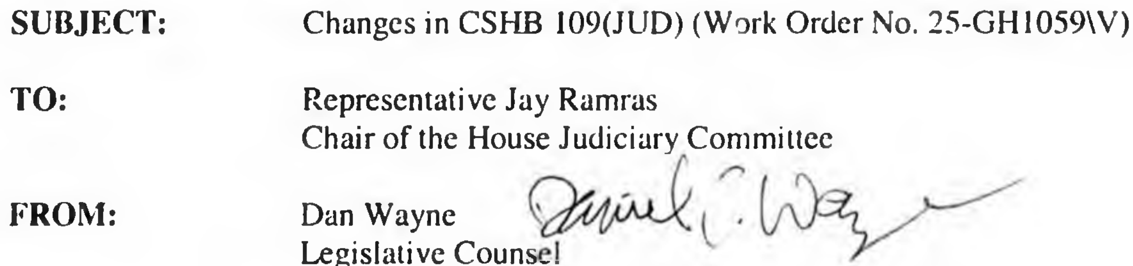
<u>MEMORANDUM</u> March 26, 2007



SUBJECT: Changes in CSHB 109(JUD) (Work Order No. 25-GH1059\V)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee

FROM: Dan Wayne
Legislative Counsel

Enclosed is the referenced CS.

1. We reworded amendment 36 (concerning AS 24.60.100) to try to make it clearer. You may want to check with the sponsor to make sure the draft is correct.

2. Amendment 4 (concerning AS 24.60.080) required extensive changes. You may want to show this memo to the sponsor of amendment 4.

A. Because of the deletion of AS 24.60.080(c)(10), we also had to amend AS 24.45.121(a)(9), AS 24.60.030(a)(1), and AS 24.60.990(a)(2)(A).

B. Because of the deletion of "during a legislative session" we also had to amend AS 24.45.121(a)(9).

C. We also modified the language in new AS 24.60.080(a)(2)(B) to reflect the fact that it is a subparagraph, not a paragraph, and to change the reference to "(a) of this section" to "(1) of this subsection". We did not delete "from a lobbyist" in new (a)(2)(B), although arguably this language should be changed to include family members and those acting on behalf of lobbyists.

D. We moved the material in AS 24.60.080(k) into AS 24.60.080(c)(5) and repealed AS 24.60.080(k) since it was now to apply only to (c)(5). We added "immediate" before "family member" in AS 24.60.080(i) but did not include a reference to AS 24.60.990 because that definition will automatically apply now that AS 24.60.080(k) is repealed.

E. As requested in amendment 4, we deleted "solicit" from AS 24.60.080(a)(2), but left it in AS 24.60.080(a)(1). Was that the sponsor's intent?

We concurred with the suggestion of Senior Assistant Attorney General Dave Jones and moved "information about" from line 14 to line 11 on page 24, and changed "electoral confirmation" to "judicial retention" on page 2, line 8. However, AS 15.13.010(a)(1) still uses "electoral confirmation," which should be changed as well.

Please note that amendment 31, adding "general election" to AS 24.60.030(c), makes it unclear whether the period starts 90 days before the primary election or 90 days before the g[illegible]eral election. You may want to speak to the sponsor about this.

I[illegible] may be of further assistance please advise.

DCW:lmb
07-072.lmb

Enclosure

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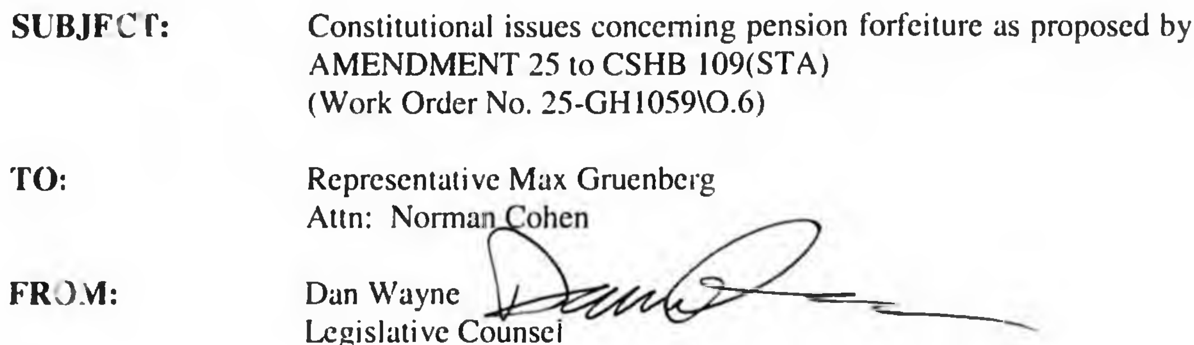
MEMORANDUM March 23, 2007



SUBJECT: Constitutional issues concerning pension forfeiture as proposed by AMENDMENT 25 to CSHB 109(STA)
(Work Order No. 25-GH1059\O.6)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Dan Wayne
Legislative Counsel

You have asked for a constitutional analysis of draft amendment 25-GH1059\O.6 which is before the House Judiciary Committee as AMENDMENT 25 to CSHB 109(STA). The amendment raises several constitutional issues. It is not possible to predict with certainty, but the court would probably resolve most of them in favor of the state if the amendment becomes law.

1. Accrued state retirement benefits shall not be diminished or impaired.
Article XII, sec. 7 of the Constitution of the State of Alaska says:

> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

A right to benefits under a state retirement system vests immediately upon the employee's enrollment in the system.[1] While the retirement system may be changed to permit the pension system to make adjustments, the modifications must be reasonable and any change that results in a disadvantage to employees must be offset by comparable new advantages.[2] Rights that are protected by the constitution include not only the amount of benefits, but also the requirements for eligibility.[3] Both eligibility and amount are at issue in AMENDMENT 25.

---

[1] *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981).

[2] *Hoffbeck* at 1057.

[3] *Hoffbeck* at 1058.

AMENDMENT 25 would diminish accrued benefits, but only those benefits accrued on or after the date of the criminal offense. An argument can be made that those after-acquired benefits are tainted by the offense, either directly or indirectly, depending on the facts of a case. A state employee, for example, can be terminated instantly upon the discovery of work-related felony conduct. If the employee's felony is undiscovered and the employee continues to work, it may be said that the benefits accrued from the work are not legitimately acquired because they were acquired by the employee's concealment of a work-related felony. The state's interest in maintaining the public's trust in government is substantial. In this type of case, and in others, the court may find that this substantial government interest outweighs a person's constitutional right to an undiminished benefit, particularly when the diminishment is limited as in AMENDMENT 25.

2. <u>Equal rights are guaranteed.</u>
Article I, sec. 1 of the Constitution of the State of Alaska says:

> This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

The court resolves constitutional issues by using a balancing test to weigh the state's interest against the interest of the person or persons impacted by the state's proposed action. The test used depends on the constitutional provision at issue.

> [T]he Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit.[4]

[4] *Malabed v. North Slope Borough*, 70 P.3d 416, 420 - 421 (Alaska 2003).

In this instance it can be argued that persons who may be subject to forfeiture if the bill becomes law -- legislators, legislative directors, and public officers[5] -- are entitled as much as other persons to enjoy the rewards of their own industry, in this case a pension. AMENDMENT 25 creates a special class of person and denies them something all persons in the state are guaranteed; therefore, in order to survive a challenge if it becomes law, it will have to withstand the highest of the three levels of scrutiny in the three-part balancing test applied by the court. [6]

3. <u>Cruel and unusual punishment is prohibited.</u>
Article I, sec. 12 of the Constitution of the State of Alaska says:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.

Our courts have found this section entitles a convicted offender to a fair sentence. In fashioning a fair sentence, judges are required to take into consideration a number of things, including the ones listed in this section, but also things like the offender's prior criminal history or lack of one, the need to deter others from offending, and the principle that sentences for like offenders should be similar. Our court is not likely to find that constitutional fairness requirements at sentencing can be relaxed because the state's interest in preserving public trust in government is so great as to outweigh the right of a legislator or public official to a fair sentence; however, in the civil case the person would arguably have less at stake than freedom from incarceration. The court could find that a person's right to a pension is outweighed, in the context of a felony-based pension forfeiture, by the governmental interest at stake.

In a criminal forfeiture, property is taken before conviction occurs and often not returned unless the state fails to prove the criminal case. In AMENDMENT 25 forfeiture is not automatic. For example, it will not occur unless a hearing officer hears evidence and argument in a new civil proceeding, separate from the criminal case, under the

---

[5] In the bill, "public officer" means: a public employee, a member of a board or commission, or a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties.

[6] For example, the Alaska Supreme Court has said Alaska has a substantial governmental interest in campaign finance reform that justifies some restriction on First Amendment freedoms. *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156 (2000).

Administrative Procedure Act. The state will have to prove that the conduct upon which the conviction was based was "in connection with the person's official duties."[7]

4. <u>No conviction shall work corruption of blood or forfeiture of estate.</u>
Part of art. I, sec. 15 of the Constitution of the State of Alaska says, in part: "No conviction shall work corruption of blood or forfeiture of estate." This stands for the principle that the punishment for a crime should not reach beyond the offender, or affect the right to property that has been acquired legitimately. AMENDMENT 25 allows some or all of a pension that would otherwise be forfeited to be awarded to dependents of the convicted person, as the hearing officer determines.[8] This partially addresses the constitutional issue concerning the forfeiture's reach beyond the convicted person, and AMENDMENT 25 would probably be upheld with regard to that issue. AMENDMENT 25 also protects from forfeiture benefits accrued before the date of the offense. This makes it less vulnerable to a constitutional challenge on the basis that legitimately acquired benefits are at stake.

You asked if the term "dependent," on page 2, line 23, includes a spouse. The terms "dependent" and "spouse," which appear in the bill in AS 37.10, are not defined in AMENDMENT 25, and therefore it would be up to the hearing officer or the court to interpret their meaning. Since AMENDMENT 25 relates to pension forfeiture, to the extent the legislature does not take the opportunity to clarify the term "dependent," a hearing officer or court would likely refer first to words and phrases applicable to the general pension provisions for public employees, codified in AS 39.35.010 - 39.35.680 (defined benefits) and AS 39.35.700 - 39.35.990 (defined contributions). In both instances, "dependent" appears as a modifier of "child" in the phrase, used throughout the chapter, "dependent child"; in the same body of material, AS 39.35, a "spouse" is referred to as a "surviving spouse." The differences between AS 39.35 and the bill's choice of the term "dependent" provides no definitive clue as to what the legislature is intending. At least arguably, it is more likely than not that the hearing officer or court would equate the rights of a "surviving spouse" as at least the equivalent of the rights accorded to a "former spouse" and make some provision for payment of a partial reward to a current spouse. If that is the outcome, then the administrative officer or court would in effect be extending to the "current spouse" the status of a "dependent," notwithstanding the absence of a clear statement on the point.

Rather than leave the outcome to chance, while the bill is under consideration, the legislature should step up and clarify direction on this point.

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[7] Under the evidence rules described in AS 44.62.460 of the Administrative Procedure Act, the state would have the burden of proving its case by a preponderance of the evidence.

[8] AMENDMENT 25 could be clearer as to whether or not a dependent has the same right to a hearing or an appeal as the convicted legislator does.

Finally, in reviewing the bill for this memo it occurred to me that the term "convicted," on page 2, line 7, might need to be defined in order to avoid confusion about its meaning in situations involving appeals, conviction reversals, plea-bargains, suspended imposition of sentences, and pardons. There might be a particular constitutional issue, and other legal and logistical problems, in connection with a forfeiture in any one of these situations. A definition might say: under this section a person is convicted if they have been sentenced and the time for filing of a merit appeal has expired; however, a person is not convicted if pardoned by an act of executive clemency or if the trial court order or judgment of conviction is reversed or expunged.

If I may be of further assistance, please advise.

DCW:ljw:med
07-204.med

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MEMORANDUM March 22, 2007

SUBJECT: Amendments relating to lobbying activities by a spouse or domestic partner of a legislator
CSHB 109(STA) (Work Order Nos. 25-GH1059\O.2 and \O.36)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion as to the differences between proposed amendments 25-GH1059\O.2 and 25-GH1059\0.36. In an earlier memorandum, dated February 26, 2007, I expressed my belief that a court might interpret the former (O.2) as unconstitutional. That amendment read in relevant part:

> The spouse or domestic partner of a legislator may not engage in activity as a lobbyist. This subsection does not prohibit the spouse or domestic partner from acting as a volunteer lobbyist under AS 24.45.161(a)(1) or a representational lobbyist, as defined in regulation by the commission.

While the state has a legitimate interest in regulating lobbyists,[1] preventing corruption and any appearance of corruption, and while 25-GH1059\O.2 might be intended to promote public confidence in the integrity of legislators; "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

25-GH1059\O.2 is not narrowly tailored but disallows all paid lobbying by spouses and domestic partners of legislators; not lobbying on issues before committees on which a legislator's spouse or domestic partner might serve, a matter on which the legislator's spouse or domestic partner will vote, etc. In justifying any infringement on the personal liberty of legislators' spouses and domestic partners, the state would have to demonstrate a compelling interest in the purposes advanced by the restriction and an absence of less

[1] See McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995).

restrictive alternatives in realizing these ends. It was my contention that there were less restrictive alternatives than the O.2 amendment.

The second amendment, 25-GH1059\O.36 reads in relevant part:

> A legislator or legislative employee may not [ ] communicate directly with a spouse or domestic partner of a legislator if the spouse or domestic partner is registered as a lobbyist under AS 24.45.041 and the communication concerns legislative action; in this paragraph, "legislative action" has the meaning given it in AS 24.45.171.

This second amendment does not operate to prohibit the spouse or domestic partner of a legislator from lobbying municipalities or the executive branch, and it does not deny them the opportunity to engage in an economic endeavor within a particular industry (lobbying).[2] The amendment is better directed at the locus of possible impropriety, undue influence, and conflicts of interest; the possibly suspect relationship between legislators and the lobbyist spouses or domestic partners of legislators. It is my opinion that this second amendment, 25-GH1059\O.36 is more "narrowly drawn and represent[s] a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, at 611 - 612.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-196.med

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[2] See State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989) (The right to engage in an economic endeavor within a particular industry is an "important" right for state equal protection purposes) and Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003) (close scrutiny of enactments impairing the important right to engage in economic endeavor requires that the state's interest underlying the enactment be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close).

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MEMORANDUM March 21, 2007

SUBJECT: Prohibition on legislative constituent "newsletters"
(CSHB 109(STA); Work Order No. 25-GH1059\O.37)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

The draft amendment relating to a prohibition on the sending of "newsletters" by legislators to constituents in the 60 day period preceeding an election in which a legislator or legislative employee is a candidate is enclosed. I have two comments.

