

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 STA 12760

Definitions:

HB 109

"administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by any state agency of any rule or regulation, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act); "administrative action" does not include

(A) a proceeding or an action to determine the rights or duties of a person under existing statutes, regulations, or policies;

(B) the issuance, amendment, or revocation of a permit, license, or entitlement for use under existing statutes, regulations, or policies by the agency authorized to issue, amend, or revoke the permit, license, or entitlement for use;

(C) the enforcement of compliance with existing law or the imposition of sanctions for a violation of existing law;

(D) procurement activity, including the purchase or sale of property, goods, or services by the agency or the award of a grant contract;

(E) the issuance of, or ensuring compliance with, an opinion or activity related to a collective bargaining agreement including negotiating or enforcing the agreement; AS 24.45.171 (1).

"administrative action" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use; AS 24.60.990 (a)(1).

"agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government; AS 24.45.171 (2).

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

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

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

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

(D) grants under AS 37.05.316 to named recipients; AS 24.60.990 (a)(2).

"assistant to the governor or the lieutenant governor" includes any executive, legislative, special, administrative, or press assistant to the governor or lieutenant governor, and any person similarly employed in a policy-making position; AS 39.50.200 (a)(1).

"benefit" means anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value; AS 39.52.960 (3).

"child" includes a biological child, an adoptive child, and a stepchild; AS 39.50.200 (a)(2).

"commission" means the Alaska Public Offices Commission; AS 24.45.171 (3).

"commission" means the Alaska Public Offices Commission created under AS 15.13.020 (a); AS 39.50.200 (a)(3).

"committee" means the Select Committee on Legislative Ethics and includes, when appropriate, the senate or house subcommittee; AS 24.60.990 (a)(3).

"communicate directly" means to speak with a legislator, legislative employee, or public official;

(A) by telephone;

(B) by two-way electronic communication; or

(C) in person; AS 24.45.171 (4)

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"compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person; AS 24.60.990 (a)(4).

"compensation" means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another; AS 39.52.960 (7).

"contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity; AS 15.13.040 (A).

"designated supervisor" or "supervisor" means

(A) the commissioner of each department in the executive branch, for public employees within the department;

(B) the president of the University of Alaska, for university employees;

(C) the attorney general, for the governor and lieutenant governor;

(D) the executive director of a board or commission for the staff of the board or commission;

(E) the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and

(F) the governor, for commissioners and for other public officers not included in (A) - (E) of this paragraph; or

(G) a public officer designated by a commissioner, the university president, or the governor to act as the supervisor if the name and position of the officer designated has been reported to the attorney general; AS 39.52.960 (8).

"domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage. AS 24.60.990 (a)(5).

"domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage; AS 39.60.200 (a)(4).

Definitions:

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"financial interest" means

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management; AS 39.52.960 (a)(9).

"fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are \$50 a person or less in amount or value. AS 15.13.040 (B).

"gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars, or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation; AS 24.45.171 (5).

"immediate family" means the spouse and dependent children of an individual; AS 24.45.171 (6).

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"immediate family" means

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

(B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person; AS 24.60.990 (a)(6).

"immediate family member" means

(A) the spouse of the person;

(B) another person cohabiting with the person in a conjugal relationship that is not a legal marriage;

(C) a child, including a stepchild and an adoptive child, of the person;

(D) a parent, sibling, grandparent, aunt, or uncle of the person; and

(E) a parent or sibling of the person's spouse; AS 39.52.960 (a)(11).

"individual" means a natural person; AS 24.45.171 (7).

"influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action; AS 24.45.171 (8).

"judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court; AS 39.50.200 (a)(6).

"legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor; AS 24.45.171 (9).

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"legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction; AS 24.60.990 (a)(9).

"legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency; AS 24.60.990 (a)(10).

"legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee; AS 24.60.990 (a)(11).

"lobbyist" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession; AS 24.45.171 (10).

"lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, but does not include a volunteer lobbyist described in AS 24.45.161 (a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission; AS 24.60.990 (a)(12).

"municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality; AS 39.50.200 (a)(8).

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"official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer; AS 39.52.960 (a)(14).

"organization" includes a group, association, society, political party, or other entity made up of two or more persons, whether operated for profit or nonprofit; AS 39.52.960 (a)(15).

"payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift, or other rendering or tendering of money, property, goods, or services or anything else of value; AS 24.45.171 (11).

"payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or the lobbyist's activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment that directly benefits a public official or a member of the immediate family of that official;

(D) a payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with a public official;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official;

(F) a payment or reimbursement for expenses in the categories set out in AS 24.45.051 (2); AS 24.45.171 (12).

"person", in addition to the terms set out in AS 01.10.060 includes a labor union; AS 24.45.171 (13).

(Sec. 01.10.060. Definitions. (a) In the laws of the state, unless the context otherwise requires, (8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;)

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"personal interest" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit; AS 39.52.960 (a)(18).

"personnel board" or "board" means the personnel board established in AS 39.25.060; AS 39.52.960 (a)(19).

"political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office; AS 24.60.990 (a)(13).

"public employee" or "employee" means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service; AS 39.52.960 (a)(20).

"public officer" or "officer" means

(A) a public employee;

(B) a member of a board or commission; and

(C) a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties; in this paragraph, "trust" has the meaning given in AS 37.14.450; AS 39.52.960 (a)(21).

"public official" or "public officer" means a public official as defined in AS 39.50.200 (a), a member of the legislature, or a legislative director as defined in AS 24.60.990 (a); however, it does not include a judicial officer or an elected or appointed municipal officer. AS 24.45.171 (14).

