

SUMMARY OF PROPOSED CHANGES IN REGULATIONS OF
ALASKA PUBLIC OFFICES COMMISSION
(2 AAC 50.250 – 2 AAC 50.920)

Note: This summary is not a part of proposed regulations, and has not been reviewed or approved by members of the APOC. If the language of this summary differs from the language of any proposed or adopted regulation, the regulation language controls.

Existing regulations of the Alaska Public Offices Commission (APOC) carry out and tell affected persons how to comply with the statutes that regulate campaign disclosure, lobbying, and financial disclosure by legislators, public officials and candidates. Since 2007, the legislature has changed relevant statutory provisions through at least six bills, including HB 109 (2007), SB 281(2008), HB 305(2008), HB 368(2008), HB 36(2010), and SB 284(2010). The APOC's regulations needed revision to implement and be consistent with the statutory changes.

As the APOC drafted proposed regulations to comply with the statutory changes, it also proposed to include policies the APOC has adopted in advisory opinions or adjudications, and reporting requirements currently described in manuals or instructions for reporting forms, but not in regulations. The APOC also wanted to simplify the organization and language of the regulations, and otherwise conform the regulations to current requirements of the Alaska Department of Law *Drafting Manual for Administrative Regulations*.

The principal changes in the APOC's proposed regulations are as follows:

- financial disclosure requirements for public officials and candidates set out at 2 AAC 50.010 - 2 AAC 50.200 are repealed and the substantive provisions are relocated and combined with the disclosure requirements for legislators in a single article at 2 AAC 50.680 – 2 AAC 50.775;
- campaign disclosure requirements are revised to follow recent statutory changes regarding reporting and disclosure of expenditures and independent expenditures, ballot initiative proposal applications and related election requirements;
- existing lobbying regulations are repealed and are replaced by reorganized and clarified regulations that incorporate recent statutory changes;
- procedural provisions are gathered in one article, and made applicable to all APOC regulatory programs;
- most definitions are moved to 2 AAC 50.920, which applies to all APOC regulations.

A more detailed description of the proposed regulations follows:

I. Campaign disclosure. 2 AAC 50.250 – 2 AAC 50.405.

Campaign disclosure regulations implement and interpret statutes in AS 15.13 that regulate campaigns including campaigns for or against a ballot measure and an initiative proposal application, and independent expenditures supporting or opposing a candidate, ballot measure, or initiative proposal application. Proposed changes to campaign disclosure regulations include:

2 AAC 50.250. Contributions. This section requires reporting of contributions as required by statute and 2 AAC 50.321, and explains rules and reporting requirements for non-

monetary contributions, services, loans and loan guarantees, credit extended beyond normal business practices, and contributions to subordinate units of a political party. The definition of “contribution” formerly in this section is moved to the definitions section, 2 AAC 50.920.

2 AAC 50.254. Personal contributions by a candidate. This section identifies assets a candidate can use as personal contributions to a campaign, and sets out rules for jointly held assets, bank loans, and proceeds from sale of a candidate’s real or personal property.

2 AAC 50.258. Prohibited contributions. The revision clarifies rules to ensure contributions are made in the name of the true source of the funds, and prohibits contributions from non-resident groups.

2 AAC 50.266. Disposition of prohibited contributions. This section requires a campaign treasurer to return any prohibited contributions and deliver any anonymous contribution to the Department of Revenue. Subsection .266(b) is repealed and relocated to 2 AAC 50.258(b).

2 AAC 50.270. Independent expenditures. This section is revised to implement new legislation (SB 284, 2010), and to set out all requirements that apply to independent expenditures, including the requirements to register, to establish a political activities account, and to report the information required by statute and additional listed information.

2 AAC 50.272. Conducting raffle or lottery and use of proceeds. This new section implements AS 15.13.069, which allows certain charitable gaming activities.

2 AAC 50.274. Early campaigning. This section requires a candidate to file a letter of intent up to 18 months before an election in which the individual intends to run, or a declaration of candidacy, and prohibits accepting campaign contributions or making campaign expenditures before compliance.

2 AAC 50.282. Candidate registration. This section requires a candidate to register and specifies the information that must be provided.