Constitutionality

As I have explained to Mr. Cohen of your staff, please be advised that the amendment's prohibition on the use of funds from a legislator's office account (AS 24.10.110) or Public Office Expense Term (POET) account may be challenged as (1) a violation of a legislator's right to engage in political speech as guaranteed by art. I, sec. 5 of the Alaska Constitution and the First and Fourteenth Amendments to the United States Constitution, (2) insufficiently tailored to a compelling governmental purpose (witness the multifold advantages of incumbency, i.e. press releases, appearances as a legislator at public meetings and on television and the radio, posting to a web page or electronic constituent newsletter, see generally Common Cause v. Bolger, 574 F. Supp. 672 (1981)), and more distantly (3) as a possible violation of the separation of powers in creating a role for the judiciary to interpose in the legislative department between the constituent and his representative, see United States v. Ford, 830 P.2d 596 (1981) and United States v. Brewster, 408 U.S. 501, 524 (1972).

Drafting Issue

I told Mr. Cohen that I believed that AS 24.60.030(c) operated to prohibit the state funding of the mailing of constituent newsletters during a campaign period. While this interpretation was based in part on an opinion found in the April 2006 edition of the Select Committee on Legislative Ethics' "The Advisor" (see "campaign related questions"), a closer reading of the statute reveals that general elections are absent from those elections included under AS 24.60.030(c)(1). In addition to your draft amendment requests, I have further amended AS 24.60.030(c) to resolve any such question as to its applicability by including the general election.

If you have any questions or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
07-145.ljw

Enclosure

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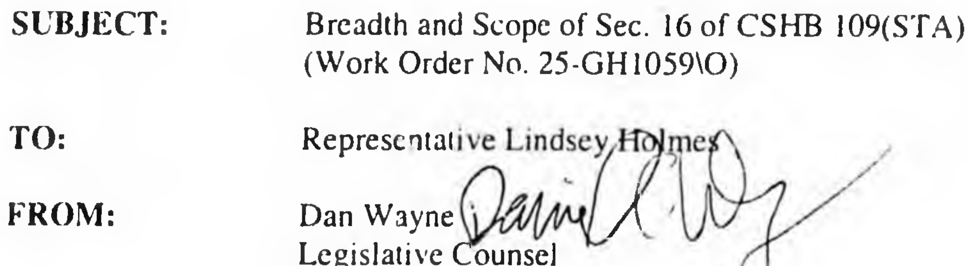
MEMORANDUM March 21, 2007

SUBJECT: Breadth and Scope of Sec. 16 of CSHB 109(STA)
(Work Order No. 25-GH1059\O)

TO: Representative Lindsey Holmes

FROM: Dan Wayne
Legislative Counsel



You have asked for an analysis regarding the breadth and scope of the above-referenced bill section, particularly concerning to whom, and to what, it would apply to.

AS 24.60.100 currently reads:

> A legislator or legislative employee who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place to the committee. The disclosure shall be made by the deadlines set out in AS 24.60.105. The committee shall maintain a public record of a disclosure under this section and forward the disclosure to the respective house for inclusion in the journal. A legislator or legislative employee may not represent another person for compensation before an agency, committee, or other entity of the legislative branch.

If amended as proposed by sec. 16, AS 24.60.100 would read:

> A legislator or legislative employee may not represent another person for compensation before a municipal, legislative, or executive branch agency, board, or commission.

The main difference between the two versions is in the approach. The existing law allows compensated representation and requires disclosure of that representation, while the proposed new version prohibits compensated representation.

"Representation" is defined in AS 24.60.990 as

> . . . action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

This means that if the amendment proposed in sec. 16 becomes law, a legislator-lawyer, or any other person who is a legislator or a legislative employee, would be prohibited from doing just about anything for a client in a state matter[1] unless or until the matter is before the judicial branch. For example, the legislator or legislative employee would be prohibited from offering any paid assistance to someone in a child support enforcement matter until it has gone from the initial investigation through the final decision of an administrative hearing officer and is on appeal in the court. I think a legislator or legislative employee would still be allowed to be an unpaid witness before the case gets to court, but the person would not be able to do much else, including offer private advice to another person, if the person receives compensation.[2]

Obviously the language goes beyond application only to legislators or legislative employees who are lawyers. Would it prohibit a legislator who is a building contractor, for example, from obtaining a municipal building permit for a customer? I think it might. I am not as certain, and perhaps it is just a question of how the Ethics Committee interprets the meaning of the language in the future, about whether sec. 16 would apply to a legislator or legislative employee who is, for example, a retail worker involved in a retail business's application for a state or municipal license, an accountant involved in preparing her employer's state or municipal compliance documents (i.e., tax forms, etc.), or a restaurant manager communicating with a DEC inspector about compliance issues. I think that many employees can think of at least one instance where they might be involved in "representing" their regular employer, and I don't know if a showing that the representation is simply part of the person's regular employee duties for which the person is already compensated would be enough to exempt the person from the prohibition in sec. 16.

If I may be of further assistance, please advise.

DCW:ljw
07-148.ljw

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[1] In my opinion it would be an unreasonable stretch to interpret the statute as applicable to federal legislative and executive branches.

[2] According to the applicable definition in AS 24.60.990(4):

> "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

Westlaw.

AK ST § 24.60.990

Page 1

AS 24.60.990

ALASKA STATUTES
Title 24. Legislature.
Chapter 60. Standards of Conduct.
Article 5. Miscellaneous and General Provisions.
→Sec. 24.60.990 Definitions.

(a) In this chapter,

(1) "administrative action" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use;

(2) "anything of value," "benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; "anything of value," "benefit," or "thing of value" does not include

(A) an item listed in AS 24.60.080(c);

(B) campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support;

(C) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction; or

(D) grants under AS 37.05.316 to named recipients;

(3) "committee" means the Select Committee on Legislative Ethics and includes, when appropriate, the senate or house subcommittee,

(4) "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

(5) "domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage.

(6) "immediate family" means

(A) the spouse or domestic partner of the person; or

(B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

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(7) "income" means assets that are received, regardless of whether they are earned or unearned; inheritances and other gifts are not income;

(8) "knowingly" has the meaning given in AS 11.81.900;

(9) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

(10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;

(12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, but does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;

(13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;

(14) "registered lobbyist" means a person who is required to register under AS 24.45.041;

(15) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

(16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of $10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

Current through all 2006 Legislation, Annotations current through Opinions Decided as of July 1, 2006.

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STATE OF ALASKA

Sarah Palin, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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February 26, 2007

The Honorable Bill Stoltze
State House of Representatives
State Capitol, Room 501
Juneau, AK 99801

Re: Amendment of Laws Enacted by Initiative

Dear Representative Stoltze:

During a budget hearing on February 15, 2007, you requested that our office provide you with an analysis on two matters related to voter initiatives. You asked, first, for a summary of the case law on the legislature's authority to amend a law enacted by voter initiative within two years of enactment, and second, for a history of the legislature's amendments to initiatives during those first two years. The reason to examine the legislature's authority to change an initiated law during the first two years that the law is effective is the prohibition in the Alaska Constitution against the repeal of an initiative during those years. Alaska Const., art. XI, sec. 6. This limit on repeal has been interpreted to restrict the legislature's power to amend an initiated law during its first two years even though the Constitution expressly permits amendments to initiated laws at any time.

1. Summary of the case law

The Alaska Supreme Court has addressed the legislature's authority to amend an initiated law in three cases, although it has reviewed the actual exercise of this authority in only one case. The first case in which the Court discussed the subject is *Warren v. Boucher*, 543 P.2d. 731, 737 (Alaska 1975), a case reviewing the legislature's exercise of its authority to void an initiative petition by enacting substantially the same measure in legislation. Alaska Const., art. XI, sec. 4. The power to amend was described as "broad" and "a check or balance against the initiative process." 543 P.2d. at 737.

The Court speculated that the purpose of the power to amend was

> to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be *altered or corrected* rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. [*Id.* (emphasis added).]

Two years later, in *Warren v. Thomas,* 568 P.2d 400, 402-03 (Alaska 1977), the Court considered a challenge to the legislature's amendment of laws adopted by initiative. The initiated laws concerned public official financial disclosure, and the legislature amended them soon after they became effective. The amendments moved the deadline for filing financial disclosure reports from February to April of 1975 and excused public officials leaving office from the obligation to file. Although the amended laws differed in many respects from th initiative measure, the Court found that the amendments did not amount to a repeal. "[t]here are considerable language changes, but, these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant," and "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.* at 402. The changes were not found to so vitiate the regulatory scheme "as to 'constitute its repeal.'" *Id.* (quoting *Boucher,* 543 P.2d. at 737). Although it upheld the amendments under review in *Thomas,* the Court clearly viewed the prohibition against repeal as a limitation on the legislature's authority to amend an initiative. For an amendment to be authorized during the first two years of an initiative, it must continue to further the intent of the voters.

The third case in which the Court discussed the legislature's power to amend an initiative was *State v. Trust the People,* 113 P.3d 613, 623 (Alaska 2005). That case concerned the legislature's exercise of its power to supplant an initiative measure by passing a substantially similar law, rather than its power to amend after an initiative is enacted by the voters. Although the Court recognized that the power to supplant is somewhat narrower than the power to amend, the Court relied in part upon its earlier decision in *Thomas.* The Court characterized *Thomas* as holding that "amendments to popularly-initiated legislation must still 'effectuate the intent of the electorate' and an amendment that 'so vitiates an act passed by initiative as to constitute its repeal' is not acceptable." *Id.* at 623 (quoting *Thomas*, 568 P.2d at 403).

In *Trust the People* the Court identified three factors relevant to determining whether a proposed initiative and legislation were substantially the same. Although this

3 prong test re: supplant

test was developed with regard to the power to supplant, rather than the somewhat broader power to amend, the test may also be helpful in determining whether proposed changes would continue to promote the same goals of the electorate in enacting the initiative. First, the scope of the subject matter is important: "The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative," *Id.* at 620-21 (quoting *Boucher,* 543 P.2d. at 736), and conversely, "the simpler and more focused a law is, the fewer details that can be adjusted without effecting a fundamental change in the measure's purpose and effect." *Id.* at 621. Second, whether the general purpose of the amended initiative would be the same as the original is important. Clues to the purpose of the initiative can be found in the text of the initiative measure, the ballot summary for the measure, and the arguments published in connection with it, such as the supporters' statement in the voter's pamphlet. *Id.* at 622. Third, the Court examines whether the initiative and proposed legislation employ the same means to accomplish its purpose. The means can be similar, rather than identical, so long as they truly accomplish the goals of the initiative measure. *Id.*

In *Trust the People*, the Court applied the test to determine whether a proposed initiative restricting the governor's power to appoint a temporary United States Senator should be supplanted by legislation retaining that authority temporarily until the results of a special election to fill the vacancy could be certified. The Court found that the scope of the initiative was narrow, filling a vacancy, and that its purpose, to eliminate the governor's appointment power, was significantly different from the purpose of the legislation, which provided for the governor to retain this authority. In addition, the means chosen to fill the vacancy, particularly with regard to the role of the governor, were dissimilar. The Court concluded that the proposed initiative and the legislation were not substantially the same and held that the legislation did not supplant the proposed initiative.

2. History of legislative amendments during the first two years of an initiative measure's enactment

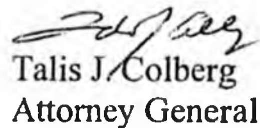
Our research discovered few amendments to initiated laws during the first two years of their enactment. We found two, in addition to the 1974 public official financial disclosure initiative enacted in 1974 and examined in *Thomas,* 568 P.2d 400, that was discussed previously. The legislature adopted a number of amendments to a 1998 initiative on the medical use of marijuana. A copy of 1999 Inf. Op. Att'y Gen. (May 24; 883-99-0037) (providing an analysis of the bill amending the initiated law) is attached for your information.

The legislature also amended the gas line initiative enacted in 2000 by changing the definition of "project." An analysis of that bill is also attached. In addition, various

"housekeeping" amendments to sections enacted by the gas line initiative were made by the 2003 "revisor's bill." CSSB49(STA) (secs. 54, 55, 56, 57 & 58, ch. 35, SLA 2003). These amendments are by definition minor and corrective and do not change the meaning of any law. AS 01.05.031.

If you have additional questions or further assistance is required, please do not hesitate to contact me.

Sincerely,



Talis J. Colberg
Attorney General

Enclosures

cc w/enc: John Bitney, Legislative Liaison, Office of the Governor
AAG D. Behr, Legislation & Regulations, Acting Legislative Liaison, Office of the Attorney General

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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May 24, 1999

The Honorable Tony Knowles
Governor
P. O. Box 110001
Juneau, AK 99811-0001

Re: HCS CSSSSB 94(FIN) -- Relating to the Medical Use of Marijuana
A.G. file no: 883-99-0037

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed HCS CSSSSB 94(FIN), relating to the medical use of marijuana.

The medical marijuana law enacted by voter initiative in the 1998 general election contained ambiguous language, and as a result contained a large number of provisions that make the law difficult to administer, difficult to enforce, and difficult to interpret. These problems could not have been envisioned by the voters.

The goal of this Administration was to fix the problems in the voter initiative in order to make the law work, that is, to give effect to the intent of the voters to allow marijuana to be used to address debilitating medical conditions under appropriate controls.

In assessing HCS CSSSSB 94(FIN) (hereafter referred to as SB 94), it is helpful to bear in mind that the legislature heard a great deal of testimony about the potency and profitability of marijuana. In addition to consistent police testimony that marijuana grown in Alaska is among the most potent grown anywhere in the world, the legislature took testimony from medical marijuana users. In particular, the House Judiciary Committee heard very compelling testimony from a user who described how, in the last few months, he was able to stop using prescription narcotic pain medications by substituting marijuana. This individual testified that he had been taking an amount of narcotics that would likely kill an ordinary person who had not built up a level of tolerance to the drugs. He also indicated that marijuana of this quality sells for $500-600 per ounce, which was supported by police testimony that Alaska-grown marijuana often sells for $4,000-5,000 per pound, or more. Thus the testimony showed that marijuana is a powerful drug capable of producing similar pain-killing effects as narcotics, and creating an enormous profit potential, all of which supported the

legislature's desire that medical use of marijuana remain under appropriate controls and not be subject to abuse.

Legal Standard

Under art. XI, sec. 6, of the Alaska Constitution, a voter initiative cannot be repealed for two years, but may be amended at any time. Alaska case law holds that the legislature has broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). There seems to be a sliding scale analysis, such that "[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." Medical use of marijuana is a fairly narrow topic, so we should assume for purposes of this analysis that a court will look more closely at any amendments than they would if the subject matter were broader. Nevertheless, the legislature can amend an initiative if the amendments "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977). As discussed more fully below, we believe that the amendments to the initiative made by this bill are valid because a court will find that they are certainly much more than a "hollow gesture" toward medical use of marijuana. 543 P.2d at 739.