"public official" means

(A) a judicial officer;

(B) the governor or the lieutenant governor;

(C) a person hired or appointed in a department in the executive branch as

(i) the head or deputy head of the department;

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(ii) the director or deputy director of a division;

(iii) a special assistant to the head of the department;

(iv) a person serving as the legislative liaison for the department;

(D) an assistant to the governor or the lieutenant governor;

(E) the chair or a member of a state commission or board;

(F) state investment officers and the state comptroller in the Department of Revenue;

(G) the chief procurement officer appointed under AS 36.30.010;

(H) the executive director of the Alaska Workforce Investment Board;

(I) each appointed or elected municipal officer; and

(J) the members of the board of trustees, the executive director, and the investment officers of the Alaska Permanent Fund Corporation; AS 39.50.200 (a)(9).

"registered lobbyist" means a person who is required to register under AS 24.45.041; AS 24.60.990 (a)(14).

"representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings; AS 24.60.990 (a)(15).

"source of income" means the entity for which service is performed or that is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or domestic partner, or the person's dependent children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation, but, if the entity that is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

(b) In this chapter "state commission or board" means the

(1) [*Repealed, Sec. 30 ch 81 SLA 2000*].

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- (2) Alaska State Council on the Arts (AS 44.27.040);
- (3) Alcoholic Beverage Control Board (AS 04.06.010);
- (4) State Assessment Review Board (AS 43.56.040);
- (5) *[Repealed, Sec. 1 ch 54 SLA 1981]*.
- (6) Board of Education and Early Development (AS 14.07.075);
- (7) Alaska Public Broadcasting Commission (AS 44.21.256);
- (8) Alaska Public Offices Commission (AS 15.13.020);
- (9) *[Repealed, Sec. 16 ch 61 SLA 1995]*.
- (10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020);
- (11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010);
- (12) *[Repealed, Sec. 140 ch 4 FSSLA 1992]*.
- (13) State Commission for Human Rights (AS 18.80.010);
- (14) *[Repealed, Sec. 86 ch 59 SLA 1982]*.
- (15) Alaska Judicial Council (art. IV, Sec. 8, Alaska Constitution);
- (16) Commission on Judicial Conduct (art. IV, Sec. 10, Alaska Constitution);
- (17) *[Repealed, Sec. 24 ch 22 SLA 2001]*.
- (18) Local Boundary Commission (AS 44.33.810);
- (19) Occupational Safety and Health Review Board (AS 18.60.057);
- (20) Board of Parole (AS 33.16.020);
- (21) State Personnel Board (AS 39.25.060);
- (22) *[Repealed, Sec. 20 ch 110 SLA 1981]*.
- (23) *[Repealed, Sec. 132 ch 9 FSSLA 2005]*.

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- (24) Regulatory Commission of Alaska (AS 42.04.010);
- (25) University of Alaska Board of Regents (AS 14.40.120);
- (26) Alaska Royalty Oil and Gas Development Advisory Board (AS 38.06.020);
- (27), (28) *[Repealed, Sec. 86 ch 59 SLA 1982]*.
- (29) *[Repealed, Sec. 132 ch 9 FSSLA 2005]*.
- (30) *[Repealed, 1983 Initiative Proposal No. 2, Sec. 6]*.
- (31) Workers' Compensation Board (AS 23.30.005) and Workers' Compensation Appeals Commission (AS 23.30.007);
- (32) Alaska Commission on Postsecondary Education (AS 14.42.015);
- (33) Alaska Municipal Bond Bank Authority (AS 44.85.020);
- (34) *[Repealed, Sec. 1 ch 54 SLA 1981]*.
- (35) Alaska Medical Facility Authority (AS 18.26);
- (36) Alaska Oil and Gas Conservation Commission (AS 31.05);
- (37) Alaska Housing Finance Corporation (AS 18.56.010 - 18.56.900);
- (38) *[Repealed, Sec. 44 ch 24 SLA 2003]*.
- (39) *[Repealed, Sec. 4 ch 75 SLA 1979]*.
- (40) Board of Fisheries (AS 16.05.221 (a));
- (41) Board of Game (AS 16.05.221 (b));
- (42) Alaska Permanent Fund Corporation (AS 37.13.040);
- (43) *[Repealed, Sec. 69 ch 14 SLA 1987]*.
- (44) Alaska Seafood Marketing Institute (AS 16.51.010);
- (45) Council on Domestic Violence and Sexual Assault (AS 18.66.010);

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(46) *[Repealed, Sec. 27 ch 18 SLA 1993].*

(47) *[Repealed, Sec. 38 ch 168 SLA 1990].*

(48) *[Repealed, Sec. 16 ch 33 SLA 1996].*

(49) *[Repealed, Sec. 10 ch 29 SLA 1999].*

(50) *[Repealed, Sec. 9 E.O. No. 84 (1993)].*

(51) *[Repealed, Sec. 102 ch 21 SLA 2000].*

(52) *[Repealed, Sec. 10 ch 58 SLA 2006].*

(53) the board of directors and the executive director of the Alaska Aerospace Development Corporation (AS 14.40.821);

(54) Alaska Retirement Management Board (AS 37.10.210);

(55) Alaska Workforce Investment Board (AS 23.15.550);

(56) Board of Agriculture and Conservation (AS 03.09.010);

(57) the board of directors and chief executive officer of the Alaska Natural Gas Development Authority (AS 41.41.020);

(58) Big Game Commercial Services Board (AS 08.54.591). AS
39.50.200 (a)(10).

"source of income" means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or child, or a combination of them, holds a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source. AS 39.52.960 (22).

