

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 HSTA 12367

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

4 (8) serve as a campaign manager or director, serve as a campaign
5 treasurer or deputy campaign treasurer on a finance or fund-raising committee,
6 host a fund-raising event, directly or indirectly collect contributions for, or deliver
7 contributions to, a candidate, or otherwise engage in the fund-raising activity of a
8 legislative campaign or campaign for governor or lieutenant governor if the
9 lobbyist has registered, or is required to register, as a lobbyist under this chapter,
10 during the calendar year; this paragraph does not apply to a representational
11 lobbyist as defined in the regulations of the Alaska Public Offices Commission,
12 and does not prohibit a lobbyist from making personal contributions to a candidate
13 as authorized by AS 15.13 or personally advocating on behalf of a candidate;

14 (9) offer, solicit, initiate, facilitate, or provide to or on behalf of a person
15 covered by AS 24.60, during a legislative session, a gift, other than food or
16 beverage for immediate consumption; however, this paragraph does not prohibit a
17 lobbyist from providing, during a legislative session or at any other time of the
18 year, tickets to a charity event described in AS 24.60.080(c)(10), or a contribution
19 to a charity event under AS 24.60.080(c)(11);

20 (10) make or offer a gift or a campaign contribution whose acceptance by
21 the person to whom it is offered would violate AS 24.60 or AS 39.52."

22 *** Sec. 6. AS 24.45.121 is amended by adding a new subsection to read:

1 (d) An individual may not engage in any activity as a lobbyist at any time
2 that AS 39.52 prohibits that individual from engaging in activity as a lobbyist. This
3 subsection does not prohibit service as a volunteer lobbyist described in
4 AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the
5 Alaska Public Offices Commission.”

6

7 Renumber the followir sections accordingly.

1 **Governor's A M E N D M E N T #3** (Details in Legislative Disclosures - Title 24)

2
3 OFFERED IN THE HOUSE BY THE GOVERNOR

4 STATE AFFAIRS COMMITTEE

5 TO: CSHB 109() (25-GH1059K; 2.21/07)

6 Page 16, following line 8:

7 Insert a new bill section to read.

8 **** Sec. 22.** AS 24.60.200 is amended to read:

9 **Sec. 24.60.200. Financial disclosure by legislators, public members of the**

10 **committee, and legislative directors.** A legislator, a public member of the
11 committee, and a legislative director shall file a disclosure statement, under oath and
12 on penalty of perjury, with the Alaska Public Offices Commission giving the
13 following information about the income received by the discloser, the discloser's
14 spouse or domestic partner, the discloser's dependent children, and the discloser's
15 nondependent children who are living with the discloser:

16 (1) the information that a public official is required to report under
17 AS 39.50.030, other than information about gifts;

18 (2) as to income in excess of \$1,000 received as compensation for
19 personal services, the name and address of the source of the income, the amount of
20 the income, the number of hours of services performed to earn that income, and a
21 statement describing in detail the nature of the services performed; [IF THE SOURCE
22 OF INCOME IS KNOWN OR REASONABLY SHOULD BE KNOWN TO HAVE
23 A SUBSTANTIAL INTEREST IN LEGISLATIVE, ADMINISTRATIVE, OR

1 POLITICAL ACTION AND THE RECIPIENT OF THE INCOME IS A
2 LEGISLATOR OR A LEGISLATIVE DIRECTOR, THE AMOUNT OF INCOME
3 RECEIVED FROM THE SOURCE SHALL BE DISCLOSED;]

4 (3) as to each loan or loan guarantee over \$1,000 from a source with a
5 substantial interest in legislative, administrative, or political action, the name and
6 address of the person making the loan or guarantee, the amount of the loan, the terms
7 and conditions under which the loan or guarantee was given, the amount outstanding
8 at the time of filing, and whether or not a written loan agreement exists.”

9
10 Renumber the following bill sections accordingly.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Governor's A M E N D M E N T #4 (Electronic Legislative Filing - Title 24)

OFFERED IN THE HOUSE BY THE GOVERNOR
STATE AFFAIRS COMMITTEE

TO: CSHB 109() (25-GH1059\K; 2/21/07)

Page 16, line 10, following "Commission":

- Delete "may request"
- Insert "shall require"

Page 16, line 11, following "but":

- Delete "shall"
- Insert "may, when circumstances warrant an exception,"

Page 22, following line 18:

Insert a new bill section to read:

**** Sec. 33.** Section 22 of this Act takes effect July 1, 2008."

Renumber the following bill sections accordingly.

Page 22, line 19, following "Sections 2,"

Delete "22"

CSHB 109(STA) Version K
Analysis of Governor's Amendments

(15)Amendment 1: Would amend section 2 to make electronic filing mandatory for all campaign reports except those from candidates for municipal offices, and to allow exceptions when circumstances warrant them. It would delay the effective date for this section until May 1, 2009.

(24)Amendment 2: Would add new sections to the lobbying statutes to give the APOC authority to enforce against lobbyists some restrictions that appear elsewhere in the bill. The new sections would prohibit lobbyists from offering or making gifts to members of the executive branch that the Executive Branch Ethics Act prohibits the members from accepting, and would prohibit individuals from lobbying when the Ethics Act prohibits them from working as lobbyists.

(24)Amendment 3: Would reinsert a section from the governor's original bill to require additional details in the financial disclosures that legislators, legislative directors, and public members of the Select Committee on Legislative Ethics file with the APOC.

(24)Amendment 4: Would amend section 22 to make electronic filing mandatory for legislative financial disclosures, and to allow exceptions when circumstances warrant them. It would also delay the effective date for this section until July 1, 2008.

(39)Amendment 5: Would amend section 25 to make \$1,000 – rather than \$5,000 – the reporting threshold for financial disclosures that “public officials” (i.e., high-level executive branch officials, judicial officers, certain municipal officers, and some others) must file with the APOC, and to require reporting of the approximate number of hours of services performed for the reported income regardless of whether the income was earned by the hour.

(39)Amendment 6: Would amend section 26 to make electronic filing of financial disclosures mandatory for all public officials except municipal officers, and to allow exceptions when circumstances warrant them. The effective date for this section would remain July 1, 2007.

(39)Amendment 7: Would add a new section to supplement the list of boards' members that must file annual financial disclosures with the APOC. The Alaska Industrial Development and Export Authority, the Knik Arm Bridge and Toll Authority, the Alaska labor relations agency, the Alaska Mental Health Trust Authority, and the Alaska Railroad Corporation would be added to the existing list in AS 39.50.200(b).

(39)Amendment 8: Would replace section 27, which defines an “insignificant” business interest, with a provision from the governor's original bill. The amendment would establish a presumption that stock or other ownership interest in a business is insignificant if the value of the stock or interest is less than \$5,000.

(39)Amendment 9: Would amend section 30 to define the “policy-making positions” in the Governor's Office that are restricted from lobbying for one year after leaving state service. The “policy-making positions” restricted from lobbying would be the same “policy-making positions” that must file annual financial disclosures with the APOC.

HB

109

SUBCOMM.

FILE #13

TITLE 39

AMEND. TO

BRING ...

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 109(), Draft Version "K"

1 Page 1, line 4, following "government;":

2 Insert "relating to executive clemency;"

3

4 Page 22, following line 6:

5 Insert a new bill section to read:

6 **** Sec. 32.** AS 39.52 is amended by adding a new section to read:

7 **Sec. 39.52.225. Disclosures in connection with executive clemency.** Before
8 granting executive clemency to a person, the governor shall disclose in writing to the
9 attorney general if granting the clemency would benefit a personal or financial interest
10 of the governor. The attorney general shall make a written determination whether
11 granting executive clemency to the person would violate AS 39.52.110 - 39.52.190. "

12

13 Renumber the following bill sections accordingly.

14

15 Page 22, line 20:

16 Delete "sec. 33"

17 Insert "sec. 34"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 109(), Draft Version "K"

1 Page 19, line 28, through page 20, line 26:

2 Delete all material and insert:

3 **"* Sec. 27.** AS 39.52.110(b) is amended to read:

4 (b) Unethical conduct is prohibited, but there is no substantial impropriety if,
5 as to a specific matter, a public officer's [(1)] personal or financial interest in the
6 matter

7 (1) is insignificant [,] or of a type that is possessed generally by the
8 public or a large class of persons to which the public officer belongs, and [; OR

9 (2)] action **taken** or influence **exercised by the public officer** would
10 have insignificant or conjectural effect on the matter; or

11 **(2) is in regard to a business and the public officer**

12 **(A) does not own a controlling interest in the business;**

13 **(B) does not own stock or options to buy stock that, when**
14 **combined,**

15 **(i) equal more than one percent of the stock in the**
16 **business; or**

17 **(ii) have a total value of more than \$5,000;**

18 **(C) owns or has an option to buy an equity interest in the**
19 **business the value of which is not more than \$5,000 or one percent of the**
20 **total value of the business, whichever is less;**

21 **(D) is not a member of the board of directors or another**
22 **governing body of the business;**

23 **(E) is not an elected officer of the business;**

1
2
3
4
5

(F) does not provide or have an option to provide personal or professional services to the business;

(G) does not have a contract or have an option fo. a contract with the business; and

(H) is not an employee of the business."

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 109(), Draft Version "K"

1 Page 1, line 4, following "**government**";:

2 Insert "**relating to executive clemency**";

3

4 Page 22, following line 6:

5 Insert a new bill section to read:

6 "*** Sec. 32.** AS 39.52 is amended by adding a new section to read:

7 **Sec. 39.52.225. Disclosures in connection with executive clemency.** Before
8 granting executive clemency to an applicant for executive clemency, the governor
9 shall disclose in writing to the attorney general whether granting the clemency would
10 benefit a personal or financial interest of the governor. The attorney general shall
11 publish and make public a written determination whether granting executive clemency
12 to the applicant would violate AS 39.52.110 - 39.52.190. The written determination of
13 the attorney general under this section is not confidential, but information set out in
14 that determination identifying a person, other than the applicant, who is a victim or
15 witness in a criminal matter may not be made public."