2 AAC 50.286. Candidate exemptions. This section exempts a candidate who does not intend to exceed \$5000 in campaign contributions or expenditures from the registration filing and campaign disclosure reports. The candidate must file an exemption form, and must register and report if the candidate’s contributions or expenditures exceed the \$5000 limit.

2 AAC 50.290. Groups, draft groups, controlled groups, ballot groups. This section is revised to collect all provision, including registration and reporting requirement, for groups. 2 AAC 50.278 and 2 AAC 50.294 are therefore repealed.

2 AAC 50.292. Nongroup entities. A non-group entity must apply to register, submitting the documentation listed in this section. APOC staff determines whether an applicant under this section qualifies as a “non-group entity.” An adverse decision may be appealed to the commission as provided in 2 AAC 50.831. A non-group entity must keep any contributions in a separate account and report as required in 2 AAC 50. 321. The definition of “nongroup entity” is moved to 2 AAC 50.920.

2 AAC 50.298. Designated campaign depository. Candidates, groups, and non-group entities that raise more than \$5,000 must use a designated bank account or credit cards identified as campaign accounts or credit cards.

2 AAC 50.300. Individuals who accept contributions. An individual not designated as a campaign treasurer may accept campaign contributions at a single event; the contributions must be turned over to the candidate or a treasurer within 72 hours after the event.

2 AAC 50.302. Campaign subcommittee. A campaign committee or controlled group may create a subcommittee, but may not maintain separate accounts or records. The

subcommittee name must identify the candidate, but may not be used to identify political communications.

2 AAC 50.306. Identification of political communication. This section implements the statutory requirement to identify political communications. Subsection (d) adds new identification provisions for electronic communications, including social media, and a detailed definition of “political communication.”

2 AAC 50.310. This section is repealed. Time and manner of filing are covered in 2AAC 50.811 and 2 AAC50.816 in the new procedural article.

2 AAC 50.317. This section is repealed and incorporated in 2 AAC 50.321.

2 AAC 50.320. Recordkeeping requirements. This section specifies record keeping requirements for contributions and expenditures, including expenditures to advertising agencies and campaign consulting or management businesses.

2 AAC 50.321. Reporting by a candidate, group, or nongroup entity. This section implements AS 15.13.040(a) and AS 15.13.110 by listing the detailed information to be reported by candidates, groups and non-group entities. Provisions formerly set out in 2 AAC 50.317 and 2 AAC 50.332 that identify the date of a contribution and provide for zero reports are combined in this section.

2 AAC 50.324. Shared campaign activities. This section covers allocation of expenses and political communication identification requirements for shared campaign events.

2 AAC 50.327. Additional reporting by political party. This section requires a political party to report listed information in addition to each contribution and expenditure.

2 AAC 50.328. Reporting exempt fundraising activities. For fund-raising activities that meet the criteria in this section, a campaign is required to file an exempt fundraiser report with the information listed in this section instead of a 2 AAC 50.321 report.

2 AAC 50.329. Reporting contributions from ongoing payroll deduction or dues programs. This section sets out the reporting requirements for a group or nongroup entity that obtains contributions from an ongoing payroll deduction program.

2 AAC 50.332. This section is repealed and incorporated in 2 AAC 50.321(f).

2 AAC 50.336. This section is repealed and the reporting requirements currently contained here are incorporated in 2 AAC 50.270, 2 AAC 50.352, and 2 AAC 50.570(d).

2 AAC 50.344. Reporting by person outside the state. Persons residing outside the state are subject to the same reporting requirements as those residing in Alaska.

2 AAC 50.348. Use of campaign contributions. This section prohibits the use of campaign contributions in private elections, requires a candidate, group or nongroup entity to use a designated campaign account to pay expenses, and sets out rules for investment of unused contributions held for a future election.

2 AAC 50.352. Ballot measure activity. This section sets out reporting and registration requirements for persons making contributions in support of or in opposition to a ballot proposition, including contributions to any has filed or intends to file an initiative proposal application.

2 AAC 50.356. Election-related use of public money. This section implements AS 15.13.145 by interpreting provisions of that statute regarding use of public money in ballot proposition elections or initiative proposal applications.

2 AAC 50.360 is repealed and the substance clarified in 2 AAC 50.356.

2 AAC 50.368. Joined campaigns. This section provides that a party's nominated candidates for governor and lieutenant governor may contribute unlimited amounts to each others campaigns or may join assets by registering a new campaign, subject to the campaign limits of AS 15.13.070.