"state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office. AS 24.60.990 (a)(16).

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Sec. 39.90.020. »Nepotism« prohibited.

It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 109
(H) Publish Date: 1/25/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to the requirement for candidates, groups, legislators, public officials... RDU AK Public Offices Commission
Sponsor Rules by Request Component AK Public Offices Commission
Requester Governor's Office Component No. 70

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
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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 requires candidates, groups, legislators, public officials, and others to submit required reports electronically; requires legislators and public officials to file financial disclosures after leaving office; requires financial disclosure filers to provide a detailed description about services performed for compensation and about certain income, gifts, and other financial matters; establishes a presumption that an interest of less than \$5000 in a business is an "insignificant" interest for the purposes of the Executive Branch Ethics Act; prohibits gifts from lobbyists to public officers or the immediate family members of public officers; and tightens the restrictions on employment after leaving state service. It is not anticipated that this measure will add to the costs of the Public Offices Commission.

Prepared by: Brooke Miles, Executive Director
Division: Alaska Public Offices Commission
Approved by: Melanie Millhorn, Deputy Commissioner
Agency: Department of Administration

Phone 907-334-1726
Date/Time 1/23/07 12:00 AM
Date 1/23/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 109
 (H) Publish Date: 1/25/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to disclosures to the APOC and RDU Civil Division
Legislative and Executive Branch ethics. Component Opinions, Appeals & Ethics
 Sponsor Rules Committee
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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 amends the state's election campaign laws, legislative standards of conduct, public official financial disclosure laws, and the Executive Branch Ethics Act in an effort to require more detailed disclosures from current and former legislators and public officials, restrict public officers' receipt of gifts from lobbyists, and extend existing restrictions on public employees' employment after leaving state service. It is unclear whether these amendments will change the department's workload. The amendments may result in increased assistance to the APOC or executive branch client agencies; however, the budget impact is indeterminable since it is impossible to predict with any certainty how many complaints or questions will arise.

Prepared by: Robert Meiners, Acting Director Phone 465-5427
 Division Administrative Services Division Date/Time 1/24/07 1:29 PM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 1/24/2007
 Agency Department of Law

To: Rep. Jay Ramras, Chair
House Judiciary Committee

From: Heidi Drygas, General Counsel
Alaska District Council of Laborers

Date: March 19, 2007

Re: HB 109

Thank you for the opportunity to provide comments on HB 109.

Alaska has a long-standing nepotism statute, AS 39.90.020, and regulations, 2 AAC 07.950, which prohibit family members from working together in a *supervisory* relationship.

But in August 2005, the Department of Administration promulgated a new policy, Alaska Administrative Manual (AAM) 100.050, which prohibits employees from being in an "*employment relationship*" with an immediate family member, including conjugal relationships, up to the second degree of kindred.

This provision was enacted in response to a Department of Law memorandum issued in March 2005 on how the Executive Branch Ethics Act (Ethics Act) applies when a supervisor and a subordinate are in a conjugal relationship. The AG's opinion was that the relationship violated the Ethics Act.

But the AG's opinion was just that--- the Ethics Act would prevent a **supervisor** and another employee from working together if they were family members or living in a conjugal relationship. The Dept. of Administration, in promulgating AAM 100.050, has taken that opinion and dramatically expanded its scope.

In defining an "*employment relationship*," the Department expanded it to include a vast number of actions typically completed by non-supervisory employees. As it stands, the Department's new policy, based on its interpretation of the Ethics Act and the March 2005 AG memorandum, has had devastating effects on Alaska's public employees, especially those living and working in rural and Native communities. The policy prohibits one family member from being hired, promoted, or transferred if it results in an employment relationship with another family member. This is true even if neither one of them is a supervisor, based solely on the minutest possibility that one family member may be promoted to a lead or foreman position even if only for a day. As most of you know, many Alaskan communities are so small that most individuals *are* related in some way. The impact on non-supervisory employees is substantial and unnecessary, as it

essentially prohibits both supervisory and non-supervisory relationships between family members.

The Department of Administration's policy is affecting everyday working Alaskans in such a way that was never intended by this legislation. Family members who seek to work together in a non-supervisory employment relationship are held to an even stricter standard than legislative branch employees.

Under long-standing state regulations promulgated by the Alaska Labor Relations Agency, a "supervisory employee" is essentially defined as an individual who has authority to act on behalf of the public employer in carrying out supervisory functions, if the exercise of that authority is not just routine but requires the exercise of independent judgment. "Supervisory functions" are defined as the ability to take action in the area of:

- Employment** (hiring, transfers, lay offs, recall),
- Discipline** (suspension, discharge, demotion, issuance of written warnings) or
- Grievance adjudication** (response to a first level grievance under a collective bargaining agreement)

The Department's new nepotism policy, however, prohibits far more than just supervisory relationships.

It bears mentioning that the Ethics Act, in AS 39.52.110(a)(3), was meant to "*distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.*"

It is noteworthy that AS 39.52.910(b) of the Ethics Act states: "*The provisions of this chapter supersede the common law on conflicts of interest that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, excluding nepotism, adopted under AS 39.25.*" It is the Union's position that this means the Ethics Act does not and should not supersede the long-standing nepotism statute and regulations, which is the result of the Department of Administration's policy. However, the Union concedes that AS 39.52.910(b) is ambiguous.

The Union suggests an amendment which would limit the affect of the Ethics Act to what the legislature likely intended: to clarify that Ethics Act issues arise in *supervisory* relationships between family members.