16

17 Renumber the following bill sections accordingly.

18

19 Page 22, line 20:

20 Delete "sec. 33"

21 Insert "sec. 34"

1 39.50.030(b)

AMENDMENT

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

OFFERED IN THE HOUSE BY THE GOVERNOR
STATE AFFAIRS COMMITTEE
TO: CSHB 109() (25-GH1059\k; 2/21/07)

Page 17, line 21:

Delete "\$5,000"
Insert "\$1,000"

Page 17, line 31:

Delete "if the income was earned by the hour,"

Page 18, line 10:

Delete "\$5,000"
Insert "\$1,000"

Page 18, line 17:

Delete "\$5,000"
Insert "\$1,000"

Page 18, line 20:

Delete "\$5,000"
Insert "\$1,000"

1

2 Page 18, line 24:

3 Delete "\$5,000"

4 Insert "\$1,000"

5

6 Page 18, line 27:

7 Delete "\$5,000"

8 Insert "\$1,000"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 109(), Draft Version "K"

1 Page 22, following line 6:

2 Insert a new bill section to read:

3 **"* Sec. 32.** AS 39.52 is amended by adding a new section to read:

4 **Sec. 39.52.225. Disclosures in connection with executive clemency.** Before
5 granting executive clemency to an applicant for executive clemency, the governor
6 shall disclose in writing to the attorney general whether granting the clemency would
7 benefit a personal or financial interest of the governor. The attorney general shall
8 publish ~~(and make public)~~ a written determination whether granting executive clemency
9 to the applicant would violate AS 39.52.110 - 39.52.190. The written determination of
10 the attorney general ~~(under this section)~~ is not confidential, but information set out in
11 that determination identifying a ^{person other than the applicant for clemency who is a} victim or witness in a criminal matter may not be
12 made public."
13

14 Renumber the following bill sections accordingly.

15

16 Page 22, line 20:

17 Delete "33"

18 Insert "34"

1

2 Page 18, line 24:

3 Delete "\$5,000"

4 Insert "\$1,000"

5

6 Page 18, line 27:

7 Delete "\$5,000"

8 Insert "\$1,000"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Governor's A M E N D M E N T #7 (Boards - Title 39)

OFFERED IN THE HOUSE BY THE GOVERNOR
STATE AFFAIRS COMMITTEE

TO: CSHB 109() (25-GH1059\K; 2/21/07)

Page 19, following line 27:

Insert a new bill section to read:

**** Sec. 27.** AS 39.50.200(b) is amended by adding new paragraphs to read:

- (59) Alaska Industrial Development and Export Authority (AS 44.88);
- (60) the board of directors of the Knik Arm Bridge and Toll Authority (AS 19.75.031 and 19.75.041);
- (61) Alaska labor relations agency (AS 23.05.360 – 23.05.390);
- (62) the Board of Trustees of the Alaska Mental Health Trust Authority (AS 47.30.016);
- (63) the board of directors of the Alaska Railroad Corporation (AS 42.40.020 – 42.40.060)."

Renumber the following bill sections accordingly.

1
2
3
4
5
6
7
8
9
10
11
12
13

Governor's A M E N D M E N T #8 (Insignificant Business Interest - Title 39)

OFFERED IN THE HOUSE BY THE GOVERNOR
STATE AFFAIRS COMMITTEE

TO: CSHB 109() (25-GH1059\K; 2/21/07)

Page 19, following line 27:

Insert a new bill section to read:

**** Sec. 27.** AS 39.52.110 is amended by adding a new subsection to read:

(d) Stock or other ownership interest in a business is presumed to be insignificant if the value of the stock or other ownership interest is less than \$5,000."

Page 19, line 28, through page 20, line 26:

Delete all material.

1
2
3
4
5
6
7
8
9

Governor's AMENDMENT #9 (Policy Making Position – Title 39)

OFFERED IN THE HOUSE BY THE GOVERNOR
STATE AFFAIRS COMMITTEE

TO: CSHB 109() (25-GH1059\K; 2/21/07)

Page 21, line 27, following "Commission.":

Insert

"In this subsection, 'policy-making position' has the same meaning as 'policy-making position' in AS 39.50.200(a)(1)."

CSHB 109(STA) Version K
Analysis of Governor's Amendments

(15)Amendment 1: Would amend section 2 to make electronic filing mandatory for all campaign reports except those from candidates for municipal offices, and to allow exceptions when circumstances warrant them. It would delay the effective date for this section until May 1, 2009.

(24)Amendment 2: Would add new sections to the lobbying statutes to give the APOC authority to enforce against lobbyists some restrictions that appear elsewhere in the bill. The new sections would prohibit lobbyists from offering or making gifts to members of the executive branch that the Executive Branch Ethics Act prohibits the members from accepting, and would prohibit individuals from lobbying when the Ethics Act prohibits them from working as lobbyists.

(24)Amendment 3: Would reinsert a section from the governor's original bill to require additional details in the financial disclosures that legislators, legislative directors, and public members of the Select Committee on Legislative Ethics file with the APOC.

(24)Amendment 4: Would amend section 22 to make electronic filing mandatory for legislative financial disclosures, and to allow exceptions when circumstances warrant them. It would also delay the effective date for this section until July 1, 2008.

(39)Amendment 5: Would amend section 25 to make \$1,000 – rather than \$5,000 – the reporting threshold for financial disclosures that “public officials” (i.e., high-level executive branch officials, judicial officers, certain municipal officers, and some others) must file with the APOC, and to require reporting of the approximate number of hours of services performed for the reported income regardless of whether the income was earned by the hour.

(39)Amendment 6: Would amend section 26 to make electronic filing of financial disclosures mandatory for all public officials except municipal officers, and to allow exceptions when circumstances warrant them. The effective date for this section would remain July 1, 2007.

(39)Amendment 7: Would add a new section to supplement the list of boards' members that must file annual financial disclosures with the APOC. The Alaska Industrial Development and Export Authority, the Knik Arm Bridge and Toll Authority, the Alaska labor relations agency, the Alaska Mental Health Trust Authority, and the Alaska Railroad Corporation would be added to the existing list in AS 39.50.200(b).

(39)Amendment 8: Would replace section 27, which defines an “insignificant” business interest, with a provision from the governor's original bill. The amendment would establish a presumption that stock or other ownership interest in a business is insignificant if the value of the stock or interest is less than \$5,000.

(39)Amendment 9: Would amend section 30 to define the “policy-making positions” in the Governor's Office that are restricted from lobbying for one year after leaving state service. The “policy-making positions” restricted from lobbying would be the same “policy-making positions” that must file annual financial disclosures with the APOC.

HB

117

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-4859
Fax (907) 465-1799



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

John Harris
Speaker of the House

SPONSOR STATEMENT HOUSE BILL 117

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

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

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

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

Sec. 24.05.100. Special sessions.

(a) The legislature may hold a special session not exceeding 30 calendar days in length. The special session shall be called in either of the following ways:

(1) The governor may call the legislature into special session by issuing a proclamation at least 15 days in advance of the convening date stated in the proclamation. At a special session called by the governor, legislation is limited to the subjects designated by the governor in the proclamation or to the subjects presented by the governor, and to reconsideration of legislation, if any, vetoed following a regular session of that legislature.

(2) The legislature may call itself into special session if two-thirds of the membership responds in the affirmative to a poll conducted by the presiding officer of each house. Each presiding officer may initiate a poll by their joint agreement, and each shall initiate a poll upon the request of 25 percent of the membership of each house, expressed in writing and signed by those members. When two-thirds of the membership to which the legislature is entitled responds in the affirmative, the president of the senate and speaker of the house shall jointly announce the result of the poll and a date for the convening of the special session. If one of the presiding officers is deceased, has resigned, or is incapacitated, the presiding officer of the other house may conduct the poll of the members of both houses.

(b) A special session may be held at any location in the state. If a special session called under (a)(1) of this section is to be convened at a location other than at the capital, the governor shall designate the location in the proclamation. If a special session called under (a)(2) of this section is to be convened at a location other than at the capital, the presiding officers shall agree to and designate the location in the poll conducted of the members of both houses.

Sec. 26.23.020. The governor and disaster emergencies.

(a) The governor is responsible for meeting the dangers presented by disasters to the state and its people.

(b) The governor may issue orders, proclamations, and regulations necessary to carry out the purposes of this chapter, and amend or rescind them. These orders, proclamations, and regulations have the force of law.

(c) If the governor finds that a disaster has occurred or that a disaster is imminent or threatened, the governor shall, by proclamation, declare a condition of disaster emergency. The disaster emergency remains in effect until the governor finds that the danger has passed or the disaster has been dealt with so that the emergency no longer exists. The governor may terminate the disaster emergency by proclamation. A proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution. The proclamation must indicate the nature of the disaster, the area threatened or affected, and the conditions that have brought it about or that make possible the termination of the disaster emergency. A proclamation to declare a condition of disaster emergency must also state whether the governor proposes to expend state funds to respond to the disaster under (i) or (j) of this section.

(d) An order or proclamation issued under AS 26.23.010 - 26.23.220 shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless prevented or impeded by circumstances attendant upon the disaster, promptly filed with the Alaska division of homeland security and emergency management, the lieutenant governor, and the municipal clerk in the area to which it applies.

(e) A proclamation of a disaster emergency activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivisions or areas in question, and constitutes authority for the deployment and use of any force to which the plan or plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under AS 26.23.010 - 26.23.220 or any other provision of law relating to disaster emergency response.

(f) During the effective period of a disaster emergency, the governor is commander in chief of the organized and unorganized militia and of all other forces available for emergency duty. The governor may delegate or assign command authority by appropriate orders or regulations.

(g) In addition to any other powers conferred upon the governor by law, the governor may, under AS 26.23.010 - 26.23.220,

(1) suspend the provisions of any regulatory statute prescribing procedures for the conduct of state business, or the orders or regulations of any state agency, if compliance with the provisions of the statute, order, or regulation would prevent, or substantially impede or delay, action necessary to cope with the disaster emergency;

(2) use all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) transfer personnel or alter the functions of state departments and agencies or units of them for the purpose of performing or facilitating the performance of disaster emergency services;

(4) subject to any applicable requirements for compensation under AS 26.23.160, commandeer or utilize any private property, except for all news media other than as specifically provided for in AS 26.23.010 - 26.23.220, if the governor considers this necessary to cope with the disaster emergency;

(5) direct and compel the relocation of all or part of the population from any stricken or threatened area in the state if the governor considers relocation necessary for the preservation of life or for other disaster mitigation purpose;

(6) prescribe routes, modes of transportation, and destinations in connection with necessary relocation;

(7) control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in it;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles;

(9) make provisions for the availability and use of temporary emergency housing;

(10) allocate or redistribute food, water, fuel, clothing, medicine, or supplies; and

(11) use money from the oil and hazardous substance release response account in the oil and hazardous substance release prevention and response fund, established by AS 46.08.010, to respond to a declared disaster emergency related to an oil or hazardous substance discharge.

(h) The governor may expend during a fiscal year not more than \$500,000 of state funds per incident to prevent, minimize, or respond to the effects of an incident that may occur or occurs in the state and that, in the determination of the governor, poses a direct and imminent threat of sufficient magnitude and severity to justify state action. Before expending funds under this subsection to respond to an incident, the governor shall provide a financing plan to cope with the incident to the legislature in the same manner prescribed for disaster emergencies under AS 26.23.025 (a).