Moreover, much of the original initiative still remains. For example, the proponents of the initiative specifically did not require a prescription by the physician, so as to avoid what they characterized as the practice in other states in which the federal authorities threatened action against doctors writing such prescriptions. SB 94 retains this provision and requires only that the physician consider other approved medications and treatments. By not requiring a formal prescription, SB 94 avoids an argument that the amendment is simply a "subterfuge to frustrate the ability of the public to obtain consideration and enactment" of a law allowing use marijuana for medical purposes. *Id.*

Main Changes made to the Initiative

The Department of Health and Social Services, Department of Public Safety, and Department of Law identified several changes needed to make the medical marijuana law work, and SB 94 addressed most of these issues. The issues that were important to this Administration were:

- Recognize that marijuana, like other prescription drugs, should be a controlled substance, regardless of how it is used.
- Prohibit patients from selling or distributing marijuana.
- Limit the number of patients who can be supplied marijuana by the same person.
- Require mandatory registration with the Department of Health and Social Services.

- Limit possession to one ounce and six plants.

- Allow police to take action in medical marijuana cases just as with misuse of a prescription for a narcotic drug, and make the legal burden of proof for medical marijuana consistent with that applied to other drugs.

- Allow access to the registry in criminal investigations.

Each of these points is discussed below and analyzed in terms of the legal standard set out above.

Marijuana Should Be a Controlled Substance, Regardless of How It Is Used. The medical marijuana initiative provides that marijuana used for medical purposes is not a "controlled substance." AS 11.71.190(b). This seemingly insignificant change has serious legal consequences because many other state laws depend on the phrase "controlled substance." For example, it is a crime to possess a firearm while under the influence of alcohol or a controlled substance. AS 11.61.210(a)(1). Thus, because medical marijuana is no longer a "controlled substance," a patient intoxicated on marijuana could lawfully possess and use a firearm. Although the laws relating to driving while intoxicated use a different definition of controlled substance, and thus we believe that a patient can be convicted for driving after using marijuana, an attorney for the legislature has written an opinion that suggests that it is possible a court would not allow prosecution or conviction for driving while intoxicated.

By continuing to treat marijuana as a "controlled substance," SB 94 takes into consideration the potential for abuse of the drug, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Prohibit Patients from Selling or Distributing Marijuana. The medical marijuana initiative contains an oddly worded provision that would allow registered patients to sell or give marijuana to anyone else, as long as the registered patient did not know that the buyer was not eligible to be registered. AS 17.37.040(a)(3). The legislature heard testimony that this could lead to the problem encountered in California, where retail outlets, euphemistically called "marijuana clubs," sprung up after the medical marijuana initiative was enacted in that state.

There was legislative testimony that the price of marijuana in California clubs ranged from $20 to $120 for one-eighth of an ounce, thus offering a product selling for nearly $1,000 per ounce. One large marijuana club in San Francisco had profits of $1 million per month before it was shut down. Although California authorities were able to close that business, it appears that the Alaska medical marijuana initiative would allow selling by patients.

SB 94 takes into consideration the potential for abuse of the drug and making a profit on its use, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Limit the Number of Patients Who Can Be Supplied Marijuana by the Same Person. The initiative is silent as to the number of patients who can be supplied marijuana by a single caregiver. If one person is allowed to supply marijuana to multiple patients, at least two problems are created. First, the designated caregiver would be allowed to possess one ounce plus six plants for each patient, thus allowing large growing operations, and the caregiver could transport and distribute multiple ounces of marijuana. Second, the caregiver would almost certainly have a large profit-making incentive and could easily take advantage of patients, as was done in the California marijuana club selling marijuana for triple the price of gold. SB 94 also prohibits convicted felony drug offenders from being caregivers and raises the minimum age for caregivers to 21, which is consistent with laws relating to possession of alcohol.

SB 94 also changed the definition of "primary caregiver," so as to give patients a broader choice of persons to assist them in obtaining marijuana. Moreover, the bill also eases a restriction in the initiative by allowing each patient to have a primary caregiver, as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. Thus, while SB 94 imposes some different requirements on caregivers in light of the potential for abusing the drug and making a profit on its use, at the same time the bill allows patients additional flexibility to designate "caregivers."

The changes to the laws on caregivers do not repeal the initiative.

Mandatory Registration. The marijuana initiative allows patients to register with the Department of Health and Social Services, but does not require it. From a quick reading of the initiative, it is not immediately apparent that persons are allowed to use marijuana for medical purposes even if they have not registered with the Department of Health of Social Services. Yet a careful legal review discloses that this is the result. AS 17.37.030(a).

The optional registration was described in testimony by many police administrators as a serious practical problem for the police. If a person tells a police officer that he or she is possessing marijuana for medical purposes, but is not registered, the officer has two choices, neither of which is acceptable: the officer can seize the marijuana and arrest the person, thus possibly depriving someone of a substance the person legitimately needs for medical care, or the officer can let the person go on his or her way, thus in essence overlooking a criminal act if the person cannot legally use the substance.

The prime sponsor of the initiative testified that some persons with debilitating conditions may choose not to register because they believe it is a violation of their privacy. However,

those fears should be allayed because the application process for registration does not require the patient to disclose the nature or symptoms of their condition. Moreover, the police will not have access to the registry for general investigative purposes and will be allowed access only to confirm that a person who claims to be registered is in fact registered. Mandatory registration is a protection for patients, because the police will be able to determine immediately that they can lawfully use marijuana for medical purposes.

Mandatory registration also cures unintended problems that arise because the initiative treats registered users differently from unregistered users in several ways. One of the examples of this different treatment is that registered patients cannot use marijuana in public. AS 17.37.040(a)(2). Yet there is no similar restriction for unregistered users. Unregistered persons who uses marijuana in public can therefore do so freely, as long as they can show they have a medical need to use marijuana. This difference in treatment is hard to justify, and thus a registered patient is likely to be able to convince a court that it is a denial of equal protection of the laws, and a restriction on their right to use marijuana, that a registered patient is prohibited from doing in public what an unregistered person can do. Without mandatory registration, the initiative would allow marijuana to be openly used in public, which could lead to a backlash against the law.

Even though SB 94 requires registration for all marijuana users, whereas the initiative makes registration optional, we do not believe this change can be characterized as a repeal of the initiative as lawful medical use of marijuana is still permitted under the bill.

Limit Possession to One Ounce and Six Plants. SB 94 limits patients to possessing one ounce plus six plants of marijuana. The one-ounce-plus-six-plants limit is contained in the original ballot initiative that enacted the medical marijuana provisions, and thus is current Alaska law. AS 17.37.020(a). As such, it is presumptively valid. Because SB 94 adopts that same limit, it would also be presumed to be valid by the courts.

The ballot proposition goes on to provide, however, that patients can possess more than one ounce and six plants if they can prove by a preponderance of the evidence that a greater amount is "medically justified." AS 17.37.020(b). SB 94 does not adopt this exception.

Although the prime sponsor of the ballot initiative testified that some patients want to have more than one ounce plus six plants, there was no testimony before any committee that explained why that is so from a medical perspective. One medical marijuana user who testified in House Judiciary Committee did not register any objection to the one-ounce-plus-six-plants limit. Indeed, there was evidence presented that this is a large amount of marijuana for personal use for medical purposes.

There was testimony in committee hearings that the *average* mature marijuana plant seized by the Alaska State Troopers in 1998 provided four ounces of dried and usable marijuana, that

is, the dried leaves, buds and seeds, with roots and stalks removed. There was also testimony in the House HESS Committee from a Fairbanks police officer who participated in the investigation of one of the largest marijuana growing operations, where plants tended by a skilled grower were up to 10 feet tall and yielded up to two pounds of marijuana each.

The three mature marijuana plants allowed by SB 94 provide an average of 12 ounces of usable marijuana. The committee testimony showed that the three other plants provide an average of three more ounces, for a total of 15 ounces of usable marijuana in plant form. Thus the testimony establishes that one ounce plus six plants, on average, yields one pound of usable marijuana.

The House Judiciary Committee heard testimony from a user of marijuana for medical purposes, who indicated that his medical needs required one ounce of marijuana every 10 days. The House HESS Committee heard testimony from a federal official who indicated that each marijuana cigarette uses about one-half gram of marijuana, thus yielding 56 cigarettes per ounce. The federal official's testimony assumed a duration of effectiveness lasting only two hours per cigarette, which means a person would need eight cigarettes per day to stay under the influence of marijuana for 16 hours, or essentially all their waking hours. Even at this unrealistically high rate of consumption of low-grade marijuana, one ounce would last a week for a heavy user of marijuana for medical purposes.

The testimony before the legislature thus shows that a patient with one ounce plus six plants has, on average, access to 16 ounces of marijuana, which provides a constantly regenerating 16-week supply, even if they use it at a rate that keeps them intoxicated all the time. There was no evidence, and no testimony, that this amount is not adequate for patients for medical purposes.

The portion of the ballot initiative that allows more marijuana if the patient proves it is "medically justified" raises two primary issues. The first issue is the practical difficulty created for police officers if every patient is allowed to possess a different amount of marijuana, depending upon what the patient can later show in court. Testimony by police officials showed that the best approach for both police officers and patients is a clear "bright line" rule that establishes a set amount that can be possessed. This was a matter of policy for the legislature to consider.

The second issue revolves around the "medical justification" that would authorize more than one ounce plus six plants. While this can be characterized as a question of medical care, it appears that this, too, was a policy matter for the legislature.

In terms of actual *medical* justification, a patient needs only enough marijuana for his or her immediate use. Anything more than that is not a matter of medical *need*, but a matter of convenience for the patient or the patient's caregivers.

It may very well be the case that possessing four ounces of usable marijuana, or eight ounces, or possessing 12 plants or 24 plants is more convenient for the patient than one ounce plus six plants. But there was no testimony in any committee that there is any possible *medical* justification for greater amounts than one ounce plus six plants. The issue for the legislature, then, was whether the increase in convenience outweighs the risks in allowing greater amounts of marijuana to be freely possessed, grown, and transported by patients and caregivers. Whether to allow more marijuana than one ounce plus six plants therefore appears to be a pure policy question for the legislature, rather than a medical one.

Given the testimony before the legislature about the potency and profitability associated with marijuana, we believe that a court would find that the one-ounce-plus-six-plants limit in SB 94, with no provision for possession of greater amounts, is a proper exercise of the legislature's authority to amend the medical marijuana law.

Allow Police to Take Action in Medical Marijuana Cases Just As with Misuse of a Prescription for a Narcotic Drug, and Make the Legal Burden of Proof for Medical Marijuana Consistent with That Applied to Other Drugs. The medical marijuana initiative gave registered patients immunity from arrest, prosecution, and conviction for any offense related to medical use of marijuana, even if the patient possessed more than the legal limit of marijuana. AS 17.37.030(b). Even if the state had evidence that the person possessed a large amount of marijuana, police and prosecutors could take no action. Although the prime sponsor of the initiative has indicated that this was not the intent of the initiative, it is certainly the plain meaning of the initiative. SB 94 removes this provision, and thus allows the police to make arrests just as they would with any other misused prescription drug: if it a felony offense, they can arrest if there is probable cause to believe that a crime has been committed, and if it is a misdemeanor offense the offense must also have been committed in the officer's presence. SB 94 also removes similar restrictions on the authority of police to seize and forfeit evidence, thus allowing general Alaska law to control those actions.

SB 94 brings the medical marijuana law into conformity with other laws that make it an "affirmative defense" if a person seeks to rely on a statutory exemption to otherwise illegal conduct. For example, the concealed handgun law requires the registered person to prove he or she is registered and that the carrying of the handgun conformed to the law. More directly to the point, however, Alaska law for many years has required that users and dispensers of controlled substances have the burden of proving by a preponderance of the evidence that they are entitled to any exemption or exception in the controlled substances laws. AS 11.71.350. Thus SB 94 puts medical users of marijuana in exactly the same position as users of prescription drugs.

Given that this allocation of burden of proof does not appear to unduly restrict access to prescription drugs, it is not a repeal of the marijuana initiative. Similarly, it is not a repeal to remove the practical impediments to police officers, by allowing them to use general laws relating to arrests and forfeiture actions, just as they can with any other prescription drug.

Allow Access to the Registry in Criminal Investigations. This Administration favored a provision allowing police access to the registry in the course of a criminal investigation. SB 94, however, retains the language in the initiative that allows access only if a person claims to be a registered patient or caregiver. We believe that this level of confidentiality will interfere with some police investigations, and make police investigative efforts more difficult. The Administration may wish to consider requesting amendments in the future if this proves to be unworkable or not in the state's best interest.

Other Changes. SB 94 changes the medical standard for a physician to recommend marijuana to a patient, by requiring the doctor to consider other approved medications and treatments. With new pain killers coming on the market all the time, as well as the availability of new nausea medications and FDA-approved synthetic THC (delta-9-tetrahydrocannabinol, the active ingredient in marijuana), it would seem to be sound medical practice to consider these other approved alternatives before advising a patient to use an unregulated substance of unknown purity and potency.

Although SB 94 does change the medical standard, by requiring doctors to consider other approved medications before recommending marijuana, this is certainly a much more flexible standard than expressed in a recent report by the Institute of Medicine of the National Academy of Sciences, and it does not constitute a repeal. The sponsor of SB 94 circulated information to legislative committees about the report, which stated that, given the health risks associated with smoked marijuana, short-term use of marijuana by certain patients was justified only if the "failure of all approved medication to provide relief has been documented." *Marijuana & Medicine: Assessing the Science Base* (Recommendation 6), National Academy Press, Washington, D.C., 1999.

A long-time Alaska physician testified in the House HESS Committee and stated that in his experience almost all requests for marijuana for medical purposes come not from patients with terminal illnesses, but from patients with chronic conditions who will be using marijuana indefinitely. The physician testified that research showed marijuana has seven times the amount of tar and other potentially cancer-causing substances as cigarettes and that there was therefore the potential (although specific research had not been done) that marijuana presented seven times the cancer risk of cigarettes. Thus the legislature certainly had an adequate record upon which to make a change in the standard to be applied by physicians, and the change in the medical standard does not repeal the initiative.

In addition to tightening up the medical marijuana law, SB 94 relaxed some requirements of the initiative. First, it allowed marijuana to be transported by patients and caregivers. The marijuana initiative defined medical use of marijuana to include transportation of marijuana. The initiative went on to say that registered patients could not "engage in medical use of marijuana" in public. This meant that marijuana could not be transported. Although this provision might have been struck down as unconstitutional (as discussed above), the law might very well have imposed a practical burden on patients and caregivers. Second, as discussed above, although SB 94 limits each

caregiver to supplying marijuana to only one patient (except in unusual circumstances), the bill also eases restriction in the initiative by allowing each patient to have a broader ranger of persons from which to choose caregivers and to designate a primary caregiver as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. These relaxed requirements also do not repeal the initiative.

