From: Dr. Priddy [drpriddy.vsoa@ak.net]
Sent: Monday, March 10, 2008 10:43 PM
To: Beth Schneider
Subject: HB 297

To Whom It May Concern:

As a practicing veterinarian in the State of Alaska, I would like to add my voice of support for HB 297 as written. It is in the best interest of the citizens of Alaska and their pets to have only veterinarians treating their pets. Our knowledge base and training qualify us more than any others. The changes to the existing Veterinary Practice Act proposed by HB 297 ensure that the public and the animals of Alaska will be best served by the veterinary profession.

Respectfully,

Nelson H. Priddy II, DVM
Diplomate American College of Veterinary Surgeons
President, Alaska State Veterinary Medical Association

Veterinary Specialists of Alaska
3330 Fairbanks Street
Anchorage, AK 99503
(907) 274-0645

Rep. Mark Neuman

From: Jim Leach [alaskatraildoc@mtaonline.net]
Sent: Tuesday, March 11, 2008 11:34 AM
To: Rep. Mark Neuman
Subject: response

Mark,

As per our telephone conversation this morning:

1. The verbiage of "for compensation " under consideration in the Alaska Veterinary Practice Act.
This is not a new issue, but has been a consideration since I served on the Veterinary Board.
The wording " for compensation ", SHOULD BE REMOVED.
The continued inclusion of these words, allows untrained, unqualified persons to foster on the public that they have the knowledge and expertise to handle, diagnose and treat animals. The removal of the words " for compensation " in no way will prevent persons who own animals from handling or treating animals that they personally own.
I would respectfully request that the wording " for compensation " be removed.

2. The issue, being considered for Veterinarians, BEING REQUIRED BY LAW , to report animal abuse, in my estimation, is not a good application of law.
Graduate Veterinarians, are bound under the oath taken when they graduate (from a qualified school), to protect animals.
I know of no instance that a veterinarian would NOT report cases of actual animal abuse, of his / her own accord.
One of the issues , within this consideration, is just WHAT IS abuse...
I believe veterinarians have the knowledge to recognize animal abuse, the contacts available to report such activity and I believe would report such activity with out the legislative requirement to do so. I believe , passing a law to DEMAND, such reporting is
maligning and demeaning to the professionalism of veterinary medicine.
I would respectfully request this requirement NOT be considered.

3. The removal of the qualification , BY THE A.V.M.A., for veterinary schools (or program) for graduates to practice in the State of Alaska is not an advisable change. The AVMA has the expertise, the funding and the means, to evaluate and qualify the veterinary education programs from the USA and around the world. The proposed change would shift the responsibility for this evaluation to the Alaska State Veterinary Board.
I believe to attempt this " qualification" by the Alaska State Veterinary Board would allow the possible excessive liberalization of veterinary graduate requirements. This liberalization, could allow less than adequately trained and qualified individuals to be allowed to
practice veterinary medicine in Alaska.
I would respectfully request that the wording change to remove the AVMA qualification of veterinary schools NOT be considered.

Mark, if there is any way I can be of further assistance, please let me know.
After tomorrow, Annie and I will be Outside for the next two weeks.
Thank you for your efforts on the behalf of the Veterinary profession.

Regards,
Jim Leach DVM

George Utermohle
HB 297, practice of veterinary medicine
March 11, 2008

Representative John Coghill
Chair, House Rules Committee
State Capitol
Juneau, AK 99811

Subject: HB 297, relating to the practice of veterinary medicine

Dear Representative Coghill

I am a dog owner. I have had pets most of my life. For the last 20 years, I have raised Bernese Mountain Dogs. During those 20 years, the same veterinarian has treated my dogs. I value his knowledge, experience, and expertise. I want to be assured that quality veterinary service will be available to treat and care for my dogs.

However, I am writing you to express my concerns regarding HB 297, relating to the practice of veterinary medicine, and the adverse effects that the proposed expansion of the definition of "practice of veterinary medicine" would have on every pet and animal owner.

Advice and Recommendations Regarding Animal Care.
HB 297 proposes to amend AS 08.98.250(5)(A) by deleting the phrase "for compensation" from the definition of "practice of veterinary medicine." This change is unnecessary to prevent the unlicensed practice of veterinary medicine or to protect veterinarians from competition from other providers of animal services. Most significantly, the amended definition would subject any person who is not a licensed veterinarian and who gives advice or recommendations regarding the health of an animal to criminal penalties for practicing veterinary medicine without a license. See, CSHB 297(L&C), Sec. 7, page 5, lines 2-3. The unlicensed practice of veterinary medicine is a misdemeanor crime punishable by a $10,000 fine and/or one year of imprisonment. See, AS 08.98.120(e).

Wherever two or more pet owners meet, they talk about their pets. Naturally, the conversation will involve the health, diet, and behavior of the pets. Being human, pet owners cannot resist giving advice to other pet owners, particularly in regard to the health and care of their pets. I truly value the advice and recommendations that I have received from other dog owners about illnesses, injuries, and behavioral issues that affect my dogs. I and my dogs have benefitted from those discussions. If I had not had the opportunity to talk with other dog owners about their experience with the various medical treatments and surgeries facing my dogs, I would have been a less informed consumer of veterinary services. There is a certain informational value and reassurance that is derived from the advice and experience of fellow pet owners that my veterinarians cannot provide. HB 297 would prohibit pet owners from giving any advice or making any recommendations, including free advice and recommendations, to other pet owners on health matters.

I must admit that if the definition of the "practice of veterinary medicine" is amended as proposed by HB 297, I will continue to give advice and recommendations based on my personal experiences to other dog owners and I will continue to solicit advice and recommendations from other dog owners whom I respect and trust. I suspect that I am not alone. It does not make sense to criminalize the exchange of advice and recommendations that can provide useful information regarding the health and well being of my dogs. The legislature cannot really intend to prohibit the exchange of information among pet owners or between pet owners and trained, knowledgeable non-veterinarian professionals. Such a prohibition is contrary to the public interest and should not be enacted.

In testimony before the House Labor & Commerce Committee, the representatives of the Department of Commerce, Community and Economic Development and the Board of Veterinary Examiners said that the bill was not intended to apply to so-called "neighbor-to-neighbor" conversations and that the law would not be enforced against them. If that is the case, then why are "neighbor-to-neighbor" conversations even covered in the bill? Clearly the bill is intended to criminalize the uncompensated exchange of advice and recommendations ("neighbor-to-neighbor" conversations) on pet health and behavior issues because that is the sole effect of deleting the phrase "for compensation" from the definition of "practice of veterinary medicine" in AS 08.98.250(5)(A).

If a law is not going to be enforced then it should not be enacted. Likewise, if it does not make sense, it should not be enacted.

It is my request and recommendation that the current definition of "practice of veterinary medicine" contained in AS 08.98.250(5)(A) be retained so that uncompensated activities are excluded from the practice of veterinary medicine.

Undesirable Consequences of HB 297.

The L&C Committee Substitute has a pretty good "Good Samaritan clause" that allows persons to provide care to an ill or injured animal that "reasonably appears to the person to be in need of aid." See, CSHB 297(L&C), Sec. 3, page 2, lines 25-26. However, the "Good Samaritan clause" is not broad enough to cover all of the foreseeable circumstances.

One, if I saw a dog that had fleas, hotspots, or a porcupine quill in its nose and told the owner of the dog about the problem, I could well be practicing veterinary medicine without a license. Am I diagnosing an injury according to the definition of "practice of veterinary medicine"? I do not know. The "Good Samaritan clause" would protect me, if I treated the fleas or hotspots or removed the quill but it would not protect me if I only reported the injury to the owner.

Two, if I gave advice on how to best remove porcupine quills to a person whose dog had porcupine quills, I would be practicing veterinary medicine without a license. In this instance I am not treating the injury, I am just giving advice. Giving advice regarding the treatment of an injury to a dog is not covered by the "Good Samaritan clause," and is clearly prohibited by proposed definition of "practice of veterinary medicine" in HB 297.

Three, when I must leave town, I must have someone watch my dogs. My dogs are receiving long term medication to address low thyroid hormone levels. My vet has instructed me that the medication is to be administered strictly on schedule every day. Under the definition of "practice of veterinary medicine," the administration of a drug must be done by a licensed veterinarian otherwise it is the unlicensed practice of veterinary medicine. Under current law, the person who watches my dogs can administer the thyroid medicine, provided that my neighbor is not compensated. However, under HB 297, only the owner or the owner's employee can administer drugs to an animal. A pet sitter is not allowed to administer drugs to my dogs unless he is either a licensed veterinarian or my employee. Neither my neighbor nor a family friend could administer the medicine to my dogs. The "Good Samaritan clause" in HB 297 would not apply because my dogs do not appear to be in need of aid. Many diseases requiring extended drug treatment are not readily apparent to a reasonable person, so the "Good Samaritan clause" would not apply. Under HB 297, my only options are to arrange for a veterinarian to administer the required drugs twice a day or to never leave town. This result is nonsensical, inconsistent with the purpose underlying the veterinary licensing statutes, and contrary to the public interest.

The solution to the three scenarios described above is to retain the current definition of "practice of veterinary medicine" which exempts uncompensated activities from the practice of veterinary medicine.

Current Definition "Practice of Veterinary Medicine" is Overbroad.
HB 297 proposes to expand the current scope of the practice of veterinary medicine under AS 08.98.250(5) by including activities, procedures, advice, and recommendations regarding animal physical and mental health that are provided without compensation. Under the current law, activities, procedures, advice, and recommendations that are provided without compensation do not constitute the practice of veterinary medicine.

Nonetheless, the current definition of the "practice of veterinary medicine" is also overly broad. The current definition encompasses many activities that legitimately fall within the scope of other professions. Professional dog groomers, dog and animal trainers, boarding kennels, and businesses that sell pet products engage in activities that are more or less encompassed by the current definition of "practice of veterinary medicine" because each of these professions provides it services for compensation.

Dog groomers treat, correct, relieve, or prevent the physical conditions of animals as part of their profession. Some coat and skin conditions treated by groomers affect the health of the animal.

Dog and animal trainers provide guidance to animal owners regarding the behavior of their animals and educate and advise owners on how to train their animals to behave in the presence of people and other animals. Animal trainers treat, change, and relieve mental conditions of animals and thus fall within the scope of the practice of veterinary medicine.

Boarding kennels are often called upon to provide medication to the animals in their care. The kennels charge for that additional service. The administration of drugs is one of those activities that falls within the scope of the practice of veterinary medicine.

Businesses that sell pet products, particularly the specialized pet stores, are often requested for recommendations on the best foods, treatments, and over the counter medications to promote pet health or to address a specific pet health conditions. Providing advice or recommendations regarding treating, correcting, relieving, or preventing animal disease or other physical condition falls within the scope of the practice of veterinary medicine.

Each of these professions provides a valuable service to animal owners and the public in general. The public would suffer if these services could be provided only by a licensed veterinarian because there are not enough veterinarians available to provide these services. The high cost of these services if provided by veterinarians would discourage the public from seeking those services. Veterinarians do not generally offer these services within their veterinary practices. No public purpose is served by subjecting these professions to regulation by the board of veterinary examiners.

Current law exempts farriers from the definition of practice of veterinary medicine. See. AS 08.98.250(5)(D)(ii). Even though some of the activities of a farrier might fall within the scope of the "practice of veterinary medicine," farriers are explicitly exempted from the definition of the "practice of veterinary medicine." A similar explicit exemption should be given to professional dog groomers, dog and animal trainers, boarding kennels, and businesses that sell pet products.

I would request that the current definition of the "practice of veterinary medicine" be amended to include exemptions for professional dog groomers, dog and animal trainers, boarding kennels, and businesses that sell pet products. The exemption could read:
The practice of veterinary medicine does not include:

- **(1) the practices of an animal groomer done in the performance of the groomers profession::**
- **(2) the practices of an animal trainer done in the performance of the trainers profession;**
- **(3) the practices of a boarding kennel operator done in the conduct of the operators business;**

(4) **the practices of the proprietor of a retail business that sells pet food, equipment, supplies, accessories, or other pet products in the normal course of business.**

At the present time, no version of HB 297 addresses the issues discussed this letter. No version of this bill, including the draft CS ( ) version L, should be passed from the House Rules Committee. The bill should be referred to a substantive committee for further work or should be held in the Rules Committee.

Thank you for your consideration of this matter which so important to me and to other pet owners.

Sincerely,

George Utermohle

George Utermohle
PO Box 20887
Juneau, AK 99802
907-586-3849
norwaypt@gci.net

SKAGWAY POLICE DEPARTMENT
P.O. BOX 518
SKAGWAY, ALASKA 99840
PHONE: (907) 983-2232 FAX: (907) 983-3632
EMAIL: sgypd@aptalaska.net

March 12, 2008

Representative John Coghill
Chairman, House Rules Committee
Alaska State Legislature

Dear Chairman Coghill,

I am writing to express my concern that C.S.H.B. 197 (L&C), which will be heard in Rules Committee today, may have an adverse impact on our community of Skagway.

As you know most communities in Alaska outside of the major rural areas do not have access to routine veterinary care. In Skagway for instance, there are many circumstances when people cannot get a sick or injured animal to veterinary care. The Skagway Police Department has committed significant resources to developing a program by which we can offer assistance to people and their animals whether it be a case of porcupine quills, a dog that has been hit be a train, or a beloved pet which must be euthanized. We do not misrepresent our level of expertise or our credentials to the people of Skagway, but we are there to help.

The removal of the words "for compensation" from the definition of veterinary practice, could potentially affect our Skagway program. I do not believe the "Good Samaritan Clause" in Section 3 is written strongly enough. For one thing, it does not cover routine care of healthy animals. Also, it needs to make clear that lay people who help each other are not liable under this statute as long as they do not misrepresent themselves or their level of expertise.

Thank you for holding this hearing and for your consideration.

Sincerely,

Ray Leggett
Chief of Police

Red Onion Saloon
Box 271
Skagway Alaska 99840

March 12, 2008

Representative John Coghill
Chairman, House Rules Committee
Alaska State Legislature

Dear Chairman Coghill,

For many years in Skagway, when an animal was sick or injured, owners had no recourse available to them if they were unable to travel several hours for veterinary assistance. Today, the situation for pets and their owners is vastly improved, thanks to our police chief who has developed a program of euthanization, emergency aid and routine care that is invaluable to the residents of our community.

The language changes proposed in H.B. 297 carries the potential to adversely affect animal care practices in Skagway as well as in all of rural Alaska where vet care is not routinely available.