(i) If the governor declares a condition of disaster emergency, the governor may expend during a fiscal year not more than \$1,000,000 of state funds per disaster declaration, including the assets of the disaster relief fund, to

(1) save lives, protect property and public health and safety, or lessen or avert the threat of the disaster that poses a direct and imminent threat of sufficient severity and magnitude to justify state action;

(2) implement provisions of law relating to disaster relief to cope with the disaster;

(3) alleviate the effects of the disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate.

(j) If the disaster described in the governor's proclamation to declare a condition of disaster emergency is a fire, the governor may expend state funds as necessary to save lives or protect property and public health and safety.

(k) The governor may expend more than \$500,000 of state funds to cope with an incident under (h) of this section or more than \$1,000,000 of state funds to cope with a disaster under (i) of this section under the following circumstances:

(1) if the legislature is in session, the legislature approves a financing plan to cope with the incident or disaster that identifies the amount in excess of the expenditure limits that is to be expended from state funds; or

(2) if the legislature is not in session, either

(A) the governor convenes a special session of the legislature within five days after declaring the condition of disaster emergency or within five days after providing a financing plan to cope with an incident to the legislature and the legislature convenes in special session and approves a financing plan to cope with the incident or disaster that identifies the amount in excess of the expenditure limits that is to be expended from state funds; or

(B) the presiding officers of both the house of representatives and the senate agree that a special session should not be convened and so advise the governor in writing.

Alaska State Legislature

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

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

John Harris
Speaker of the House

MEMORANDUM

To: Representative Bob Lynn, Chair
House State Affairs Committee

From: Representative John Harris *JH*
Speaker of the House

Date: February 2, 2007

Subject: Hearing Request for HB 117

Please consider this request to hear House Bill 117: Proclamation Calling A Special Session, before your committee at your earliest possible convenience.

Background materials for the bill will be forthcoming. If you have questions or need additional information, please contact Tom Wright of my staff at 465-4859.

Thank you for your consideration of this request to schedule HB 117.

HB

126



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

The Honorable Sarah Palin
Governor of Alaska
Juneau, AK 99811

Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: MC-ESL

JAN 31 2007

Dear Governor Palin:

This is a follow-up to the May 17, 2006, letter in which the Federal Motor Carrier Safety Administration (FMCSA) issued a determination of substantial noncompliance to the State of Alaska. That determination was based on the State's failure to adopt the statutory authority needed to enforce all the required Commercial Driver's License provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). In addition, Alaska had not met the projected dates in its Action Plan (submitted in February 2006 to FMCSA) for beginning and passing the Structured Test administered by the American Association of Motor Vehicle Administrators (AAMVA) for transmitting and receiving via the Commercial Driver License Information System the new data elements required by MCSIA.

Since the May 17, 2006 letter, FMCSA has been encouraged that Alaska has established the date of January 29, 2007, to begin structured testing with AAMVA and has drafted legislation that it plans to introduce to the legislature that would bring the State into compliance with the MCSIA provisions for which it lacked statutory authority. Tracy Lewellyn, FMCSA Division Administrator in Alaska, has indicated to us that Kerry Hennings and Shelly Mellott deserve praise for their efforts in resolving compliance issues.

Nonetheless, this letter is a reminder that Alaska is scheduled to lose up to 5 percent of its Federal-aid highway funds on October 1, 2007. The FMCSA will withdraw this determination only when the required legislation is passed and signed by you and when the State successfully completes the structured test of the MCSIA data elements administered by AAMVA.

The FMCSA would like to see Alaska take the necessary steps to avoid sanctions and join other States in creating a system to keep unsafe drivers of commercial motor vehicles off our highways by implementing the provisions of MCSIA.

The FMCSA Division Administrator Tracy Lewellyn and her staff are available to assist you. She may be contacted at (907) 271-4068.

Sincerely yours,

John H. Hill

cc:

Annette Kreitzer, Commissioner, Alaska Department of Administration
Duane Bannock, Director, Alaska Division of Motor Vehicles
Leo von Scheben, Commissioner, Alaska Department of Transportation
Dominick Spataro, Division Chief, FMCSA CDL Division
Tracy Lewellyn, FMCSA Division Administrator, Alaska
William R. Paden, FMCSA Field Administrator, Western Service Center
Kent Fleming, FMCSA Western Service Center
J. Richard Capka, Administrator, Federal Highway Administration

ALASKA STATE LEGISLATURE

Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-3424
Fax (907) 465-3793

Interim:
50 Front Street, Suite 203
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546



REPRESENTATIVE KYLE JOHANSEN
DISTRICT ONE

Chair
Transportation

Vice Chair
Fisheries

Member
Economic Development,
Trade and Tourism
State Affairs

SPONSOR STATEMENT

HB X26

“An act relating to driver’s licenses and permits, commercial driver’s licenses, and other motor vehicle laws; relating to the driver’s license compact; and providing for and effective date.”

The intent of HB 126 is to reduce the number and severity of commercial motor vehicle related fatalities and injuries. To achieve these ends, HB 126 updates existing motor vehicle statutes and adds new motor vehicle statutes to meet current and upcoming federal regulations for commercial driver’s licenses. This legislation incorporates into Alaska law key provisions of the federal Motor Carrier Safety Improvement Act aimed at improving the overall effectiveness of the commercial driver’s license program.

This bill will bring Alaska into compliance of the regulations set forth by the Federal Motor Carrier Safety Administration. Further noncompliance subjects Alaska to the withholding of up to five percent of federal-aid highway funds in the first year and up to ten percent of federal-aid highway funds in the second and subsequent years. The reduction in National Highway System, Surface Transportation Program and Interstate Maintenance funds is estimated to be \$10.4 million in federal fiscal year (FFY) 2008 and \$17.4 million in FFY 2009. If similar amounts to FFY 2009 are assumed, a total of \$80 million over a 5 year period would be lost if Alaska remains noncompliant. These funds are the most flexible dollars used in the State Transportation Improvement Program (STIP).

This bill would exempt from the state’s driver’s license requirements certain military drivers operating commercial vehicles for military purposes and other drivers in cases of emergencies requiring additional assistance. Also, a nonresident holding a valid CDL issued by another jurisdiction whose permanent residence is maintained in that jurisdiction will not need to be issued a State of Alaska CDL.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB 126 (PLN-02-14-07)
 Bill Version: HB 126
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title Commercial Drivers Licenses RDU Planning
 Component Program Development
 Sponsor Johansen
 Requester House STA Component No. 385

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill brings the state into compliance with the Motor Carrier Safety Improvement Act of 1999.

Under section 384.401 of the Federal Motor Carrier Safety Regulations (49 CFR 384.401), a state that is not in compliance is subject to the withholding of up to five percent of Federal-aid highway funds that would otherwise be appropriated under 23 U.S.C. section 104(b). This reduction in National Highway System, Surface Transportation Program and Interstate Maintenance funds is estimated to be \$7 million in federal fiscal year (FFY) 2008 (starting October 1, 2007) and \$14 million in FFY 2009 (October 2008).

These funds are the most flexible dollars used in the State Transportation Improvement Program (STIP).

Prepared by: Mary Siroky Phone 465-4772
 Division Commissioner's Office Date/Time 2/14/07 12:00 AM
 Approved by: John MacKinnon Date 2/14/2007
 Agency Department of Transportation and Public Facilities

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB126-DOA-DMV-2-13-07
 Bill Version: HB 126
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act relating to driver's licenses and permits,
commercial driver's licenses..." RDU Division of Motor Vehicles
 Component Motor Vehicles
 Sponsor Rep. Johansen
 Requester (H) STA Component No. 2348

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will update existing motor vehicle statutes to bring the state into compliance with current and upcoming federal regulations for commercial driver's licenses.

We do not anticipate any change in expenditures or revenue as a result of this bill.

Prepared by: Duane Bannock, director Phone 269-5559
 Division: Motor Vehicles Date/Time 2/13/07 10:00 AM
 Approved by: Kevin Brooks, Deputy Commissioner Date 2/13/2007
 Agency: Department of Administration

Alaska Trucking Association, Inc.

3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946
www.aktrucks.org

February 19, 2007

Chairman Bob Lynn
House State Affairs Committee
Alaska State Legislature
State Capitol, Room 104
Juneau, AK 99801

re: HB 126

Dear Chairman Lynn,

The Alaska Trucking Association is a state wide organization representing trucking interests from Barrow to Ketchikan. In another three weeks, we will conduct our 49th Annual Meeting celebrating over 49 years of representing our industry in Alaska. Our more than 200 members represent all of the diverse trucking operations in the state and many associate members who provide goods and services to our industry.

On behalf of ATA, I take this opportunity to express our support of HB126. HB 126 is an important bill relating to commercial drivers licenses, DMV operations and other driver issues.

In reviewing the bill, we are in agreement with the intent of the bill to reduce the number and severity of commercial motor vehicle related fatalities and injuries. Alaska has had an admirable commercial vehicle safety record over the years and we support efforts to continue to improve safety for commercial vehicles. One of the elements of our mission statement is to "...promote highway and driver safety."

Provisions of the bill will bring Alaska into compliance with Federal Motor Carrier Safety Administration regulations which will eliminate the possibility of federal sanctions against our federal-aid highway funds. These funds are currently in jeopardy due to Alaska's non-compliance.

Exemptions are included to expand the military exemption language to include more service members and to allow a non-CDL holder to operate snow removal equipment in case of emergency.

Chairman Bob Lynn
House State Affairs Committee
February 19, 2007

In line with FMCSA regulations, this change also allows a non-resident to operate a CMV using their home state license.

Bill language clearly states that 19 year old drivers may be issued a CDL to operate in intra state commerce. This clears up some previous ambiguities.

Many of the changes update penalties for drivers for disqualifying offenses. This will assist in keeping bad or unfit drivers off our highways thereby improving the safe driving environment.

To reiterate, Mr. Chairman, we support HB126 and urge the committee to move the bill with do pass recommendations.

Sincerely,



Aves D. Thompson
Executive Director

cc: Representative Kyle Johansen
Sponsor

SECTIONAL ANALYSIS

HOUSE BILL NO. 126

"An Act relating to driver's licenses and permits, commercial driver's licenses, and other motor vehicle laws; relating to the driver's license compact; and providing for an effective date."