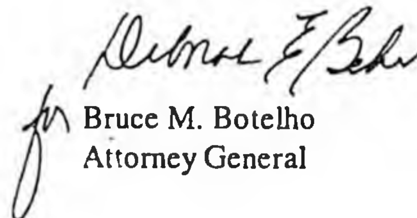
In conclusion, in our opinion the changes to the initiative do not violate the constitution, either singly or in their totality, because they do not constitute a repeal of the initiative. Instead, the amendments appear to be a proper exercise of the legislature's broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The amendments to the initiative, though numerous, still "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977).

SB 94 has an immediate effective date if it is enacted into law.

Conclusion

The bill addresses legal concerns raised by law enforcement and the Department of Health and Social Services.

Sincerely,



Bruce M. Botelho
Attorney General

BMB:DJG:jf

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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May 19, 2004

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HB 417 -- amending the definition of "project" in the act establishing the Alaska Natural Gas Development Authority
Our File: 883-04-0044

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed HB 417, which expands the definition of "project" in the act establishing the Alaska Gas Development Authority ("ANGDA") to include a possible gas pipeline terminus at tidewater at a point on Cook Inlet. Before this addition, the definition of "project" included only a terminus at tidewater at a point on Prince William Sound and a spur line from Glennallen to the Southcentral gas distribution grid. This bill has an immediate effective date under AS 01.10.070(c) so, if you sign the bill into law, it would become effective at 12:01 a.m. Alaska Standard Time on the day after you took that action.

The Alaska Natural Gas Development Authority is a public corporation housed in the Department of Revenue. ANGDA was created by public initiative when voters passed Proposition 3 during the November 5, 2002 election. The establishing legislation is codified at AS 41.41.010 - AS 41.41.990. This bill amends the definition of project in AS 41.41.990(3) to read:

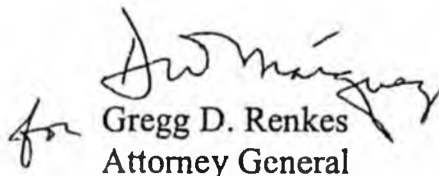
> (3) "project" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska **either** to tidewater at a point on Prince William Sound and the spur line from Glennallen to the South Central gas distribution grid **or to tidewater at a point on Cook Inlet** and includes

> planning, design, and construction of the pipeline and facilities as described in AS 41.41.010(a)(1)-(5). [Language in bold added by this bill.]

The Alaska Constitution art. XI, sec. 1 provides that the people may propose and enact laws by initiative. Although an initiated law may not be repealed by the legislature within two years of its effective date, Alaska Const. art. XI, sec. 7 provides that an initiated law may be amended at any time. The Alaska Supreme Court has stated that the legislature has broad authority to vary the terms of an initiated law after its adoption. *See Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The addition of a new project for ANGDA to consider is a proper exercise of that broad authority and does not constitute a repeal of the initiated legislation.

In summary, we see no legal or constitutional problems presented by this bill.

Sincerely,



for Gregg D. Renkes
Attorney General

GDR:LHH:tag

LEGAL SERVICES

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

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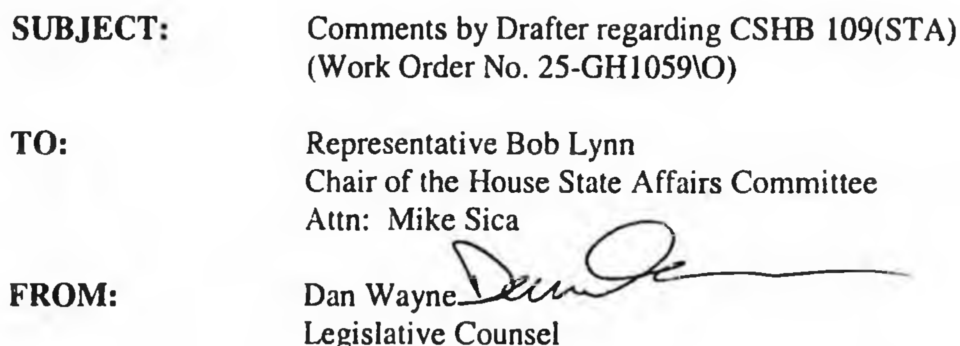
Mail Stop 3101

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

MEMORANDUM March 6, 2007



SUBJECT: Comments by Drafter regarding CSHB 109(STA)
(Work Order No. 25-GH1059\O)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Dan Wayne
Legislative Counsel

Attached is the above-referenced bill draft for your review. In particular please note the following:

1. On page 28, line 10, I removed sec. 2 from the list of sections that would become effective July 1, 2007. In drafting the amendment that eventually was adopted and became sec. 2, I was permitted to discuss it with your staff, Representative Gruenberg's staff, and David Jones of the Department of Law. In those discussions I think it was generally understood that the effective date of the section, except as specifically noted otherwise in the language of the section itself, would be the same as the general effective date of the bill. Therefore, instead of giving a specific May 1, 2007, effective date for persons campaigning for or against a ballot proposition or initiative, as in the previous draft adopted by the committee (which was later rescinded for other reasons), I was able to accomplish the same thing but in leaner and simpler language. By removing sec. 2 from the list of sections that become effective July 1, 2007, sec. 2 becomes effective at the time as I believe the committee intended.

2. Regarding the section amending AS 39.52.180(d) (page 26, lines 19 - 28), I modified the language of oral amendment 35 (by Representative Bob Roses) to conform with drafting requirements. I conformed the language of new subsection 39.52.180(e) (page 26, line 29, through page 27, line 7) and corresponding applicability sections as well, by adding the amended language.

3. The next committee of referral may want to consider two changes to sec. 20 of the bill, to better define the term "caucus" in AS 24.60.130(p). I recommend adding the word "organizational" following the word majority on page 15, lines 24, 27, and 31, the word minority, on page 15, line 28, and page 16, lines 2 and 3. With that change the sentence on page 16, line 4 that begins "In this paragraph," should be deleted because "minority organizational caucus" is already defined in the section and the extra reference

would not be needed.[1] In my opinion, the meaning of "majority organizational caucus" in this context is self-evident, and needs no further definition in the bill.

DCW:lmb
07-045.lmb

Enclosure

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[1] Rule number 1(e) of the Alaska State Legislature Uniform Rules says, in part:

> For purposes of this subsection "minority" means a group of members who have organized and elected a minority leader and who constitute at least 25 percent of the total house membership.

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MEMORANDUM February 26, 2007

SUBJECT: Prohibition on lobbying by legislator spouses and domestic partners in CSHB 109( )(Work Order No. 25-GH1059\K)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion as to the constitutionality of the proposed statutory change that would prohibit the spouse or domestic partner of a legislator from being a lobbyist as is proposed in sec. 5 of the Committee Substitute for House Bill 109, draft version "K". It is my opinion that the prohibition as it is currently structured may be interpreted by a court as unconstitutional.

The First Amendment provides that "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances", art. I, sec. 1 of the Alaska Constitution provides that ". . . all persons have a natural right to life, liberty, . . . equal rights, opportunities, and protection under the law . . .", and art. I, sec. 5 of the Alaska Constitution provides that "[e]very person may freely speak, write, and publish on all subjects . . . ." Lobbying involves both the petitioning of government agencies and core political speech concerns that "implicates First Amendment guarantees of petition, expression, and assembly." Kimball v. Hooper, 665 A.2d 44, 46 (Vt. 1995); United States v. Sawyer, 85 F.3d 713, 731 n. 15 (1st Cir. 1996) (paid lobbyist's employment goal of attempting to persuade and influence legislators was guaranteed by the First Amendment); Fidanque v. Oregon Government Standards and Practices Commission, 969 P.2d 376, 379 (Ore. 1998) ("Lobbying is political speech, and being a lobbyist is the act of being a communicator to the legislature on political subjects."); Liberty Lobby, Inc. v. Person, 390 F.2d 489, 491 (D.C. Cir. 1968) ("While the term 'lobbyist' has become encrusted with invidious connotations, every person or group engaged . . . in trying to persuade Congressional action is exercising the First Amendment right of petition."); and United States v. Harris, 347 U.S. 612, 625 (1954).

The fact that the proposed prohibition applies only to paid lobbyists ("volunteer" and "representational" lobbyists being excluded, see 25-GH1059\K p. 4, lines 5 - 7) does not shield the proposed prohibition from constitutional analysis. "The mere fact . . . that one earns a living by exercising First Amendment rights does not vitiate the ability to assert those rights." Moffett v. Killian, 360 F. Supp. 228, 231 (D. Conn. 1973) citing Follett v.

McCormick, 321 U.S. 573 (1944). Additionally, the individual rights afforded by the Alaska Constitution, art. I, sec. 1, include the right to make certain contracts for personal employment. see State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989) (The right to engage in an economic endeavor within a particular industry is an "important" right for state equal protection purposes) and Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003) (close scrutiny of enactments impairing the important right to engage in economic endeavor requires that the state's interest underlying the enactment be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close.) In justifying such an infringement on the personal liberty of legislators' spouses and domestic partners, the state would have to demonstrate a compelling interest in the purposes advanced by the restriction and an absence of less restrictive alternatives in realizing these ends. While the United States Supreme Court has acknowledged that governments have a legitimate interest in regulating lobbyists, see McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption"), "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

While the United States Supreme Court has recognized that governments have a "sufficiently important" interest in preventing political corruption and the appearance of corruption that justifies limits on campaign contributions and a standard of review below that of strict scrutiny, see McConnell v. Federal Election Commission, 540 U.S. 93 (2003), I am not aware of any court that has recognized this rationale as a basis for such a broad prohibition on paid lobbying. While the ban may be intended to promote public confidence in the integrity of legislators and to prevent corruption and any appearance of corruption, the prohibition as it is currently structured disallows all paid lobbying by spouses and domestic partners of legislators; not lobbying on issues before committees on which a legislator spouse or domestic partner might serve, a matter on which the legislator spouse or domestic partner will vote, etc. Therefore, a court might conclude that the ban as structured is not sufficiently narrow to further a compelling state interest and is an unconstitutional infringement on the First Amendment rights of the spouses and domestic partners to whom it applies.

It is my opinion that the state may be unable to meet its burden of demonstrating that no less restrictive alternatives exist to eliminate impropriety, undue influence, and conflicts-of-interest, and that this restriction might be invalidated.

TLAB:med
07-127.med

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MEMORANDUM February 28, 2007

SUBJECT: Constitutionality of statutes similar to sec. 5 of CSHB 109( ), draft version "K" (Work Order No. 25-GH1059\K)

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard
Legislative Counsel

In a response to an earlier memorandum, you have requested that I augment my efforts by searching for and examining any existing judicial interpretation of statutes similar to sec. 5 of the proposed Committee Substitute for House Bill 109, draft version "K."

My research for the earlier memorandum began with such an effort, but I did not, and have not, unearthed any judicial examination of a statutory prohibitions on lobbying by a legislative spouse or domestic partner as broad as that found in sec. 5.

While decidedly second best, what I was able to find, was circumstantial evidence of state legislative and congressional consideration of similar provisions. The common thread or denominator discovered, is that while such broad prohibitions have been considered, they are absent from the final enactments of the legislation in which the provisions were to be included. For one example, see the ethics opinion draft concerning the history of Kentucky Senate Bill No. 7, 1993 at "www.lrc.ky.gov/ethics/Opinions/02-04.doc."

The most similar provision to sec. 5 that I found, is "S.1, Commission to Strengthen Confidence in Congress Act of 2007" passed by the United States Senate on January 18, 2007. The bill addresses statutory changes affecting lobbyists under the federal Lobbying Disclosure Act and other laws. The bill includes a prohibition on "official contacts" by a senator's spouse or immediate family member with the personal, committee, and leadership staff of that senator if the spouse or immediate family member is a registered lobbyist or retained or employed by a registered lobbyist. If it becomes law, a provision in the bill also would prohibit a senator's spouse from having any "official contacts" with any senator or staff if the spouse is a registered lobbyist or retained or employed by a registered lobbyist. The provision in full reads:

SEC. 113. PROHIBIT OFFICIAL CONTACT WITH SPOUSE OR IMMEDIATE FAMILY MEMBER OF MEMBER WHO IS A REGISTERED LOBBYIST.

Rule XXXVII of the Standing Rules of the Senate is amended by--

(1) redesignating paragraphs 10 through 12 as paragraphs 11 through 13, respectively; and

(2) inserting after paragraph 9, the following:

10. (a) If a Member's spouse or immediate family member is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, the Member shall prohibit all staff employed by that Member (including staff in personal, committee, and leadership offices) from having any official contact with the Member's spouse or immediate family member.

(b) Members and employees on the staff of a Member (including staff in personal, committee, and leadership offices) shall be prohibited from having any official contact with any spouse of a Member who is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist.

(c) The prohibition in subparagraph (a) shall not apply to the spouse of a Member who was serving as a registered lobbyist at least 1 year prior to the election of that Member to office or at least 1 year prior to their marriage to that Member.

(d) In this paragraph, the term 'immediate family member' means the son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, or stepsister of the Member. (www.govtrack.us/congress/billtext.xpd?bill=s110-1)

This is as similar a provision as I have been able to find.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-0132.med

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MEMORANDUM February 14, 2007

SUBJECT: Constitutionality of Amending AS 15.13.040(b); CSHB 6( )
(Work Order No. 25-LS0055\K)

TO: Representative John Harris
Speaker of the House
Attn: Tom Wright

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion on whether the referenced Committee Substitute for House Bill 6 is constitutional. The potential constitutional violation arises in secs. 2 and 5 of the Committee Substitute for House Bill 6. These two sections amend AS 15.13.040(b) and AS 15.13.070(c), statutory sections that were changed by 2006 Ballot Measure No. 1 initiative. I believe that the bill may be constitutional, but that it is a close question. In this instance, my opinion is without the benefit of a bright-line rule or clear precedent, therefore a review of the relevant legal and historical information is a necessary element in providing a complete answer to your question. Allow me to provide a summary.

Constitutionality of Amending an Initiated Law

Two Alaska court decisions are implicated.

In early 1974, two related initiative petitions were filed with the lieutenant governor. One dealt with conflict of interest, and the other election campaign disclosure. Both petitions were certified as having sufficient signatures and were scheduled for inclusion on a statewide election ballot. The 1974 Legislature considered both matters. The legislature did not take any action on the conflict of interest petition, but did adopt legislation, approved as ch. 76, SLA 1974, on campaign disclosures.

