

CS FOR SENATE BILL NO. 82(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/28/21

Referred: State Affairs, Finance

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to elections and election investigations."**

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

3 *** Section 1.** AS 15.56 is amended by adding a new section to read:

4 **Sec. 15.56.140. Civil enforcement of election laws.** (a) A person may file
5 with the division a written complaint alleging that a violation of an election law or rule
6 adopted under this title has occurred, the factual basis for the allegation, and any
7 related evidence. A complaint filed under this section must be filed within 60 days
8 after certification of the election at which a violation of an election law or rule is
9 alleged to have occurred or within 60 days after the date of the violation of an election
10 law or rule is alleged to have occurred, whichever is later.

11 (b) If a complaint alleges a violation of AS 15.13 or a regulation adopted
12 under the authority of AS 15.13, the division shall refer the complaint to the Alaska
13 Public Offices Commission. For all other complaints filed under (a) of this section, the
14 division may refer the complaint to the attorney general. If the complaint is
15 incomplete, determined by the division to be frivolous, or the allegations in the

1 complaint, if true, do not constitute a violation, the division may request additional
2 information or dismiss the complaint.

3 (c) In conducting an investigation under this section, if the attorney general
4 has reason to believe that a person has information relevant to the investigation, the
5 attorney general may

6 (1) issue a subpoena requiring the person to provide testimony and
7 answer questions under oath, subject to penalty of perjury,

8 (A) in person, virtually, or by telephone, at the discretion of the
9 attorney general;

10 (B) at the location and date and time stated in the subpoena;

11 (C) not less than seven days after service of the subpoena,
12 unless a court order allows for expedited testimony;

13 (2) issue a subpoena duces tecum requiring the person to produce for
14 inspection, copying, and testing any books, records, documents, or electronically
15 stored information within 30 days, unless the court orders an expedited response;
16 electronically stored information shall be translated, if necessary, into a reasonably
17 useable form;

18 (3) issue interrogatories to the person, which shall be signed under
19 oath, subject to penalty of perjury, and provided to the attorney general within 30 days
20 unless a court orders an expedited response;

21 (4) obtain relevant records and information from a state agency upon
22 written request to the agency head; if the records or information requested by the
23 attorney general are required by law to remain confidential, the state agency shall
24 provide the records or information and designate them as confidential; the attorney
25 general shall keep confidential any records or information designated as confidential,
26 except when disclosure is necessary to file an action under this section or to comply
27 with state or federal law or a court order.

28 (d) The attorney general shall serve a subpoena, subpoena duces tecum, or
29 interrogatory issued under (c) of this section in the manner prescribed by
30 AS 44.62.430. The attorney general may initiate contempt proceedings in the manner
31 prescribed by AS 44.62.590 against a person who fails in whole or in part to respond

1 to a subpoena, subpoena duces tecum, or interrogatory issued under (c) of this section.

2 (e) Before serving a subpoena, subpoena duces tecum, or interrogatories, the
3 attorney general may file an ex parte petition in superior court seeking an order
4 requiring the person to respond to the subpoena, subpoena duces tecum, or
5 interrogatory sooner than permitted under (c) of this section. The order shall be issued
6 by a judge upon a showing of probable cause that a violation of this chapter, excluding
7 AS 15.13, has been committed, is being committed, or is about to be committed and
8 that there is reason to believe an expedited response may be necessary under the
9 circumstances. The order may also designate a deadline by which the recipient of a
10 subpoena, subpoena duces tecum, or interrogatory must file an action in superior court
11 to quash the subpoena.

12 (f) A person who is served with a subpoena, subpoena duces tecum, or
13 interrogatory under (c) of this section may file an action in superior court to quash the
14 subpoena, subpoena duces tecum, or interrogatory not later than 10 days after being
15 served, unless an earlier time is designated by the court under (e) of this section. An
16 action brought under this subsection shall be considered on an expedited basis. The
17 court may hear evidence and argument from the attorney general in an ex parte setting.
18 The court may quash a subpoena, subpoena duces tecum, or interrogatory only after
19 finding the subpoena, subpoena duces tecum, or interrogatory is not reasonably
20 calculated to aid in a good faith investigation of an alleged violation of this chapter.

21 (g) At the conclusion of an investigation under this section, the attorney
22 general shall inform the division of the result of the investigation and shall submit to
23 the division a notice of findings. If the attorney general's investigation determines that
24 a complaint against a state agency or state employee is meritorious, the division shall
25 make a reasonable effort to work with the agency or employee to take corrective
26 action.

27 (h) When the attorney general submits a notice of findings to the division, a
28 record of the investigation and the notice are public records subject to the disclosure
29 requirements and exemptions under AS 40.25.100 - 40.25.295. Intelligence
30 information of the attorney general is not a public record and is not subject to
31 disclosure under AS 40.25.100 - 40.25.295.

1 (i) If, after an investigation, the attorney general has reason to believe that a
 2 person has engaged, is engaging, or is about to engage in an act or practice in violation
 3 of a provision of this title, excluding AS 15.13, the attorney general may bring a civil
 4 action for injunctive relief to compel compliance with the provisions of this title.

5 (j) In an action brought under (i) of this section,

6 (1) if the court finds that a person has engaged, is engaging, or is about
 7 to engage in an act or practice in violation of a provision of this title, excluding
 8 AS 15.13, the attorney general may, upon petition to the court, recover on behalf of
 9 the state a fine of up to \$25,000 for each violation;

10 (2) if the attorney general prevails, the court may award the state actual
 11 attorney fees and costs, including the cost of an investigation, to the extent those fees
 12 and costs are reasonable.

13 (k) An action by the attorney general under (i) of this section against a
 14 candidate or elected official must be brought within two years after the filing of the
 15 complaint under (a) of this section.

16 (l) The director may adopt regulations to implement this section, including
 17 regulations creating a process for a person to file a written complaint.

18 (m) The attorney general may adopt regulations to implement this section.

19 (n) Nothing in this section prevents a complainant from filing an action in
 20 court.

21 (o) In this section,

22 (1) "frivolous" means

23 (A) not reasonably based on evidence or on existing law or a
 24 reasonable extension, modification, or reversal of existing law; or

25 (B) brought to harass the subject of the complaint or to cause
 26 unnecessary delay or needless expense;

27 (2) "state agency"

28 (A) means

29 (i) a state department, division, or office;

30 (ii) a state board, commission, public corporation, or
 31 other organizational unit of or created under the executive branch of the

1 state government, or the University of Alaska, to the extent that the
2 location serves as a polling place under AS 15.15.060;

3 (B) does not include an agency of the legislative or judicial
4 branch of state government;

5 (3) "state employee" includes a permanent employee, emergency
6 employee, nonpermanent employee, or a program or project employee as those terms
7 are defined in AS 39.25.200; "state employee" does not include a person hired by the
8 state to work as an independent contractor or a person who is in the custody of the
9 state.