This amendment would add a section "(d)" to the Ethics Act provision AS 39.52.910 which would read as follows:

"Nothing in this Act shall supersede the provisions of AS 39.90.020, nor preclude individuals from being in an employment relationship with an immediate family member where neither family member is a supervisor who has authority to act or to effectively recommend action in the interest of the public employer in one of the following

supervisory functions, if the exercise of that authority is not merely routine but requires the exercise of independent judgment:

- (a) employing, including hiring, transferring, laying off, or recalling;
- (b) discipline, including suspension, discharge, demotion, or issuance of written warnings; or
- (c) grievance adjudication, including responding to a first level grievance under a collective bargaining agreement.”

We believe that such an amendment would clarify the scope of the Ethics Act and protect working Alaskans, especially those working in small rural and native communities, yet also strike a balance by highlighting the ethical issues involved in familial supervisory relationships.

Thank you.

An Amendment to add a new section to AS 39.52.910 which would read as follows:

(d) Nothing in this Act shall supersede the provisions of AS 39.90.020, nor preclude individuals from being in an employment relationship with an immediate family member where neither family member is a supervisor who has authority to act or to effectively recommend action in the interest of the public employer in one of the following supervisory functions, if the exercise of that authority is not merely routine but requires the exercise of independent judgment:

(a) employing, including hiring, transferring, laying off, or recalling;

(b) discipline, including suspension, discharge, demotion, or issuance of written warnings; or

(c) grievance adjudication, including responding to a first level grievance under a collective bargaining agreement.

HB 109

Sec 8 – newsletters:

New language proposed in AS 24.60.030(a)(2)(K) prohibiting the mailing of a newsletter within 30 days of an election needs review in relation to the current 90 day prohibition in AS 24.60.030(c).

HB 109, Section 8, Page 7, Lines 14-20

AS 24.60.030(a)(2)(K)

- (a) A legislator or legislative employee may not
- (2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit
- (K) a legislator from sending any communication in the form of a newsletter to the legislator's constituents **unless the communication is**
- (i) sent during the 30-day period immediately preceding a state election; or**
- (ii) [EXCEPT] a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or**

Current language in AS 24.60.030(c)

(c) Unless approved by the committee, during a campaign period for an election in which the legislator or legislative employee is a candidate, a legislator or legislative employee may not use or permit another to use state funds, other than funds to which the legislator is entitled under AS 24.10.110, to print or distribute a political mass mailing to individuals eligible to vote for the candidate. In this subsection,

- (1) a "campaign period" is the period that
- (A) begins 90 days before the date of an election to the board of an electric or telephone cooperative organized under AS 10.25, a municipal election, or a primary election, or that begins on the date of the governor's proclamation calling a special election; and
- (B) ends the day after the cooperative election, municipal election, or general or special election;
- (2) a mass mailing is considered to be political if it is from or about a legislator, legislative employee, or another person who is a candidate for election or reelection to the legislature or another federal, state, or municipal office or to the board of an electric or telephone cooperative.

- **STATE FUNDS:** Include but are not limited to Finance Committee funds, other committee funds, leadership funds, and the use of the LAA print shop.
- Timeframe from 2006 campaign season with the 90 day prohibition:
 - May 9 – legislative session ends
 - May 24 – last day to use state funds to print a legislative newsletter
 - May 25 – 90 days prior to Primary Election (August 22) and start of ban on the use of state funds for a legislative newsletter
 - November 8 – ban on use of state funds for a legislative newsletter lifted (the day after the General Election)
- Timeframe from 2006 campaign season if the 30 day prohibition were in place:
 - May 9 – legislative session ends
 - July 22 – last day to use state funds to print a legislative newsletter
 - July 23 -90 days to Primary Election (August 22) and start of ban on the use of state funds for a legislative newsletter
 - November 8 – ban on use of state funds for a legislative newsletter lifted (the day after the General Election)

Legislators have used the following funds to send out a newsletter

- STATE FUNDS
- OFFICE ALLOWANCE ACCOUNT FUNDS under AS 24.10.110
- PUBLIC OFFICE EXPENSE TERM (POET) ACCOUNT FUNDS under AS 15.13.116

Back-up
Exhibit # 37

SCHEDULE A
SOURCES OF INCOME OVER \$5000

Self-Employment

If NONE reportable, check box

Self-employment results when the person whose income is being reported worked in any of the following: a corporation in which you, your spouse, domestic partner, dependent children, nondependent children living with you or a combination of them held a controlling interest, or a sole proprietorship, limited liability company, partnership, or professional corporation in which the person whose income is being reported has an ownership interest.

List the name, address, and nature of services provided for each self-employment source of income from whom more than \$5000 was received as compensation for personal services by you or a family member. Provide enough detail when describing the nature of services to tell a reader what work was performed for the compensation received.

If the business is non-retail, list the nature of services performed and the name and address of each client or customer who paid the business over \$5000 during calendar year 2005.

Report the amount of income you received from a client, patient or customer when the client, patient, or customer:

- Hired a lobbyist or was a lobbyist;
- Had or sought contracts with the legislature or agency of the state that exceeded \$10,000;
- Was a municipality or local government entity; or
- Was affected financially by an action of the legislature or any other state agency in an amount exceeding \$5,000 including actions concerning professional or occupational licenses, natural resource permits or quotas, rates of assessment or taxation, health, safety or environmental standards and insurance or business practices.

Use copies of this page if you need additional space to complete this section.
See pages 8-10 of the LFD manual for more help with this section.

Name of filer, spouse, domestic partner, or child: _____

Business Name: _____

Retail Non-Retail (If you check non-retail, list clients/customers, and amounts if required, below.)

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: \$ _____

Assist with the development of construction-related projects, including arranging and conducting meetings, performing research, and developing plans and strategies.