After reading the minutes of the previous hearing and discussing the proposed changes with Dr. Torrence, Chairman of the Veterinary Licensing Board, it became clear to me that of major concern to the Board are individuals who misrepresent themselves to the public and hold themselves out to have cures and treatments for disease. H.B. 297 should be written to accomplish this while still affording protection to the thousands of mushers, groomers, breeders, public safety officers and other lay people who routinely care for animals and are in constant communication with each other regarding animal health issues.

I propose the following language be included Section 3. **Any person who provides routine health care to an animal, whether healthy or sick, without remuneration is not in violation of this statute unless they misrepresent themselves, their credentials or their level of expertise or claim to have a cure or a treatment for disease.**

Also, it would appear that the Veterinary Board is asking for greater discretion not only in the definition and enforcement of veterinary medicine but also in the evaluation of vets who apply for licensing. I would be interested in hearing the rationale for removing the the language **"and conforms to the standards required for accreditation by the American Veterinary Medicine Association"** on page 3, line 21 of the bill.

Thank you for your consideration.

Sincerely,

Janice C. Wrentmore

Jan Wrentmore
Proprietor, Red Onion Saloon

Representative John Coghill, House Rules Chairman
State Capitol, Room 214
Juneau, AK 99801-1182

Re: HB 297, Practice of Veterinary Medicine, Additional Concerns

Dear Representative Coghill:

I would request that the Board continue to follow and conform to the Standards of Accreditation by their own professional organization, the American Veterinary Medical Association (AVMA) in licensing applicants. It seems a tremendous waste to simply throw away all the knowledge and expertise accumulated over the years by the AVMA about other programs throughout the world. It will take a lot of time and money for each member of the Board to "reinvent the wheel" and get up to speed on programs worldwide. The public member of the Board may even lack sufficient credentials themselves to be able to make a fair and knowledgeable assessment and recommendation on medical issues. And the time, money and process will have to be repeated each time a board member is replaced...a very costly proposition.

A previous board has gone on record choosing to make even a discussion between non-veterinarians about neutering a pet, a punishable offense. They decided they would deal with all the infractions on a case-by-case basis. A Board with similar intentions could easily happen again and all the criminals created by this bill, would not be protected by the good intentions of other Boards. Good intentions do not have the force of law. The "Good Samaritan" clause in this bill does not offer protection either, for normal, everyday care, nor care for healthy animals.

Fiscal Notes from Law and Public Safety seem to be in order, given the massive number of people (hundreds/thousands) who would be committing criminal acts on a daily basis, and need to be prosecuted. Of course the new laws would be expected to be equitably enforced throughout every community in the state. A Fiscal Note from Commerce is also needed, to process the huge number of new licensed veterinarians that will be required to provide the feeding, boarding, training, grooming, advice and other care which would become illegal upon passage of this bill.

The significant economic effects of HB 297 on events like the Iditarod, Quest, state fairs, and horse and dog shows should be evaluated. What will happen to the livelihoods of trappers, mushers, herders and farmers when they can't afford the cost of the veterinarian to do the necessary daily care when they (the owners) are unable to provide the care? Will they have to/be able to find a new profession? And what will happen to their animals...will they have to be sold, or even destroyed (because no one else can afford them either)?

A fair, thorough, impartial and accurate assessment of all the ramifications and costs of this proposed legislation needs to be done before further action is taken.

Sincerely,

Michelle Stone

Representative John Coghill, House Rules Chairman
State Capitol, Room 214
Juneau, AK 99801-1182

Re: HB 297, Practice of Veterinary Medicine, Additional Concerns

Dear Representative Coghill:

I would request that the Board continue to follow and conform to the Standards of Accreditation by their own professional organization, the American Veterinary Medical Association (AVMA) in licensing applicants. It seems a tremendous waste to simply throw away all the knowledge and expertise accumulated over the years by the AVMA about other programs throughout the world. It will take a lot of time and money for each member of the Board to "reinvent the wheel" and get up to speed on programs worldwide. The public member of the Board may even lack sufficient credentials themselves to be able to make a fair and knowledgeable assessment and recommendation on medical issues. And the time, money and process will have to be repeated each time a board member is replaced...a very costly proposition.

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Fiscal Notes from Law and Public Safety seem to be in order, given the massive number of people (hundreds/thousands) who would be committing criminal acts on a daily basis, and need to be prosecuted. Of course the new laws would be expected to be equitably enforced throughout every community in the state. A Fiscal Note from Commerce is also needed, to process the huge number of new licensed veterinarians that will be required to provide the feeding, boarding, training, grooming, advice and other care which would become illegal upon passage of this bill.

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A fair, thorough, impartial and accurate assessment of all the ramifications and costs of this proposed legislation needs to be done before further action is taken.

Sincerely,

HB

305

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement for House Bill 305

"An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

In 1998, the Legislature changed AS 24.60.031(b) to allow a legislator to raise campaign funds during a legislative session as long as the funds were not for a legislative campaign. This enabled sitting members to raise money for a gubernatorial, federal or municipal campaign. House Bill 305 reverses this change and prohibits any fundraising by a legislator during a legislative session.

If the goal of the Legislative Ethics Act (AS 24.60) is to set ethical guidelines for legislators, it seems inconsistent to allow fundraising during a session for some offices but not others. HB 305 will bring consistency to the Legislative Ethics Act's guidelines on fundraising and ensure that a legislative session remains a forum for policy debates rather than an opportunity to fundraise for future elected office.

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
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 305(STA)
(H) Publish Date: 1/23/08

Identifier (file name): HB305-DOA-APOC-1-18-08
Title "An Act relating to campaign fund raising by a legislator..."
Sponsor Representative Meyers
Requester House State Affairs

Dept. Affected: Administration
RDU AK Public Offices Commission
Component AK Public Offices Commission
Component Number 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services	0.0	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	0.0
Contractual	0.0	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	0.0
Equipment	0.0	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	0.0
Grants & Claims	0.0	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	0.0
TOTAL OPERATING	**0.0**	**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	0.0	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	0.0
1004 GF	0.0	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	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	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**	**0.0**

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

Section 1 of this bill amends the campaign dislcosure law to restrict any candidate for legislative office from soliciting or accepting campaign contributions during a legislative session in any location in which the legislature is convened. This section of law is not enforceable by the Public Offices Commission, under the ruling of the Alaska Supreme Court in State v. Alaska Civil Liberties Union (ACLU), No. 5108, 199 WL 21944 (Alaska April 16, 1999). See Attorney General's Opinion 661-99-0513, June 22, 1999. This bill will not increase the operating costs for APOC.

Prepared by: Brooke Miles
Division: Alaska Public Offices Commission
Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone 907-334-1726
Date/Time 1/18/2008 9:16 a.m.
Date 1/18/2008

(Revised 11/19/2007 OMB)

C

HOUSE COMMITTEE REPO T

2.4.08

(7)

Date Referred to Committee: January 23, 2008

FURTHER REFERRALS: Rules

Date of Committee Action: Feb. 4, 2008

The RULES Committee considered: HB 305

HOUSE BILL NO. 305 — **CAMPAIGN FUND RAISING DURING SESSIONS**

"An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

Recommends it be replaced with | | HCS *or* |✓| CS *for* HB 305 (RLS)

For Senate Bills with new title: | | *Technical Title* | | *New Title: HCR*_____ | | Same Title |X| 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
HAM	1			✓

Signing with recommendations	Printed Last Name	DP (5)	DNP	NR	AM (2)
Anna Fairclough	FAIRCLOUGH	✓			
	TUTTENBERG				X
	KNAPIK	✓			
	KORTHUIS	✓			
	SAMUELS	X			
	Johnson				X
Chair: John Coghill	Coghill	✓			
Chair:					

HOUSE COMMITTEE REPOI

(7)
Date Referred to Committee: January 15, 2008 **FURTHER REFERRALS:**

Date of Committee Action: 1-22-08

The STATE AFFAIRS Committee considered: **HB 305**

HOUSE BILL NO. 305 **CAMPAIGN FUND RAISING DURING SESSIONS**

"An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

Recommends it be replaced with [ ] HCS *or* **[X] CS for** HB 305 (STA)
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____ [ ] Same Title [X] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
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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
Admin				X

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

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Craig Johnson	Johnson	Y			
Joe Johansen	JOHANSEN	X			
Bob Lynn	Ross	X			
John Coghill	Coghill			✓	
G T Doll	Doll			✓	
Chair: Bill J	LYNN	X			
Chair:					

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

The rewrite of HB 305 in State Affairs **created overlap language** in **AS 15.13.072(d)** ***Restrictions on solicitation and acceptance of contributions*** and a new section added in the State Affairs amendment to ***AS 15.13.074 Prohibited contributions***.

The amendment eliminates the new section to ***Prohibited contributions*** and repeals and reenacts AS 15.13.072(d) to clarify the changes made to contributions during regular or special session. Originally the statutes allowed contributions during the **90 days immediately preceding an election if the contribution was made in a place other than the capital city**. This would allow for a legislator or legislative staffer to attend special session in Anchorage within 90 days of an election and collect contributions while in special session because he or she is not in the "capital city".

With the attached amendment, a legislator or legislative employee cannot solicit or receive campaign contributions in the city hosting a regular or special session.

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456-5081

Date: February 5, 2008

To: Alpheus Bullard, Legal Counsel

From: Rynnieva Moss, Legislative Aide

Re: LS 1226\K version

Please prepare a CS (RLS) with the two amendments made in Rules Committee yesterday. We would like the committee report read across tomorrow morning. The amendments are attached.

LEGAL SERVICES

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

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

MEMORANDUM January 25, 2008

SUBJECT: Legislators who are candidates for federal office (HB 305)

TO: Representative Kevin Meyer
Attn: Mike Pawloski

FROM: Alpheus Bullard
Legislative Counsel

In a memorandum to your office dated December 13, 2007, I had advised that AS 15.13 could not be amended to include the regulation of the solicitation and acceptance of contributions for federal office, but that AS 24.60.031 could be so amended.

When I drafted the bill (that became HB 305), it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[1] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will

[1] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[2]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[3] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

TLAB::med
08-046.med

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[2] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[3] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

LEGISLATIVE RESEARCH REPORT

JANUARY 23, 2008

REPORT NUMBER 08.114

STATE LAWS ON CAMPAIGN FUNDRAISING DURING A LEGISLATIVE SESSION

PREPARED FOR REPRESENTATIVE KEVIN MEYER

BY PATRICIA YOUNG, MANAGER

You asked for information on campaign fundraising during legislative sessions. Specifically, you wished to know how other states address campaign fundraising by sitting legislators running either for reelection to the legislature or for other offices.

As you know, states vary remarkably in their approaches to nearly everything. Fundraising during sessions is no exception. Some states prohibit fundraising generally; others direct the prohibitions at lobbyists and political committees; a number of states are silent upon the issue. Nevertheless, **many states in some fashion restrict fundraising activities during legislative sessions.**[1] The following table provides details on eight of the states that prohibit campaign fundraising during and around legislative sessions. Briefly, we found as follows:

- Laws in **Missouri**, **New Mexico**, and **Virginia** appear to ban fundraising by any legislator for any statewide elected office—which would include federal office. New Mexico and Virginia also appear to prohibit a sitting legislator from fundraising for a local office.

- The statutory language in **Georgia** and **Nevada** would have banned any member of the legislature from fundraising for any purpose; however, the Georgia law, as it applies to candidates for federal office, was held to be preempted by federal election law. An opinion from the Nevada Attorney General arrived at a similar conclusion in regard to the Nevada law.

- The ban in **Iowa** does not apply to sitting legislators seeking election to a federal office.

- The ban in **Tennessee** does not apply to sitting legislators seeking election to a local office.

---

[1] Peggy Kerns, director, Center for Ethics in Government, National Conference of State Legislatures. Ms. Kerns can be reached at 303 856 1447.

907-465-3991
907-465-3908 (fax)

Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/laa/research/research.php

State Capitol
Juneau, AK 99801

- **Connecticut** law restricts the fundraising activity of lobbyists and their political committees on behalf of candidates, and bars candidates and political committees from accepting such contributions. The law does not apply to campaigns by legislators running for local or federal offices.

We hope this information is helpful. Please contact us if you have questions or need additional information.

Sample of State Prohibitions on Campaign Fundraising du. Legislative Sessions

State	Citation	Provision	Notes
Connecticut	CGS § 9-610(e)	[During session], (1) no lobbyist or political committee established by or on behalf of a lobbyist shall make or offer to make a contribution to or on behalf of, and no lobbyist shall solicit a contribution on behalf of, (A) a candidate or exploratory committee established by a candidate for nomination or election to the General Assembly or a state office or (B) a political committee (i) established for an assembly or senatorial district, (ii) established by a member of the General Assembly or a state officer or such member or officer's agent, or in consultation with, or at the request or suggestion of, any such member, officer or agent, or (iii) controlled by such member, officer or agent, to aid or promote the nomination or election of any candidate or candidates to the General Assembly or a state office, and (2) no such candidate or political committee shall accept such a contribution	For purposes of this subsection the term "state office" means the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, and the term "state officer" means the Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State The prohibition does not apply to lobbyists making campaign contributions during sessions to state legislators who are running for local or federal office
Georgia	OCGA § 21-5-35	No member of the General Assembly or that member's campaign committee or public officer elected state wide or campaign committee of such public officer shall seek or accep. a contribution or a pledge of a contribution to the member, the member's campaign committee, or public officer elected state wide, or campaign committee of such public officer during a legislative session	This provision, as it applies to candidates for federal office, is preempted by the Federal Election Campaign Act *Teper v Miller*, 82 F 3d 989 (11th Cir 1996)
Iowa	IC § 68A 504	A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills an elected state official, member of the general assembly, or candidate for state office shall not accept a contribution as prohibited in this subsection [However, the prohibition does not apply] to receipt of contributions by an elected state official, member of the general assembly, or candidate for state office who has taken affirmative action to seek nomination or election to a federal elective office so long as the contribution is placed in a federal campaign account	The ban does not apply to elected state officials, members of the general assembly, or candidates for state office seeking nomination or election to a federal office as long as certain conditions are met
Missouri	RSM § 130 032	Any candidate for the office of state representative, the office of state senator, or a statewide elected office shall not accept any contributions [during a legislative session] Only candidates for special election to the house of representatives, senate, or statewide elected office may, during such time, accept contributions from the date of the candidate's nomination by his or her respective political party until thirty days after the date of the election	This ban appears to extend to sitting legislators running for federal office (a "statewide elected office") but not for local office
Nevada	NRSA § 294A 300	It is unlawful for a member of the Legislature, the Lieutenant Governor, the Lieutenant Governor-Elect, the Governor or the Governor-Elect to solicit or accept any monetary contribution, or solicit or accept a commitment to make such a contribution for any political purpose [from 30 days before to 30 days after a regular session and from 15 days before to 15 days after a special session]	Federal election law preempts state election law therefore, state officials delineated in subsection (1) are not prohibited from soliciting or accepting monetary contributions for a campaign for federal office before during, or after a regular or special session of the legislature AGO 01-04 (3-12-2001)
New Mexico	NMSA § 1-19-34 1	It is unlawful [during a regular or special session] for a state legislator or candidate for state legislator, and for the governor, or any agent on behalf of any such individuals, to knowingly solicit a contribution for a political purpose	This provision appears to extend to sitting legislators running for any local or federal office
Tennessee	TCA § 2-10-310	[During regular or special sessions] no member of the general assembly or a member's campaign committee or the governor or the governor's campaign committee shall conduct a fundraiser or solicit or accept contributions for the benefit of the caucus, any caucus member or member or candidate of the general assembly or governor (Except that) a member of the general assembly who is a candidate for a local public office shall be permitted to conduct fundraising events and solicit or accept contributions for such campaign for local public office under certain conditions [However] it shall be unlawful for any lobbyist or employer of a lobbyist to make any contribution to such member's campaign committee during such period for any purpose	A state legislator can legally raise money for a federal race while the state legislature is in session, the prohibition on legislative fundraising does not apply to campaigns for federal office OAG 00-185 (12/13/00) Nonlegislators [are] not barred from fund raising OAG 97-158 (12/01/97)
Virginia	Va Code Ann § 24 2-954	No member of the General Assembly or statewide official and no campaign committee of a member of the General Assembly or statewide official shall solicit or accept a contribution for the campaign committee of any member of the General Assembly or statewide official, or for any political committee from any person or political committee [during a regular session] No person or political committee shall make or promise to make a contribution to a member of the General Assembly or statewide official or his campaign committee [during a regular session]	This provision appears to extend to sitting legislators running for any local or federal office