2 AAC 50.375. Communications by incumbents. This section controls when an incumbent public official must identify and report communications during a campaign.

2 AAC 50.379. This section, regarding election educational activities, is repealed and relocated to 2 AAC 50.405(3.)

2 AAC 50.384. Winding up campaign affairs. This section describes how a candidate, a group, or a nongroup entity must disburse all funds at the end of a campaign. Provisions formerly in .389 and .394 are combined in one section dealing with obligations at the end of a campaign.

2 AAC 50.389, regarding campaign debts and 2 AAC 50.394, regarding final disbursement of campaign funds, are repealed and the subject matter is combined in 2 AAC 50.384.

2 AAC 50.396. Public office expense term account. This new section sets out rules for public office expense term accounts.

2 AAC 50.405. Definitions. Definitions unique to this article are set out here; others are moved to 2 AAC 50.920.

II. Regulation of lobbying. 2 AAC 50. 550 - 2 AAC 50.590.

The APOC proposes to repeal all existing lobbying regulations at 2 AAC 50.505 - 2 AAC 50.545, but most of the substance of those regulations, along with recent statutory changes, is retained in a reorganized format at 2 AAC 50.550- 2 AAC 50.590. The proposed lobbying regulations are organized by activity (mainly registration and reporting) and by person responsible (lobbyist and employer of lobbyist). Procedural sections of the existing regulations are repealed and the substance of those sections is moved to new Article IV. Most definitions are moved to the expanded definitions section in 2 AAC 50.920, but a few terms with meanings unique to this article are set out in 2 AAC 50.590.

2 AAC 50.550. Registration by lobbyist, and 2 AAC 50.555. Registration by employer of lobbyist. These sections describe the registration process as now carried out in the APOC's electronic filing system. A lobbyist now files a separate form for each employer. and the employer, who submits required information on the same electronic form. 2 AAC 50.550 also clarifies the timing when a person must register as a lobbyist, and the exceptions for a representational lobbyist and an uncompensated volunteer lobbyist.

2 AAC 50.560. Training required. This section implements the statutory requirement for a lobbyist training program.

2 AAC 50.565. Termination, disqualification. This section describes how a lobbyist terminates registration. Subsection (b) any registered lobbyist convicted of a felony of moral turpitude to notify the commission and cease any lobbying activity.

2 AAC 50.570. Reporting by lobbyist and 2 AAC 50.575. Reporting by employer of lobbyist. These sections set out reporting requirements and methods to be used for reporting for lobbyists and employers of lobbyists. These proposed regulations incorporate statutory reporting provisions adopted in HB 109 (2007), HB 368 (2008), and SB 281(2008).

2 AAC 50.580. Prohibited activity relating to a campaign. This section 2 AAC 50.580 replaces the current provisions of 2 AAC 50.545(g) – (i) defining terms used in AS

24.45121(a)(8) with a direct interpretation of the statutory prohibition on lobbyist activity related to a campaign.

2 AAC 50.585. Code of Ethics. This section adopts by reference the Code of Ethics of the American League of Lobbyists.

2 AAC 50.590. Definitions. Some terms used only in this lobbying article are set out in 2 AAC 50.590. Definitions in 2 AAC 50.920 also apply to the proposed lobbying regulations.

III. Public official and legislative financial disclosure. 2 AAC 50. 680-2 AAC 50.780.

The proposed financial disclosure regulations in 2 AAC 50.680- 2 AAC 50.780 apply to public officials and candidates as well as to legislative filers. These revised regulations replace the current public official and candidate disclosure requirements at 2 AAC 50.010- 2 AAC 50.200, which are repealed. The combined financial disclosure regulations include reporting interpretations currently set out in the APOC's forms and instructions, but not previously adopted by regulation. Proposed regulations in this article cover the following matters:

2 AAC 50.680. Applicability; family member disclosure required. Subsection (a) provides that regulations in this article apply to implement the reporting requirement of AS 24.60.200 for legislative filers, as defined in this section, and their family members and any nondependent child residing with the legislative branch filer. Subsection (b) makes these regulations applicable to public officials and candidates, and family members.

2 AAC 50.685. Reporting sources of income and gifts. This section identifies specific income and gift information required to be reported, and provides for reporting in a range of amount rather than in specific dollar figures.