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: \$ _____

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: \$ _____

MAR 15 2006

Legislator # 104015167

SCHEDULE A
SOURCES OF INCOME OVER \$5000

Self-Employment

If NONE reportable, check box

Self-employment results when the person whose income is being reported worked in any of the following: a corporation in which you, your spouse, domestic partner, dependent children, nondependent children living with you or a combination of them held a controlling interest, or a sole proprietorship, limited liability company, partnership, or professional corporation in which the person whose income is being reported has an ownership interest.

List the name, address, and nature of services provided for each self-employment source of income from whom more than \$5000 was received as compensation for personal services by you or a family member. Provide enough detail when describing the nature of services to tell a reader what work was performed for the compensation received.

If the business is non-retail, list the nature of services performed and the name and address of each client or customer who paid the business over \$5000 during calendar year 2005.

Report the amount of income you received from a client, patient or customer when the client, patient, or customer:

- Hired a lobbyist or was a lobbyist;
- Had or sought contracts with the legislature or agency of the state that exceeded \$10,000;
- Was a municipality or local government entity; or
- Was affected financially by an action of the legislature or any other state agency in an amount exceeding \$5,000 including actions concerning professional or occupational licenses, natural resource permits or quotas, rates of assessment or taxation, health, safety or environmental standards and insurance or business practices.

Use copies of this page if you need additional space to complete this section.
See pages 8-10 of the LFD manual for more help with this section.

Name of filer, spouse, domestic partner, or child: _____

Business Name: _____

Retail Non-Retail (If you check non-retail, list clients/customers, and amounts if required, below.)

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 33,600

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 24,000

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 50,000

2501 G

Legislator #2

2 of 2
Pg 2 of 2

SCHEDULE A SOURCES OF INCOME OVER \$5000

Self-Employment

If NONE reportable, check box

Self-employment results when the person whose income is being reported worked in any of the following: a corporation in which you, your spouse, domestic partner, dependent children, nondependent children living with you or a combination of them held a controlling interest, or a sole proprietorship, limited liability company, partnership, or professional corporation in which the person whose income is being reported has an ownership interest.

List the name, address, and nature of services provided for each self-employment source of income from whom more than \$5000 was received as compensation for personal services by you or a family member. Provide enough detail when describing the nature of services to tell a reader what work was performed for the compensation received.

If the business is non-retail, list the nature of services performed and the name and address of each client or customer who paid the business over \$5000 during calendar year 2005.

Report the amount of income you received from a client, patient or customer when the client, patient, or customer:

- Hired a lobbyist or was a lobbyist;
- Had or sought contracts with the legislature or agency of the state that exceeded \$10,000;
- Was a municipality or local government entity; or
- Was affected financially by an action of the legislature or any other state agency in an amount exceeding \$5,000 including actions concerning professional or occupational licenses, natural resource permits or quotas, rates of assessment or taxation, health, safety or environmental standards and insurance or business practices.

Use copies of this page if you need additional space to complete this section.
See pages 8-10 of the LFD manual for more help with this section.

Name of filer, spouse, domestic partner, or child: _____

Business Name: _____

Retail Non-Retail (If you check non-retail, list clients/customers, and amounts if required, below.)

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 16,800

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: Business Services

Amount: \$ 57,000

Name of client/customer: _____

Client/Customer Address: _____

Nature of Services Provided: _____

Amount: \$ _____

#2
Legislator

Emily Stancliff

From: Heidi Drygas [hdrygas@alaskalaborers.com]
Sent: Thursday, March 22, 2007 11:26 AM
To: Emily Stancliff
Subject: Re: HB 109

This is from Mary Coulman, who is the administrative manager at the Tok DOT station.

-----Original Message-----

From: Mary Coulman [mailto:mary_coulman@dot.state.ak.us]
Sent: Thursday, March 22, 2007 12:08 PM
To: hdrygas@alaskalaborers.com
Subject: Nepotism

I do not agree with how the nepotism waiver has been used in the hiring of clerical employees. A clerical employee in the district office can not be related to any maintenance worker in any station in that district. We do not have any supervisory duties over these employees, so I do not believe this should narrow our ability to get employment. Also limiting any relative from being employed in a maintenance position in our district, which in this case is 7 maintenance stations. In small communities this greatly narrows a persons ability to find employment.

1

Originator - Paul D. Kendall = One mans contribution to a dialogue for better public servant conduct.

ETHICS - A ROUGHLY PROPOSED DRAFT
(throw down thoughts/wrinkled thinking)

Wednesday, January 4, 2007

NOTE: The following constitutional amendment, statue, law, regulation or what ever you call it, shall be invoked, used, or applied when the conduct of a public servant is called into question or review:

- a. Following a normal trial,
- b. During a normal trial (in parallel with),
- c. In addition to a trial,
- d. Or in a stand alone event where there is enough self evident in its nature; evidence, suspicion, events sufficiently suspect in their nature, indicators,
- e. Or other public concerns that would warrant its sole and immediate application so as to protect the publics interest or punish a self evident abuse of public service.
- f. Or where a contrived, conspired, or construct of a corrupted or "Less than Honorable Conduct" may exist,s,ed or will exist.....
- g. Also, all public servants should receive this declaration and sign for its understanding

----Public Service Conduct/Ethics Cont. next page

(Complete truths and individual free will are
fundamental requisites for a free and viable society)

1

----Public Service Conduct/Ethics Cont.----

Paul D. Kendall

January 4, 2007

A determination and findings of the Conduct of a public servant:

HONORABLE Conduct --- (OR) --- LESS than HONORABLE Conduct

Any and all public servants brought into review in regards to being "questionable, unethical, suspect, inappropriate or of other like concern actions" in reference to conducting the public's business shall be reviewed and judged by the following ruling or process:

Any and all public servants (1) conducting the public's business (1a) in anyway (2) shall conduct the public's business in an "open to the public's view"(3) and shall represent the public's business with "Honorable Conduct"; And, not in a "Less than Honorable Conduct" manner.