Introduced: February 12, 2007

Section 1: Language to support the prior authorization under AS 28.35.030(q) and AS 28.35.032(s) for DQA/DMV to review criminal histories prior DUI/Refusals for proper application of revocation, suspension, cancellation and disqualification timeframes. Current records are not complete.383.51

Section 2: Amends requirements so more current addresses may be used as reflected on citations, police reports, judgments or crash reports for notification of CDL drivers.383.141

Section 3: Expands military exemption language to include more service members as required by FMCSA. 383.3 (c)

Adds exemption to allow non-CDL holder to operate snow removal equipment in case of emergency (this is good for the rural communities). 383.3(d)(3)

Allows a non-resident to operate a CMV using their home state license. FMCSA allows one CDL issued from the state where you are domiciled (permanent residence). 383.212

Section 4: Adds cancel and withdrawal language to comply with 384.201, 384.210

Section 5: Adds disqual language but may still be eligible for base privilege 384.212, 383.5

Section 6: Removes 1 year expiration of school bus license (no longer needed due to removal of tuberculin requirement in 05) which will allow the state to add a school bus license as an endorsement to a CDL as required by FMCSA 383.93, 383.123, 384.201

Section 7: Alaska allows CDL instruction permit holders to renew a CDL instruction permit as many times as requested effectively allowing a driver to operate a CDL along side a licensed CDL driver forever without taking the CDL skills test. DMV chose 1 renewal which equals 4 years total of driving on an instruction permit. Instruction permits will be issued specifically for each type of CDL (IC, IB, IA) so each upgrade allows 4 years of practice time.

Sections 8: Clarifies "legal" name and requires applicant to provide past driving history 384.206(2)(ii)

Section 9: "May" to "Shall" and maintaining disqual info 384.225, 384.207

Section 10: "May" to "Shall" and update record in 10 days 384.225, 384.207

Section 11: "May" to "Shall" and provide record in 10 days 384.225, 384.207

Section 12: "Shall" send convictions to other states.

Section 13: Change from one-month/three months to 30 days/90 days for consistency and equitable/equal time frames of suspension.

Section 14: Add disqualifications

Section 15: Clearly define 19 yoa to operate intrastate. Add domicile per Fed. Reg.

Section 16: Add administrative actions and 2 new federal offenses

Section 17: Gives admin authority after court conviction to take disqual.

Section 18: Gives admin authority after court conviction to take disqual Change "substance" to "material" to comply with FMCSA

Section 19: Gives admin authority after court conviction to take disqual.

Section 20: Surrender of license if admin. Action

Section 21: Increases penalties to match federal requirements.

Section 22: Gives admin authority after court conviction to take disqual

Section 23: Gives USDOT authority to declare a driver an imminent hazard and creates civil penalties for employers.

Section 24: Adds disqualification info

Section 25: Adds 3 new serious offenses as required by FMCSA

Section 26: Adds new definitions

Section 27: Removes definition that has been added in AS 28.05.065

Section 28: Same amendment and logic as Section 2

Section 29: Updates compact with federal changes

Section 30: adds definition

Section 31: repeals language no longer applicable

ALASKA STATE LEGISLATURE

Session: /
State Capitol /
Juneau, AK 99801-1182 /
(907) 465-3424 /
Fax (907) 485-3793 /

Interim: /
50 Front Street, Suite 203 /
Ketchikan, AK 99901 /
(907) 247-4672 /
Fax (907) 225-8546 /



REPRESENTATIVE KYLE JOHANSEN
DISTRICT ONE

Chair
Transportation

Vice Chair
Fisheries

Member
Economic Development,
Trade and Tourism
State Affairs

SPONSOR STATEMENT

HB 126

"An act relating to driver's licenses and permits, commercial driver's licenses, and other motor vehicle laws; relating to the driver's license compact; and providing for and effective date."

The intent of HB 126 is to reduce the number and severity of commercial motor vehicle related fatalities and injuries. To achieve these ends, HB 126 updates existing motor vehicle statutes and adds new motor vehicle statutes to meet current and upcoming federal regulations for commercial driver's licenses. This legislation incorporates into Alaska law key provisions of the federal Motor Carrier Safety Improvement Act aimed at improving the overall effectiveness of the commercial driver's license program.

This bill will bring Alaska into compliance of the regulations set forth by the Federal Motor Carrier Safety Administration. Further noncompliance subjects Alaska to the withholding of up to five percent of federal-aid highway funds in the first year and up to ten percent of federal-aid highway funds in the second and subsequent years. The reduction in National Highway System, Surface Transportation Program and Interstate Maintenance funds is estimated to be \$10.4 million in federal fiscal year (FFY) 2008 and \$17.4 million in FFY 2009. If similar amounts to FFY 2009 are assumed, a total of \$80 million over a 5 year period would be lost if Alaska remains noncompliant. These funds are the most flexible dollars used in the State Transportation Improvement Program (STIP).

This bill would exempt from the state's driver's license requirements certain military drivers operating commercial vehicles for military purposes and other drivers in cases of emergencies requiring additional assistance. Also, a nonresident holding a valid CDL issued by another jurisdiction whose permanent residence is maintained in that jurisdiction will not need to be issued a State of Alaska CDL.

ALASKA STATE LEGISLATURE

Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-3424
Fax (907) 465-3793

Interim:
50 Front Street, Suite 203
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546



Chair
Transportation

Vice Chair
Fisheries

Member
Economic Development,
Trade and Tourism
State Affairs

REPRESENTATIVE KYLE JOHANSEN
DISTRICT ONE

February 14, 2007

Representative Lynn
Committee Chairman
State Affairs
State Capitol, Room 104

Re: HB 126, Commercial Driver's Licenses and other motor vehicle laws

Representative Lynn:

I respectfully request that you schedule HB 126 for a hearing in House State Affairs at your earliest convenience. HB 126 updates and adds motor vehicle statutes to meet current and upcoming federal regulations for commercial driver's licenses. Noncompliance with these regulations subjects Alaska to withholding of federal aid highway funds.

If you have any questions please contact my staff, Randy Ruaro. Thank you.

Respectfully,

Kyle Johansen 

HB

130


Alaska State Legislature

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

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

John Harris Speaker of the House

To: Representative Bob Lynn, Chair
House State Affairs Committee

From: Representative John Harris 
Speaker of the House

Date: February 14, 2007

Subject: Hearing Request for HB 130

Please consider this request to hear House Bill 130: Resign to Run for Office, before your committee at your earliest possible convenience.

Background materials for the bill are attached. If you have questions or need additional information, please contact Tom Wright of my staff at 465-4859.

Thank you for your consideration of this request to schedule HB 130.

Alaska State Legislature

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



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

John Harris
Speaker of the House

SPONSOR STATEMENT

HOUSE BILL 130

“An Act prohibiting a state legislator, the governor or lieutenant governor from retaining office if the person runs for a different state or federal office and a part of the term of this different office runs concurrently with that of the office held; and providing for an effective date.”

House Bill 130 will level the playing field for candidates seeking higher office. The premise of the bill is that the governor, lieutenant governor or a legislator cannot run for another different state or federal office while maintaining their current office. This does not apply to seated officials who are in their last year of their term.

This is a fundamental issue of fairness. The power of incumbency and not holding a safe seat should they lose the election creates a huge advantage over an opponent who may not enjoy the same benefits of public office or who may have to give up their seat to run for higher office. Some of these advantages occur in fundraising, being able to speak in an official capacity to groups who realize the person's incumbency would survive an election for a different office, and other perks they may have as a continuing office holder. This would also help resolve any potential retribution should the office holder lose the election for a higher office.

Alaska State Legislature

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



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

John Harris
Speaker of the House

SECTIONAL ANALYSIS **HOUSE BILL 130**

“An Act prohibiting a state legislator, the governor or lieutenant governor from retaining office if the person runs for a different state or federal office and a part of the term of this different office runs concurrently with that of the office held; and providing for an effective date.”

Section 1: Amends AS 15.25.030(a), Declaration of candidacy. Conforming language adding reference to AS 24.05.045 and AS 44.19.038.

Section 2: Amends AS 15.25.105(a), Write-in candidates. Conforming language adding reference to AS 24.05.045 and AS 44.19.038.

Section 3: Amends AS 15.25.180(a), Requirements for petition. Conforming language adding reference to AS 24.05.045 and AS 44.19.038.

Section 4: Adds a new section to AS 24.05. Section states that a legislator who is not in the final year of office must resign that office if the legislator files as a candidate for a state or federal office if the term runs concurrently with the legislator's term of office. The resignation is to take place before the date of filing for the other office.

Section 5: Adds a new section to AS 44.19. Section states that a governor or lieutenant governor who is not in the final year of office must resign that office if the governor or lieutenant governor files as a candidate for a state or federal office if the term runs concurrently with the the governor's or lieutenant governor's term of office. The resignation is to take place before the date of filing for the other office.

Section 6: Immediate effective date.

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

February 9, 2007

SUBJECT: Bill relating to a requirement that a legislator, the governor, or lieutenant governor resign from office if running for another public office. (Work Order No. 25-LS0459\A)

TO: Representative John Harris
Attn: Tom Wright

FROM: Alpheus Bullard *ALB*
Legislative Counsel

Enclosed is the draft bill you requested, requiring a legislator, the lieutenant governor, or governor to resign if running for another state or federal public office. While it is my opinion that the bill is constitutional, challenges to the bill could be brought on a variety of constitutional grounds. These constitutional issues and a drafting question are detailed in brief below.

Constitutional Issues.

1. Different litigants in disparate circumstances might charge that the bill is an infringement of First Amendment rights, a violation of the Equal Protection Clause of the Fourteenth Amendment, or imposes an unconstitutional qualification under Art. I, Secs. 2 and 3 of the United States Constitution or art. II, sec. 2, and art. III, sec. 2 of the Alaska Constitution.

The First Amendment.

The First Amendment to the United States Constitution prohibits abridging freedom of speech. The Supreme Court has held in Clements v. Fashing, 102 S. Ct. 2836 (1982) that a "resign to run" state constitutional provision similar to the statute you have requested places an insignificant burden on an elected state office holder's First Amendment rights and "a State [may] define the benefits and burdens of different elective offices in any particular manner." Id. at 2848-49. A federal judge has called the question of the propriety of resign-to-run rules "settled doctrine." Wilbur v. Mahan, 3 F.3d 214, 219 (7th Cir. 1993) (Easterbrook, J. concurring). In this case, sitting public office holders running for another federal office would be denied their former income and the benefits of state office while running for another elected office. It seems unlikely that this restriction rises to the level of an impermissible abridgment of these candidates' freedom of speech or association under Alaska law. A restriction by government which has as its purpose the prohibition or prevention of some act other than communicative speech, but which affects speech being valid unless the interference with communication of ideas and information

outweighs the benefit to the governmental interest to be served. See Younger v. Harris, 401 U.S. 37 (1971).

Equal Protection.

This bill would create a classification that distinguishes between elected state office holders who wish to run for another public office before the last year of their term and all other persons. A state court in assessing an equal protection challenge would examine the nature and weight of the interests possessed by those burdened by the restriction, the importance of the interests underlying the bill, and the closeness of the means-to-end fit of the bill's restriction on state office holders with the state interests protected. In this case, the bill's creation of two potential would-be candidate groups does not disadvantage a constitutionally suspect class, the bill's prohibition against sitting state office holders running as candidates is rationally related to furthering substantial and important state interests in orderly and consistent government¹, and the burden borne by the newly created class is unlikely to be interpreted as unduly burdensome.