2 AAC 50.690. Good faith effort to obtain information. This section requires a good faith effort to obtain the information that a legislative file, public official or candidate must report, and defines what constitutes a good faith effort.

2 AAC 50.695. Reporting deferred income. The section requires and explains reporting of income earned, but deferred for payment after the reporting period.

2 AAC 50.700. Reporting self-employment and business income. The section specifies the reporting requirements for income from self-employment and from businesses in which the filer has an ownership interest.

2 AAC 50.704. Reporting income from contingency fee agreements. This section explains how contingency fee agreements must be reported.

2 AAC 50.705, regarding reporting of sources of income for retail businesses, is repealed.

2 AAC 50.708. Reporting business interests and investments. This section requires reporting of interests in businesses, including nonprofit businesses and investments owned in the reporting period, and specifies information to be reported.

2 AAC 50.712. Reporting trusts and beneficial interests. This section lists information to be reported for trusts and beneficial interests.

2 AAC 50.720. Reporting interests in real property. This section lists information to be reported for real property interests.

2 AAC 50.725. Reporting sources of income from rental property. This section lists information to be reported for rental property.

2 AAC 50.730 is repealed. The substance is relocated to 2 AAC 50.680.

2 AAC 50.735 is repealed. The substance is relocated to 2 AAC 50.708.

2 AAC 50.740. Reporting loans, loan guarantees, and indebtedness. This section

lists information to be reported for loans, loan guarantees, and indebtedness of public officials and candidates and legislative filers.

2 AAC 50.745 is repealed. The substance is relocated to 2 AAC 50.740.

2 AAC 50.765 and 2 AAC 50.770 are repealed and the subject matter of these regulations is relocated to 2 AAC 50.700.

2 AAC 50.775. Exemption from reporting sources of income. This section identifies the circumstances in which a legislative filer, public official or candidate may obtain an exemption from reporting the name of a source of income or other information required by statute or regulation.

IV. Alaska Public Offices Commission Procedures, 2 AAC 50.801-2 AAC 50.895.

In the proposed regulations, all procedural provisions now contained in any part of the existing regulations are repealed. They are replaced by a comprehensive set of procedural provisions collected in new sections 2 AAC 50.801 – 2 AAC 50.895. These proposed regulations are intended to inform the public how the commission will conduct its business in compliance with due process. Among other provisions, this section now contains procedures for filing required registrations, statements, and reports with the APOC; for commission review of staff recommendations and final decisions; for assessing penalties, including consideration of mitigating factors, for complaints, investigations, expedited consideration, and hearings. More specifically, the proposed regulations in this article provide as follows:

2 AAC 50.801. Reports; public records. This section clarifies that APOC records are available for inspection or copying in compliance with the Public Records Act, but also provides a procedure for requesting that information be kept confidential. It also provides for investigative records to be confidential until an investigation is concluded.

2 AAC 50.806. Inspection and preservation of records. This section provides for staff inspection of documents required to be kept under any of the statutory programs the APOC administers, and describes the process for serving and objecting to an APOC subpoena. This section also implements the process for a records-preservation request under AS 15.13.111(c).

2 AAC 50.811. Mailing, delivery, computation of time. This section clarifies filing requirements by defining “mailed” or “delivered;” establishes the method of notice for hearings; requires persons subject to reporting requirements to keep a current address on file with the commission, and explains how to compute time for completing any action required under this chapter.

2 AAC 50.816. Electronic filing. This section implements the electronic filing requirements that have now been adopted by statute for each of the APOC programs, but gives the commission flexibility to order filing by a different method when the electronic system is not available. Under this section, a representational lobbyist may, but is not required to use the electronic filing system, and other persons, except those required to file electronically under AS 24.45, may submit the information specified here to ask for an exemption from the electronic filing requirement. (d) of the section defines delivery, and the method of confirmation for electronic filing.

2 AAC 50.821. Request for exemption or waiver. This section describes the process for request any exemption allowed by statute, or a waiver of a provision of these regulations.

2 AAC 50.826. Commission decision on staff recommendation and 2 AAC 50.831. Administrative appeal of staff decision. Some provisions of these regulations call for APOC staff to prepare a decision that will be final unless appealed to the commission, while other

provisions require the staff to prepare a recommendation that has no effect unless approved by the commission. 2 AAC 50.826 describes the procedure where staff prepares a recommendation that is presented to the commission for review.