The lieutenant governor concluded that the campaign disclosure enactment was substantially the same as the campaign disclosure petition and voided the initiative. That decision was challenged. The challenger, Cliff Warren, an initiative sponsor, contended that the legislature had short-circuited the initiative process by passing a law determined to be substantially the same as the proposed initiative. In its decision upholding the lieutenant governor's conclusion, the Alaska Supreme Court observed that the legislature enjoys broad authority to amend an initiative:

The final constitutional provision states in pertinent part:

> An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time . . . .

> The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975).

But the legislature's authority to amend is not without limits. At the August 1974 primary election, the voters approved the second initiative petition, the conflict of interest proposal, and it was certified and became law on December 11, 1974. The 1975 Legislature amended the law to change deadlines and to exclude certain former officials, who under the initiative were required to file disclosures, from having to file. Ch. 2, SLA 1975. The law was amended again that session by adding a further delay to the filing deadline. Ch. 25, SLA 1975. Mr. Warren challenged the amendments, contending that the changes were beyond the authority of the legislature to approve and amounted to a "repeal" of the initiated law.

The court rejected his contentions in its decision in Warren v. Thomas, 568 P.2d 400 (Alaska 1977):

> The central issue in the case at bar is whether the legislature has exceeded the broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." [Warren v. Boucher, 543 P.2d 731,] at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments . . . amount to a repeal of the law. We disagree. "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, . . . 243 P.2d 38, 42 (Cal. 1952); see also W.R. Grasle

> Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974) . . . .
>
> [T]here remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant . . . . Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.
>
> . . .
>
> For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of an initiated law.

Warren v. Thomas, 568 P.2d 400, 402 - 404.

This pair of cases has not been the court's last word. In Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985), the court decided an appeal by setting out the full text of the trial court opinion, "which explains the questions presented and, in our view, properly resolves them." Id. at 1175. The trial court opinion, which the Supreme Court acknowledged, declared that "[t]he two Warren cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives." Id. at 1179.

AS 15.13.040(b)

AS 15.13.040(b) was most recently amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.040(b) to provide that groups need only report the "the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor. . ." for contributions exceeding $100 in the aggregate a year. At that time AS 15.13.040(b) provided that the name, address, date, and amount contributed by each contributor be reported in all instances, and that for contributions in excess of $250 in the aggregate during a calendar year, that the principal occupation and employer of the contributor also be provided. The effect of this section (section three of six) of the initiated law was to dispense with reporting requirements for contributions of $100 or less in the aggregate a year (name, address,

date, and amount up contributed up to $100) and require the additional information of the principal occupation and employer of the contributor for contributions of $100.01 - $250.00 (the principal occupation and employer of the contributor was already required contributor information for contributions in excess of $250).

In a paragraph summarizing the entirety of the initiative, the August 22, 2006 Ballot[1] encapsulated the effect of sec. 3 as "requir[ing] groups to disclose the name, address, occupation, employer, date and amount given by each contributor for contributions more than $100 during a calendar year". The Legislative Affairs Agency Summary in the 2006 Official Primary Election Voter Pamphlet was marginally more informative; "[g]roups would have to report more about donors. For gifts over $100 to a group, the group would have to provide the true source of the gift. The group would also have to report the donor's job and the donor's employer." In the voter pamphlet, in the "Ballot Measure 1, Statement In Support" and "Ballot Measure 1, Statement In Opposition" pages, the lifting of the disclosure requirements for contributions of up to $100 dollars to groups received mention only in the text of the "Statement in Opposition" page as a "change eliminat[ing] the disclosure of some names and addresses". It received no mention in the "Statement of Support." This was the sum of information provided to the electorate about sec. 3 of the initiative.

Conspicuous in its absence from the ballot language and Legislative Affairs Summary of the 2006 Official Primary Election Voter Pamphlet is any mention of how sec. 3 of the initiative would operate to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to $100 during a calendar year. The change was not reflected in the title of the initiative nor in the summaries provided to the voters. The change, which dispenses with the disclosure of previously required contributor information, is arguably less than consistent with the reduced contribution limits, limitations on lobbying, and more stringent disclosure requirements that made up the other 5/6 of the initiative.

If this initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, the operation of the initiative's sec. 3, unexplained to voters, to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to $100 during a calendar year could be interpreted by the court as effecting something less than the intent or will of the electorate. While sec. 3 of the initiative is the best statement of its contents, the section did not appear on the ballot itself, and where it was printed in the voter pamphlet, the text appeared as it would after enactment. The voter did not have the benefit of comparing the proposed amendment with the existing statutory text. While ignorance of the law may not be an excuse, this was a ballot measure labeled by the "Statement In Support" in the voter pamphlet as the "Take Our State Back" initiative, a measure that would limit campaign

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[1] See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet.

contributions and "close the soft money loophole" . . . words and phrases poorly reconciled with sec. 3 of the initiative.

AS 15.13.070(c)

AS 15.13.070(c) was also amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.070(b) to provide that "[a] group that is not a political party may contribute not more than $1,000 per year" to a candidate, an individual conducting a write-in campaign as a candidate, another group, a nongroup entity, or to a political party. Previous to the passage of the initiative AS 15.13.070(c) had provided that "[a] group that is not a political party may contribute not more than $2,000 per year." The Committee Substitute for House Bill 6 now proposes to further limit such contributions to $500 per year.

The central issue for a court in interpreting the effect of the legislature's amendment to the initiated law is whether the legislature has exceeded their "broad power" by passing an amendment which "so vitiates the initiative as to "constitute its repeal," Warren v. Boucher, at 737. The changes to AS 15.13.070(c) are not drastic, and do not work against the initiative, but further the stated goals of the initiative by further limiting campaign contributions. I don't believe that this amendment, which changes the statute to further the aims endorsed in the initiative itself, would be interpreted by a court to amount to a repeal of the law.

> "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

The amended law imposes substantial campaign contribution restrictions and effectuates the intent of the electorate that campaign contributions from groups be further restricted. If the initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, it is my opinion that the Committee Substitute's amendment to this section is constitutional.

Conclusions

It is my opinion that the Committee Substitute's changes to AS 15.13.040(b) and 15.13.070(c) could be interpreted by a court as a constitutional modification. While a court could decide that these sections were key features to the initiative, and the Committee Substitute's changes are unconstitutional, I believe that the "broad power" of the legislature to amend adopted initiatives recognized by the courts is sufficient in this instance to prevent the present amendment from offending art XI, sec. 6 of the Alaska Constitution. The Committee Substitute's amendment to AS 15.13.040(b) and 15.13.070(c) is in keeping with stated goals and rationales of the initiative, and operates

to modify an element of AS 15.13.040(b) that is arguably inconsistent with the initiative's other provisions. For these reasons, I believe a court could find that the present amendment does not operate as a repeal of the initiative's provisions "to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
07-082.ljw

CS FOR SENATE BILL NO. 13(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/14/07
Referred: State Affairs

Sponsor(s): SENATOR STEVENS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to ethics in state government and to activities of former legislators; and**
2 **providing for an effective date."**

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

4 * **Section 1.** AS 24.60.030(a) is amended to read:
5 (a) A legislator or legislative employee may not
6 (1) solicit, agree to accept, or accept a benefit other than official
7 compensation for the performance of public duties; this paragraph may not be
8 construed to prohibit lawful solicitation for and acceptance of campaign contributions,
9 solicitation or acceptance of contributions for a charity event, as defined in
10 AS 24.60.080(c)(10), or the acceptance of a lawful gratuity under AS 24.60.080;
11 (2) use public funds, facilities, equipment, services, or another
12 government asset or resource for a nonlegislative purpose, for involvement in or
13 support of or opposition to partisan political activity, or for the private benefit of either
14 the legislator, legislative employee, or another person; this paragraph does not prohibit

1 (A) limited use of state property and resources for personal
2 purposes if the use does not interfere with the performance of public duties and
3 either the cost or value related to the use is nominal or the legislator or
4 legislative employee reimburses the state for the cost of the use;
5 (B) the use of mailing lists, computer data, or other information
6 lawfully obtained from a government agency and available to the general
7 public for nonlegislative purposes;
8 (C) telephone or facsimile use that does not carry a special
9 charge;
10 (D) the legislative council, notwithstanding AS 24.05.190,
11 from designating a public facility for use by legislators and legislative
12 employees for health or fitness purposes; when the council designates a facility
13 to be used by legislators and legislative employees for health or fitness
14 purposes, it shall adopt guidelines governing access to and use of the facility;
15 the guidelines may establish times in which use of the facility is limited to
16 specific groups;
17 (E) a legislator from using the legislator's private office in the
18 capital city during a legislative session, and for the 10 days immediately before
19 and the 10 days immediately after a legislative session, for nonlegislative
20 purposes if the use does not interfere with the performance of public duties and
21 if there is no cost to the state for the use of the space and equipment, other than
22 utility costs and minimal wear and tear, or the legislator promptly reimburses
23 the state for the cost; an office is considered a legislator's private office under
24 this subparagraph if it is the primary space in the capital city reserved for use
25 by the legislator, whether or not it is shared with others;
26 (F) a legislator from use of legislative employees to prepare
27 and send out seasonal greeting cards;
28 (G) a legislator from using state resources to transport
29 computers or other office equipment owned by the legislator but primarily used
30 for a state function;
31 (H) use by a legislator of photographs of that legislator;

1 (I) reasonable use of the Internet by a legislator or a legislative
2 employee except if the use is for election campaign purposes;
3 (J) a legislator or legislative employee from soliciting,
4 accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable
5 organization in a state facility;
6 (K) a legislator from sending any communication in the form of
7 a newsletter to the legislator's constituents, **unless**
8 **(i) the communication is sent during the 30-day**
9 **period immediately preceding a state election; or**
10 **(ii) it is** [EXCEPT] a communication expressly
11 advocating the election or defeat of a candidate or a newsletter or
12 material in a newsletter that is clearly only for the private benefit of a
13 legislator or a legislative employee; or
14 (L) full participation in a charity event approved in advance by
15 the Alaska Legislative Council;
16 (3) knowingly seek, accept, use, allocate, grant, or award public funds
17 for a purpose other than that approved by law, or make a false statement in connection
18 with a claim, request, or application for compensation, reimbursement, or travel
19 allowances from public funds;
20 (4) require a legislative employee to perform services for the private
21 benefit of the legislator or employee at any time, or allow a legislative employee to
22 perform services for the private benefit of a legislator or employee on government
23 time; it is not a violation of this paragraph if the services were performed in an
24 unusual or infrequent situation and the person's services were reasonably necessary to
25 permit the legislator or legislative employee to perform official duties;
26 (5) use or authorize the use of state funds, facilities, equipment,
27 services, or another government asset or resource for the purpose of political fund
28 raising or campaigning; this paragraph does not prohibit
29 (A) limited use of state property and resources for personal
30 purposes if the use does not interfere with the performance of public duties and
31 either the cost or value related to the use is nominal or the legislator or

1 legislative employee reimburses the state for the cost of the use;
2 (B) the use of mailing lists, computer data, or other information
3 lawfully obtained from a government agency and available to the general
4 public for nonlegislative purposes;
5 (C) telephone or facsimile use that does not carry a special
6 charge;
7 (D) storing or maintaining, consistent with (b) of this section,
8 election campaign records in a legislator's office;
9 (E) a legislator from using the legislator's private office in the
10 capital city during a legislative session, and for the 10 days immediately before
11 and the 10 days immediately after a legislative session, for nonlegislative
12 purposes if the use does not interfere with the performance of public duties and
13 if there is no cost to the state for the use of the space and equipment, other than
14 utility costs and minimal wear and tear, or the legislator promptly reimburses
15 the state for the cost; an office is considered a legislator's private office under
16 this subparagraph if it is the primary space in the capital city reserved for use
17 by the legislator, whether or not it is shared with others; or
18 (F) use by a legislator of photographs of that legislator.
19 * **Sec. 2.** AS 24.60.040 is amended by adding a new subsection to read:
20 (d) Disclosure by a legislator or legislative employee under this section shall
21 be made in writing to the committee, which shall maintain a public record of the
22 disclosure and forward the disclosure to the respective house for inclusion in the
23 journal.
24 * **Sec. 3.** AS 24.60.050(c) is amended to read:
25 (c) A legislator or legislative employee who participates in a program or
26 receives a loan that is not exempt from disclosure under (a) of this section shall **make**
27 **written disclosure to** [FILE A WRITTEN REPORT WITH] the committee by the
28 date required under AS 24.60.105 stating the amounts of the loans outstanding or
29 benefits received during the preceding calendar year from nonqualifying programs. If
30 the committee requests additional information necessary to determine the propriety of
31 participating in the program or receiving the loan, it shall be promptly provided. The

1 committee shall promptly compile a list of the statements indicating the loans and
2 programs and amounts and send it to the presiding officer of each house who shall
3 have it published in the supplemental journals **with the next regular publication, by**
4 **the senate secretary and the house chief clerk, of disclosures under this chapter**
5 [WITHIN THREE WEEKS AFTER THE FILING DATE]. A legislator or legislative
6 employee who believes that disclosure of participation in a program would be an
7 invasion of the participant's right to privacy under the state constitution may request
8 the committee to keep the disclosure confidential. If the committee finds that
9 publication would constitute an invasion of privacy, the committee shall publish only
10 the fact that a person has participated in the program and the amount of benefit that the
11 unnamed person received. The committee shall maintain the disclosure of the name of
12 the person as confidential and may only use the disclosure in a proceeding under
13 AS 24.60.170. If the disclosure becomes part of the record of a proceeding under
14 AS 24.60.170, the disclosure may be made public as provided in that section.
15 * **Sec. 4.** AS 24.60.080(c) is amended to read:
16 (c) Notwithstanding (a) of this section, it is not a violation of this section for a
17 legislator or legislative employee to accept
18 (1) hospitality, other than hospitality described in (4) of this
19 subsection,
20 (A) with incidental transportation at the residence of a person;
21 however, a vacation home located outside the state is not considered a
22 residence for the purposes of this subparagraph; or
23 (B) at a social event or meal;
24 (2) discounts that are available
25 (A) generally to the public or to a large class of persons to
26 which the person belongs; or
27 (B) when on official state business, but only if receipt of the
28 discount benefits the state;
29 (3) food or foodstuffs indigenous to the state that are shared generally
30 as a cultural or social norm;
31 (4) travel and hospitality primarily for the purpose of obtaining