State and Federal Qualifications Clauses.

There exists some likelihood that the bill could be interpreted by a court to create a fourth and impermissible qualification for candidacy of "not an elected state office holder before the final year of the office holder's term."² If a court were to interpret the bill as creating such a qualification, the bill would not pass constitutional muster. The addition of a fourth qualification for office would require an amendment to the Alaska constitution. While I am unable to predict with certainty how a state court would treat the qualifications clause issues posed by this bill, similar "resign-to-run" statutes and state constitutional provisions have been upheld in federal and state courts against "qualifications clause" challenges. See Signorelli v. Evans, 637 F.2d 853 (2d Cir. 1980) and Oklahoma State Election Board v. Coats, 610 P.2d 776 (Okla. 1980). While a "resign-to-run" statute has never been before an Alaska court, in Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994), the court, in a review of permissible and impermissible candidate qualifications, observed that "a state 'resign-to-run' statute has been upheld because it did not actually bar a candidate from office. Rather, it simply required the candidate to sacrifice the security of the public office presently held for the prospect of obtaining a different position." Id. citing Coats at 780. I believe that an Alaska court would most likely hold that this bill does not seek to create an impermissible qualification, but is instead, a legitimate exercise of the state's plenary

¹ i.e. (1) encouraging elected public officials to devote themselves exclusively to the duties of the office held; (2) reducing the possibilities of public subsidies for persons using public office as a stepping stone; (3) preventing abuse of an office before and after an election; and (4) protecting the expectations of the electorate in voting a candidate into state office. See Joyner v. Mofford, 706 F.2d 1523, 1532 (1983).

² The three existing qualifications are age, citizenship, and residency; qualifications that have been held to be exclusive and that neither Congress nor the states may require more. See Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994).

Representative John Harris

February 9, 2007

Page 3

power to regulate the conduct of its own office holders without providing an absolute or permanent prohibition against the candidacy of any individual running for state or federal office.

2. You requested that the draft bill exempt a legislator, the lieutenant governor, or governor who is in the final year of the legislator's, lieutenant governor's, or governor's office from the bill's resignation requirement. This exemption, so phrased, may not be necessary given the draft bill's language concerning the existing office holder's filing for an office "the term or any part of the term of which runs concurrent with the legislator's [lieutenant governor's or governor's] term of office." While this language is not synonymous in its effect with the requested "final year" exemption, it may provide the same desired result.

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

TLAB:med
07-074.med

Enclosure

Sec. 15.25.030. Declaration of candidacy.

(a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and must state in substance

- (1) the full name of the candidate;
- (2) the full mailing address of the candidate;
- (3) if the candidacy is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;
- (4) the office for which the candidate seeks nomination;
- (5) the name of the political party of which the person is a candidate for nomination;
- (6) the full residence address of the candidate, and the date on which residency at that address began;
- (7) the date of the primary election at which the candidate seeks nomination;
- (8) the length of residency in the state and in the district of the candidate;
- (9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;
- (10) that the candidate is a qualified voter as required by law;
- (11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;
- (12) that the candidate requests that the candidate's name be placed on the primary election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot; and

(16) that the candidate is registered to vote as a member of the political party whose nomination is being sought.

(b) A person filing a declaration of candidacy under this section, other than a person subject to AS 24.60 who is filing a declaration for a state legislative office, shall simultaneously file with the director a statement of income sources and business interests that complies with the requirements of AS 39.50. A person who is subject to AS 24.60 and is filing a declaration of candidacy for state legislative office shall simultaneously file with the director a disclosure statement that complies with the requirements of AS 24.60.200.

(c) An incumbent public official, other than a legislator, who has a current statement of income sources and business interests under AS 39.50 on file with the Alaska Public Offices Commission, or an incumbent legislator who has a current disclosure statement under AS 24.60.200 on file with the Alaska Public Offices Commission, is not required to file a statement of income sources and business interests or a disclosure statement with the declaration of candidacy under (b) of this section.

Sec. 15.25.105. Write-in candidates.

(a) If a candidate does not appear on the primary election ballot or is not successful in advancing to the general election and wishes to be a candidate in the general election, the candidate may file as a write-in candidate. Votes for a write-in candidate may not be counted unless that candidate has filed a letter of intent with the director stating

(1) the full name of the candidate;

(2) the full residence address of the candidate and the date on which residency at that address began;

(3) the full mailing address of the candidate;

(4) the name of the political party or political group of which the candidate is a member, if any;

(5) if the candidate is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(6) the office that the candidate seeks;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the house district of the candidate;

(9) the name of the candidate as the candidate wishes it to be written on the ballot by the voter;

(10) that the candidate meets the specific citizenship requirements of the office for which the person is a candidate;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(12) that the candidate is a qualified voter as required by law; and

(13) that the candidate is not a candidate for any other office to be voted on at the general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy.

(b) If a write-in candidate is running for the office of governor, the candidate must file a joint letter of intent together with a candidate for lieutenant governor. Both candidates must be of the same political party or group.

(c) A letter of intent under (a) of this section must be filed not later than five days before the general election.

Sec. 15.25.180. Requirements for petition.

- (a) The petition must state in substance**
 - (1) the full name of the candidate;**
 - (2) the full residence address of the candidate and the date on which residency at that address began;**
 - (3) the full mailing address of the candidate;**
 - (4) the name of the political group, if any, supporting the candidate;**
 - (5) if the candidacy is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;**
 - (6) the office for which the candidate is nominated;**
 - (7) the date of the election at which the candidate seeks election;**
 - (8) the length of residency in the state and in the district of the candidate;**
 - (9) that the subscribers are qualified voters of the state or house or senate district in which the candidate resides;**
 - (10) that the subscribers request that the candidate's name be placed on the general election ballot;**
 - (11) that the proposed candidate accepts the nomination and will serve if elected, with the statement signed by the proposed candidate;**
 - (12) the name of the candidate as the candidate wishes it to appear on the ballot;**
 - (13) that the candidate is not a candidate for any other office to be voted on at the primary or general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy;**
 - (14) that the candidate meets the specific citizenship requirements of the office for which the person is a candidate;**
 - (15) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election;**

and if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(16) that the candidate is a qualified voter; and

(17) if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly with the candidate for governor.

(b) A person filing a nominating petition under this section, other than a person subject to AS 24.60 who is filing a petition for a state legislative office, shall simultaneously file with the director a statement of income sources and business interests that complies with the requirements of AS 39.50. A person who is subject to AS 24.60 and is filing a nominating petition for state legislative office shall simultaneously file with the director a disclosure statement that complies with the requirements of AS 24.60.200.

(c) An incumbent public official, other than a legislator, who has a current statement of income sources and business interests under AS 39.50 on file with the Alaska Public Offices Commission, or an incumbent legislator who has a current disclosure statement under AS 24.60.200 on file with the Alaska Public Offices Commission, is not required to file a statement of income sources and business interests or a disclosure statement with the nominating petition under (b) of this section.

Article 02. COMPOSITION AND MEMBERS

Sec. 24.05.020. Composition.

The legislature is composed of two houses: a senate consisting of 20 members and a house of representatives consisting of 40 members.

Sec. 24.05.030. Qualifications of members.

A member of the legislature shall be a qualified voter who has been a resident of the state for at least three years and of the district from which elected for at least one year immediately preceding filing for office. A senator shall be at least 25 years of age and a representative at least 21 years of age at the time of taking the oath of office.

Sec. 24.05.040. Dual office.

A member of the legislature may not hold any other office or position of profit under the United States or the state. During the term for which elected and for one year thereafter, a legislator may not be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while the legislator was a member. This section does not prevent any person from seeking or holding the office of governor, lieutenant governor, or member of Congress. This section does not apply to employment by or election to a constitutional convention. A member may serve on or at the behest of an interim committee of the legislature.

Sec. 24.05.050. Membership on boards and commissions.

A member of the legislature may serve on a board or commission of the state government only if the membership of legislators on the board or commission is specifically authorized by law.

Sec. 24.05.060. Disqualifications.

A person is not qualified for membership in the legislature who is disqualified to hold public office under the provisions of art. XII, Sec. 4, Constitution of the State of Alaska, and as it may be implemented by law. Each member of the legislature, before entering upon the duties of the office, shall take the oath of office prescribed in art. XII, Sec. 5, Constitution of the State of Alaska, and such further oath or affirmation prescribed by law for members of the legislature or other officers of the state.

Sec. 24.05.070. Election and expulsion.

Each member of the legislature shall be elected from the district and in conformity with the procedures established by the state constitution and the laws of the state. Each house is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members.

Sec. 24.05.080. Terms.

The term of each member of the legislature begins on the second Monday in January following a presidential election year; however, following a gubernatorial election year, the term of each member begins on the third Tuesday in January. The term of representatives is two years, and the term of senators is four years. One-half of the senators shall be elected every two years.

Sec. 24.05.085. Resignation.

A member resigns by submitting a resignation in writing to the presiding officer of the house to which the member was elected or appointed, with information copies to the governor, the director of elections, and the executive director of the Legislative Affairs Agency for appropriate administrative action. The resignation is effective on the date specified in the resignation or, if no date is specified, 10 days after the date of mailing the resignation. The resignation may be withdrawn, in the same manner as it was submitted, at any time before it becomes effective.

Sec. 24.05.087. [*Renumbered as AS 24.05.184*].

Article 01. POWERS AND DUTIES

Sec. 44.19.010. Office of the Governor.

The Office of the Governor includes the lieutenant governor, the budget officer, and the staff that the governor finds necessary to administer the executive powers of the state.

Sec. 44.19.015. State budget.

The governor shall direct the preparation and administration of the state budget.

Sec. 44.19.017. International trade.

(a) The Office of the Governor is authorized to foster the growth of

(1) trade between Alaska and foreign countries; and

(2) international trade within the state and administer Alaska foreign offices.

(b) The governor shall maintain foreign offices, including an office located in Tokyo, Japan and Seoul, Republic of Korea. The foreign offices shall serve as outlets for information related to economic development, resources, and trade and as contact points for government and private industry of Alaska and the Pacific Rim nations of Asia and other foreign countries to promote and maintain trade between the state and those countries.

(c) The governor shall staff the foreign offices with persons the governor selects based on their experience, training, and linguistic ability. The governor shall solicit ideas from the legislature regarding desirable staff qualifications and its recommendations of persons to staff the offices. The governor may hire additional personnel as necessary.

(d) The governor shall direct all state agencies, and request the federal government and private industry, to provide necessary reports, brochures, and information requested by the governor.