NOTES: For the purposes of this table, we have truncated descriptions of the time period around a legislative session, which vary considerably
SOURCES: The LEXIS on-line database of state statutes

Alaska State Legislature

Select Committee on
Legislative Ethics

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(907) 258-8172
FAX: 258-2106

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510

January 24, 1994

ADVISORY OPINION 94-04

Subject: Campaigning During Session

RE: May a legislator who is a candidate for a statewide elective office engage in fund raising activities for that office during the legislative session?

You are a legislator, covered by the Legislative Code of Ethics. You have filed a general letter of intent and you have announced that you are running for Lieutenant Governor in the next election. You ask whether you may engage in fund raising activities concerning that campaign during the legislative session.

Discussion

To begin with, the committee notes that campaign contributions that you report as required by law are excluded from the provisions concerning gifts by AS 24.60.080(e). [1]

Under AS 24.60.031, a legislator's fund raising activities are restricted during the legislative session. The section states:

> Sec. 24.60.031. RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not
>
> (1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;

---

[1] AS 24.60.080(e) states:

> (e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or

(3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

Under paragraph (1) of subsection (a), legislators are prohibited from soliciting or accepting contributions during the legislative session for state legislative campaigns. Under paragraph (3), legislators may not spend money in a state legislative campaign that was raised during the session. The scope of paragraph (2) is not clearly limited to "state legislative campaigns." That paragraph prohibits legislators from accepting money raised at events held during the session if the event was to raise money on behalf of the legislator for campaign purposes or for state legislative political purposes. Unlike the other two paragraphs, this paragraph does not, on its face, limit the prohibition related to "campaign purposes" to "state legislative campaigns."

The committee believes that the language of the statute should be interpreted as it is written. Accordingly, a legislator running for statewide office may solicit and accept contributions for that office during the legislative session (as permitted by paragraph (1) of 24.60.031(a)) and a legislator who has filed a general letter of intent to become a candidate for public office may spend money raised during the session on a campaign for statewide office (as permitted by paragraph (3)). However, under paragraph (2), a legislator may not accept money from an event held during the legislative session if the purpose of the event was to raise money for the legislator's campaign for any elective office. The committee recognizes that this result appears inconsistent, but the committee believes that any change from this result should be made by amendment to the statute, not by interpretation of it.

Conclusion

For the reasons discussed above, the committee finds that the prohibition contained in AS 24.60.031(a)(2), concerning accepting money from an event held during the legislative session, applies to statewide campaigns, including your campaign for lieutenant governor. Therefore, you may not accept money raised during the session at fundraising events.

Adopted by the Select Committee on Legislative Ethics on January 24, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair
Ed Granger, Vice-Chair
Senator Drue Pearce

Margie MacNeille
Representative Brian Porter
Shirley A. McCoy
Senator Jay Kerttula

Members absent were:

Edith Vorderstrasse
Representative Jerry Mackie

TC:gc
94-038.glc

LEGAL SERVICES

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MEMORANDUM April 23, 1999

SUBJECT: Effect of the court's decision in State v. ACLU on AS 24.60.031

TO: Shirley McCoy, Chair
Select Committee on Legislative Ethics
Attn: Susie Barnett, Professional Assistant

FROM: Teresa B. Cramer
Legislative Counsel

You have asked for an opinion from this office regarding the interplay of the state supreme court's recent decision in State v. ACLU, -- P.2d -- (Alaska) (Alaska Supreme Court Opinion No. April 16, 1999) and the ethics law regarding the prohibition on fund raising during session (AS 24.60.031(a)).

Short answer: The answer to your question is not clear. Having said that, it seems to me somewhat more likely than not that the ban on accepting contributions during session contained in the ethics code would survive a challenge under the reasoning in the ACLU case.

1. AS 24.60.031.

In 1992, the legislature substantially revised the legislative ethics code. The ban on accepting contributions during the legislative session was part of that legislation. As enacted, AS 24.60.031(a) read:

> **Sec. 24.60.031** RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not
>
> (1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;
>
> (2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or
>
> (3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

AS 24.60.031 was amended in 1996 by the campaign reform legislation that formed the basis for the ACLU case, but only to conform the citation to the definition of "contribution" in subsection (b) to the new statute number in AS 15.13. (Sec. 27, chapter 48, SLA 1996.)

In the last legislative session, AS 24.60.031(a) was amended to allow fund raising during the 90 days before elections, except in Juneau. The statute now reads:

Sec. 24.60.031. Restrictions on fund raising. (a) A legislator or legislative employee may not

(1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for the state legislature; however, a legislator or legislative employee may, except in the capital city, solicit or accept a contribution, promise, or pledge for a campaign for the state legislature that occurs during the 90 days immediately preceding an election;

(2) accept money from an event held on a day when either house of the legislature is in regular or special session if a substantial purpose of the event is to raise money on behalf of the member or legislative employee for state legislative political purposes; however, this paragraph does not prohibit a legislator or legislative employee from accepting money from an event held in a place other than the capital city during the 90 days immediately preceding an election; or

(3) in a campaign for the state legislature, expend money that was raised on a day when either house of the legislature was in a legislative session by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office; however, this paragraph does not apply to money raised in a place other than the capital city during the 90 days immediately preceding an election.

(b) In this section, "contribution" has the meaning given in AS 15.13.400.

The legislative ethics code applies to legislators and legislative employees. (AS 24.60.020) It does not apply to candidates for the legislature unless they are incumbent legislators running for reelection or for election to a different legislative office. (AS 24.60.020(a)(2)) Therefore, when the ban on accepting campaign contributions during session in AS 24.60.031 was first enacted in 1992, the prohibition did not apply to challengers who were not themselves legislators. This circumstance is important given the supreme court's reasoning in ACLU.

2. The ACLU decision on fund raising during sessions.

The 1996 amendment to election campaign laws enacted AS 15.13.074(c), which limits the time when persons and groups may make contributions to candidates. (Section 11, Ch. 48, SLA 1996.) Under AS 15.13.074(c)(2) as it read when the ACLU suit was filed, contributions to legislative candidates, both incumbents and challengers, may not be made during a regular legislative session. (In footnote 194 of the ACLU opinion, the court notes that AS 15.13.074(c)(2) and AS 15.13.072(d) were both amended in 1998 to permit candidates for the legislature to solicit and accept contributions during the 90 days immediately preceding the election in which they are competing, except in Juneau. The court does not discuss this loosening of the restrictions on campaign fund raising.)

The court acknowledges that the state may impose restraints on the exercise of First Amendment free speech rights in order to prevent corruption or the appearance of corruption. Id. at 82. The court also notes that the receipt of contributions by incumbents is relevant to the appearance of impropriety. Id. at 82. The court distinguishes this factual situation from the receipt of contributions by challengers, and finds that there is not a comparable justification for prohibiting challengers from accepting contributions during legislative sessions. Because of this finding, the prohibition against accepting contributions during sessions is not narrowly tailored to the State's compelling interest: it is invalid as to non-incumbents. Id. at 83. The court finds that invalidating the ban only as to challengers (and leaving the ban in place as to incumbent legislators) "would fundamentally unbalance a restriction which the legislature clearly intended to apply to incumbents and challengers alike, and would defeat the legislature's clear intention as to this prohibition." Id. at 83. The court therefore invalidates the ban on accepting contributions during sessions both as to challengers and as to legislators. Id. at 83.

3. Application of the ACLU holding to AS 24.60.031.

The reasons for the court's holding in the ACLU case do not apply to the Ethics Code prohibition against accepting contributions for legislative races during the session. As discussed in the first part of this opinion, AS 24.60.031, the Ethics Code prohibition against legislators' accepting contributions during sessions, was enacted without a comparable prohibition imposed on non-incumbent challengers. Therefore, there is no basis for saying that the legislature's intent with respect to AS 24.60.031 requires that the ban be applied equally to challengers and incumbents. The court in ACLU acknowledged that preventing corruption or the appearance of corruption is a compelling state interest and that prohibiting incumbent candidates from accepting contributions during a session is relevant to that interest. Therefore, the court is not likely to find that the ban against legislators accepting contributions during session fails as an infringement of legislators' First Amendment Rights. It appears to me that the court, under the reasoning expressed in ACLU, would uphold the provisions of AS 24.60.031at least as the ban applies to legislators.

There is another basis on which the legislature's placing of a prohibition on its members might be upheld. Under art. 2, sec. 12, each house of the legislature is the judge of the

qualifications of its members. AS 24.60.031 can be viewed as an exercise of that power and, if so, a court might decline to intervene in a matter that was within the unique jurisdiction of the legislative branch of government

The ethics code prohibition against campaign fund raising during sessions applies to both legislators and legislative employees. The court in the ACLU case was not asked to examine the role of employees in the legislative process. The evidence cited by the court in support of the need for campaign fund-raising restrictions with respect to legislators describes the public response, expectations of lobbyists, and perceptions of elected officials with respect to legislators only. Id. at 6 - 7, 40 - 41, 53 - 56, and 74 - 76. The ACLU decision cannot, therefore, be directly applied to legislative employees.

The courts generally have permitted restraints on the right of public employees to participate actively in political campaigns because of the government's interest in enforcing the law and executing programs without bias or favoritism for or against political parties, in avoiding the appearance of political favoritism, and in using or appearing to use a government workforce as a political machine. United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, at 565, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973). The case arose in the context of Executive Branch employees, but at least the last argument applies equally to Legislative Branch employees. In any case, it indicates that the court has recognized the importance of separating the political campaigning process from governmental functions. The interest of the government in prohibiting fund raising by employees as well as by legislators during session furthers this goal. It seems to me likely that the court would uphold the prohibition as it applies to employees.

TC:pl
99-054.plm

Memorandum

State of Alaska

Department of Law

TO: Karen Boorman
Executive Director
Alaska Public Offices Comm'n

DATE: June 22, 1999

FILE NO: 661-99-0513

TEL. NO: 269-5135

FROM: Jan Hart DeYoung
Assistant Attorney General

SUBJECT: Questions following *State v. Alaska Civil Liberties Union*

You have asked a number of questions about the decision of the Alaska Supreme Court in *State v. Alaska Civil Liberties Union (ACLU)*, No. 5108, 1999 WL 219443 (Alaska April 16, 1999). In that decision the Court upheld most of the campaign finance law reforms adopted in 1996. However, the Court did invalidate as unconstitutional two provisions: the bans on nonelection year contributions in AS 15.13.074(c)(1) and on contributions to legislative candidates during the legislative session in AS 15.13.074(c)(2). You have several questions about how the Court's decision affects other sections of the law that the Court did not address.

Summary: our opinion is that the deadline for making contributions in AS 15.13.074(c) is 45 days after the date of the election; candidates for the legislature may raise funds during the legislative session unless barred by the legislative ethics law in AS 24.60.~~130~~ 990, and candidates for statewide office may not solicit or accept contributions in Juneau during the legislative session under AS 15.13.072(g). Your questions and our analysis follow.

1. **What effect does invalidating the ban on nonelection year contributions in AS 15.13.074(c)(1) have on AS 15.13.074(c)(4) and (5), which address post election contributions and contributions to statewide candidates in Juneau during the legislative session?**

The answer depends on whether the provision is compatible with the delayed repeal and reenactment of AS 15.13.074(c).

When the legislature adopted the 1996 campaign finance reforms, it set time limits on fund raising. AS 15.13.074(c), as it was enacted in 1996, prohibited persons or groups from making contributions except during an allowed period, generally, from January 1 of the year of the election to 45 days following the election. The legislature also adopted a contingent provision that would take effect only if the Court found "the dates before which campaign contributions may not be accepted" unconstitutional. Sec. 12, ch. 48, SLA 1996 (contingent provision); sec. 33(b), ch. 48, SLA 1996 (setting out contingency that causes contingent provision in section 12 to become effective). This contingent provision ("section 12") would allow campaign contributions to be made earlier -- 18 months before the election

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Dept.	Phone #
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In *State v. ACLU*, the Court did find "the dates before which campaign contributions may not be accepted" unconstitutional. The Court held that prohibiting contributions in nonelection years significantly interfered with the constitutional right of association because the time period for contributions was relatively short without appearing to address the State's interests of preventing corruption or its appearance. 1999 WL 219443, at *28, slip op. at 78-79. The Court expressly invalidated AS 15.13.074(c)(1), (2), and (3) and noted that its action caused the contingency in section 12 to take effect. 1999 WL 219443, at *28 & n. 192, slip op. at 79 & n. 192.