1 information on matters of legislative concern;
2 (5) gifts from the immediate family of the person;
3 (6) gifts that are not connected with the recipient's legislative status;
4 (7) a discount for all or part of a legislative session, including time
5 immediately preceding or following the session, or other gift to welcome a legislator
6 or legislative employee who is employed on the personal staff of a legislator or by a
7 standing or special committee to the capital city or in recognition of the beginning of a
8 legislative session if the gift or discount is available generally to all legislators and the
9 personal staff of legislators and staff of standing and special committees; this
10 paragraph does not apply to legislative employees who are employed by the
11 Legislative Affairs Agency, the office of the chief clerk, the office of the senate
12 secretary, the legislative budget and audit committee, **the office of victims' rights,** or
13 the office of the ombudsman;
14 (8) a gift of legal services in a matter of legislative concern and a gift
15 of other services related to the provision of legal services in a matter of legislative
16 concern;
17 (9) a gift of transportation from a legislator to a legislator if the
18 transportation takes place in the state on or in an aircraft, boat, motor vehicle, or other
19 means of transport owned or under the control of the donor; this paragraph does not
20 apply to travel described in (4) of this subsection or travel for political campaign
21 purposes;
22 (10) tickets from a lobbyist for a charity event at any time, including
23 during a legislative session, except that tickets to or gifts received at a charity event
24 under this paragraph are subject to the calendar year limit on the value of gifts
25 received by a legislator or legislative employee in (a) of this section; in this paragraph,
26 "charity event" means an event the proceeds of which go to a charitable organization
27 with tax-free status under 26 U.S.C. 501(c)(3) and that the Alaska Legislative Council
28 has approved in advance; the tickets may entitle the bearer to admission to the event,
29 to entertainment, to food or beverages, or to other gifts or services involved in the
30 charity event; or
31 (11) a contribution to a charity event from any person at any time; in

1 this paragraph, "charity event" has the meaning given in (10) of this subsection.
2 *** Sec. 5.** AS 24.60.080(i) is amended to read:
3 (i) A legislator or legislative employee who knows or reasonably should know
4 that a family member has received a gift because of the family member's connection
5 with the legislator or legislative employee shall **make written disclosure to the**
6 **committee regarding the gift** [REPORT THE RECEIPT OF THE GIFT BY THE
7 FAMILY MEMBER TO THE COMMITTEE] if the gift would have to be reported
8 under this section if it had been received by the legislator or legislative employee or if
9 receipt of the gift by a legislator or legislative employee would be prohibited under
10 this section. **The committee shall maintain a public record of the disclosure and**
11 **forward the disclosure to the respective house for inclusion in the journal.**
12 *** Sec. 6.** AS 24.60.085 is amended by adding a new subsection to read:
13 (c) During the term for which elected or appointed a legislator may not,
14 directly or by authorizing another to act on the legislator's behalf, accept or agree to
15 accept compensation, except from the State of Alaska, for work associated with
16 legislative action, administrative action, or political action. Notwithstanding
17 AS 24.60.990, in this subsection "administrative action" and "legislative action" have
18 the meanings given in AS 24.45.171.
19 *** Sec. 7.** AS 24.60.105(a) is amended to read:
20 (a) When a legislator or legislative employee is required to file a disclosure
21 under this chapter and a date by which the disclosure must be filed is not otherwise set
22 by statute, the **deadline for filing disclosure shall be 30 days** [DEADLINES SET
23 OUT IN THIS SECTION SHALL APPLY. FOR DISCLOSURE OF A MATTER OR
24 AN INTEREST THAT BEGAN OR WAS ACQUIRED DURING THE INTERIM
25 BETWEEN REGULAR LEGISLATIVE SESSIONS, WHETHER OR NOT THE
26 REGULAR SESSION IS EXTENDED OR THERE IS A SPECIAL SESSION, OR
27 DURING THE LAST 30 DAYS OF A REGULAR SESSION, THE LEGISLATOR
28 OR LEGISLATIVE EMPLOYEE SHALL DISCLOSE THE MATTER BY MARCH
29 15. FOR DISCLOSURE OF A MATTER OR AN INTEREST THAT BEGAN OR
30 WAS ACQUIRED DURING A REGULAR LEGISLATIVE SESSION, BUT NOT
31 DURING THE LAST 30 DAYS OF THE REGULAR SESSION, THE

1 DISCLOSURE MUST BE MADE WITHIN 30 DAYS] after the commencement of
2 the interest or representation.
3 * **Sec. 8.** AS 24.60.130(n) is amended to read:
4 (n) When appointing members of the legislature to serve on the committee, the
5 speaker of the house or the president of the senate, as appropriate, shall appoint an
6 alternate member for each regular member. An alternate must have the same
7 qualifications as the regular member for whom the alternate stands as alternate and is
8 subject to confirmation as required for the regular member. **If a regular legislative**
9 **member of the committee or a subcommittee is unable to attend a meeting, the**
10 **chair of the committee or a subcommittee shall designate the regular member's**
11 **alternate to serve in place of the regular member at the meeting and the**
12 **designated alternate shall serve unless unable to serve for any reason.** If a regular
13 legislative member of the committee or a subcommittee is disqualified under (h) of
14 this section from serving on the committee or the subcommittee concerning a
15 proceeding under AS 24.60.170 **or if the regular member is unable to attend**, the
16 chair of the committee or a subcommittee shall designate the regular member's
17 alternate to serve in place of the regular member in the proceeding unless the alternate
18 is also disqualified from serving. The designation shall be treated as confidential to the
19 same extent that the identity of the subject of a complaint is required to be kept
20 confidential.
21 * **Sec. 9.** AS 24.60.150(a) is amended to read:
22 (a) The committee shall
23 (1) adopt procedures to facilitate the receipt of inquiries and prompt
24 rendition of its opinions;
25 (2) **publish advisory opinions annually;**
26 **(3)** publish **annual** [SEMI-ANNUAL] summaries of decisions [AND
27 ADVISORY OPINIONS] with sufficient deletions in the summaries to prevent
28 disclosing the identity of the persons involved in the decisions [OR OPINIONS] that
29 have remained confidential.
30 * **Sec. 10.** AS 24.60.160(b) is amended to read:
31 (b) An opinion issued under this section is binding on the committee in any

1 subsequent proceedings concerning the facts and circumstances of the particular case
2 unless material facts were omitted or misstated in the request for the advisory opinion.
3 **All advisory opinions shall be issued with sufficient deletions to prevent**
4 **disclosing the identity of the persons involved. Advisory opinion discussions and**
5 **deliberations are confidential, unless the requester and anyone else named in the**
6 **request who is covered by the ethics code waives confidentiality. The committee**
7 **vote shall be a public record** [EXCEPT AS PROVIDED IN THIS CHAPTER, AN
8 ADVISORY OPINION IS CONFIDENTIAL BUT SHALL BE MADE PUBLIC IF A
9 WRITTEN REQUEST BY THE PERSON WHO REQUESTED THE OPINION IS
10 FILED WITH THE COMMITTEE].
11 * **Sec. 11.** AS 24.60.176(b) is amended to read:
12 (b) In this section, "appointing authority" means
13 (1) the legislative council for employees of the Legislative Affairs
14 Agency and of the legislative council and for legislative employees not otherwise
15 covered under this subsection;
16 (2) the Legislative Budget and Audit Committee for the legislative
17 fiscal analyst and employees of the division of legislative finance, the legislative
18 auditor and employees of the division of legislative audit, and employees of the
19 Legislative Budget and Audit Committee;
20 (3) the appropriate finance committee for employees of the senate or
21 house finance committees;
22 (4) the appropriate rules committee for employees of
23 (A) standing committees of the legislature, other than the
24 finance committees;
25 (B) the senate secretary s office and the office of the chief clerk
26 of the house of representatives; and
27 (C) house records and senate records;
28 (5) the legislator who made the hiring decision for employees of
29 individual legislators; however, the legislator may request the appropriate rules
30 committee to act in the legislator's stead;
31 (6) the ombudsman for employees of the office of the ombudsman,

1 other than the ombudsman;

2 (7) the legislature for the ombudsman**;**

3 **(8) the victims' advocate for the employees, other than the victims'**

4 **advocate, of the office of victims' rights;**

5 **(9) the legislative council for the victims' advocate**.

6 * **Sec. 12.** AS 24.60.210(a) is amended to read:

7 (a) A person required to file a disclosure statement under AS 24.60.200 shall

8 file an annual report with the Alaska Public Offices Commission, covering the

9 previous calendar year, containing the disclosures required by AS 24.60.200, on or

10 before March 15 of each year**, except that a legislator appointed under**

11 **AS 15.40.320 - 15.40.350, a public member of the committee, and a legislative**

12 **director must file within 30 days after the person's initial appointment**.

13 * **Sec. 13.** AS 24.60.250(c) is amended to read:

14 (c) In addition to the sanctions described in AS 24.60.260, if the Alaska Public

15 Offices Commission finds that a legislative director has failed or refused to file a

16 report under AS 24.60.200 by a deadline established in AS 24.60.210, it shall notify

17 the Alaska Legislative Council or the Legislative Budget and Audit Committee, as

18 appropriate. For the ombudsman **and for the victims' advocate**, the Alaska

19 Legislative Council shall be notified.

20 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

25-LS0160\V.A

CS FOR SENATE BILL NO. 19(FIN) am

IN THE LEGISLATURE OF THE S 'ATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 3/2/07
Offered: 2/14/07

Sponsor(s): SENATORS FRENCH, ELTON, MCGUIRE, WIELECHOWSKI, THOMAS AND HUGGINS, Ellis, Stevens, Green, Kookesh, Davis, Olson, Hoffman, Cowdery, Stedman, Wilken, Dyson, Wagoner, Therriault

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a public officer's taking official action regarding, or influencing, a**
2 **matter in which the public officer has a personal or financial interest; relating to**
3 **restrictions on employment after leaving state service; prohibiting certain persons from**
4 **engaging in activity as lobbyists; relating to financial disclosures from former public**
5 **officials; and defining 'official action' under the Alaska Executive Branch Ethics Act**
6 **and related law."**

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

8 * **Section 1.** AS 24.45.121 is amended by adding a new subsection to read:
9 (d) A former public official in the executive branch may not engage in
10 activities as a lobbyist to the extent prohibited under AS 39.52.180(d).
11 * **Sec. 2.** AS 39.50.020 is amended to read:
12 **Sec. 39.50.020. Report of financial and business interests.** (a) A public
13 official other than the governor or the lieutenant governor shall file a statement giving

1 income sources and business interests, under oath and on penalty of perjury, within 30
2 days after taking office as a public official. Candidates for state elective office other
3 than a candidate who is subject to AS 24.60 shall file the statement with the director of
4 elections at the time of filing a declaration of candidacy or a nominating petition or
5 becoming a candidate by any other means. Candidates for elective municipal office
6 shall file the statement at the time of filing a nominating petition, declaration of
7 candidacy, or other required filing for the elective municipal office. Refusal or failure
8 to file within the time prescribed shall require that the candidate's filing fees, if any,
9 and filing for office be refused or that a previously accepted filing fee be returned and
10 the candidate's name removed from the filing records. A statement shall also be filed
11 by public officials no later than March 15 in each following year. **On or before the**
12 **90th day after leaving office, a former public official shall file a statement**
13 **covering any period during the official's service in that office for which the public**
14 **official has not already filed a statement.** Persons who are members of boards or
15 commissions not named in AS 39.50.200(b) are not required to file financial
16 statements.
17 (b) A public official **or former public official** other than an elected or
18 appointed municipal officer shall file the statement with the Alaska Public Offices
19 Commission. Candi[illegible]es for the office of governor and lieutenant governor and, if the
20 candidate is not subject to AS 24.60, the legislature shall file the statement under
21 AS 15.25.030 or 15.25.180. Municipal officers, **former municipal officers,** and
22 candidates for elective municipal office, shall file with the municipal clerk or other
23 municipal official designated to receive their filing for office. All statements required
24 to be filed under this chapter are public records.
25 * **Sec. 3.** AS 39.52.110(b) is repealed and reenacted to read:
26 (b) Notwithstanding (a) of this section, a public officer's action or influence
27 with respect to the officer's personal or financial interest in a specific matter is not a
28 violation of public trust or a violation of this chapter
29 (1) if the public officer's action or influence in the matter would have
30 only an insignificant or conjectural effect on the matter; or
31 (2) if the public officer's

1 (A) personal or financial interest is of a type that is possessed
2 generally by the public or a large class of persons to which the public officer
3 belongs;
4 (B) personal interest is insignificant; or
5 (C) financial interest is solely in regard to a business and
6 neither the public officer nor a member of the public officer's immediate
7 family
8 (i) owns a controlling interest in the business and the
9 controlling interest has a fair market value of $5,000 or more;
10 (ii) owns stock or options to buy stock that, when
11 combined, equal more than one percent of the stock in the business or
12 have a total fair market value of more than $5,000;
13 (iii) owns or has an option to buy an equity interest in
14 the business the fair market value of which is more than $5,000 or one
15 percent of the total fair market value of the business, whichever is less;
16 (iv) is a member of the board of directors or another
17 governing body of the business;
18 (v) is an officer of the business;
19 (vi) provides or has an option to provide personal or
20 professional services to the business;
21 (vii) has a contract or an option for a contract with the
22 business; or
23 (viii) is an employee of the business.
24 * **Sec. 4.** AS 39.52.110 is amended by adding a new subsection to read:
25 (d) Stock or other ownership interest in a business is presumed to be
26 insignificant if the value of the stock or other ownership interest is less than $5,000.
27 * **Sec. 5.** AS 39.52.180(a) is amended to read:
28 (a) A public officer who leaves state service may not, for two years after
29 leaving state service, represent, advise, or assist a person for compensation regarding a
30 matter that was under consideration by the administrative unit served by that public
31 officer, and in which the officer participated personally and substantially through the

1 exercise of official action. For the purposes of this subsection, "matter" includes a
2 case, proceeding, application, contract, [OR] determination, [BUT DOES NOT
3 INCLUDE THE] proposal or consideration of legislative bills, resolutions and
4 constitutional amendments, or other legislative measures, [;] or [THE] proposal,
5 consideration, or adoption of administrative regulations.
6 * **Sec. 6.** AS 39.52.180(d) is amended to read:
7 (d) **An individual who formerly held a position listed in this subsection** [A
8 FORMER GOVERNOR, LIEUTENANT GOVERNOR, OR HEAD OF A
9 PRINCIPAL DEPARTMENT IN THE EXECUTIVE BRANCH] may not engage in
10 activity as a lobbyist under AS 24.45 for a period of one year after leaving **that**
11 **position** [SERVICE AS THE GOVERNOR, LIEUTENANT GOVERNOR, OR
12 DEPARTMENT HEAD, AS APPROPRIATE]. This subsection does not prohibit
13 service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational
14 lobbyist as defined under regulations of the Alaska Public Offices Commission. **This**
15 **subsection applies to the position of**
16 **(1) governor;**
17 **(2) lieutenant governor;**
18 **(3) head or deputy head of a principal department in the executive**
19 **branch;**
20 **(4) director of a division or legislative liaison within a principal**
21 **department in the executive branch;**
22 **(5) legislative liaison, administrative assistant, or other employee**
23 **of the Office of the Governor or Office of the Lieutenant Governor in a policy-**
24 **making position;**
25 **(6) member of a state board or commission that has the authority**
26 **to adopt regulations, other than a board or commission named in AS 08.01.010;**
27 **(7) member of the governing board and executive officer of a state**
28 **public corporation.**
29 * **Sec. 7.** AS 39.52.960(14) is amended to read:
30 (14) "official action" means **performance of any duties in the course**
31 **and scope of a public officer's employment, including review, advice,**

1 **participation, assistance, or another kind of involvement regarding a matter, such as** a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

4 * **Sec. 8.** AS 39.52.180(c) is repealed.