(e) The governor shall prepare a report annually on the activities and accomplishments of the Office of the Governor under this section and notify the legislature that the report is available.

(f) The expenses of operating the activities of the Office of the Governor under this section, including its foreign offices, shall be included in appropriations made to the Office of the Governor.

Sec. 44.19.020. Duties of the lieutenant governor.

The lieutenant governor shall

(1) administer state election laws;

(2) appoint notaries public;

(3) adopt regulations under AS 44.62 (Administrative Procedure Act) that establish for the broadcasting of notices under AS 44.62.190 and 44.62.310(e) the frequency of the broadcasts, appropriate broadcast times, and the locations for the broadcasts; the regulations must be reasonably calculated to provide the widest possible exposure of the notices.

Sec. 44.19.022. Custodian of state seal.

The lieutenant governor is the custodian of the state seal.

Sec. 44.19.023. State museum management [Repealed, E.O. No. 34 (1974)].

Repealed or Renumbered

Sec. 44.19.024. Fees for issuing certificate.

For issuing each certificate with the seal of the state affixed, the lieutenant governor shall collect a fee of \$5 for each certificate.

Sec. 44.19.025. [Renumbered as AS 44.99.001].

Repealed or Renumbered

Sec. 44.19.026. Designation of temporary substitute for lieutenant governor.

The lieutenant governor may designate a head of a principal executive department, or more than one such officer in the alternative, who shall temporarily be custodian of the state seal and perform the authenticating functions of the lieutenant governor during such time as the lieutenant governor succeeds to the office of governor, acts as governor, is absent from the state, or otherwise is not available at the state capital to perform the above authenticating functions. The designation shall be in writing, signed by the lieutenant governor, and filed in the office of the lieutenant governor. The designation is effective until revoked by a later designation executed and filed in the same manner.

Sec. 44.19.028. Interim boards.

The governor may establish the interim advisory boards, councils, and commissions the governor considers necessary. The governor may prescribe the functions and authority of interim boards, councils, and commissions and fix the compensation of their members. An interim board, council, or commission remains in existence only until the adjournment of the next regular or reconvened session of the legislature.

Sec. 44.19.030. Printing governor's message.

The governor shall have the governor's message printed and distributed to each member of the legislature within 24 hours after it is delivered or with all possible speed.

Sec. 44.19.035. Jones Act repeal.

The governor shall use best efforts and all appropriate means to persuade the United States Congress to repeal 46 U.S.C. 861, et seq., known as the Jones Act.

HB

151

Library

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS0479E
Bannister
3/21/07

CS FOR HOUSE BILL NO. 151()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE JOHNSON BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring an indemnification, defense, and hold harmless provision in**
2 **construction-related professional services contracts of state agencies, quasi-public**
3 **agencies, municipalities, and political subdivisions."**

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

5 *** Section 1. AS 36.90 is amended by adding a new section to read:**

6 **Article 4. Required Contract Provision.**

7 **Sec. 36.90.300. Indemnification, defense, and hold harmless provision in**
8 **certain construction-related contracts. (a) A public agency shall include in a**
9 **construction-related professional services contract entered into by the public agency a**
10 **provision under which the consultant agrees to indemnify, defend, and hold harmless**
11 **the public agency from claims or liability for the negligent acts, errors, or omissions of**
12 **the consultant. The provision must include an apportionment of the indemnification,**
13 **defense, and hold harmless obligation on a comparative fault basis where there is joint**
14 **liability.**

1 (b) A provision that reads substantially as follows satisfies the requirement of
2 (a) of this section:

3 The consultant shall indemnify, defend, and hold harmless the
4 contracting agency from and against any claim of, or liability for,
5 negligent acts, errors, and omissions of the consultant under this
6 agreement. The consultant is not required to indemnify, defend, or hold
7 harmless the contracting agency for a claim of, or liability for, the
8 independent negligent acts, errors, and omissions of the contracting
9 agency. If there is a claim of, or liability for, a joint negligent act, error,
10 or omission of the consultant and the contracting agency, the
11 indemnification, defense, and hold harmless obligation of this provision
12 shall be apportioned on a comparative fault basis. In this provision,
13 "consultant" and "contracting agency" include the employees, agents,
14 and contractors who are directly responsible, respectively, to each. In
15 this provision, "independent negligent acts, errors, and omissions"
16 means negligence other than in the contracting agency's selection,
17 administration, monitoring, or controlling of the consultant, or in
18 approving or accepting the consultant's work.

19 (c) In this section,

20 (1) "consultant" means a person who contracts with a public agency to
21 provide professional services;

22 (2) "professional services" has the meaning given in AS 36.30.990;

23 (3) "public agency" means a department, institution, board,
24 commission, division, authority, public corporation, committee, school district,
25 political subdivision, or other administrative unit of a municipality, of a political
26 subdivision, or of the executive or legislative branch of state government, including
27 the University of Alaska, the Alaska Aerospace Development Corporation, the Alaska
28 Housing Finance Corporation, the Alaska Industrial Development and Export
29 Authority, the Alaska Energy Authority, the Alaska Railroad Corporation, and a
30 regional educational attendance area.

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

FAX

To: LIO - Peg Warren

Fax #: 2864

From: Nancy Manly x2794
Alaska State Capitol, room 104
Juneau, AK 99801-1182

of Pages (including cover): 3 / 11

Phone: 907-465-4931

Fax: 907-465-4316

Re: HB 151

Here is some additional information that was turned in this morning on H. 151. This bill will be heard in House State Affairs Committee tomorrow.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 151

1 Page 1, line 1, following "indemnification":

2 Insert ", defense,"

3

4 Page 1, line 7, following "Indemnification":

5 Insert ", defense,"

6

7 Page 1, lines 9 - 10:

8 Delete "that indemnifies the public agency and holds the public agency harmless"

9 Insert "under which the consultant agrees to indemnify, defend, and hold harmless the
10 public agency from claims or liability"

11

12 Page 1, lines 10 - 11:

13 Delete "who contracts with the public agency to provide the professional services"

14

15 Page 1, line 12:

16 Delete "joint liability on a comparative fault basis"

17 Insert "the indemnification, defense, and hold harmless obligation on a comparative
18 fault basis where there is joint liability"

19

20 Page 2, line 1, following "indemnify":

21 Insert ", defend,"

22

23 Page 2, line 4, following "indemnify":

1 Insert ", defend, or hold harmless"

2

3 Page 2, line 8, following "indemnification":

4 Insert ", defense,"

5

6 Page 2, line 12:

7 Delete "provision"

8 Insert "subsection"

9

10 Page 2, following line 16:

11 Insert a new paragraph to read:

12 "(1) "consultant" means a person who contracts with a public agency

13 to provide professional services;"

14

15 Renumber the following paragraphs accordingly.

ALASKA STATE LEGISLATURE

Interim:

716 West 4th Avenue, Suite 640
Anchorage, Alaska 99501
(907) 269-0200
FAX (907) 269-0204

Rep_Craig_Johnson@legis.state.ak.us



Session:

State Capitol, Room 126
June 1, Alaska
99501-1182
(907) 465-4993
FAX (907) 465-3872

REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

Sponsor Statement

House Bill 151

An Act requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions.

HB 151 will require uniform indemnification and hold harmless provisions in professional services contracts for all public agencies within the state of Alaska.

In the last few years, there has been a significant increase in litigation related to public projects. One reaction to this trend has been for public agencies to include indemnification language in new construction projects contracts. This language insulates public agencies from liability by unfairly transferring responsibility for negligence to design consultant companies.

These indemnification clauses are typically either uninsurable or insurable only at very high cost. When a contract cannot be insured, design professionals must either accept an unduly high degree of liability or walk away from the contract. The results of this increased liability include:

- Increased costs to the design professionals (which translates into increased overall costs for public projects)
- Decreased participation from design professional companies on competitive bids for public projects (which again increases the costs of these projects)
- The elimination of many smaller local design firms due to their lack of the financial wherewithal to defend themselves from civil lawsuits, or worse, from losing a civil lawsuit that stemmed from negligence on behalf of a public agency

HB 151 prescribes uniform contract indemnification language for all state agencies and makes each party to a professional services contract financially responsible for their own liabilities and distributes joint liability on a comparative fault basis.

The question of indemnification has been addressed by the Alaska Department of Transportation, whose language has been adopted by many boroughs and agencies throughout Alaska for decades. HB 151 means to standardize their approach, and in doing so, provide a fair and equitable business climate within the State of Alaska.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

**Sample Indemnification clauses
used in A/E Contracts
by various Alaska Public Agencies**

Alaska Department of Transportation

Also used by

**Alaska Department of Administration
Alaska Department of Revenue (D1.1 only) (2002)
Alaska Railroad Corporation (D1.1 only)
Anchorage School District (D1.1 only)
City of Gamble (D1.1 only)**

INDEMNIFICATION

D1.1 The CONTRACTOR shall indemnify, hold harmless, and defend the CONTRACTING AGENCY from and against any claim of, or liability for negligent acts, errors or omissions of the CONTRACTOR under this Agreement. The CONTRACTOR shall not be required to indemnify the CONTRACTING AGENCY for a claim of, or liability for, the independent negligence of the CONTRACTING AGENCY. If there is a claim of, or liability for, the joint negligent error or omission of the CONTRACTOR and the independent negligence of the CONTRACTING AGENCY, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "CONTRACTOR" and "CONTRACTING AGENCY", as used within this article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "Independent Negligence" is negligence other than in the CONTRACTING AGENCY's selection, administration, monitoring, or controlling of the CONTRACTOR and in approving or accepting the CONTRACTOR's Work.

D1.2 The CONTRACTOR shall exercise that degree of skill, care and judgment commensurate with the professional standards for the services of a similar nature. When such standards are in dispute, they shall be established by a panel of three qualified, impartial professionals objectively selected and appointed by the Appeals Officer.

D1.3 The CONTRACTOR shall correct, through re-performance at its expense, any services which are deficient or defective because of the CONTRACTOR's failure to perform said services in accordance with professional standards, provided the CONTRACTING AGENCY has notified the CONTRACTOR in writing within a reasonable time, not to exceed 60 days, of the discovery of any such deficiency during the performance of the services and within 12 months of the date of final payment under this Agreement.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Alaska Department of Revenue alternate (November 3, 2006)

RFP 2007-0600-6640 for Professional Services

B.1 Indemnification Obligations The Contractor shall indemnify the State Contracting Agency, and each of its current, future and former officials, employees, representatives and agents (the "State Indemnified Parties"), and defend and save each of them harmless, from and against any and all losses, damages, liabilities, costs and expenses (including attorneys' fees and expenses) (collectively, "Losses") in connection with any and all suits, proceedings, investigations, claims or demands (collectively, "Claims") arising from or occurring as a result of: (a) the breach by the Contractor of any term or provisions of this Agreement, including the inaccuracy, untruthfulness or breach of any representation or warranty made by the Contractor in this Agreement, (b) the negligence or willful misconduct on the part of the Contractor or the Contractor Agents in performing any obligations under this Agreement; (c) bodily injury or death to persons or physical damage to personal or real property attributable to the acts or omissions of the Contractor or the Contractor Agents in performing any obligations under this Agreement; and (d) the use by the State in accordance with the terms of this Agreement of any Deliverable or Service developed and/or provided by the Contractor to the State pursuant to this Agreement, including any Claim that the use of such Deliverable or Service infringes, violates or misappropriates a third party's patents, copyrights, trade secrets, trademarks or other intellectual property rights; provided, however, that in each case (items (a) through (d) above) the Contractor shall not be obligated to indemnify the State Indemnified Parties for any Losses to the extent that such Losses arise as a result of gross negligence or willful misconduct on the part of the State Contracting Agency.