However, in 1998 (after the ACLU filed its lawsuit but before the Court's decision), the legislature amended AS 15.13.074. Sec. 5, ch. 74, SLA 1998. First, it amended AS 15.13.074(o)(4) to expand the period for contributions from 45 days to 60 days following the election or to December 31, whichever came first. Second, it added AS 15.13.074(c)(5) to prohibit contributions to statewide candidates in Juneau during the legislative session. Sec. 5, ch. 74, SLA 1998. When adopting the amendments, the legislature apparently overlooked the contingent provision; the legislature did not amend section 12 of the 1996 reforms to conform to the changes it made to AS 15.13.074.

Section 12 purports to repeal all of AS 15.13.074(c).[1] Because section 12 was not amended to increase the time for postelection contributions or to ban contributing in Juneau

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[1] The complete text of section 12 follows:

"Sec. 12. AS 15.13.074(c) is repealed and reenacted to read:

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

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

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

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

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

(ii) is not opposed at the general election;

during the legislative session, applying section 12 literally would repeal the 1998 amendments and reinstate parts of the earlier version of AS 15.13.074(c). The result would be to return the postelection deadline to 45 days and to extinguish the restrictions on contributing in Juneau.

However, a rule of statutory construction allows intervening amendments to survive repeal when a delayed enactment takes effect. The rule appears in the principal treatise on statutory construction, Norman J. Singer, *Sutherland Statutory Construction* § 23.29 (5th ed. 1993):

> The reenactment of a statute is a continuation of the law as it existed prior to the reenactment as far as the original provisions are repeated without change in the reenactment. Consequently, an intermediate statute which has been superimposed upon the original enactment as a modification of its provisions is likewise not repealed by the reenactment of the original statute, but is construed to be in force to modify the reenacted statute as it modified the original enactment. However, this immunity from repeal is extended only to those provisions of intermediate acts which are consistent with the reenactment; any provisions in the intermediate act which are inconsistent with the reenactment are repealed.

This rule is applied in Alaska. It was applied in Alaska before statehood, *U.S. Smelting Refining & Mining Co., v. Lowe*, 11 Alaska 429, 74 F. Supp. 917, 921, 922 (D. Alaska Terr. 1947),[2] and the Legislative Affairs Agency has incorporated the rule into the state's legislative drafting manual:

> If a statutory amendment is to be delayed, the following question may arise: Do intervening amendments to the same AS section survive once the delayed amendment takes effect. The general rule is that intervening amendments will survive unless incompatible with the delayed

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(B) after the date of a primary election if the candidate was not nominated at the primary election; or
(C) after the date of the general election, or after the date of a municipal or municipal runoff election.

[2] *U.S. Smelting Refining & Mining Co., v. Lowe*, 11 Alaska 429, 74 F. Supp. 917, 921, 922 (D. Alaska Terr. 1947), *aff'd Lowe v. United States Smelting Refining & Mining*, 175 F.2d 486, 489 (9th Cir.1949) ("Enough to say that repeals by implication are regarded with disfavor; but where the latest legislative word on a subject is so incompatible with a previous enactment that the two can not exist together the courts have not hesitated to hold the earlier enactment repealed insofar as it is in conflict with the later"), *and vacated on other grounds*, 338 U.S. 954, 70 S.Ct. 493 (1950).

> amendment. See *U.S. Smelting, Refining & Mining Co. v. Lowe*, 12 Alaska 423 (9th Cir. 1949) and the discussion in the same case at 11 Alaska 429 (D. Alaska 1947). If intervening amendments are to be allowed, it is best to draft the delayed amendment as an amendment rather than a repeal and reenactment. If intervening amendments are to be wiped out once the delayed amendment takes effect, it is best to draft the delayed amendment as a repeal and reenactment and include an intent section stating that intervening amendments are not to be carried forward once the repeal and reenactment takes effect. [Legislative Affairs Agency, Manual of Legislative Drafting 21 (1999).]

The preferred practice is for the legislature to state when it enacts legislation with a delayed effective date whether it intends intervening amendments to survive the reenactment. According to the manual, delayed legislation that does not extinguish intervening amendments should be in the form of an amendment. On the other hand, delayed legislation that repeals intervening amendments should be in the form of a repeal and reenactment with a statement of intent that intervening amendments are not carried forward. In adopting section 12 in 1996, the legislature did not follow this practice. It used the form of the delayed repeal and reenactment but did not state any intention about the survival of intervening amendments. Because the legislature did not declare its intention, we apply the rule of construction, which carries intervening amendments forward unless they are incompatible with the delayed enactment, and because the intervening amendments are incompatible, conclude that the amendments do not carry forward.

a. Because postelection fund raising deadlines of 60 days and 45 days following the election are in direct conflict, the longer deadline in the intervening amendment is not carried forward and does not survive reenactment.

The 1996 campaign finance law reforms established a deadline for post election fund raising of 45 days following an election. AS 15.13.074(c)(4), sec. 11, ch. 48, SLA 1996. This 45-day deadline also appears in the contingent provision, section 12. AS 15.13.074(c)(3), sec. 12, ch. 48, SLA 1996. In 1998 the leg. ature amended AS 15.13.074(c)(4), expanding the deadline to 60 days following the election or December 31, whichever came first. Sec. 5, ch. 74, SLA 1998. The deadlines in the intervening amendment and the reenacted AS 15.13.074(c) are in direct conflict and cannot be reconciled. Because the intervening amendment is inconsistent with the reenactment of AS 15.13.074(c), under the rule of construction, the 1998 amendment to AS 15.13.074(c)(4) may not carry forward and is repealed. Thus, the postelection deadline for contributing returns to 45 days following the election.[3]

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[3] During the 1999 legislative session following the issuance of *ACLU v. State*, the legislature considered a bill that would have expanded the post election deadline for making contributions to the earlier of 60 days following the election or December 31 of the year of the

b. Because prohibiting contributions to candidates for statewide office in Juneau during the legislative session is incompatible with section 12, it does not survive reenactment.

In 1998 the legislature added a new provision, AS 15.13.074(c)(5), which prohibits contributions in Juneau to statewide candidates during a legislative session, thereby expanding the circumstances in AS 15.13.074(c) in which "a person or group may not make a contribution." Sec. 5, ch. 74, SLA 1998. Whether banning some contributing in Juneau is compatible with the delayed enactment of section 12 provides a more difficult question than the expanded postelection deadline in AS 15.13.074(c)(4), discussed in the previous section.

Other legislative session contribution limits preceded the Juneau ban in AS 15.13.074(c)(5). AS 15.13.074(c)(2) banned contributions during the session to all candidates for legislative office.[4] In addition, during the legislative session, legislators and legislative staff may not raise campaign funds regardless of the political office they are seeking under AS 24.60.031. This prohibition in the legislative ethics law handicaps those legislators seeking elective office against an opponent not subject to the prohibition. By adopting the Juneau ban in AS 15.13.074(c)(5), the legislature narrowed the opportunities for candidates not otherwise restricted by the legislative ethics law to raise campaign funds during the legislative session. It thereby helped level the playing field for legislators and legislative staff running for statewide offices.

Applying the rule of construction, we must examine the compatibility of the Juneau ban in AS 15.13.074(c)(5) with section 12. Section 12 was intended to expand the time period for *pre*election contributions if the Alaska Supreme Court found the time period in AS 15.13.074(c)(1) too restrictive. The legislature stated, "if a court order is entered and becomes final declaring that the dates set out in AS 15.13.074(c), as enacted by sec. 11 of this Act, as the dates before which campaign contributions may not be accepted, are unconstitutional," then section 12 takes effect. Sec. 33(b), ch. 48, SLA 1996. The legislature obviously intended section 12 to fill the void created if a court invalidated the short preelection contributions period and to cure any constitutional deficiency by expanding the time for contributing. On the other hand, the Juneau ban narrows, rather than expands, opportunities for fund raising. Retaining the Juneau ban in AS 15.13.074(c)(5) also seems inconsistent with the repeal of AS 15.13.074(c)(2). The legislative session ban in AS 15.13.074(c)(2) banned contributions to all candidates for the

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election. House Bill 225, §1, 21st Legislature, First Session (1999). The bill was not enacted during the first session. 1999 House Journal 1635, 1672 (5/18-19/99) (unfinished business).

[4] In addition, all candidates for *legislative office* at the time the Juneau ban in AS 15.13.074(c)(5) was adopted were prohibited from soliciting or accepting contributions during the legislative session under AS 15.13.072(d).

legislature during the legislative session. The Court found the legislative session ban unconstitutional in *State v. ACLU*, 1999 WL 219443, at *28-29, slip op. at 81-83, due to its impact on the right of association through making contributions to nonincumbent candidates. The legislative session ban was then repealed through the repeal and reenactment of AS 15.13.074(c) in section 12 when the Court found the date contributions could begin unconstitutional. Sec. 33(b), ch. 48, SLA 1996. Because the legislature intended the repeal of the legislative session ban in AS 15.13.074(c)(2) when AS 15.13.074(c) was repealed and reenacted, it probably would not intend to carry forward even a partial legislative session ban. Thus, we conclude that carrying forward the Juneau legislative session ban is inconsistent with section 12. Moreover, we have reservations about the constitutionality of AS 15.13.074(c)(5) after *State v. ACLU*.[5] Because carrying forward AS 15.13.074(c)(5) is inconsistent and incompatible with the goals of expanding opportunities for fund raising and responding to a Court's decision that the time period was unconstitutionally restrictive, it does not meet the test of the rule of construction. We therefore conclude that the ban on contributions to candidates for statewide office in the capital city during the legislative session should not carry forward.

2. **What effect does invalidating the ban on contributing during the legislative session in AS 15.13.074(c)(2) have on AS 15.13.072(d), which prohibits candidates from soliciting or accepting contributions while the legislature is in session?**

The effect is to invalidate AS 15.13.072(d). Making a contribution is not a meaningful expression of association if the candidate may not accept the contribution.

Alaska's campaign finance laws set contribution limits in two ways: they impose limits on the makers of contributions in AS 15.13.074 and they limit the candidates' ability to solicit and accept contributions in AS 15.13.072. In *State v. ACLU*, the Court found certain

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[5] The constitutionality of the Juneau ban in AS 15.13.074(c)(5) after *State v. ACLU* provides a close question. The Court did not address AS 15.13.074(c)(5) in the decision. But a rule prohibiting contributing in Juneau during the legislative session (AS 15.13.074(c)(5)), resembles a rule prohibiting contributions to legislative candidates during the session (AS 15.13.074(c)(2)), which the Court found unconstitutional. Like the legislative session ban in AS 15.13.074(c)(2), the Juneau ban in AS 15.13.074(c)(5) limits the opportunities for expressing support for candidates and thereby encroaches on the right of association of contributors. The key is whether the Juneau ban succeeds in combating corruption and its appearance where the legislative session ban in AS 15.13.074(c)(2) did not. Because the prohibition in AS 15.13.074(c)(5) is much narrower – it only applies to candidates for statewide office and in the capital city – it can be distinguished from the legislative session ban found unconstitutional. Thus, while *State v. ACLU* raises a question about the constitutionality of AS 15.13.074(c)(5), it does not compel the answer. See Court's discussion of the legislative session ban, 1999 WL 219443, at *28-29, slip op. at 81-83.

limits unconstitutional but in doing so addressed only the limits in AS 15.13.074 on persons or groups making the contribution. It did not address the closely related limits on the candidates in AS 15.13.072. This omission is not surprising because the Court's focus was the constitutional rights of the contributors. Nevertheless, the omission is confusing and raises the question whether requiring a candidate to refuse a contribution infringes on the contributors' constitutional right to associate with the candidate by making a contribution. The Court found that prohibiting contributions to candidates during the legislative session interfered with a contributor's right of association with nonincumbent candidates without promoting the government's interest in preventing corruption or its appearance. The contribution and act of association, however, would be pointless if the candidate could not accept the contribution. Based on the Court's decision in *State v. ACLU*, we believe the Court would conclude that prohibiting the solicitation and acceptance of contributions interferes with the constitutional right of association without promoting a governmental interest. Although the Court did not expressly invalidate the prohibition in AS 15.13.072(d), we believe it would find the prohibition on legislative candidates' soliciting or accepting contributions during the legislative session to be unconstitutional and unenforceable.

Please note that this opinion and the Court's decision in *State v. ACLU* should not affect the validity of the ban on fund raising during the legislative session in the legislative ethics law, AS 24.60.130. That section applies only to legislators and legislative staff. It was not at issue in *State v. ACLU* and remains effective. See opinion of the legislative counsel, Mem. from T. Cramer, Legislative Counsel, to Select Comm. Legislative Ethics (4/23/99).

3. **Does *State v. ACLU* invalidate AS 15.13.072(g), which prohibits candidates for statewide office from soliciting or accepting contributions in the capital city while the legislature is in session?**
No. AS 15.13.072(g) remains valid.

Earlier in this memorandum we determined that *State v. ACLU* and the consequent repeal of AS 15.13.074(c) by section 12 repealed the prohibition in AS 15.13.074(c)(5) against contributions to candidates for statewide office in Juneau during the legislative session. Your question is whether the parallel prohibition in AS 15.13.072(g) against candidates soliciting or accepting such contributions is now also invalid.

Our earlier determination that AS 15.13.074(c)(5) had been repealed followed the application of the rule of construction for delayed enactments. The 1996 legislation, however, did not contain a section comparable to section 12 that would repeal parts of AS 15.13.072, which limits candidates' solicitation or acceptance of contributions. The rule of construction for intervening amendments therefore does not apply. Moreover, we cannot say that prohibiting contributions in Juneau during the legislative session is unconstitutional. Although we have reservations about the constitutionality of legislative session limits on contributions to *nonlegislative* candidates following *State v. ACLU*, we believe the limits in AS 15.13.072(g) are distinguishable from the limits that the Court found unconstitutional. See discussion in note 5.

While we have doubts about the constitutionality of AS 15.13.072(g), we cannot conclude that it is unconstitutional. Despite these doubts, because the rule of construction does not apply to make AS 15.13.072(g) ineffective, the limits in AS 15.13.072(g) on soliciting or accepting such contributions in the capital city remain valid.

I hope this discussion is helpful. If the foregoing discussion failed to answer your questions, please do not hesitate to contact me for clarification.