All conduct by public servants as mentioned above shall be judged (4) as either "Honorable Conduct" or "Less than Honorable Conduct"(5) and be subject to the mandatory sentencing, fines and actions attached to the determination of findings.

1. Elected, appointed, titled, employed, entrusted, assigned, contracted, represented, part time or full time, exempt or non-exempt, to, for, in.
- 1a. All public matters deemed to be the public's business -- matters of public assets, projects, financial and /or other matters.
2. Shape, or form, either directly, indirectly, implied, inferred, or on behalf of , or for the public's interests, or, at the direction of , etc..
3. Shall always be conducted in an open to the public manner and not just or only upon request from the public citizenry; With camera broadcast; And, all and any testimony shall be considered as under oath or sworn in testimony.
4. By a jury of their peers- standard jury -- in a priority and expedited means
5. Once conduct determination or findings by the jury has been determined, the following sentences, penalties and actions shall apply as per each offence: as described in (a) thru (f) under the findings sections

FINDINGS of conduct by the jury ----- determinations, descriptions, sentences and actions

Finding #s -- findings ----descriptions -----sentencing and actions

- 1. **Honorable Conduct --- ----- self explanatory and self evident**
- 2. **Less than Honorable Conduct / with good intentions or ineptness only---**
 ---- well intended, bullied by duress,
 poor judgment, self evident in true
 conduct, conned, unsuspectingly
 conned,
 ---- verbal admonishment, probation, suspension,
 probation, and fine -- no jail time ?
- 3. **Less than Honorable Conduct / Inconclusive ----**
 ---- unable to detect confirmation of
 intent to do less than honorable
 conduct and is suspect at best , unable
 to determine collaboration or motive
 for the process or occurrence of less
 than honorable conduct
 ---- probation ??
- 4. **Less than Honorable Conduct --level \$ 0 to \$500.00 penalty is a) + b) + c) +**
- 5. **Less than Honorable Conduct --level\$501.00 ---to--\$1,000.00 a), b) - < 90 days
 mandatory, c), d),
 e) - <\$2,000.00 fine**
- 6. **Less than Honorable Conduct --\$1,001.00 --to---\$\$\$ any amount over -- a), b) + very
 heavy fines and jail sentences; Again very large fines and jail time + other actions**

Findings cont. nxt pg.

Findings cont.

Notes: the above findings of sentencing, fines, and actions are determined by assessments of or degrees of damage / impacts as listed below reflected by all of the conduct of the public official being reviewed.

- a) Immediate "loss of employment" and "not for hire" with any current or future public servant entity.
- b) Loss of all current and future retirement, medical, life or other benefit or compensation.
- *1c) Must pay fine in the minimum amount of \$1,000.00 (should go up !!)
- *2d) Immediate jail incarceration for a period of 30 days with no bail or parole
- e) Must repay all court costs, injuries, harms, damages, jail, and transport costs back within one year following completion of jail sentence
- f) Make it a felony and loss of voting for a 2 year period...???

*1 - Minimum fines shall be \$1,000.00 and then increase with severity with assessment determination from jury ---Then, go very large if over \$1,000.00 jury determination

*2 - Minimum mandatory jail shall increase in severity with assessment from \$0 to \$1,000.00 and up -i. e. \$0 to \$500 = 30 days, ---- \$501.00 to \$1,000.00 = 90 days etc. Again, we must impose large and impacting sentences if determination or finding of impact is larger than \$1,000.00.—3 to 5 years mandatory.

**NOTES, THOUGHTS, VIEWS, CONSIDERATIONS AND SUPPORT
COMMENTALRY-----**

It has become common knowledge to us, the general citizenry, that many of those to whom we have conveyed the "highest honor in the land"(*1), are failing us in their representations of our publics business affairs and matters; Thereby jeopardizing our general welfare, safety, well being and the pursuit of happiness.

The time has come for us citizens to impose a higher standard of expectations and performances from our public servants behaviors; And in order to achieve a greater degree of responsible, honest, fair, and truthful conduct we must declare, design and impose a higher magnitude of penalty;

And, in order to stop the continued skirting, eroding, dodging, and re-drafting of the laws we pass in hoping to curtail these ever continuing corrupted "Less than Honorable Conduct" actions by public servants and officials;

We must give our jury system the latitude (discretion?) to make the "final determination of a description of a public servants deeds" as either "Honorable Conduct or "Less than Honorable Conduct"(*2),

Along with the severest penalties, fines and actions so as to stop the continuing malaise of corrupted conduct by our public servants.

In constructing this long overdo procedure of punishing aberrant or corrupted public officials for their deceitful, deceptive, and self indulgent betrayal of the publics "full faith and trust";

We must try to use words other than transparency, ethics, etc.(*3); Rather, simple words with little misunderstandings.

If we do not protect and establish integrity and value for the fundamental laws that govern our society and hold accountable those who we elect to represent those values and us with "Honorable Conduct", then we have in essence undermined our entire legal system and the very fabric our society itself.