2 AAC 50.831 describes the procedure under which a staff decision becomes final if it not appealed to the commission for review within 30 days.

2 AAC 50.835. Disqualification of commission member. This section forbids a commissioner with a conflict of interest from participating in an APOC decision, defines “conflict of interest,” and describes the procedure APOC procedure for identifying and resolving a member’s potential conflict of interest.

2 AAC 50.840. Advisory opinion. This section describes the APOC procedure for handling a request for an advisory opinion authorized by AS 15.13.374.

2 AAC 50.845. Late or incomplete reports. This section defines what constitutes a late report and an incomplete report.

2 AAC 50.850. Notice of deficiency; remedies. This section describes the process the commission intends to follow in sending out deficiency notices when any registration, disclosure statement, or other report required under statutes administered by the APOC is not received on time. This section describes the information to be included in a notice when the filing is ten days late, the additional notice to be sent out when a filing is 25 days late, and a description of the statutory penalties that may be imposed on public officials, judicial officers, municipal officials, and candidates.

2 AAC 50.855. Penalty assessment procedure. The section describes the APOC’s procedure for imposing a penalty for a late or incomplete report or other required filing. If the report is filed within 30 days after the due date, the staff will compute the penalty, based on the statutory penalty times the days overdue, unless the deficiency is insignificant and promptly corrected. The penalty may be appealed to the commission under the procedure in 2 AAC 50.831. If the deficiency is not corrected within 30 days after the due date, the staff penalty assessment will also state that the penalty will continue to accrue and that other enforcement action may be taken.

2 AAC 50.860. Procedure for disputing penalty. This section describes what a person subject to a penalty assessment must do to dispute the penalty, the commission’s process, the due date for payment of a penalty and the right to judicial review.

2 AAC 50.865. Mitigating factors; aggravating factors. This section defines criteria that the commission will use to determine whether a penalty assessed under 2 AAC 50.855-2 AAC 50.860 may be reduced or waived, and criteria that may justify imposing the maximum penalty.

2 AAC 50.870. Complaints. This section describes the procedure for complaints filed with the APOC, including the information that must be submitted with a written complaint, preliminary review of a complaint by the staff, the procedure for appealing rejection of a complaint or giving notice that staff will investigate a complaint.

2 AAC 50.875. Investigation. This section describes the procedure for an APOC investigation, including a written notice of the investigation, methods of investigation, the contents of an investigation report, and consideration by the commission.

2 AAC 50.880. Answer to complaint. This section describes what information must be or may be in an answer to a complaint or an investigative report.

2 AAC 50.885. Consent agreement. This section provides for settlement of a complaint or any matter under investigation by a consent agreement. The commission may take

evidence on any consent agreement and may accept or reject it.

2 AAC 50.888. Expedited consideration; hearing on expedited consideration. This section describes the procedure for any person to request a hearing on expedited consideration, and for the commission to consider and decide the matter.

2 AAC 50.891. Hearing, record, decision. This section describes hearing processes the APOC will follow, including requirements of the Administrative Procedure Act and regulations of the Office of Administrative Hearings. Provisions of this section cover the notice to be given, the respondent's right to inspect the investigation file other than internal memoranda and any privileged material, parties, recording and transcripts, commission deliberation and timing for an order. Provisions for reconsideration and assessment of costs also appear in this section.

2 AAC 50.895. Referral to attorney general. This section provides for the commission to refer unpaid penalties to the attorney general, and for the commission to dismiss or suspend action on a complaint when the matter is subject to a civil complaint or criminal investigation.

V. General provisions. 2 AAC 50.900-2 AAC 50.920.

Sections 2 AAC 50.905 and 2 AAC 50.910 of the current regulations, which address advisory opinions and availability of reports, are repealed and the substance is relocated in the new procedural article at 2 AAC 50.840 and 2 AAC 50.801, respectively. Definitions that apply generally in 2 AAC 50 are gathered in one section, 2 AAC 50.920, which is applicable to all APOC regulatory programs. Definitions that are unique to a particular section or article in this chapter are located at the end of the relevant section or article. See 2 AAC 50.405, 2 AAC 50.590, 2 AAC 50.700.