JHD:jv

State v. Alaska Civil Liberties Union, 978 P.2d 597, 631 (Alaska 1999):

The court case did overrule the prohibition against making contributions during the legislative session. Here is the text from the opinion if you are interested:

b. Ban on contributions during the legislative session; AS 15.13.074(e)

[24] Alaska Statute 15.13.074(e)(2) prohibits making contributions to legislative candidates, including both challengers and incumbents, during a regular legislative session. (FN194)

AkCLU argues that this ban severely constrains effective campaig advocacy by legislative candidates. "Given the length of the Alaska legislative session, fundraising [under the ban] is limited to a two-month period before a primary election and [to] two and one-half [additional] months before a general election." (FN195) Moreover, AkCLU claims the associational rights of potential contributors are severely restricted during the legislative session.

The State argues that this ban "addresses the perception that contributions are made to influence the conduct of elected officials during the session." It also contends that "the prohibition frees sitting legislators from the fund-raising treadmill and allows them to focus on the public's business during the legislative session." The State claims that this interest is compelling enough to support the ban. The Josephson Report survey, in which about sixty percent of legislators stated they believed fundraising during the legislative session needed to be regulated, supports this contention to a limited extent.

Considered in isolation, the "legislator-freeing" rationale is not sufficiently compelling to justify this restriction. In Rosenstiel v. Rodriguez, the Eighth Circuit held that freeing legislators to deal with issues was only relevant as a by-product of corruption-fighting measures. (FN196) In other cases cited by the State, the interest was found sufficient

only to promote a speech-enhancing measure. (FN197)

Preventing corruption or its appearance is a compelling interest justifying narrowly-tailored restraints on First Amendment rights. But the very circumstance most relevant to the appearance of corruption--receipt of contributions by incumbent candidates during the session--does not imply that in-session contributions to challengers also give the appearance of corruption. The ban is therefore not narrowly tailored to the State's compelling interest, and is invalid as to non-incumbents. But invalidating the ban only as to challengers would fundamentally unbalance a restriction which

the legislature clearly intended to apply to incumbents and challengers alike, and would defeat the legislature's clear intention as to this prohibition. We therefore decline to invalidate only part of this ban while upholding it with respect to incumbent candidates.

Accordingly, we affirm the decision holding these provisions invalid.

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MEMORANDUM January 24, 2008

SUBJECT: Amendments to CSHB 305(STA)
(Work Order Nos. 25-LS1226\K.1 & \K.2)

TO: Representative John Coghill
Attn: Rynnieva Moss

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies amendments 25-LS1226\K.1 & \K.2 for CSHB 305(STA). Please find below a brief explanation of the amendments.

Amendment \K.1: eliminating overlap
This amendment eliminates repetitive[1] statutory provisions found in CSSB 305(STA) (25-LS1226\K), relating to restrictions on the acceptance and solicitation of campaign contributions by legislators and legislative employees during a legislative session.

AS 15.13.072(d) (as found in existing statute) restricts the solicitation and acceptance of contributions during session by "candidates or individuals" who seek election or reelection to the state legislature. In State v. Alaska Civil Liberties Union, 978 P.2d 597 (1999), the Alaska Supreme Court reversed a lower court's ruling that Alaska's 1996 campaign finance reform statute was unconstitutional. What the Alaska Supreme Court did not reverse was the judgment of the lower court as to the Act's pre-election year and legislative session contribution bans. Consequently, the current AS 15.13.072(d) has been applied only to legislators by the Alaska Public Offices Commission.[2]

This amendment (1) repeals and reenacts AS 15.13.072(d), (2) eliminates CSHB 305(STA)'s amendment of AS 15.13.074, and (3) further clarifies language providing that only contributions made towards the election campaign of the legislator or legislative employee (accepting or soliciting the contribution) may be accepted or solicited within

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[1] "Repetitive" rather than redundant. AS 15.13.072 regulates the solicitation and acceptance of campaign contributions; AS 15.13.074 prohibits the making of certain contributions.

[2] Testimony of Brooke Miles, House State Affairs Committee, January 22, 2008.

the 90 days preceeding that election, and only if those contributions are solicited or accepted outside the capital city or location in which the session is being held.

Amendment \K.2: campaign for federal office
This amendment removes language from CSHB 305(STA)'s changes to AS 24.60.031 that prohibit a legislative employee (AS 24.60.031(a)) or legislator (AS 24.60.031(c)) from soliciting or accepting a contribution or soliciting or accepting a promise or pledge to make a contribution for that legislative employee or legislator's campaign for federal office.

When I drafted the bill, it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[3] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state

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[3] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

statutes limiting the time frame during which federal candidates may accept campaign contributions.[4]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[5] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

Requested amendment dealing with overlap between CSHB 305(STA)'s AS 15.13.072(d), AS 15.13.074(j), and AS 24.60.031(a) and (c).
While there is overlap between CSHB 305(STA)'s AS 15.13.072(d), AS 15.13.074(j), and AS 24.60.031(a) and (c), some overlap may be desirable. AS 15.13 regulates state elections and AS 24.60 provides standards of conduct for the legislature. The chapters are two very different animals and the means of enforcement, sanctions, and scope of each chapter is not the same. The prohibitions in AS 24.60.031(a) and (c) bar the solicitation or acceptance of a contribution or the solicitation or acceptance of a *promise or pledge to make a contribution,* whereas the prohibitions in AS 15.13.072(d) and AS 15.13.074(j) speak only to the acceptance or solicitation of a contribution. I am not acquainted with the drafting history of these provisions and the rationales accounting for the difference.[6] 25-LS1226\K.1 addresses repetition in the Committee Substitute. I will await further direction from your office relating to the overlap between these provisions.

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

TLAB:ljw:med
08-030.ljw

Enclosures

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[4] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[5] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

[6] Important to note, that a violation of AS 15.13 may be criminally prosecuted, which would require a higher standard of proof than would a violation of AS 24.60. The difficulty of proving "beyond a reasonable doubt" the acceptance or solicitation of a promise or pledge to make a contribution, may account for the disparity in language.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 305(STA)

Page 2, line 27:

Delete "**municipal, state, or federal**"

Insert "**state or municipal**"

Page 2, line 31:

Delete "**municipal, state, or federal**"

Insert "**state or municipal**"

Page 3, line 10, following "**for**":

Delete "**public**"

Insert "**state or municipal**"

Page 3, line 24:

Delete "public"

Insert "state or municipal"

Page 3, lines 29 - 30:

Delete "municipal, state, or federal"

Insert "state or municipal"

Page 4, line 3, following "for":

Delete "public"

Insert "state or municipal"

Page 4, line 8:

Delete "municipal, state, or federal"

Insert "state or municipal"

Page 4, line 11, following "for":

Delete "public"

Insert "state or municipal"

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MEMORANDUM January 25, 2008

SUBJECT: Legislators who are candidates for federal office (HB 305)

TO: Representative Craig Johnson
Attn: Jeanne Ostnes

FROM: Alpheus Bullard
Legislative Counsel

You requested an amendment to House Bill 305 (25-LS1226\E) that was provided to your office on 1/19/2008. Subsequently, I've become better acquainted with the federal law governing candidates in federal elections.

When I drafted your amendment, it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[1] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will

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[1] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[2]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[3] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

TLAB:med
08-045.med

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[2] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[3] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

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MEMORANDUM January 23, 2008

SUBJECT: Candidates for federal office (HB 305; Work Order No. 25-LS1226\E)

TO: Representative Gabrielle LeDoux
Attn: Sonya Hymer

FROM: Alpheus Bullard
Legislative Counsel

You have asked whether federal law would operate to preempt an Alaska law that restricts the fundraising activities of a candidate for federal office. It is my opinion that any state law that prohibits the solicitation and acceptance of campaign contributions during a legislative session by a state legislator who is a candidate for federal office will be interpreted by a court as being preempted by federal law.[1]

In Tepper v. Miller, 82 F.3d 989 (1996) the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[2] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 ("FECA") (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any*

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[1] While such state laws might be directed toward the regulation of state legislators and only incidentally affect some candidates for federal office during certain times, it is the effect of the state law that matters in determining preemption, not its intent or purpose. See Tepper v. Miller, 82 F.3d 989, 995 (1996), citing Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 105-06 (1988) ("In assessing the impact of a state law on the federal scheme, we have refused to rely solely on the legislature's professed purpose and have looked as well to the effects of the law.").

[2] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

provision of State law with respect to election to Federal office." (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission ("FEC"), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[3]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[4] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

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

TLAB:ljw
08-026.ljw

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[3] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[4] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN

State Capitol Juneau, AK 99801-1182 (907) 465-3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456-5081

Date: January 30, 2008

To: Suzi Lowell, Chief Clerk

From: Representative John Coghill, Chairman
House Rules Committee

House Rules
JBC jr

Re: House Rules Committee Schedule

Schedule for Hr les:

Monday, February 4th - 4:30 p.m. Room 106

HB 305 - "An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

✓

RECEIVED 1/30/08 2:39
POSTED sh 2:43 pm

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 305(STA)
(H) Publish Date: 1/23/08

Identifier (file name): HB305-DOA-APOC-1-18-08
Dept. Affected: Administration
Title "An Act relating to campaign fund raising by a legislator..." RDU AK Public Offices Commission
Component AK Public Offices Commission
Sponsor Representative Meyers
Requester House State Affairs
Component Number 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services	0.0	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	0.0
Contractual	0.0	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	0.0
Equipment	0.0	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	0.0
Grants & Claims	0.0	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	0.0
TOTAL OPERATING	**0.0**	**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	0.0	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	0.0
1004 GF	0.0	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	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	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**	**0.0**

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Part-time	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Temporary	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

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

Section 1 of this bill amends the campaign dislcosure law to restrict any candidate for legislative office from soliciting or acccpting campaign contributions during a legislative session in any location in which the legislature is convened. This section of law is not enforceable by the Public Offices Commission, under the ruling of the Alaska Supreme Court in State v. Alaska Civil Liberties Union (ACLU), No. 5108, 199 WL 21944 (Alaska April 16, 1999). See Attorney General's Opinion 661-99-0513, June 22, 1999. This bill will not increase the operating costs for APOC.

Prepared by: Brooke Miles
Phone 907-334-1726
Division Alaska Public Offices Commission
Date/Time 1/18/2008 9:16 a.m.
Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration
Date 1/18/2008

(Revised 11/19/2007 OMB)

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: **January 28, 2008**

TO: **Representative John Coghill, Chairman**
House Rules Committee

FROM: **Representative Kevin Meyer**

RE: **Hearing Request for House Bill 305 *Campaign Fundraising During Sessions***

Please schedule HB 305 *Campaign Fundraising During Sessions* for a hearing in the House Rules Committee at your earliest convenience.

HB 305 amends the legislative ethics act to prohibit fundraising during a legislative session for any political office or ballot measure.

Included in this packet:

- CSHB 305 (STA) 25-LS1226\K
- HB 305 25-LS1126\E
- Sponsor Statement
- Sectional Analysis
- Zero Fiscal Note, APOC
- Memorandum, Changes to HB 305 in CSHB305 STA
- Backup Information
    - Legislative Legal Services Memorandum, January 25, 2008
    - Legislative Research Report; *State Laws on Campaign Fundraising During a Legislative Session.*
    - Select Committee on Legislative Ethics Advisory Opinion 94-04
    - Legislative Legal Services Memorandum, April 23, 1999
    - Alaska Department of Law Memorandum, June 22, 1999

Thank you for your consideration of this request. If you have any questions, please feel free to contact me or my staff, Mike Pawlowski at x4945.

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

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Anchorage Daily News

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Uh-oh

Federal law inhibits reform move

(01/31/08 00:50:15)

A useful reform measure pending in the Alaska Legislature has run afoul of a decade-old federal court ruling from the other side of the country.

Alaska lawmakers are considering whether to ban legislators from collecting campaign contributions for any office -- state, local or federal -- while the Legislature is in session. The move would close a troublesome loophole in the legislative ethics law.

A legislator cannot take contributions for a state legislative race during the legislative session but can take money for a statewide, federal or local election contest. That loophole allows special interests to buy special access to ambitious legislators while they are reviewing and voting on legislation.

Closing this loophole sounds like it would be a pretty simple matter.

Not so -- at least when it comes to legislators aiming for federal office.

Georgia's Legislature long ago passed a fundraising ban like the one being considered here in Alaska. A disgruntled Georgia legislator sued. In 1996, he won a federal appeals court ruling that struck down the fundraising restriction as it applies to federal election campaigns. Georgia's restriction on its legislators' fundraising, the court said, was pre-empted by federal election law. The U.S. Supreme Court let that ruling stand.

That leaves Alaska legislators with a tough choice. They can respect the ruling and pass a limited reform that leaves intact the federal election fundraising loophole. Or the Legislature could contradict the federal court ruling and tell its members they can't raise any campaign money during the session -- period.

We know which choice would work best for Alaskans. During the session, legislators should be working for people who elected them, instead of dialing for campaign dollars in any race -- especially an expensive federal contest that covers the entire state.

And who knows, there's a decent chance that, given a second look at the question, the federal courts might rule the other way.

The appeals court split 2-1 in the Georgia case, and the dissenting judge made an excellent point. The Georgia restriction, he said, doesn't apply to all Georgia candidates for federal office, so it is not an illegal attempt to meddle in federal elections, an area where the federal government is the sole boss. The Georgia Legislature was merely saying what its members were not allowed to do. That's a matter for the Georgia Legislature, not the federal government, to decide.

In the decade since that ruling, the U.S. Supreme Court has struck down some federal laws because they go too far in treading on state government powers. New legal standards set in those

cases might help reverse the misguided decision in the Georgia case.

Given the corruption that afflicted the Alaska Legislature, Alaskans want and need legislators to uphold the strongest possible ethical standards. Include a federal election fundraising ban in the legislative ethics reform -- and should any lawmaker decide to challenge it, let's see if the federal courts will come to their senses.

BOTTOM LINE: The tighter the ban on campaign fundraising during a legislative session, the better.

He's ba-a-ck

State doesn't need this help

Ex-Gov. Frank Murkowski is back, "intending to join gas line debate."

As Dave Barry would say, we are not making this up.

This is the governor who gave away the store in his proposed gas line contract with Exxon, Conoco and BP. In return, he got little more than a promise the Big Three would keep sort-of-working on a gas line, which would get built whenever it suited them.

This is the governor who derailed his own gas line promotion efforts by indulging those same three multi-national companies' additional demand for "certainty" on oil taxes.

But hey, Murkowski's return to the gas line issue is a truly inspirational act of political hubris. Maybe it will inspire other discredited political figures to return to the scene of the disasters they helped create.

Imagine, George Bush might pop up a few months after he leaves office and volunteer to help the new president figure a way out of Iraq.