We must in all fairness, set a bar and a standard that gives a clear and obvious forewarning, and notification that any public servant who betrays the "full faith and trust" of the general citizenry will pay a heavy and just price with short and long term impacts and consequences in an expedient manner of trial and sentencing.(*4)

*1 The conveyance of our full faith and trust of the Alaskan/American people who comprise our families, loved ones, homes, communities, and states (the voting process and other)

- *2 We must maintain the capacity for the general citizenry to "by its own merits" via the jury system determine what is "Honorable Conduct" and what is "Less than Honorable Conduct"; Any vagueness here must be maintained so the jury can use a subjective and or objective means of determination because history has shown us that political bodies will attempt to circumvent a given specific law of exactness with their ability to draft legislation or warp its interpretations and applications.
- *3 It is time to use simple words with clear and common understandings, applications, and meanings, i.e. open, clear, simple, etc. (not lawyered up words)
- *4 Punishment of corrupted public servants, officials, etc. must exemplify sentencing and actions of the firmest, strongest, and severest application possible- as well as expediency in trial as a priority.

Words used as indicators of Conduct ??---

Advisement – arrangements – agreements – actions – discussions – directions – decisions – determinations – involvement – instructions – contributions – participations – understandings – communications – judgments – representations – presentations, etc.

In closing, I believe that time is of the essence, or at least at hand for us, today, to end this historical continuing and ongoing betrayal of the publics' conveyance of their "full faith and trust" in our public leadership.

I realize we have focused primarily on our need to and means of judgment and penalties here in this writing;

Because we have to begin our work on those foundational aspects to begin correcting our political representations, infrastructure, and process; Those foundational aspects being the establishment of clear and meaningful reward and punishment for ones actions.-

Considering the damage and / or the grave consequences we have suffered as a community, people, city, county, state, nation, family, species, environment, society, laws, happiness, loss of loved ones; Along with

The ability, if not the consequences of our elected and represented public officials to do harm to and on us and all of the most sacred things we hold to;
Is astronomical in its proportions.

The ability of our public servants to weave false hoods, irresponsible acts, omissions, false and misleading proclamations, combined with the full might and power of the assets of the collective peoples nation or community is just undeniably catastrophic on our entire lifes' realm of nearly the entire planet and all living creatures and good or GOD force.

How can we hold to accountability the common criminal for an impact born out of an act of desperation while we let the those who represent the "highest law and honor of the land" go nearly scott free for an act of unmitigated greed and self indulgence with impacts far beyond what that individual criminal might do??

LET US HERE IN THE GREAT STATE OF ALASKS BEGIN TO RIGHT THE WRONG -
TO SET THE STANDARD.
THE BEGINNING OF OUR TRUE NEXT LEGACY FOR NOT JUST US , BUT THE REST OF OUR SOCIETY.
LET US MAKE THE HISTORY RATHER THAN WATCH HISTORY BEING MADE BY ANOTHER .

WE ALL KNOW THAT THE ABOVE MENTIONED WILL HAPPEN SOMEWHERE SOMETIME, SOMEPLACE BY SOMEONE ---

LET US LEAD this resolution in this matter of political corruption by public servants TO BE THAT MOMENT AND THAT EVENT IN THIS MATTER WHICH CRIES OUT TO BE RESOLVED AND HAVE JUSTICE SERVED—

Sincerely and Respectfully,

Paul D. Kendall _____

h 907-222-7882 cell 702-403-3656 (I know, vegas made me a deal on air time but lied on prefix change)

Dated: January, 4, 2007 _____

-----ADDITIONAL ANNEDOTAL VIEWS AND SUPOPORT -----
See next page

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

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

A Magnitude of consequences
A Consensus of opinions

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

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

This proposed determination and findings of "Honorable or less Than Honorable" act does not deny or restrict; It simply says that the voting general public gets to make the determination as to the conduct of a public servant. The same elected or appointed official who ask for the publics trust should have faith that the public is quite capable of ferreting out the truth.

This conduct act is really an extension of the foundational values we use every day in our family lives, jury decisions, homes, and legal systems

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

Cont.....

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

That we are on the edge of a new society, a better society,

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

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

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

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

Attached to the Above Notes:

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

- 1) declare a public state wide video channel as an official election channel and require the officials to be sworn in before their political commentary and other standards
- 2) It is necessary to establish a c-span type channel or channels for Alaska so that we as a state wide community may watch our public officials conduct business in an accessible manner of oversight.
- 3) and more is needed – I am time restricted !

Paul D. Kendall _____ date _____ 1-4-07

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

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

END -----

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

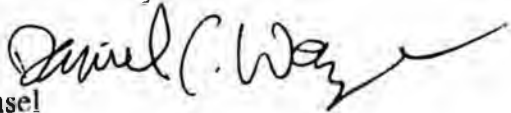
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 26, 2007

SUBJECT: Changes in CSHB 109(JUD) (Work Order No. 25-GH1059V)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee

FROM: Dan Wayne 
Legislative Counsel

Enclosed is the referenced CS.

1. We reworded amendment 36 (concerning AS 24.60.100) to try to make it clearer. You may want to check with the sponsor to make sure the draft is correct.
2. Amendment 4 (concerning AS 24.60.080) required extensive changes. You may want to show this memo to the sponsor of amendment 4.
 - A. Because of the deletion of AS 24.60.080(c)(10), we also had to amend AS 24.45.121(a)(9), AS 24.60.030(a)(1), and AS 24.60.990(a)(2)(A).
 - B. Because of the deletion of "during a legislative session" we also had to amend AS 24.45.121(a)(9).
 - C. We also modified the language in new AS 24.60.080(a)(2)(B) to reflect the fact that it is a subparagraph, not a paragraph, and to change the reference to "(a) of this section" to "(1) of this subsection". We did not delete "from a lobbyist" in new (a)(2)(B), although arguably this language should be changed to include family members and those acting on behalf of lobbyists.
 - D. We moved the material in AS 24.60.080(k) into AS 24.60.080(c)(5) and repealed AS 24.60.080(k) since it was now to apply only to (c)(5). We added "immediate" before "family member" in AS 24.60.080(i) but did not include a reference to AS 24.60.990 because that definition will automatically apply now that AS 24.60.080(k) is repealed.
 - E. As requested in amendment 4, we deleted "solicit" from AS 24.60.080(a)(2), but left it in AS 24.60.080(a)(1). Was that the sponsor's intent?