**Alaska Department of Health and Social Services
(Provider Agreement for Individualized Behavioral Health Services)**

INDEMNIFICATION AND HOLD HARMLESS OBLIGATION (Rev6/05)

The Provider shall indemnify, hold harmless, and defend DHSS from and against any claim of or liability for error, omission, or negligent or intentional act of the Provider under this Agreement. The Provider shall not be required to indemnify DHSS for a claim of, or liability for, the independent negligence of DHSS. If there is a claim of, or liability for, the joint negligent error or omission of the Provider and the independent negligence of DHSS, fault shall be apportioned on a comparative fault basis.

"Provider" and "DHSS," as used within this section, include the employees, agents, or Providers who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in DHSS's selection, administration, monitoring, or controlling of the Provider and in approving or accepting the Provider's work.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Alaska Native Tribal Health Consortium

(Similar to Alaska DOT)

Liability and Indemnification

Contractor shall indemnify, defend, and hold the Owner harmless from and against all liabilities, claims, penalties, forfeitures, demands, suits, judgments, expenses, attorneys' fees and losses ("claims"), including without limitation any and all claims in connection with bodily injury, including death, to persons or damage to tangible property, arising out of or related to Contractor's or subcontractor's negligent acts or omissions or breach of any term or condition of this Contract.

All actions or claims including costs and expenses resulting from injuries or damages sustained by any person or property arising from the contractor's performance of this contract which are caused by the joint negligence of the Owner and the contractor shall be apportioned on a comparative fault basis. Any such joint negligence on the part of the Owner must be a direct result of active involvement by the Owner or failure to act by the Owner.

Standard of Care

Contractor shall maintain and exercise such professional expertise as is consistent with that level of care and skill ordinarily exercised by members of the profession under similar conditions, circumstances, and limitations, either in Alaska or nation-wide, whichever standard of care is higher.

Anchorage (Municipality)

(Similar to Alaska DOT)

Section 9. Liability.

A. The Contractor shall indemnify, defend, save, and hold Anchorage harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

B. The Contractor shall not indemnify, defend, save and hold Anchorage harmless from claims, lawsuits, liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Anchorage occurring during the course of or as a result of the performance of this Contract.

C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Anchorage and the Contractor, the Contractor shall indemnify, defend, save, and hold Anchorage harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result of the Contractor's performance pursuant to this Contract.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Juneau (City Borough)

(A/E liability expansive: liable for any claim arising out of performance)

22. INDEMNIFICATION AGREEMENT. Consultant agrees to defend, indemnify, and hold harmless City, its employees, volunteers, Consultants, and insurers, with respect to any action, claim, or lawsuit arising out of the Consultant's performance of this Contract, without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorneys fees even if in excess of Alaska Civil Rule 82. This indemnification agreement applies to the fullest extent permitted by law and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against City relating to this Contract. The obligations of Consultant arise immediately upon actual or constructive notice of any action, claim, or lawsuit. City shall notify Consultant in a timely manner of the need for indemnification, but such notice is not a condition precedent to consultant's obligations and may be waived where the Consultant has actual notice.

Kenai Peninsula Borough

(A/E liable for "negligent actions, errors, or omissions"; comparative fault if not covered by insurance)

ARTICLE 13 INDEMNIFICATION Revised 9/30/02

To the maximum extent allowed by law, the Consultant and all Consultant's subcontractors shall indemnify, defend, and hold harmless Kenai Peninsula Borough (KPB), and Kenai Peninsula Borough School District (KPBSD) where the contract involves KPBSD, and their assemblies, boards, officers, and employees (hereinafter Owner) for all damages of any kind or nature all costs of any kind and all attorneys' fees arising from all claims, suits, or actions of any nature that result, in total or in part, from the negligent actions, errors, or the omissions of the Consultant and/or Consultant's subcontractors and/or their officers, agents and employees in connection with this contract. Without modifying consultant's duty to defend Owner, in the event it is found that the Owner is in part responsible for any of the above-referenced damage or loss, Consultant shall only be required to indemnify Owner for the portion of fault attributed to Owner where Consultant's insurance provides coverage. Consultant and Consultant's subcontractors shall not be required to defend or indemnify Owner for damage or loss that has been found to be attributed to a contractor directly responsible to the Owner under separate written contract. Consultant shall not be required to defend and indemnify Owner where the Owner's action(s) is/are the sole cause for the damage or loss or where the damage or loss was caused by the Owner's willful misconduct.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Ketchikan (City of)

(A/E liable for "negligent acts or omissions"; comparative fault)

(2006)

18. Hold Harmless and Indemnity. The **OWNER**, its officers, employees and agents shall not be held liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person whatsoever, nor for any personal injury or death, caused by or resulting from any negligent act or omission of **CONSULTANT**, or by any of **CONSULTANT'S** officers, employees, agents, representatives, Consultants, or subconsultants in the performance or nonperformance of this agreement, and **CONSULTANT** further agrees to appear and defend, and to indemnify and save free and harmless the **OWNER** and its officers, employees and agents from and against any of the foregoing claims, liabilities, penalties, fines or damages, and for any cost and expense, including reasonable attorney's fees, incurred by the **OWNER**, its officers, employees or agents on account of any claim therefore, including claims by reasons of any defects in any plans, drawings, specifications, computer programs, technical reports, or other work product of **CONSULTANT** prepared for or submitted to the **OWNER** pursuant to this agreement provided said claim is not based upon a use of said plans, drawings, specifications or other work product for other than the purposes for which such data was prepared and submitted to the **OWNER**. Notwithstanding any other provision herein contained the parties hereto agree that liability (including costs of defense and attorney's fees) for claims arising from the concurrent negligence of both parties to this agreement shall be apportioned according to the respective percentage of fault attributable to each party as determined by agreement or by the tier of fact.

Matanuska Susitna Borough

(A/E assumes virtually all liability)

SECTION 25 Defense and Indemnification

The consultant shall indemnify, defend, and hold and save the borough its elected and appointed officers, agents, and employees harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees. The consultant shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from consultant's or consultant's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omission by the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, the consultant shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the borough, its agents, or employees.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

University of Alaska
(A/E assumes virtually all liability)

Indemnification: (Rev 2/5/04)

To the fullest extent permitted by law, the Contractor shall pay costs of defense, indemnify, and hold harmless the University, its Board of Regents, officers, and employees from and against any and all loss, expense, damage, claim, demand, judgment, fine, charge, lien, liability, action, cause of action, or proceedings of any kind whatsoever (whether arising on account of damage to or loss of property, or personal injury, emotional distress, or death) arising directly or indirectly in connection with the performance or activities of the Contractor hereunder, whether the same arises before or after completion of the Contractor's operations or expiration of this Agreement, except for damage, loss, or injury resulting from the Owner's gross negligence or willful misconduct. The provisions of this paragraph do not apply to claims that fall within coverage of the Contractor's professional liability insurance policy.

Wasilla (City of)
(A/E liable for "negligent or willful acts or omissions")

INDEMNIFICATION.

To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the City's right to participate, the City from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

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

March 16, 2007

SUBJECT: Sectional summary of HB 151 requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions (Work Order No. 25-LS0479\C)

TO: Representative Craig Johnson
Attn: Debbie Higgins

FROM:  Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Adds a new section to the chapter on public contracts.

Sec. 36.90.300(a). Requires public agencies to include an indemnification and hold harmless provision in their professional services contracts. The provision must indemnify and hold the public agency harmless for the negligent acts, errors, and omissions of the consultant. Requires the provision to apportion joint liability on a comparative fault basis.

Sec. 36.90.300(b). Provides model language for the provision required by (a). Allows a provision that reads substantially the same as the model language to satisfy the requirements of (a).

Sec. 36.90.300(c). Defines two terms for the section. Refers the definition of "professional services" to the definition in the state's procurement code. The definition of "public agency" identifies which public entities are covered by the section.

If I may be of further assistance, please advise.

TLB:med
07-175.med

(3) "Internet or online service provider" means an interactive computer service that provides software or other material that enables a person to transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content; select or analyze content; or allow or disallow content;

(4) "mark" means a registered trademark, registered service mark, or registered domain name in an Internet website address that is owned, licensed, or lawfully used by a person doing business in this state;

(5) "pop-up advertisement" means material offering for sale or advertising the availability or quality of a property, good, or service that is displayed on a user's computer screen, without any request or consent of the user, separate from an Internet website that a user intentionally accesses;

(6) "spyware"

(A) means software on the computer of a user who resides in the state that

(i) collects information about an Internet website at the time the Internet website is being viewed in the state, unless the Internet website is the Internet website of the person who provides the software; and

(ii) uses the information collected contemporaneously to display a pop-up advertisement on the computer;

(B) does not mean

(i) an Internet website;

(ii) a service operated by an Internet or online service provider accessed by a user;

(iii) software designed and installed primarily to prevent, diagnose, detect, or resolve technical difficulties or prevent fraudulent activities;

(iv) software designed and installed to protect the security of the user's computer from unauthorized access or alteration;

(v) software or data that reports information to an Internet website previously stored by the Internet website on the user's computer, including a cookie; in this subparagraph, "cookie" means a text file that is placed on a computer to record information that can be read or recognized when the user of the computer later accesses a particular Internet website, online location, or online service by an interactive computer service, Internet website, or a third party acting on behalf of an interactive computer service or an Internet website;

(vi) software that provides the user with the capability to search the Internet;

(vii) software installed on the user's computer with the consent of the user the primary purpose of which is to prevent access to certain Internet content;

(7) "user" means the owner or authorized user of a computer. (§ 3 ch 97 SLA 2005)

Article 12. Miscellaneous Provisions.

Section

900. Indemnification agreements against public policy

910. Sale or transfer of consumer electrical products

Section

920. Free trial period

930. Opt-out marketing plans

Sec. 45.45.900. Indemnification agreements against public policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting a construction contract that purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects, or (4) other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of an insurance contract workers' compensation, or agreement issued by an insurer subject to the provisions of AS 21, or a provision, clause, covenant, or agreement of indemnification

respecting the handling, containment, or cleanup of oil or hazardous substances as defined in AS 46. (§ 1 ch 155 SLA 1975; am § 6 ch 59 SLA 1986)

Revisor's notes. — Formerly AS 45.47.010. Renumbered in 1980.

Opinions of attorney general. — The apparent prohibition on indemnification agreements in con-

struction contracts found in this section will only apply when the promisee is completely negligent and seeks to hold an innocent promisor accountable. February 27, 1986 Op. Att'y Gen.

NOTES TO DECISIONS

Legislative intent. — The absence in this section of an exemption for limitation of liability clauses indicates that the legislature did not intend to allow an exemption. *City of Dillingham v. CH2M Hill N.W., Inc.*, 873 P.2d 1271 (Alaska 1994).

The word "indemnify" as used in this section means "exempt," and thus this section prohibits limitation of liability clauses; absent legislative action to the contrary, such an interpretation best fulfills the legislature's express intent to prevent a party to a construction contract from bargaining away liability for the party's negligent acts. *City of Dillingham v. CH2M Hill N.W., Inc.*, 873 P.2d 1271 (Alaska 1994).

Applicability of section. — This section became effective on September 23, 1975, and governs contracts executed on or after that date. Contracts executed before that date are governed by the rule announced in *Burgess Constr. Co. v. State*, 614 P.2d 1380 (Alaska 1980), that an indemnity clause is effective to shift responsibility for an accident where the indemnitee is negligent and the indemnitor is not. *Stephan & Sons v. Municipality of Anchorage*, 629 P.2d 71 (Alaska 1981).

There is no indication in the text of this section itself that would indicate that the statute is intended to ban only indemnification clauses that would benefit a public promisee at the expense of a private promisor. *City of Dillingham v. CH2M Hill N.W., Inc.*, 873 P.2d 1271 (Alaska 1994).

This section applies to a clause that is questioned under this statute regardless of whether indemnification has been sought. *City of Dillingham v. CH2M Hill N.W., Inc.*, 873 P.2d 1271 (Alaska 1994).

Section applicable to equipment leases. — This section should be applied to void indemnity clauses in equipment lease agreements if such a legal rule would

advance the purposes of the anti-indemnity statute by inducing careful inspection and use of the leased equipment. *Aetna Cas. & Sur. Co. v. Marion Equip. Co.*, 894 P.2d 664 (Alaska 1995).

When state is solely negligent. — This section should come into effect only when it is determined, as between the state and contractors, that the state is solely negligent. *Rogers & Babler v. State*, 713 P.2d 795 (Alaska 1986).

"Wilful misconduct" does not require intent to harm. — Wilful misconduct means volitional action taken either with a knowledge that serious injury to another will possibly result, or with wanton and reckless disregard of the possible results. *Aetna Cas. & Sur. Co. v. Marion Equip. Co.*, 894 P.2d 664 (Alaska 1995).

Because the insured was found by a jury to have acted with reckless disregard of the plaintiff's interests and safety, the insured's injurious behavior is properly termed wilful misconduct. Consequently, this section forbids the indemnity the insurer seeks. *Aetna Cas. & Sur. Co. v. Marion Equip. Co.*, 894 P.2d 664 (Alaska 1995).

Indemnity clause not invalidated. — This section only invalidates an indemnity clause if the clause purports to indemnify the indemnitee for the indemnitee's sole negligence, and where neither part of the indemnity clause purported to indemnify the general contractor for the hospital's sole negligence, this section did not invalidate the indemnity clause in the contract between the general contractor and the hospital work site. *Hoffman Constr. Co. of Alaska v. U.S. Fabrication & Erection, Inc.*, 22 P.3d 464 (Alaska 2001).

Cited in *Deaver v. Auction Block Co.*, 107 P.3d 884 (Alaska 2005).

Sec. 45.45.910. Sale or transfer of consumer electrical products. (a) Unless exempted by the department under (d) of this section, a person may not sell, offer to sell, or otherwise transfer in the course of the person's business a consumer electrical product that is manufactured after August 14, 1990, unless the product is clearly marked as being listed by an approved third-party certification program.

(b) A person may not sell, offer to sell, or otherwise transfer in the course of the person's business a consumer electrical product that is manufactured before August 14, 1990, unless the product is clearly marked

(1) as being listed by an approved third-party certification program; or

(2) with a warning label that complies with (e) of this section.

(c) A person may not sell, offer to sell, or otherwise transfer in the course of the person's business a consumer electrical product that has been exempted under (d) of this section, unless the product is clearly marked with a warning label that complies with (e) of this section.

(d) If a consumer electrical product is a work of art or an item that has an unusual application that makes approval by a third-party certification program not reasonably available, the department shall upon request exempt the item from (a) of this section. The

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB151-DOA-RM-3-15-07
 Bill Version: HB 151
 () Publish Date: _____

Revision Date/Time (Note if correction): 3/15/2007 Dept. Affected: Administration
 Title: An act requiring an indemnification and hold harmless provision in state prof. serv. contracts RDU: Risk Management
 Component: Risk Management
 Sponsor: Representative Johnson
 Requester: House State Affairs Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation requires use of standard indemnity clause in "professional service" (AS 36.30.990) agreements by all public agencies as broadly defined.

The stipulated language proposed is similar to standard terms already being used for many years by state agencies protected by state's self insurance program administered by the Division of Risk Management, thereby there is no operational or financial impact.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management
 Approved by: Kevin Brooks, Deputy Commissioner
 Agency: Department of Administration

Phone 465-5723
 Date/Time 3/15/07 4:00 PM
 Date 3/15/07 5:00 PM



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

HB 151 Comment Letter

MEMBER SOCIETIES

Alaska Society of Professional Engineers

Alaska Society of Professional Land Surveyors

American Congress on Surveying & Mapping Alaska Section

American Institute of Architects Alaska Chapter

American Society of Civil Engineers Alaska Section

American Society of Landscape Architects Alaska Chapter

Architecture/Engineering Marketing Association of Alaska

American Council of Engineering Companies of Alaska

Professional Engineers in Private Practice Alaska Chapter

American Society of Interior Designers

March 5, 2007

Representative Craig Johnson
Chair, House Resources Committee
Alaska State Legislature
State Capitol, Room 126
Juneau, AK 99801-1182

Re: House Bill 151 — Indemnification

Dear Representative Johnson:

On behalf of the Alaska Professional Design Council (APDC), I am writing to express our support of House Bill 151 and to the need for this legislation.

The Alaska Professional Design Council (APDC) is a consortium of professional societies representing architects, engineers, land surveyors, landscape architects and other design professionals. Our ten member organizations have a combined membership of over 1,500 and represent approximately 5,000 licensed professionals. APDC addresses issues of concern to the various design professions through workshops, seminars, ad-hoc committees, standing committees, and governmental task forces. APDC also receives sustaining member support from 30 Architectural and Engineering firms throughout Alaska.

Presently, public agencies in Alaska have a wide variety of indemnification requirements. This bill will standardize indemnification requirements for all Public Agencies in Alaska, make the Architects/Engineers and other professionals responsible for their "negligent acts, errors or emissions", make each financially responsible for their own liabilities, fairly apportion joint liabilities on a comparative fault basis, and defines Public Agency for purposes of this bill.

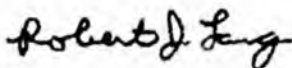
The Alaska Department of Transportation & Public Facilities (DOT/PF) has language that is generally appropriate for contract indemnification purposes. HB 151 through legislation is requiring the use of indemnification contract clauses that are in place with DOT/PF and to be consistent with all Public Agencies.

Professional Services Contracts establish the basic framework between a project owner and a design company for design services associated with a particular project. In recent years, owners of some projects, generally government and quasi-government agencies, have required designers to assume additional liability, beyond the consultant's own negligence. The net effect of this action is to reduce agency risk by insulating the agency from its own negligence. This increases the liability insurance costs to the designers and creates a contract which is not fully insurable, or in some cases asks the designers to assume liability for which no insurance is available. APDC supports legislation that would prescribe indemnification language that is uniform for all state government agencies and assigns, and that requires each party to be financially responsible for their own liabilities and to fairly apportion joint liabilities on a comparative fault basis.

APDC encourages the House of Representatives to move HB 151 forward and enact this important legislation.

Thank you for considering APDC's position on this important issue.

Sincerely,
Alaska Professional Design Council



Rob Lang, P.E.
President

Alaska Society of Professional Engineers
Professional Engineers in Private Practice

750 W. Dimond Boulevard, Suite 203 Anchorage, AK 99515

March 9, 2007

The Honorable Craig Johnson,
State Capital, Room 126
Juneau, Alaska 99801-1182

Subject: HB No. 151

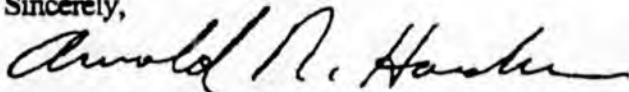
Dear Mr. Johnson:

The Professional Engineers in Private Practice is a professional society for individuals providing consulting services to private and public clients. Our members have observed a steady increase in the number of public agency professional service agreements that require design professionals to assume liability which is uninsurable. We believe that this type of professional service contract language is unfair and is not in the best interest of the public. We endorse and strongly support HB No. 151 for the following reasons.

- 1) Errors and Omissions insurance covers negligence, errors, and omissions of the professional. These policies do not cover liabilities arising due to the negligence, errors, or omissions of the Owner. As such, unfair indemnification clauses may not provide the Owner with the liability coverage that they expect.
- 2) Some professionals will not compete for projects containing unfair indemnification requirements. As a result, the most qualified professional may not be selected for some projects and this is not beneficial to the public.
- 3) Substantial time and expense is incurred by professionals and insurance companies as they review and assess the unique indemnification language contained in each professional service agreement. This raises the cost for public projects.
- 4) When a public agency shifts the liability for their actions to consultants, the public agency is likely to be less diligent and increase the likelihood of negligence, errors, and omissions. This is not beneficial to the public since there is still a negative impact to the public, regardless of who is held responsible.
- 5) In many cases when a problem arises, both the public agency and the design professional have contributed to the problem. Arbitrarily assigning liability to the design professional is unfair and may prevent the public agency from taking the appropriate counter-measures to prevent similar problems in the future.

The Professional Engineers in Private Practice believe that it is in the best interest of the public that each party in a professional service agreement be financially responsible for their own liabilities and to apportion joint liabilities on a comparative fault basis. As such, we strongly support House Bill 151.

Sincerely,



Arnold N. Harder, P.E.
Chairperson, Alaska Chapter