Michael Brown, President Bush's horse-fancying FEMA director, might come back and offer to help reconstruct post-hurricane New Orleans.

Heck, ex-president Bill Clinton might volunteer to teach abstinence-only classes to teenage girls.

How could ex-Gov. Murkowski be of most help in bringing Alaska a North Slope gas line?

By heeding the verdict of Alaska voters and quietly returning to his political retirement.

BOTTOM LINE: Frank Murkowski help with the state's gas line promotion efforts? No thanks.

Print Page | Close Window

Ballot proposition —

Am #1 adopted

Guttenberg April – Anchorage only

at least 3 states have law
2 states have run court challenge
$10,000 a day needed to run for Congress

25-LS1226\K.2
Bullard
1/24/08

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 305(STA)

NOT OFFERED
Meyer wants
court challenge

Page 2, line 27:

Delete "**municipal, state, or federal**"

Insert "**state or municipal**"

Page 2, line 31:

Delete "**municipal, state, or federal**"

Insert "**state or municipal**"

Page 3, line 10, following "**for**":

Delete "**public**"

Insert "**state or municipal**"

Page 3, line 24:

Delete "public"

Insert "state or municipal"

Page 3, lines 29 - 30:

Delete "municipal, state, or federal"

Insert "state or municipal"

Page 4, line 3, following "for":

Delete "public"

Insert "state or municipal"

Page 4, line 8:

Delete "municipal, state, or federal"

Insert "state or municipal"

Page 4, line 11, following "for":

Delete "public"

Insert "state or municipal"

original copy may be used. The original of the enrolled copy is used for certification by each house for transmittal to the governor.

HISTORY OF BILLS

Rule 38. History of Bills. A separate history of the bills of each house shall be maintained for both houses by the Legislative Affairs Agency. The agency shall, in cooperation with the legislators who chair the Rules Committees and the chief clerk and senate secretary, maintain a current record on all bills and resolutions and publish a weekly report on the status of the bills of each house.

ACTION ON BILLS

Rule 39. Action on Bills. (a) Number of readings. A bill may not become law unless it has passed three separate readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by a three-fourths vote of the full membership of the house considering it. (Constitution, Art. II, Sec. 14.)

(b) First Reading. The first reading consists of a reading aloud by the clerk or secretary of the following information: the house of origin, the bill number, the sponsor, and the title of the bill, e.g., "In the House, House Bill No. ..., by ..... and ...., A bill for an Act entitled, 'An Act relating to a code of ethics for state employees.'" The bill is then referred by the presiding officer to one or more committees. The house may by a majority vote of the full membership of the house refer the bill to any other standing or special committee.

(c) Second Reading. When a bill appears on the calendar for second reading it is read in the same manner as in the first reading unless the members present order by a majority vote of the full membership of the house that it be read in full. When the second reading of the bill and the accompanying committee report is completed the bill is then before the house for amendment. If a proposed amendment is tabled it does not carry with it or prejudice the bill. When all amendments have been made the presiding officer directs the clerk or secretary to have the bill engrossed with all amendments approved by the house and to certify its proper engrossment on the following legislative day. When the clerk or secretary reports the bill back properly engrossed it is then delivered to the Rules Committee for placement on the calendar for third reading and final consideration. A house may, by a three-fourths vote of the full membership of the house, order that the bill be considered engrossed upon the completion of the second reading for the purpose of advancing it from second to third reading on the same day.

(d) Third Reading. On its third reading the bill is read by heading and title only. The question on third reading of a bill is upon its final passage and no amendments may be considered. No bill may become law without an affirmative

vote of the majority of the membership of each house. The yeas and nays on final passage, noting the name and vote of each member, shall be entered in the journal. The bill is then engrossed or enrolled, as appropriate, at the direction of the clerk or secretary.

(e) If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house. If the section effecting a change in the court rule fails to receive the required two-thirds vote, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which changes a court rule shall also be noted in the title of the bill.

(f) If a bill or portion of a bill contains material which has an effective date other than the date which is 90 days after the bill becomes law, the bill must contain a section or sections setting out the proposed effective date or dates. The section or sections relating to the effective dates must be approved by an affirmative vote of two-thirds of the full membership of each house. If a section setting out an effective date fails to receive the required two-thirds vote in either house, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which sets out an effective date shall also be noted in the title of the bill.

(g) A bill may be recommitted any time before passage.

COURSE OF BILLS

Rule 40. Course of Bills. When a bill has passed the house in which it originated and has been certified as properly engrossed by the clerk or secretary and photographed for duplication (if changes have been made), it shall be signed by the presiding officer and the clerk or secretary. The clerk or secretary shall transmit the original and committee copies of the bill on receipt to the other house. When the second house receives the message accompanying the engrossed bill and reporting its passage, the bill shall be read by the clerk or secretary for the first time and then referred by the presiding officer to one or more committees for subsequent action by that house.

AMENDMENTS IN OTHER HOUSE

Rule 41. Amendments in Other House. (a) When a bill, resolution, or citation passed in one house is amended in the other house, the bill, resolution, or citation with certified amendments is returned to the house of origin requesting concurrence. The vote on concurrence in amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a

ing the amendments, when bills are printed in this manner. The copy of the bill, when reported by the committee as correctly engrossed, is substituted for the official original bill on the files.

Sec. 736. Third Reading of Bills

1. On third reading, a bill is presented for consideration and passage.

2. Amendments on third reading of a bill are not favored but are permitted. After passage, the title of a bill may be amended to conform to the body, but the body of a bill is no longer subject to amendment, except upon reconsideration.

3. Motions affecting bills on third reading are not in order, even under that order of business, until the particular bill is reached upon the calendar.

4. A motion or request for the reading of a bill for the information of the members is not in order after the roll call has been ordered.

Sec. 737. Passage of Bills

1. The word "passage," used in connection with legislation, refers to the compliance with all the forms necessary to give force and effect to the legislation.

Sec. 735, Par. 2: Cushing's Legislative Assemblies, Sec. 2284.
Sec. 736, Par. 1: Jefferson, Sec. XI.
Sec. 736, Par. 2: Jefferson, Sec. XI.
Sec. 736, Par. 3: N.Y. Manual, p. 419.
Sec. 736, Par. 4: N.Y. Manual, p. 448.
Sec. 737, Par. 1: People v. Coffin (1917), 279 Ill. 401, 117 N.E. 185.

2. A bill is not duly enacted until it has been voted on affirmatively by both houses in its final form.

3. Under the U.S. system of government, the house and senate are separate and independent bodies, and their votes are to be taken and counted separately.

4. The fact that there is agreement between the houses as to the contents of a bill should appear with certainty, but it is sufficient if it be clear from the record as a whole that the bill, as finally passed by both houses, was identical.

Sec. 737, Par. 2: Chicago B. & Q. R. Co. v. Smyth (1900), 103 F. 376; Jefferson County v. Crow (1904), 14 Ala. 126, 37 So. 469; Rogers v. State of Arkansas (1904), 72 Ark. 565, 82 S.W. 169; State of Connecticut v. Savings Bank of New London (1906), 79 Conn. 141, 64 A. 5; Volusia County v. State of Florida (1929), 98 Fla. 1166, 125 So. 375; People v. Knopf (1902), 188 Ill. 340, 64 N.E. 843; Norman v. Ky. Board of Managers (1892), 93 Ky. 537, 20 S.W. 901; State of Louisiana *ex rel.* Caillouet v. Laiche (1901), 105 La. 84, 29 So. 700; County Commissioners of Washington v. Baker (1922), 141 Md. 623, 119 A. 461; Ellis v. Parsell (1894), 100 Mich. 170, 58 N.W. 839; Johnson v. City of Great Falls (1909), 38 Mont. 369, 99 P. 1059; State of Nebraska v. Cox (1920), 105 Neb. 175, 178 N.W. 913; *In re* Opinion of the Justices (1857), 35 N.H. 579; *In re* Jaegle (1912), 83 N.J.L. 313, 85 A. 214; Tyson v. City of Salisbury (1909), 151 N.C. 418, 66 S.E. 532; State of North Dakota v. Schultz (1919), 44 N.D. 269, 174 N.W. 81; State of Oregon v. Boyer (1917), 84 Ore. 513, 165 P. 587; State of Tennessee v. Persica (1914), 130 Tenn. 48, 168 S.W. 1056; Wilson v. Young County Hardware & Furniture Co. (Tex. Civ. App. 1924), 262 S.W. 873; Smith v. Mitchell (1911), 69 W.Va. 481, 72 S.E. 755; State of Wisconsin v. Wendler (1896), 94 Wis. 369, 68 N.W. 759; Arbuckle v. Pflaeging (1912), 20 Wyo. 351, 123 P. 918.

Sec. 737, Par. 3: Belote v. Coffman (1915), 117 Ark. 352, 175 S.W. 37.

Sec. 737, Par. 4: Perry v. State of Arkansas (1919), 139 Ark. 227, 214 S.W. 2; Walnut v. Wade (1880), 103 U.S. 683; Butler v. Board of Directors (1912), 103 Ark. 109, 146 S.W. 120; State of

CS FOR HOUSE BILL NO. 305(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 1/23/08
Referred: Rule

Sponsor(s): REPRESENTATIVES MEYER, Chenault, Fairclough, Olson, Neuman, Ramras

A BILL

FOR AN ACT ENTITLED

"An Act relating to campaign fund raising during a regular or special legislative session ~~by a candidate for election to the legislature, a legislator, or a legislative employee~~; and providing for an effective date."

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

*** Section 1.** AS 15.13.072(d) is amended to read:

(d) A **legislator or legislative employee** [CANDIDATE OR AN INDIVIDUAL] who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100

(1) for election [OR REELECTION] to the state legislature may not solicit or accept a contribution while the legislature is convened in a regular or special legislative session unless the solicitation or acceptance occurs

(A) [(1)] during the 90 days immediately preceding an election in which the candidate or individual is a candidate; and

(B) [(2)] in a place other than the capital city **or a location in**

which the legislature is convened in a regular or special session if the location is other than the capital city;

(2) who is a legislator or legislative employee and who is seeking election to state office or to municipal office may not solicit or accept a contribution for the legislator or legislative employee's own campaign while the legislature is convened in a regular or special legislative session unless the solicitation or acceptance occurs

(A) during the 90 days immediately preceding an election in which the legislator or legislative employee is a candidate; and

(B) in a place other than the capital city or a location in which the legislature is convened in regular or special session if the location is other than the capital city.

* **Sec. 2.** AS 15.13.074 ~~is amended by adding a new subsection to read:~~ (d) repealed and reenacted

~~(d)~~ While the legislature is convened in a regular or special legislative session, a legislator or legislative employee may not solicit or accept a contribution to be used for the purpose of influencing the outcome of an election under this chapter unless

(1) it is an election in which the legislator is a candidate and the contribution is for that legislators or legislative employee's campaign

(2) the solicitation or acceptance occurs during the 90 days immediately preceeding that election; and

(3) the solicitation or acceptance occurs in a place other than the capital city or a location in which the legislature is convened in a ~~regular or~~ special session if the location is other than the capital city.

* **Sec. 3.** AS 24.60.031(a) is amended to read:

(a) A [LEGISLATOR OR] legislative employee may not

(1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for **municipal, state, or federal office** [THE STATE LEGISLATURE]; however, a [LEGISLATOR OR] legislative employee may, except in the capital city **or in the location in which the legislature is convened in ~~regular or~~ special session if the location is other than the capital city**, solicit or accept a contribution, promise, or pledge for a campaign for **municipal, state, or federal**

office [THE STATE LEGISLATURE] that occurs during the 90 days immediately preceding **the** [AN] election **for that office**; **or**

(2) accept money from an event held on a day when either house of the legislature is in regular or special session if a substantial purpose of the event is to raise money on behalf of the [MEMBER OR] legislative employee for [STATE LEGISLATIVE] political purposes; however, this paragraph does not prohibit a [LEGISLATOR OR] legislative employee from accepting money from an event held in a place other than the capital city **or a location in which the legislature is convened in ~~regular or~~ special session if the location is other than the capital city** during the 90 days immediately preceding an election **for public office in which the legislative employee is a candidate** [; OR

(3) IN A CAMPAIGN FOR THE STATE LEGISLATURE, EXPEND MONEY THAT WAS RAISED ON A DAY WHEN EITHER HOUSE OF THE LEGISLATURE WAS IN A LEGISLATIVE SESSION BY OR ON BEHALF OF A LEGISLATOR UNDER A DECLARATION OF CANDIDACY OR A GENERAL LETTER OF INTENT TO BECOME A CANDIDATE FOR PUBLIC OFFICE; HOWEVER, THIS PARAGRAPH DOES NOT APPLY TO MONEY RAISED IN A PLACE OTHER THAN THE CAPITAL CITY DURING THE 90 DAYS IMMEDIATELY PRECEDING AN ELECTION].

*** Sec. 4.** AS 24.60.031 is amended by adding a new subsection to read:

(c) A legislator may not

(1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution

(A) for the legislator's own campaign for public office, unless the solicitation, acceptance, promise, or pledge occurs in a place other than the capital city or a location in which the legislature is convened in ~~regular or~~ special session if the location is other than the capital city during the 90 days immediately preceding the election in which the legislator is a candidate;

(B) for another candidate in an election for municipal, state, or federal office; or

(C) to influence a state ballot proposition or question;

(2) accept money from an event held on a day when either house of the legislature is in regular or special session if a substantial purpose of the event is to raise money on behalf of the legislator's campaign for public office; however, this paragraph does not prohibit a legislator from accepting money from an event held in a place other than the capital city or a location in which the legislature is convened in ~~regular or~~ special session if the location is other than the capital city during the 90 days immediately preceding an election in which the legislator is a candidate; or

(3) in a campaign for municipal, state, or federal office, expend money that was raised on a day when either house of the legislature was in a legislative session by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office; however, this paragraph does not apply to money raised in a place other than the capital city or a location in which the legislature is convened in ~~regular or~~ special session if the location is other than the capital city during the 90 days immediately preceding an election in which the legislator is a candidate.

*** Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT #1

offered in the House

by Representative Crawford

on CS HB 305 (RLS)\L

Page 3, Lines 9- 10

delete

or;

(C) to influence a state ballot proposition or question

HB 3001 (FILE 1)

Official Business

Twenty-Fifth Alaska Legislature
HOUSE CALENDAR
Fourth Special Session - Thirteenth Day
Monday - July 21, 2008 - 4:00 p.m.