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

Representative Jay Ramras

March 26, 2007

Page 2

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

If I may be of further assistance please advise.

DCW:lmb
07-072.lmb

Enclosure

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

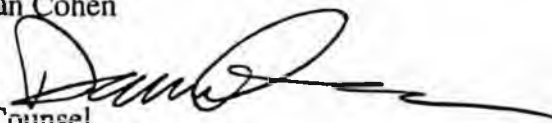
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 23, 2007

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

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Dan V. Lyne 
Legislative Counsel

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

1. Accrued state retirement benefits shall not be diminished or impaired.

Article XII, sec. 7 of the Constitution of the State of Alaska says:

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

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

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

² *Hoffbeck* at 1057.

³ *Hoffbeck* at 1058.

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

2. Equal rights are guaranteed.

Article I, sec. 1 of the Constitution of the State of Alaska says:

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

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

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

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

In this instance it can be argued that persons who may be subject to forfeiture if the bill becomes law -- legislators, legislative directors, and public officers⁵ -- are entitled as much as other persons to enjoy the rewards of their own industry, in this case a pension. AMENDMENT 25 creates a special class of person and denies them something all persons in the state are guaranteed; therefore, in order to survive a challenge if it becomes law, it will have to withstand the highest of the three levels of scrutiny in the three-part balancing test applied by the court.⁶

3. Cruel and unusual punishment is prohibited.

Article I, sec. 12 of the Constitution of the State of Alaska says:

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

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

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

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

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

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

4. No conviction shall work corruption of blood or forfeiture of estate.

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

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

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

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

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

Representative Max Gruenberg

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

If I may be of further assistance, please advise.

DCW:ljw:med

07-204.med

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MEMORANDUM

March 22, 2007

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

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard *RAB*
Legislative Counsel

You have requested a legal opinion as to the differences between proposed amendments 25-GH1059\O.2 and 25-GH1059\O.36. In an earlier memorandum, dated February 26, 2007, I expressed my belief that a court might interpret the former (O.2) as unconstitutional. That amendment read in relevant part:

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

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

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

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

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

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

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

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

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

TLAB:med
07-196.med

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

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MEMORANDUM

March 21, 2007

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

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Alpheus Bullard *AB*
Legislative Counsel

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

Constitutionality

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

Drafting Issue

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

Representative Max Gruenberg

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

TLAB:ljw

07-145.ljw

Enclosure

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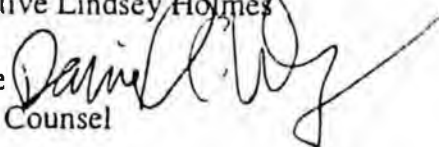
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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 21, 2007

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

TO: Representative Lindsey Holmes

FROM: Dan Wayne 
Legislative Counsel

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

AS 24.60.100 currently reads:

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

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

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

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

"Representation" is defined in AS 24.60.990 as

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

Representative Lindsey Holmes

March 21, 2007

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This means that if the amendment proposed in sec. 16 becomes law, a legislator-lawyer, or any other person who is a legislator or a legislative employee, would be prohibited from doing just about anything for a client in a state matter¹ unless or until the matter is before the judicial branch. For example, the legislator or legislative employee would be prohibited from offering any paid assistance to someone in a child support enforcement matter until it has gone from the initial investigation through the final decision of an administrative hearing officer and is on appeal in the court. I think a legislator or legislative employee would still be allowed to be an unpaid witness before the case gets to court, but the person would not be able to do much else, including offer private advice to another person, if the person receives compensation.²

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

If I may be of further assistance, please advise.

DCW:ljw
07-148.ljw

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

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

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

Westlaw.

AK ST § 24.60.990

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AS 24.60.990



ALASKA STATUTES

Title 24. Legislature.

Chapter 60. Standards of Conduct.

Article 5. Miscellaneous and General Provisions.

→Sec. 24.60.990 Definitions.

(a) In this chapter,

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

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

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

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

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

(D) grants under AS 37.05.316 to named recipients;

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

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

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

(6) "immediate family" means

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

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

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AS 24.60.990

- (7) "income" means assets that are received, regardless of whether they are earned or unearned; inheritances and other gifts are not income;
- (8) "knowingly" has the meaning given in AS 11.81.900;
- (9) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;
- (10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;
- (11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;
- (12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, but does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;
- (13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;
- (14) "registered lobbyist" means a person who is required to register under AS 24.45.041;
- (15) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;
- (16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.
- (b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of \$10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

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

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STATE OF ALASKA

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February 26, 2007

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

Re: Amendment of Laws Enacted by Initiative

Dear Representative Stoltze:

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

1. Summary of the case law

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

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

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

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

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

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

3 prong test
re: supplant

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

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

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

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

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

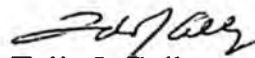
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"housekeeping" amendments to sections enacted by the gas line initiative were made by the 2003 "revisor's bill." CSSB49(STA) (secs. 54, 55, 56, 57 & 58, ch. 35, SLA 2003). These amendments are by definition minor and corrective and do not change the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

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

Sincerely,


Talis J. Colberg
Attorney General

Enclosures

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