5 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

7 APPLICABILITY. Sections 5, 6, and 8 of this Act apply to a person who leaves state service on or after the effective date of secs. 5 and 6 of this Act.

CS FOR SENATE BILL NO. 20(STA) am(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Amended: 3/5/07
Offered: 2/2/07

Sponsor(s): SENATORS FRENCH, ELTON, MCGUIRE, WIELECHOWSKI, THOMAS AND HUGGINS, Ellis, Stevens, Cowdery, Olson, Hoffman, Kookesh, Davis, Green, Stedman, Wilken, Therriault, Wagoner, Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to disclosures by legislators, legislative employees, public members of**
2 **the Select Committee on Legislative Ethics, and legislative directors subject to the**
3 **Legislative Ethics Act; and relating to the applicability of the Legislative Ethics Act."**

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

5 * **Section 1.** AS 24.60.020(a) is amended to read:
6 (a) Except as otherwise provided in this subsection, this chapter applies to a
7 member of the legislature, to a legislative employee, and to public members of the
8 committee. This chapter does not apply to
9 (1) a former member of the legislature or to a person formerly
10 employed by the legislative branch of government unless **a** [THE] provision **of this**
11 **chapter** specifically states that it applies;
12 (2) a person elected to the legislature who at the time of election is not
13 a member of the legislature.
14 * **Sec. 2.** AS 24.60 is amended by adding a new section to article 2 to read:

1 **Sec. 24.60.115. Disclosure required of a legislator, legislative employee or**
2 **public member of the committee after final day of service.** A person serving as a
3 legislator, legislative employee, or public member of the committee shall, not later
4 than 90 days after the person's final day of service, file a disclosure of every matter
5 that was subject to disclosure under this chapter while the person was serving.
6 * **Sec. 3.** AS 24.60.200 is amended to read:
7 **Sec. 24.60.200. Financial disclosure by legislators, public members of the**
8 **committee, and legislative directors.** A legislator, a public member of the committee,
9 and a legislative director shall file a disclosure statement, under oath and on penalty of
10 perjury, with the Alaska Public Offices Commission giving the following information
11 about the income received **<u>or deferred income to be received</u>** by the discloser, the
12 discloser's spouse or domestic partner, the discloser's dependent children, and the
13 discloser's nondependent children who are living with the discloser:
14 (1) the information that a public official is required to report under
15 AS 39.50.030, other than information about gifts;
16 (2) as to income **<u>or deferred income</u>** in excess of $1,000 **<u>earned or</u>**
17 received as compensation for personal services, **<u>and as to dividend income or</u>**
18 **<u>deferred compensation in excess of $1,000 received from a limited liability</u>**
19 **<u>company as compensation or deferred compensation for personal services,</u>** the
20 name and address of the source of the income, and a statement describing
21 **<u>(A)</u>** the nature of the services performed**<u>, with sufficient</u>**
22 **<u>description to make clear to a person of ordinary understanding the</u>**
23 **<u>specific services performed;</u>**
24 **<u>(B) the approximate total number of hours that have been</u>**
25 **<u>spent or will be spent performing the services; and</u>**
26 **<u>(C) the amount of income received and the amount of</u>**
27 **<u>income deferred from the source, if the</u>** [; IF THE SOURCE OF INCOME
28 IS KNOWN OR REASONABLY SHOULD BE KNOWN TO HAVE A
29 SUBSTANTIAL INTEREST IN LEGISLATIVE, ADMINISTRATIVE, OR
30 POLITICAL ACTION AND THE] recipient of the income is a legislator or
31 legislative director [, THE AMOUNT OF INCOME RECEIVED FROM THE

1 SOURCE SHALL BE DISCLOSED];
2 (3) as to each loan or loan guarantee over $1,000 from a source with a
3 substantial interest in legislative, administrative, or political action, the name and
4 address of the person making the loan or guarantee, the amount of the loan, the terms
5 and conditions under which the loan or guarantee was given, the amount outstanding
6 at the time of filing, and whether or not a written loan agreement exists.
7 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:
9 APPLICABILITY. (a) Section 2 of this Act applies to a person serving as a legislator
10 who leaves service on or after the effective date of this Act, and to a person who is not a
11 legislator but served as a legislator between April 9, 2006, and the effective date of this Act.
12 (b) A person who is not a legislator on the effective date of this Act but who served as
13 a legislator between April 9, 2006, and the effective date of this Act shall make the disclosure
14 required by AS 24.60.115, added by sec. 2 of this Act, within 90 days after the effective date
15 of this Act.

SENATE BILL NO. 63

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY SENATOR BUNDE

Introduced: 1/22/07
Referred: Judiciary, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to disclosure of political campaign contributions."**

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

3 * **Section 1.** AS 15.13.040(a) is amended to read:

4 (a) **Each** [EXCEPT AS PROVIDED IN (g) AND (*l*) OF THIS SECTION,

5 EACH] candidate shall make a full report, upon a form prescribed by the commission,

6 (1) listing

7 (A) the date and amount of all expenditures made by the

8 candidate;

9 (B) the total amount of all contributions, including all funds

10 contributed by the candidate;

11 (C) the name, address, date, and amount contributed by each

12 contributor; and

13 (D) for contributions in excess of $250 in the aggregate during

14 a calendar year, the principal occupation and employer of the contributor; and

15 (2) filed in accordance with AS 15.13.110 and certified correct by the

1 candidate or campaign treasurer.
2 * **Sec. 2.** AS 15.13.040(b) is amended to read:
3 (b) Each group shall make a full report upon a form prescribed by the
4 commission, listing
5 (1) the name and address of each officer and director;
6 (2) the aggregate amount of all contributions made to it; and, for **each**
7 **contribution** [ALL CONTRIBUTIONS IN EXCESS OF $100 IN THE
8 AGGREGATE A YEAR], the name, address, principal occupation, and employer of
9 the contributor, and the date and amount contributed by each contributor; for purposes
10 of this paragraph, "contributor" means the true source of the funds, property, or
11 services being contributed; and
12 (3) the date and amount of all contributions made by it and all
13 expenditures made, incurred, or authorized by it.
14 * **Sec. 3.** AS 15.13.040(j) is amended to read:
15 (j) **Each** [EXCEPT AS PROVIDED IN (*l*) OF THIS SECTION, EACH]
16 nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form
17 prescribed by the commission and certified by the nongroup entity's treasurer, listing
18 (1) the name and address of each officer and director of the nongroup
19 entity;
20 (2) the aggregate amount of all contributions made to the nongroup
21 entity for the purpose of influencing the outcome of an election;
22 (3) for all contributions described in (2) of this subsection, the name,
23 address, date, and amount contributed by each contributor and, for all contributions
24 described in (2) of this subsection in excess of $250 in the aggregate during a calendar
25 year, the principal occupation and employer of the contributor; and
26 (4) the date and amount of all contributions made by the nongroup
27 entity, and, except as provided for certain independent expenditures in
28 AS 15.13.135(a), all expenditures made, incurred, or authorized by the nongroup
29 entity, for the purpose of influencing the outcome of an election; a nongroup entity
30 shall report contributions made to a different nongroup entity for the purpose of
31 influencing the outcome of an election and expenditures made on behalf of a different

1 nongroup entity for the purpose of influencing the outcome of an election as soon as
2 the total contributions and expenditures to that nongroup entity for the purpose of
3 influencing the outcome of an election reach $500 in a year and for all subsequent
4 contributions and expenditures to that nongroup entity in a year whenever the total
5 contributions and expenditures to that nongroup entity for the purpose of influencing
6 the outcome of an election that have not been reported under this paragraph reach
7 $500.

8 * **Sec. 4.** AS 24.60.080(e) is amended to read:

9 (e) A political contribution is not a gift under this section if it is reported under
10 AS 15.13.040 [OR IS EXEMPT FROM THE REPORTING REQUIREMENT
11 UNDER AS 15.13.040(g)]. The use of a bulk mailing permit owned by a legislator's
12 campaign committee or used in a legislator's election campaign is not a gift to that
13 legislator under this section.

14 * **Sec. 5.** AS 15.13.040(g) and 15.13.040(*l*) are repealed.

25-GS1059\M
Wayne
3/14/07

CS FOR SENATE BILL NO. 64(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to bribery, receiving a bribe, and receiving unlawful gratuities;**
2 **relating to the requirement for candidates, groups, legislators, public officials, and other**
3 **persons to submit reports electronically to the Alaska Public Offices Commission;**
4 **relating to the use of state government assets and resources when there is no charge to**
5 **the state for their use, and to the use of state aircraft for partisan political purposes;**
6 **relating to disclosures by public officials and certain candidates for public office**
7 **concerning services performed for compensation and concerning certain income, gifts,**
8 **and other financial matters; relating to gifts received by a public officer or a public**
9 **officer's immediate family; expanding the number of boards and commissions whose**
10 **members and chairs are required to disclose certain financial information to the Alaska**
11 **Public Offices Commission; and providing for an effective date."**

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

1 *** Section 1.** AS 11.56.130 is amended to read:

2 **Sec. 11.56.130. Definition.** In AS 11.56.100 - 11.56.130, "benefit" has the
3 meaning ascribed to it in AS 11.81.900 but does not include

4 (1) political campaign contributions reported in accordance with
5 AS 15.13 **unless the contribution is made or received in exchange for an**
6 **agreement to alter an elected official's or candidate's vote or position on a state**
7 **administrative matter or a legislative or municipal matter**;

8 (2) concurrence in official action in the cause of legitimate
9 compromise between public servants; or

10 (3) support, including a vote, solicited by a public servant or offered by
11 any person in an election.

12 *** Sec. 2.** AS 15.13.040(m) is repealed and reenacted to read:

13 (m) Information required under this chapter shall be submitted to the
14 commission electronically. However, the following information may be submitted in
15 clear and legible black typeface or hand-printed in dark ink on paper in a format
16 approved by the commission or on forms provided by the commission:

17 (1) information submitted by a candidate for municipal office; in this
18 paragraph, "municipal office" means the office of an elected borough or city

19 (A) mayor;

20 (B) planning commissioner;

21 (C) utility board member; or

22 (D) assembly, council, or school board member;

23 (2) any information if the commission determines that circumstances
24 warrant an exception to the electronic submission requirement;

25 (3) information submitted before May 1, 2009, by a candidate for the
26 legislature.

27 *** Sec. 3.** AS 24.60.210 is amended by adding a new subsection to read:

28 (c) The Alaska Public Offices Commission shall require that the reports
29 required under this section be submitted electronically but may, when circumstances
30 warrant an exception, accept any information required under this section that is typed
31 in clear and legible black typeface or hand-printed in dark ink on paper in a format

1 approved by the commission or on forms provided by the commission and that is filed
2 with the commission.
3 * **Sec. 4.** AS 39.50.030(b) is amended to read:
4 (b) Each statement filed by a public offici[illegible] candidate under this chapter
5 must include the following:
6 (1) **for** [THE SOURCE OF] all income over **$1,000** [$5,000] during
7 the preceding calendar year, including taxable and nontaxable capital gains, **and each**
8 **gift with a value exceeding $250,** received by the person, the person's spouse or
9 domestic partner, or the person's dependent child,
10 **(A) the source of the income or gift;**
11 **(B) the receipt of the income or gift;**
12 **(C) the amount of the income or value of the gift;**
13 **(D) the number of hours of services performed, if any, to**
14 **earn the income or for which the gift was given; and**
15 **(E) a detailed description of the nature of the services**
16 **performed** [EXCEPT THAT A SOURCE OF INCOME THAT IS A GIFT
17 MUST BE INCLUDED IF THE VALUE OF THE GIFT EXCEEDS $250];
18 (2) the identity, by name and address, of each business in which the
19 person, the person's spouse or domestic partner, or the person's dependent child has an
20 interest or was a stockholder, owner, officer, director, partner, proprietor, or employee
21 during the preceding calendar year, except that an interest of less than **$1,000** [$5,000]
22 in the stock of a publicly traded corporation need not be included;
23 (3) the identity and nature of each interest in real property, including
24 an option to buy, owned at any time during the preceding calendar year by the person,
25 the person's spouse or domestic partner, or the person's dependent child;
26 (4) the identity of each trust or other fiduciary relation in which the
27 person, the person's spouse or domestic partner, or the person's dependent child held a
28 beneficial interest exceeding **$1,000** [$5,000] during the preceding calendar year, a
29 description and identification of the property contained in each trust or relation, and
30 the nature and extent of the beneficial interest in it;
31 (5) any loan or loan guarantee of more than **$1,000** [$5,000] made to

1 the person, the person's spouse or domestic partner, or the person's dependent child,
2 and the identity of the maker of the loan or loan guarantor and the identity of each
3 creditor to whom the person, the person's spouse or domestic partner, or the person's
4 dependent child owed more than **$1,000** [$5,000]; this paragraph requires disclosure of
5 a loan, loan guarantee, or indebtedness only if the loan or guarantee was made, or the
6 indebtedness incurred, during the preceding calendar year, or if the amount still owing
7 on the loan, loan guarantee, or indebtedness was more than **$1,000** [$5,000] at any
8 time during the preceding calendar year;
9 (6) a list of all contracts and offers to contract with the state or an
10 instrumentality of the state during the preceding calendar year held, bid, or offered by
11 the person, the person's spouse or domestic partner, or the person's dependent child, a
12 partnership or professional corporation of which the person is a member, or a
13 corporation in which the person or the person's spouse, domestic partner, or dependent
14 **child** [CHILDREN], or a combination of them, hold a controlling interest, and
15 (7) a list of all mineral, timber, oil, or any other natural resource lease
16 held, or lease offer made, during the preceding calendar year by the person, the
17 person's spouse or domestic partner, or the person's dependent child, a partnership or
18 professional corporation of which the person is a member, or a corporation in which
19 the person or the person's spouse**,** [OR] domestic partner**,** or dependent **child**
20 [CHILDREN], or a combination of them, holds a controlling interest.
21 * **Sec. 5.** AS 39.50.050(a) is amended to read:
22 (a) The Alaska Public Offices Commission created under AS 15.13.020(a)
23 shall administer the provisions of this chapter. The commission shall prepare and keep
24 available for distribution standardized forms on which the reports required by this
25 chapter shall be filed. The commission shall print the forms provided under this
26 section so that the front and back of each page have the same orientation when the
27 page is rotated on the vertical axis of the page. The commission **shall require** [MAY
28 REQUEST] that the information required under this chapter**, unless it is information**
29 **required of a municipal officer,** be submitted electronically but **may, when**
30 **circumstances warrant an exception,** [SHALL] accept any information required
31 under this chapter that is typed in clear and legible black typeface or hand-printed in

1 dark ink on paper in a format approved by the commission or on forms provided by
2 the commission and that is filed with the commission. **A municipal officer shall**
3 **submit information required under this chapter either electronically or typed or**
4 **handprinted in the manner described in this subsection.**
5 * **Sec. 6.** AS 39.50.200(b) is amended by adding new paragraphs to read:
6 (59) Alaska Industrial Development and Export Authority (AS 44.88);
7 (60) the board of directors of the Knik Arm Bridge and Toll Authority
8 (AS 19.75.031 and 19.75.041);
9 (61) Alaska labor relations agency (AS 23.05.360 - 23.05.390);
10 (62) the Board of Trustees of the Alaska Mental Health Trust
11 Authority (AS 47.30.016);
12 (63) the board of directors of the Alaska Railroad Corporation
13 (AS 42.40.020 - 42.40.060).
14 * **Sec. 7.** AS 39.52.120(b) is amended to read:
15 (b) A public officer may not
16 (1) seek other employment or contracts through the use or attempted
17 use of official position;
18 (2) accept, receive, or solicit compensation for the performance of
19 official duties or responsibilities from a person other than the state;
20 (3) use state time, property, equipment, or other facilities to benefit
21 personal or financial interests;
22 (4) take or withhold official action in order to affect a matter in which
23 the public officer has a personal or financial interest;
24 (5) attempt to benefit a personal or financial interest through coercion
25 of a subordinate or require another public officer to perform services for the private
26 benefit of the public officer at any time; or
27 (6) use or authorize the use of state funds, facilities, equipment,
28 services, or another government asset or resource for partisan political purposes; this
29 paragraph does not prohibit use of the governor's residence for meetings to discuss
30 political strategy and does not prohibit use of **state aircraft or** the communications
31 equipment in the governor's residence so long as there is no [SPECIAL] charge to the

1 state for the use; in this paragraph, "for partisan political purposes"
2 (A) means having the intent to differentially benefit or harm a
3 (i) candidate or potential candidate for elective office;
4 or
5 (ii) political party or group;
6 (B) but does not include having the intent to benefit the public
7 interest at large through the normal performance of official duties.
8 * **Sec. 8.** AS 39.52.120 is amended by adding a new subsection to read:
9 (f) Use of state aircraft for partisan political purposes is permitted under (b) of
10 this section only when the use is collateral or incidental to the normal performance of
11 official duties and does not exceed 10 percent of the total of the use of the aircraft for
12 official purposes and partisan political purposes, combined, on a single trip. A public
13 officer who authorizes or makes any partisan political use of a state aircraft under (b)
14 of this section shall disclose the authorization and use under AS 39.52.210 or
15 39.52.220 for each trip, and the person who uses the aircraft shall reimburse the state
16 for the proportionate share of the actual cost of the use.
17 * **Sec. 9.** AS 39.52.130(a) is amended to read:
18 (a) A public officer may not solicit, accept, or receive, directly or indirectly, a
19 gift, whether in the form of money, service, loan, travel, entertainment, hospitality,
20 employment, promise, or in any other form, that is a benefit to the officer's personal or
21 financial interests, under circumstances in which it could reasonably be inferred that
22 the gift is intended to influence the performance of official duties, actions, or
23 judgment. **A gift from a person required to register as a lobbyist under**
24 **AS 24.45.041 to a public officer or a public officer's immediate family member is**
25 **presumed to be intended to influence the performance of official duties, actions,**
26 **or judgment unless the giver is an immediate family member of the person**
27 **receiving the gift.**
28 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:
30 APPLICABILITY. Section 1 of this Act applies to offenses occurring on or after the
31 effective date of section 1 of this Act.

1 * **Sec. 11.** Section 3 of this Act takes effect July 1, 2008.

2 * **Sec. 12.** Section 5 of this Act takes effect July 1, 2007.

3 * **Sec. 13.** Except as provided in secs. 11 and 12 of this Act, this Act takes effect
4 immediately under AS 01.10.070(c).

HB
117

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: February 28, 2007

To: Representative John Coghill
Chairman House Rules Committee

From: Jane Pierson JWP
House Judiciary Committee Aide

Re: Judiciary Referral File for HB117

Attached please find:

- CSHB117(JUD) 25-LS0458\M
- Judiciary Committee Report
- HB117 25-LS0458\C
- Sponsor Statement
- LAW – zero fiscal note
- Applicable statutes
  1) AS 24.05.100 Special sessions
  2) AS 26.20.040 Emergency powers of the governor
  3) AS 26.23.020 The governor and disaster emergencies
  4) AS 26.23.900 Definitions

HOUSE COMMITTEE REPC

(7)
Date Referred to Committee: February 21, 2007 **FURTHER REFERRALS:**

Date of Committee Action: 2/28/07

The JUDICIARY Committee considered: **HB 117**

HOUSE BILL NO. 117 **PROCLAMATION CALLING A SPECIAL SESSION**

"An Act relating to proclamations issued by the governor calling the legislature into special session."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB117 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR___ [✓] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to ____________Committee
[ ] Letter of Intent___________Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES** *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW				✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Gruenberg	–			
[signature]	Lynn	X			
[signature]	Coghill	✓			
[signature]	Lynn	\			
[signature]	Holmes	X			
Chair: [signature]	Ramras	X			
Chair:					

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-4859
Fax (907) 465-3799

Interim: (June-Dec)
716 West 4th Avenue, Suite 300
Anchorage, AK 99501-2133
(907) 269-0129
Fax (907) 269-0128

John Harris
Speaker of the House

SPONSOR STATEMENT
HOUSE BILL 117
"An Act relating to proclamations issued by the governor calling the legislature into special session."

House Bill 117 was introduced in order to give legislators and the public more notice in the event the Governor decides to call a special session outside of a disaster declaration or after the conclusion of a regular session.

Special sessions have become the norm rather than the exception during my tenure as a legislator. For "citizen-legislators," who are trying to make a living outside of their legislative duties, two weeks notice is insufficient and unfair to employers of legislators during the interim. More public notice leads to more public participation and ultimately, better legislation.

As stated in the first paragraph, the Governor still has the statutory authority to call a special session prior to the conclusion of a regular session or if a disaster declaration is issued and legislative action is required.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB117-LAW-LSA-2-16-07
Bill Version: HB 117
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title: An Act relating to proclamations calling a special session.
RDU: Civil
Component: Labor & State Affairs
Sponsor: Representative Harris
Requester: House State Affairs
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

The bill would require the governor to issue a proclamation at least 30 days in advance of the convening date of a special session unless the proclamation is issued under AS 26.23.020(k), while both houses of the legislature are in regular or special session, or within one hour after the first house has adjourned from regular or special session. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director
Phone: 465-5427
Division: Administrative Services Division
Date/Time: 2/16/07 9:37 AM
Approved by: Robert Meiners for Talis Colberg, Attorney General
Date: 2/16/2007
Agency: Department of Law

(Revised 9/18/2006 OMB)

HB
118

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Represer ive_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 102
Juneau, Alaska 99801-1182

HOUSE BILL 118 – RESTRICT ACCESS TO ALCOHOL (3/12/07)

- HB118
- SPONSOR STATEMENT
- FISCAL NOTES
  1) COR – 0 FISCAL NOTE
  2) LAW – 0 FISCAL NOTE
  3) DPS – 0 FISCAL NOTE
- SUPPORT
  1) USA Today: *Law Crash Underage Parties*
  2) Marin Institute: What's Hot – Adults and Underage Drinking
  3) Current Status of Underage Drinking in Alaska Power Point
  4) Underage Drinking in Alaska Needs Assessment
- AS 04.16.051

// Representative Kevin Meyer

HOUSE DISTRICT 30

Sponsor Statement
House Bill 118

"An Act relating to underage possession of alcoholic beverages in a dwelling."

While it is against the law in Alaska to rent a hotel room for the purposes of providing alcohol to underage persons (AS 04.16.055) there is no provision in statute that makes it illegal to allow underage drinking in a home. This appears to be a significant oversight in statute since a home is the most commonly cited place underage people consume alcohol.

House Bill 118 closes this gap in statute by making it a non-criminal violation to permit underage persons to possess alcohol in your home. A parent allowing their own child to possess alcohol is not subject to the violation because they are allowed to provide alcohol to their children under AS 04.16.05. Under HB 118 however, a person throwing a party where an underage person possess alcohol (even if they were not responsible for providing the alcohol) would face a $500 fine.

Alcohol is the drug of choice for young people in Alaska and has very serious impacts on our families, our institutions and our society. HB 118 closes a significant gap in our statutes and gives law enforcement an important tool to deter people from providing a venue for underage drinking.

(Updated 2/6/07)

Email: Representative_Kevin_Meyer@legis.state.ak.us • **Toll Free:** (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • **Phone:** (907) 465-4945 **Fax:** (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • **Phone:** (907) 269-0199 **Fax:** (907) 269-0197

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 118
(H) Publish Date: 2/22/07

Revision Date/Time (Note if correction):
Title: "An act relating to underage possession of alcoholic beverages in a dwelling."
Sponsor: Representative Meyer, Wilson
Requester: Labor & Commerce

Dept. Affected: Corrections
RDU: Administration and Operations
Component: Office of the Commissioner
Component No. 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

POSITIONS	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

Passage of this legislation should have no fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Phone: (907) 465-3339
Date/Time: 2/15/07 8:20 AM

Approved by: Dwyane Peeples, Deputy Commissioner
Agency: Department of Corrections
Date: 2/15/2007

(Revised 9/18/2006 OMB)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 118
(H) Publish Date: 2/22/07

Revision Date/Time (Note if correction):

Title	An Act relating to underage possession of alcoholic beverages in a dwelling
Sponsor	Representative Meyer
Requester	House Labor & Commerce

Dept. Affected: Law
RDU: Criminal
Component: Criminal Justice Litigation
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

The bill would prohibit a person who possesses or exercises dominion and control over a dwelling from recklessly permitting a person under 21 years of age to possess an alcoholic beverage in the dwelling. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director — Phone 465-5427
Division: Administrative Services Division — Date/Time 2/13/07 11:01 AM

Approved by: Robert Meiners for Talis Colberg, Attorney General — Date 2/13/2007
Agency: Department of Law

(Revised 9/18/2006 OMB)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 118
(H) Publish Date: 2/22/07

Revision Date/Time :
Dept. Affected: Public Safety
Title: An act relating to underage possession of alcohol
RDU: Alaska State Troopers
Component: AST Detachments
Sponsor: Representative Meyer
Requester: House Labor & Commerce Committee
Component No: 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill is an act relating to underage possession of alcoholic beverages in a dwelling.

Passage of this legislation will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Rodney Dial
Phone 907-247-4480
Division: Division of Alaska State Troopers
Date/Time 2/9/07 1600
Approved by: Commissioner Walt Monegan
Date 2/14/2007
Agency: Department of Public Safety

(Revised 9/18/2006 OMB)

Laws crash underage drinking parties

Posted 1/4/2007 11:12 PM ET
By John Ritter, USA TODAY

OJAI, Calif. — Tony Barrett and his wife were enjoying a getaway weekend when police called to report they'd broken up an underage drinking party at the couple's home here. Their daughter Shannon, legally an adult but at 19 too young to drink, was cited for hosting the party and was fined $1,000.

Barrett, who grew up in this art- and music-loving city of 8,000, wasn't happy with his daughter — "the house was trashed and stunk like beer and cigarettes for a week" — but was even angrier at Ojai's "social host" ordinance that gave police the authority to bust the party.

"She called three friends, and before an hour was up, 100 people were here," Barrett says. "I told the police she was a hostage, not a host. I'm still not paying the fine, because I didn't do anything."

Authorities here and in a growing number of cities and counties say their ability to enforce "social host" ordinances to curb such parties, held with or without parents' knowledge, is a key tactic in the battle against underage drinking and its potentially tragic consequences.

CRACK DOWN: Adults penalized for teen drinking

"We don't want to send parents to jail," says Stacy Saetta, a lawyer with the Center for the Study of Law and Enforcement Policy in Felton, Calif. "We want to get parents to change their behavior when kids want to throw a party."

A catalyst for action

Underage drinking costs the nation at least $53 billion a year, mostly because of traffic deaths and violent crime, according to a 2003 report by the National Research Council's Institute of Medicine. The report, which urged communities to hold adults accountable for teen drinking parties, was a catalyst for many recent ordinances, Saetta says.

Ojai, the picturesque setting for Shangri-La in the 1937 Frank Capra film *Lost Horizon*, is one of seven cities in Ventura County that passed social host ordinances last year after the county did. In one three-month period in 2004, police in the Ojai Valley, an affluent enclave north of Los Angeles, responded to nearly 300 parties involving underage drinking, according to sheriff's statistics.

"We had overdose deaths. We had prescription-drug use after hazardous drinking. We had parties where gang members showed up and beat the hell out of people. Close to 70% of the sexual assaults on young women were coming out of home parties," says Dan Hicks, administrator of Ventura County Limits, an initiative to curb underage binge drinking.

"It was like the big elephant in the living room. People thought there was nothing we could do about it," he says.

Social host ordinances give police a tool beyond standard disturbing-the-peace laws. Typically these ordinances call for civil fines, thus avoiding the courts and the higher burden of proof required under criminal laws.

Ordinances give police discretion to target repeat offenders or the most egregious bashes. Most permit officers to cite a host if they identify a handful of underage drinkers among dozens of partiers. Fines range from less than $500 to $2,500 and more. "The whole purpose is to make the community aware," says Sgt. Pat Ruby of the Ventura County sheriff's station here. "But this won't have an effect on a lot of people unless it hits them in the pocketbook."

Ojai's laid-back image may be part of the problem, Ruby says. "There's not a whole lot for kids to do up here, and a lot of them look at parties as a release," he says. Violent crime is relatively rare in Ojai. The city hasn't had a murder in years. Its gang problem is small enough that police know all the players.

Social host ordinances have been used 20 times around the county to shut down parties in the past year, Hicks says. Ten of those incidents were in Ojai, and Ruby was involved in seven of them.