Invocation: Chaplain Designee

SECOND READING OF HOUSE BILLS

HB 3001

"An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

BILL CARRIES OVER TO FOURTH SPECIAL SESSION P. 3178
PENDING RULES REPORT

STATE OF ALASKA

Executive Proclamation
by
Sarah Palin, Governor

Under the authority of art. II, sec. 9, and art. III, sec. 17, of the Alaska Constitution, and in the public interest, I call the Twenty-Fifth Legislature of the State of Alaska into its third special session at Juneau, Alaska in the legislative chambers on June 3, 2008 at 5:00 p.m. to consider the following subject:

any action taken by the commissioner of natural resources and the commissioner of revenue under AS 43.90, the Alaska Gasline Inducement Act.

Dated at Juneau, Alaska this 25th day of March, 2008.

Done by:

Sarah Palin, Governor

SARAH PALIN
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 3, 2008

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that provides for the approval of the license proposed to be issued by the commissioner of the Department of Natural Resources and the commissioner of the Department of Revenue under the Alaska Gasline Inducement Act (AGIA), AS 43.90.

In May 2007, AGIA was passed by the Alaska State Legislature with a nearly unanimous vote. The purpose of AGIA, as stated in AS 43.90.010, is to encourage expedited construction of a natural gas pipeline that:

- facilitates commercialization of North Slope gas resources in the state;

- promotes exploration and development of oil and gas resources on the North Slope in the state;

- maximizes benefits to the people of the state from the development of oil and gas resources in the state; and

- encourages oil and gas lessees and other persons to commit to ship natural gas from the North Slope to a gas pipeline system for transportation to markets in this state or elsewhere.

AGIA meets this purpose through provisions establishing an Alaska Gasline Inducement Act license and the state's terms for maximizing benefits to the people of Alaska during and after pipeline construction.

In exchange for meeting the state's requirements, the successful AGIA license applicant is entitled to certain inducements that will facilitate project development. An AGIA license entitles the licensee up to $500 million in state matching funds for qualified expenditures to offset some of the initial risk borne by the project developer. AGIA also provides for an AGIA coordinator and expedited project review and action by state agencies.

AGIA also provides for "resource inducements" to encourage North Slope oil and gas producers to commit gas for shipment on the pipeline. An oil and gas leaseholder that commits to ship gas in the pipeline in the first binding open season will be entitled to favorable changes to the state's royalty valuation method and a freeze on gas tax rates for the gas shipped through firm transportation contacts acquired during the first binding open season; the tax freeze may be applied within ten years following commencement of commercial operations.

In accordance with AS 43.90.120, on July 2, 2007, the commissioner of the Department of Revenue and the commissioner of the Department of Natural Resources (commissioners) commenced a public process to request applications for an AGIA license. Five applications were received in response to the request for applications (RFA). Under AS 43.90.140, the commissioners reviewed each application to determine whether it was consistent with the terms of the RFA and met the requirements listed in AS 43.90.130.

On January 4, 2008, the commissioners determined the application submitted by TransCanada Alaska Company, LLC and Foothills Pipe Lines, Ltd., (TC Alaska) met the requirements for completeness under AGIA. The application submitted by TC Alaska satisfied all the mandatory requirements in the statute and the application was eligible for further evaluation to determine whether the project would sufficiently maximize the benefits to the people of the state to merit issuance of a license under AGIA.

The commissioners provided notice and a 60-day public comment period for the complete application as required by AGIA. In accordance with AS 43.90.160, the commissioners published notice on January 4, 2008, inviting public comment on TC Alaska's application to build a natural gas pipeline under the terms of AGIA. The 60-day public comment period ended March 6, 2008. More than 300 comments were received.

AGIA requires the commissioners to issue a determination with written findings if they determine that a proposed natural gas pipeline project "will sufficiently maximize the benefits to the people of this state and merits issuance of a license under this chapter..." AS 43.90.180(a).

In accordance with AS 43.90.170, the commissioners fully evaluated TC Alaska's application to determine whether TC Alaska's proposed project would maximize the benefits to Alaskans and merited issuance of the AGIA license. To aid the evaluation, the commissioners compared TC Alaska's proposed project with liquefied natural gas (LNG) project options. The commissioners also compared the TC Alaska project to an alternative overland project recently announced by BP and ConocoPhillips, commonly known as the Producer Project.

Following this extensive evaluation process and consideration of public comments, the commissioners determined that the natural gas pipeline project proposed by TC Alaska sufficiently maximizes benefits to the people of this state and merits issuance of an AGIA license.

In accordance with AS 43.90.180, on May 27, 2008, the commissioners issued a determination, with written findings addressing the basis for the determination. The commissioners also published notice of intent to issue an AGIA license, and today forwarded the notice along with the findings, supporting documentation, and the determination to the presiding officers of each house of the Legislature.

The commissioners findings regarding the TC Alaska proposal included the following:

- Alaskans will benefit from TC Alaska having committed to regularly expand its pipeline to meet demand for additional capacity on reasonable commercial terms, which is essential to opening the North Slope to competitive natural gas exploration and development;

- Alaskans will benefit from short-term construction jobs and from long-term careers as new natural gas fields are developed because the path to market has been built;

- Alaskans will benefit from TC Alaska having committed to tariff structure requirements of AGIA that are designed to ensure the lowest possible tariffs, that maximize state revenues, that provide true open access to all potential shippers, and that accommodate expansions;

- Alaskans will benefit from the opportunity that the TC Alaska project creates for a "Y line" liquefied natural gas project and the "bullet line" to Southcentral Alaska;

- Alaskans will benefit from the potential for lower energy costs as natural gas is made available to communities throughout Alaska through offtake points along the pipeline route and spur lines;

- Alaskans will benefit from TC Alaska's proposed distance-sensitive rates, which ensure that Alaskans will pay just the costs incurred to ship gas from the North Slope to one of the five off-take points within Alaska;

- Alaskans will benefit from TC Alaska's project plan being reasonably likely to succeed, in that it is technically reasonable, feasible, and specific and includes (1) the use of technology that TC Alaska is now using to operate pipelines in climates similar to Alaska's, and (2) an obtainable schedule for regulatory approval in Canada;

- Alaska will benefit from TC Alaska's proposed commercial terms being reasonable and likely to attract commitments for shipments of natural gas during the first open season; and

- The TC Alaska project will generate more long-term jobs than either a liquefied natural gas (LNG) option or the Producer Project, because of TC Alaska's commitments to expansion and real open access that will open the North Slope basin to competition.

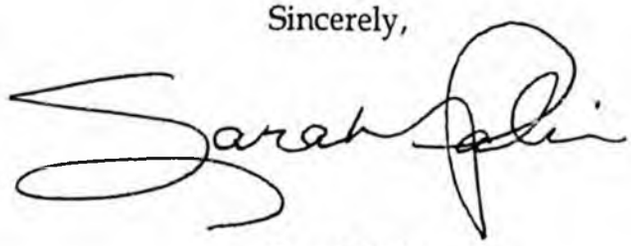
Upon receipt of the commissioners findings and determination, AS 43.90.190(a) calls for the rules committee of each house of the Legislature to introduce a bill "in the committee's respective chamber that provides for the approval of the license proposed to be issued by the commissioners." In accordance with this statute, I am transmitting for the Legislature's consideration, a bill that, if passed by the Legislature within 60 days of the presiding officers' receipt of the commissioners' findings and determination, will approve the issuance of the AGIA license proposed by the commissioners to TC Alaska.

The proposed license is an integrated document that incorporates all provisions, terms, conditions, contingencies, obligations, rights, and requirements of AGIA, the RFA, and TC Alaska's application.

Issuance of the AGIA license to TC Alaska will greatly enhance Alaska's chances to commercialize the vast natural gas resources on Alaska's North Slope through the construction of a gas pipeline, and to do it in a way that protects the interests of Alaska and the nation, now and well into the future.

I urge your prompt and favorable action on the bill.

Sincerely,



Sarah Palin
Governor

Enclosure

House or Senate Minutes/Recordings

Bill : HB3001

Dates: 01/01/1981 to 12/01/2080

06/04/2008 9:03 AM House RULES	Minutes	Audio
06/04/2008 10:03 AM House RULES	Minutes	Audio
06/04/2008 10:03 AM Senate SENATE SPECIAL COMMITTEE ON ENERGY	Minutes	Audio
06/05/2008 9:03 AM House RULES	Minutes	Audio
06/05/2008 9:03 AM Senate SENATE SPECIAL COMMITTEE ON ENERGY	Minutes	Audio
06/08/2008 1:06 PM House RULES	Minutes	Audio
06/08/2008 1:06 PM Senate SENATE SPECIAL COMMITTEE ON ENERGY	Minutes	Audio
06/12/2008 10:03 AM House RULES	Minutes	Audio
06/12/2008 10:03 AM Senate SENATE SPECIAL COMMITTEE ON ENERGY	Minutes	Audio
06/16/2008 9:19 AM House RULES	Minutes	Audio
06/16/2008 9:19 AM Senate SENATE SPECIAL COMMITTEE ON ENERGY	Minutes	Audio
06/26/2008 1:01 PM House RULES	Minutes	Audio
06/26/2008 1:01 PM Senate SENATE SPECIAL COMMITTEE ON ENERGY	Minutes	Audio

Alaska State 25th Legislature Third Special Session Documents

Third Special Session Supporting Documents as presented on a daily basis.

If you have questions, please call the Legislative Information Office at 907-465-4648.

Date	Document
June 3rd, 2008	3rd Special Session Proclaimation.pdf
June 4th, 2008	060408 LBA Econ One.pdf
June 4th, 2008	060408 LBA Muse Stancil - Impact Final Assessment.pdf
June 5th, 2008	060508 LBA Dickinson License Determination.pdf
June 6th, 2008	060608 AGIA Statute & RFA Refresher Special Session Joint Committee.pdf
June 6th, 2008	060608 TransCan AGIA Application Special Session Joint Committee.pdf
June 7th, 2008	060708 USGS (Long Version) Natural Gas Expl. Potential Special Session Joint Committee.pdf
June 7th, 2008	060708 USGS Natural Gas Expl. Potential Special Session Joint Committee.pdf
June 8th, 2008	060608 AGIA Training Strategic Plan Special Session Joint Committee.pdf
June 8th, 2008	060608 Short & Long Term Employment Special Session Joint Committee.pdf
June 8th, 2008	060808 Legal Issues Affecting Prod. Participa. Special Session Joint Committee.pdf
June 9th, 2008	060908 AGIA Incentives & Mandates Special Sessin Joint Committee...f
June 9th, 2008	060908 Challenges Alaskan LNG Special Session Joint Session.pdf
June 9th, 2008	060908 FERC Letter.pdf
June 9th, 2008	060908 LNG NPV Analysis Special Session Joint Committee.pdf
June 9th, 2008	060908 Prod. Incentives to Expand Special Session Joint Committee.pdf
June 10th, 2008	061008 Analysis of Project Costs Etc. Special Session Joint Committee.pdf
June 10th, 2008	061008 FERC Press Release.pdf
June 10th, 2008	061008 Financial Review of TC & Proposal Special Session Joint Committee.pdf
June 10th, 2008	061008 LNG NPV Analysis Special Session Joint Committee.pdf
June 10th, 2008	061008 LNG Project Costs & Schedule Special Session Joint Committee.pdf
June 10th, 2008	061008 Net Present Value Analysis Special Session Joint Committee.pdf
June 12th, 2008	061208 AGPA Fairbanks Special Session Joint Committee.pdf
June 12th, 2008	061208 AK Nat Gas Needs & Market 2008 Special Session Joint Session.pdf
June 12th, 2008	061208 ANGDA Fairbanks Special Session Joint Committee.pdf
June 12th, 2008	061208 Enstar Fairbanks Special Session Joint Committee.pdf
June 13th, 2008	061308 AGIA Training Strategic Plan Special Session Joint Committee.pdf
June 13th, 2008	061308 AGIA Written Findings & Summary May 2008 Special Session Joint Committee.pdf
June 13th, 2008	061308 DOT Infastructure Improvements Needed Special Session Joint Committee.pdf
June 13th, 2008	061308 Employment Modeling Special Session Joint Committee.pdf
June 13th, 2008	061308 Explorer View Gas Pipeline Special Session Joint Committee.pdf
June 14th, 2008	061408 AGIA Fairbanks Summary Special Session Joint Committee.pdf
June 14th, 2008	061408 TransCan Statewide Hearing Presenta. for Special Session Joint Committee.pdf
June 16th, 2008	061608 FERC Process Special Session Joint Hearing.pdf
June 16th, 2008	061608_Denali_Project_FERC_Letter_Special_Session_Joint_Committee.pdf
June 16th, 2008	061608_RCA_Special_Session_Joint_Committee.pdf
June 17th, 2008	061708 AOGCC Cathy Foerster Testimony Special Session Joint Committee.pdf
June 17th, 2008	061708 BP Written Testimony on Pt. Thomson Special Session Joint Committee.pdf
June 17th, 2008	061708 Chevron Pt. Thomson Special Session Joint Committee.pdf
June 17th, 2008	061708_AOGCC_Allowable_Gas_Offtake_Prudhoe_Bay_Special_Session_Joint_Committee.pdf
June 17th, 2008	061708_AOGCC_North_Slop_Gas_Sales_Special_Session_Joint_Committee.pdf
June 17th, 2008	061708_AOGCC_Pool_Rules_for_Pt._Thomson_Field_Special_Session_Joint_Committee.pdf

June 17th, 2008	061708_Appendix_to_Pt._Thomson_Res._Assess._DNR_Special_Session_Joint_Committee.pdf
June 17th, 2008	061708_DNR_Glossary_of_Oil_&_Gas_Terms_Special_Session_Joint_Committee.pdf
June 17th, 2008	061708_ExxonMobil_Pt._Thomson_Special_Committee_Joint_Hearing.pdf
June 17th, 2008	061708_Nan_Thompson_-_Div._O&G_Pt._Thomson_Remarks_Special_Sesion_Joint_Committee.pdf
June 17th, 2008	061708_Pt._Thomson_Resource_Assessment_-_DNR_Special_Session_Joint_Committee.pdf
June 17th, 2008	061708_Pt_Thomson_Unit_Map_Special_Session_Joint_Committee.pdf
June 18th, 2008	061808 Black & Veatch - Methodology Utilized Special Session Joint Committee.pdf
June 18th, 2008	061808 Black & Veatch Net Present Value Special Session Joint Committee.pdf
June 18th, 2008	061808 DNR & PetroTel Response to Questions Special Session Joint Committee.pdf
June 18th, 2008	061808 DNR High Pressure Gas Reinjection Special Session Joint Committee.pdf
June 18th, 2008	061808 Gov Hickel Remarks Special Session Joint Committee.pdf
June 19th, 2008	061908 FERC Press Release on TAPS Tariff Special Session Joint Committee.pdf
June 19th, 2008	061908 Summary of Comm. Findings & Determin. Special Session Joint Committee.pdf
June 19th, 2008	061908 TransCan Statewide Hearing Presenta. for Special Session Joint Committee.pdf
June 20th, 2008	062008 ANGDA Changes to RCA statues on in-state open season Special Session Joint Committee.pdf
June 20th, 2008	062008 ANGDA It's the Open Season Special Session Joint Committee.pdf
June 20th, 2008	062008 ANRTL Gas to Liquids Special Session Joint Committee.pdf
June 20th, 2008	062008 EconOne Potential LNG Project Special Session Joint Committee.pdf
June 20th, 2008	062008 Enstar Special Session Joint Committee.pdf
June 20th, 2008	062008 SAIC AK Natural Gas Needs Special Session Joint Committee.pdf
June 20th, 2008	062008 SAIC AK Natural Gas Needs Updated Special Session Joint Committee.pdf
June 20th, 2008	062008_AK_Gasline_Port_Authority_Special_Session_Joint_Committee.pdf
June 24th, 2008	062408_AGIA_Summary,_Findings_&_Determination_Special_Session_Joint_Committee.pdf
June 24th, 2008	062408_TransCan_Statewide_Hearing_Presenta._for_Special_Session_Joint_Committee.pdf
June 26th, 2008	062608_AGIA_Summary,_Findings_&_Determination_Special_Session_Joint_Committee.pdf
June 26th, 2008	062608_TransCan_Statewide_Hearing_Presenta._for_Special_Session_Joint_Committee.pdf
July 1st, 2008	070108_AGIA_Summary,_Findings_&_Determination_Special_Session_Joint_Committee.pdf
July 1st, 2008	070108_TransCan_Statewide_Hearing_Presenta._for_Special_Session_Joint_Committee.pdf
July 8th, 2008	070808_AGIA_Summary,_Findings_&_Determination_Special_Session_Joint_Committee.pdf
July 8th, 2008	070808_TransCan_Statewide_Hearing_Presenta._for_Special_Session_Joint_Committee.pdf
July 9th, 2008	070908 AK Gasline Port Authority Special Session Joint Committee.pdf
July 9th, 2008	070908 Point Thomson Unit Agreement Section 21 Special Session Joint Committee.pdf
July 9th, 2008	070908 Pt Thomson S. Porter LB&A Consultant Special Session Joint Committee.pdf
July 10th, 2008	071008 CBI Mediation Presenta. Special Session Joint Committee.pdf
July 10th, 2008	071008 Denali Project Special Session Joint Committee.pdf
July 10th, 2008	071008 Exxon Mobil Special Session Joint Committee.pdf
July 10th, 2008	071008 Exxon Mobil Written Testimony Special Session Joint Committee.pdf

July 10th, 2008	071008 Kalt Report provided by Exxon Mobil to Special Session Joint Committee.pdf
July 10th, 2008	071008 TransCan. Alaska Pipeline Workforce Plan Special Session Joint Committee.pdf
July 13th, 2008	071308 Bennett Jones Report Special Session Joint Committee.pdf
July 13th, 2008	071308 Keith Bergner Bio Special Session Joint Committee.pdf
July 13th, 2008	071308 Lawson Lundell The Crown's Duty to Consult & Accomm. Special Session Joint Hearing.pdf
July 13th, 2008	071308 Lawson Lundell The Duty to Consult What Does it Mean to Project Special Session Joint Committee.pdf
July 14th, 2008	071408 APEGGA Letter to TransCan. Handout at Special Session Joint Committee.pdf

For additional information, including correspondence with consultants, memos, and other work documents provided to the Legislature, go to Legislative Budget and Audit Committee, click on Gasline Proposals, then click on Gasline Document Logs.

Send questions and comments to Webmaster.

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: June 3, 2008 **FURTHER REFERRALS:**

Date of Committee Action: July 21, 2008

The RULES Committee considered: **HB 3001**

HOUSE BILL NO. 3001 **APPROVING AGIA LICENSE**
"An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ _____(_____)
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

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Craig Fr			X		
Anna L Fairclough	FAIRCLOUGH		X		
Bob Kettula	KERHula	X			
TRUDY SAMUELS	SAMUELS		X		
	NORRIS		X		
	GUTTENBERG	X			
Chair: John Coghill	Coghill	✓			
Chair:					

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN

State Capitol Juneau, AK 99801-1182 (907) 465-3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456-5081

Date: July 14, 2008

To: Suzi Lowell, Chief Clerk

From: Representative John Coghill, Chairman
House Rules Committee

Re: House Rules Committee Meeting Notice

The following meeting is scheduled:

Monday, July 21st - 2:00 p.m. Room 120 State Capitol

HB 3001 "An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural r sources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

25-GH3055\A.2
Bullock
7/14/08

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE Johnson ~~RAMRAS~~

TO: HB 3001

Page 1, line 1, following "Act":

Insert "**relating to the extension of inducements to a natural gas pipeline project that would transport natural gas from the North Slope to a market in the state** ~~**or for export from the state by marine transportation;**~~"

Page 1, following line 5:

Insert a new bill section to read:

"*** Section 1.** AS 43.90.440(a) is amended to read:

(a) Except as otherwise provided in this chapter, the state grants a licensee assurances that the licensee has exclusive enjoyment of the inducements provided under this chapter before the commencement of commercial operations. If, before the commencement of commercial operations, the state extends to another person preferential royalty or tax treatment or grant of state money for the purpose of facilitating the construction of a competing natural gas pipeline project in this state **other than a natural gas pipeline project that is wholly within the state and transports natural gas to a market in the state** ~~**or for export from the state by marine transportation**~~, and if the licensee is in compliance with the requirements of the license and with the requirements of state and federal statutes and regulations relevant to the project, the licensee is entitled to payment from the state of an amount equal to three times the total amount of the expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of AS 43.90.110 that the licensee incurred in developing the licensee's project before the date that the state first extended preferential treatment to another person. The payment under this subsection

is subject to appropriation. Upon payment by the state of the amount owed under this section, the licensee shall, at no additional cost to the state, assign to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that were acquired by the licensee during the term of the license. The payment under this subsection is in full satisfaction of all claims the licensee may bring in contract, tort, or other law related to the events that gave rise to the payment."

Page 1, line 6:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

LEGAL SERVICES

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

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

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

MEMORANDUM July 14, 2008

SUBJECT: Amending the assurances to a licensee after a proposed licensee has been recommended by the commissioners (Amendment to HB 3001; Work Order No. 25-GH3055\A.2)

TO: Representative Jay Ramras

FROM: Donald M. Bullock Jr.
Legislative Counsel

Enclosed is the amendment you requested that alters the assurances the state offered to proposed licensees when the request for applications was issued by the commissioner of revenue and the commissioner of natural resources (together, "commissioners") under AS 43.90.120. Please read this amendment carefully to ensure that it is consistent with your intent.

Under AS 43.90.190, the power of the legislature after receiving a determination that a proposed license should be issued is limited to either approving or disapproving the issuance. If the legislature nevertheless changes the terms and conditions under which the original license applications were solicited, a court could find that the proposed licensee has been deprived of its right to due process.[1] There is also the risk, under the separation of powers doctrine,[2] that the commissioners may nevertheless issue the license under the terms of AGIA as originally enacted, with or without legislative approval of the proposed project being considered by the legislature.

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[1] A change in the requirements for a license at this point has an effect that goes back to the commissioners' request for applications. Had the change been incorporated in the initial request for applications, there could have been a difference in who applied for the license and the nature of the proposed projects. Although the applicants were required to waive the right to appeal the issuance of a license to another applicant under AS 43.90.130(16), it is my opinion that if the process and requirements for the license are changed by the legislature, the courts would consider a constitutionally-based challenge to the process.

[2] The doctrine of separation of powers between the executive and legislative branches is based on the constitutional allocation of power in art. II, sec. 1, and art. III, sec. 1, Constitution of the State of Alaska.

You may wish to consider a conditional effective date or applicability for the proposed amendment. Should you choose to make the change in the assurances effective or applicable only if the legislature fails to approve the issuance of the license proposed by the commissioners, the risk of a due process challenge may be diminished.

The effect of an amendment to AGIA.

There is no authority within AS 43.90 for the legislature to do anything with regard to a license proposed to be issued by the commissioners other than to approve or disapprove the issuance of the license. AS 43.90.190(a) requires the rules committee in each house of the legislature to "introduce a bill in the committee's respective chamber that provides for the approval of the license proposed to be issued by the commissioners." Two things are particularly noteworthy in this mandate. First, the bill is to provide for the *approval* of the license, and not a bill "relating to the issuance of a license"; if the bill passes, AS 43.90.190(b) requires the commissioners to "issue the license as soon as practicable after the effective date of the Act approving the issuance of the license." Second, the issue before the legislature is the "approval of the license proposed to be issued by the commissioners," not some other license or variation. Rhetorically, if the legislature tries to change the terms and conditions, including changing the assurances, is the bill that passes the "license proposed to be issued by the commissioners," or a different license?

A bill amending AGIA would also be subject to the governor's veto. Under AS 43.90.190(b), the commissioners are required to issue the contract as soon as possible after the effective date of the Act approving the license. If a bill amending AGIA becomes law, it may be challenged and the changes to AGIA severed from the approval; if the bill is vetoed, there is the possibility that the commissioners could proceed to issue the contract under the terms of AGIA as originally enacted, and defend their action under the separation of powers doctrine described below.

Due process issues raised by a change in the assurances.

This amendment raises an issue under the due process clauses in art. I, sec. 7 of the state constitution and amendment V of the U.S. constitution. A court could find that the change in assurances is material and deprives the licensee of the right to due process.

The proposed change to the assurance provision may be interpreted by the proposed licensee to increase the risk that there would be insufficient North Slope gas to make a pipeline project that crosses the border with Canada economical. The change comes after the commissioners requested applications, various persons considered or applied for the license, proposed projects were designed, and the commissioners submitted a proposed licensee to the legislature for approval. If the amendment is adopted, the licensee (the proposed licensee at this point) should be given the opportunity to withdraw its application.

Separation of powers – the potential for issuing a license without legislative approval or without the change to the assurances offered by the amendment.

When it comes to legislative approval of executive branch contracts, and the license under AGIA is a contract, the Attorney General's office has long held that legislative approval is a violation of the separation of powers. The Attorney General's office stated its views quite plainly in the following excerpt from a 1981 informal opinion:[3]

> In approving individual contracts, the legislature does not exercise a lawmaking function. Consequently, in the absence of a constitutional grant of such power or some unique circumstance that we cannot presently contemplate, a statute requiring legislative approval of an individual contract is a violation of the separation of powers. See *Chadha v. Immigration and Naturalization Service*, 634 F.2d 408 (9th Cir. 1980). In *Public Defender Agency v. Superior Court, Third Judicial District*, 534 P.2d 947 (Alaska 1975), the Alaska Supreme Court held that the doctrine of separation of powers, though not expressly set out in the Alaska Constitution, is clearly implied. See also Minutes of the Alaska Constitutional Convention 1955-56, at 2228-29. Furthermore, the court has expressly recognized that it was a purpose of the framers of the Alaska Constitution to create a strong executive branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

The separation of powers issues arises under art. III, sec. 1 (powers of the governor), and art. II, sec. 1 (powers of the legislature), Constitution of the State of Alaska. A governor may waive the separation of powers and involve the legislature in a process to which the legislature would otherwise be excluded but the governor's mind may change. Such was the case in *Bradner v. Hammond*, wherein the court noted in a footnote:[4]

> The attorney general candidly admitted at oral argument that examination of practice between the legislative and executive branches since statehood indicates that the executive has at least acquiesced to legislative confirmation of certain subcabinet officials. However, he argued that the political reality of a legislature dominated by the same party as that of the governor, as well as the minor interference such intervention created,

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[3] 1981 Inf. Alaska Atty. Gen. Op. (file no. J66-159-82), November 3. The Attorney General's office has reiterated this position at least two other times in opinions. *See* 1985 Inf. Alaska Atty. Gen. Op. (file no. 166-065-86), August 13, and 1987 Inf. Alaska Atty. Gen. (file no. 663-88-0094), September 17 (noting "the position of the Department of Law has consistently been that such requirements of legislative approval are unconstitutional as a violation of the doctrine of separation of powers").

[4] 553 P.2d 1, 5 n. 5 (Alaska 1976).

> indicates that the executive stance in the past should not be read as a "constitutional interpretation by a coordinate branch of government," but rather as a product of a realistic ordering of executive goals at the time.

Despite the precedence of governors submitting subcabinet appointments to the legislature for confirmation, when the issue was presented to the court of whether confirmation was required under the state constitution, the court found that the executive could make those appointments without legislative confirmation.

With regard to AGIA, Governor Palin wanted the legislature to participate in the process leading to the issuance of a license and appears to have initially waived the constitutional power to enter into a contract without legislative confirmation. In the AGIA bills introduced at the request of the governor -- HB 177 and SB 104 -- the governor proposed that the legislature could stop the issuance of a license. In both bills, the proposed AS 43.90.200(a) and (b) described the legislative involvement as follows:

> **Sec. 43.90.200. Legislative action; issuance of license.** (a) A determination and notice of intent to issue a license under AS 43.90.190 is a final agency action, effective under this chapter on the 30th legislative day after the date of referral to the legislature, unless the notice of intent is disapproved by joint resolution of the legislature. After the determination and notice of intent are effective under this subsection, the commissioners may issue the license under this chapter.
>
> (b) If the legislature disapproves the notice of intent to issue a license before the 30th legislative day after referral, the commissioners may commence another public process under AS 43.90.130 to request applications.

In the initial proposal for legislative involvement, the legislature could stop the issuance of a license by passing a joint resolution; if the legislature did nothing, the commissioners could issue the license. In other words, the legislature had only "red light" power -- only the power to stop the license.

As consideration of the legislation progressed, legislative involvement was changed from being able to stop the issuance of a license, by passing a joint resolution, to requiring the legislature to approve the issuance of a license in the form of a bill. The change in vehicle from a joint resolution to a bill was required because the legislature would or will be taking action that has a binding effect on those outside of the legislature.[5] Thus the

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[5] See, *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 773 (Alaska 1980) (when the legislature wishes to act in an advisory capacity it may act by resolution; however, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures).