

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

May 8, 2002  
8:08 a.m.

**MEMBERS PRESENT**

Representative John Coghill, Chair  
Representative Jeannette James  
Representative Hugh Fate  
Representative Gary Stevens  
Representative Peggy Wilson  
Representative Harry Crawford  
Representative Joe Hayes

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 531

"An Act relating to communications and elections, to reporting of contributions and expenditures, and to campaign misconduct in the second degree; relating to disclosure by individuals of contributions to candidates; and providing for an effective date."

- MOVED CSHB 531(STA) OUT OF COMMITTEE

HOUSE BILL NO. 371

"An Act establishing the Alaska veterans' memorial endowment fund and providing for credits against certain taxes for contributions to that fund; relating to other tax credits for certain contributions; and providing for an effective date."

- MOVED CSHB 371(STA) OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 531

SHORT TITLE: ELECTIONEERING COMMUNICATIONS/DISCLOSURES

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
05/07/02	3421	(H)	READ THE FIRST TIME - REFERRALS

05/07/02            3421            (H)            STA, FIN  
 05/08/02                            (H)            STA AT 8:00 AM CAPITOL 102

BILL: HB 371

SHORT TITLE:ALASKA VETERANS' MEM.ENDOWMENT FUND

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/01/02	2119	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2119	(H)	MLV, STA, FIN
02/01/02	2119	(H)	FN1: INDETERMINATE(CED)
02/01/02	2119	(H)	FN2: INDETERMINATE(REV)
02/01/02	2119	(H)	FN3: (MVA)
02/01/02	2119	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/05/02		(H)	MLV AT 3:00 PM CAPITOL 124
03/05/02		(H)	Heard & Held
03/05/02		(H)	MINUTE(MLV)
03/14/02		(H)	MLV AT 3:00 PM CAPITOL 124
03/14/02		(H)	Scheduled But Not Heard
03/26/02		(H)	MLV AT 3:00 PM CAPITOL 124
03/26/02		(H)	Scheduled But Not Heard
04/04/02		(H)	MLV AT 3:00 PM CAPITOL 124
04/04/02		(H)	Moved Out of Committee
04/04/02		(H)	MINUTE(MLV)
04/05/02	2815	(H)	MLV RPT 3DP 2NR
04/05/02	2815	(H)	DP: GREEN, HAYES, CHENAULT;
04/05/02	2815	(H)	NR: KOTT, MURKOWSKI
04/05/02	2815	(H)	FN1: INDETERMINATE(CED)
04/05/02	2815	(H)	FN2: INDETERMINATE(REV)
04/05/02	2815	(H)	FN3: (MVA)
04/23/02		(H)	STA AT 8:00 AM CAPITOL 102
04/23/02		(H)	Heard & Held
04/23/02		(H)	MINUTE(STA)
05/08/02		(H)	STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

JOE BALASH, Staff  
 to Senator Gene Therriault  
 Alaska State Legislature  
 Capitol Building, Room  
 Juneau, Alaska 99801  
 POSITION STATEMENT: Presented HB 531.

BROOKE MILES, Executive Director  
 Alaska Public Offices Commission

2221 East Northern Lights, Room 128  
Anchorage, Alaska 99508-4149  
POSITION STATEMENT: Testified on HB 531.

CAROL CARROLL, Director  
Central Office  
Administrative Services Division  
Department of Military & Veterans Affairs (DMVA)  
400 Willoughby Avenue, Suite 500  
Juneau, Alaska 99811  
POSITION STATEMENT: Testified on HB 371.

**ACTION NARRATIVE**

TAPE 02-54, SIDE A  
Number 0001

CHAIR JOHN COGHILL called the House State Affairs Standing Committee meeting to order at 8:08 a.m. Representatives Coghill, Fate, Stevens, Wilson, Crawford, and Hayes were present at the call to order. Representative James arrived as the meeting was in progress.

HB 531 - ELECTIONEERING COMMUNICATIONS/DISCLOSURES

[Contains discussion of SB 363]

CHAIR COGHILL announced that the first order of business would be HB 531, "An Act relating to communications and elections, to reporting of contributions and expenditures, and to campaign misconduct in the second degree; relating to disclosure by individuals of contributions to candidates; and providing for an effective date."

Number 0139

JOE BALASH, Staff to Senator Gene Therriault, Alaska State Legislature, explained that [SB 363, legislation similar to HB 531] was introduced as an attempt to try to get some disclosure on issue ads. There is a huge gray area in election law between an express ad, in which a supporter opposes a candidate, and [an issue ad], in which somebody advocates an issue to the public in the context of the campaign season. Candidates' names and images get mentioned all the time, and if there could just be some disclosure on these issue ads, perhaps a little more light could be shed on what's going on.

Number 0228

MR. BALASH acknowledged that simply requiring disclosure on an issue-based ad provided some constitutional problems. The bill before the committee [HB 531] is based largely on the McCain-Feingold or Shays-Mehan bill, which Congress passed recently and the President signed into law. McCain-Feingold basically says if an ad identifies a candidate 30 days before a primary or 60 days before a general election, it cannot be run unless it's by a candidate, a party, or a group.

MR. BALASH mentioned discussions with the Legal and Research Services Division ("Legislative Legal"), and he indicated that there is case law - either in the Tenth or the Fourth Circuit Court [of Appeals] - that defines a political message as one that unambiguously identifies the candidate. That particular court of appeals struck it down because it was thought to infringe on one's ability to speak about issues. This bill takes it one step further than McCain-Feingold did. It has to be an ad that directly or indirectly identifies the candidate, occurs within that window of time before an election, addresses an issue of national, state, or local political concern, and attributes a position on that particular issue to the candidate identified.

Number 0450

MR. BALASH noted that type of communication was defined as an expenditure. So, corporations and unions are not able to make those kinds of communications to the public. It has to be a party, a group, a nongroup entity, or the candidate. An individual is still able to make that type of communication on his/her own and out of his/her own pocket, independently of any of those types of entities.

MR. BALASH referred to the 5-15 form. He said he thinks this is the first year the Alaska Public Offices Commission (APOC) began levying the civil penalties for contributor statements that either were not filed or were filed late. Senator Therriault had asked [the APOC executive director], and she explained a little bit of the history of this form. Basically, as the campaign finance laws have evolved, the usefulness of the form has worn itself out as it pertains to candidates or groups with these limits. That requirement was deleted in AS 15.13.080 and repealed and reenacted another section of AS 15.13.040 to make it purely an expenditure report instead of a contribution and expenditure report.

CHAIR COGHILL told the committee that he took the language from the latest version in the Senate, and that is what is before the committee.

Number 0629

REPRESENTATIVE HAYES asked when the information would be out to the public if the 15-5 form is repealed.

Number 0670

MR. BALASH answered that currently a contribution has to be \$500 in order to trigger the 15-5 form. A great number of people contribute \$499; that speaks for itself. If it is a contribution to a candidate, each candidate is required to report all contributions and expenditures 30 days before the primary. The contributions will show up 30 days before the primary and then 10 days before and 7 days after and then that cycle repeats itself for the general election.

REPRESENTATIVE HAYES asked what happens now.

MR. BALASH said that's how the mechanism works now for candidates' reporting. The 15-5 is required to be filed within 30 days of the contribution. For example, if the contribution was made on March 1, the candidate would have until April 1 to file the 15-5 with the APOC. He indicated that information is on the Web, and it would be the contributions at the \$500 level. The form is not required to be submitted for other contributions up to \$499.99.

Number 0844

BROOKE MILES, Executive Director, Alaska Public Offices Commission, testified via teleconference. She reviewed the history of the 15-5 reporting. It has been a component of Alaska campaign disclosure law since its inception, and it is a unique requirement to the State of Alaska. Originally, contributors were required to file this report when they made a contribution that was more than \$250. In those days, contributors could give up to \$1,000 to a candidate per calendar year, and it was required to be filed within 10 days. When the state undertook campaign finance reform, the 15-5 reporting was changed: it was increased to be only the \$500 contributors and the time period for submitting it was within 30 days. As Mr. Balash indicated, it is true that when one reviews candidate

campaign disclosure reports, one will see a number of \$499 contributions, which is probably because they didn't wish to have the burden of filing the contributor report. In the past several years, the commission has become aware of concerns on behalf of the candidates that this is an additional burden to their contributors.

Number 0971

MS. MILES told the members that also with campaign finance reform came civil penalty for filing [the report] after the 30-day period. The civil penalty is \$50 per day from the date the report was due until it's received. For several years after campaign finance reform, the commission had a moratorium or hold harmless on any of the reports that were submitted late. However, the legislature overrode the governor's veto last year on SB 103, which made an additional change to the 15-5 reporting that said a candidate could file the report on behalf of his/her contributor. With that, the audit component of the 15-5 reporting as it relates to candidates became not very workable. In addition, when the commission reviewed this at its meeting last March, it no longer wished to maintain the moratorium or hold harmless. The composition of the commission has changed, and the members were uncomfortable not administering the law as written by the legislature and directed staff to begin after the effective date, April 16, to assess the civil penalties on a late 15-5.

Number 1098

MS. MILES said to the best of her knowledge she doesn't believe that a civil penalty has been assessed on a 15-5 unless it was an aggravator in a complaint action or other substantial noncompliance.

Number 1123

REPRESENTATIVE CRAWFORD indicated that he had talked to former Senator Tim Kelly - who wrote the campaign finance reform law - who told him that going up to \$500 on the 15-5 form was an oversight; it had not been the intention to leap the lower limit of \$250. He wondered if Ms. Miles remembered it that way.

MS. MILES said, absolutely not. In fact, it was Senator Kelly's staff who came to a commission meeting in Juneau and negotiated with them because he wanted to completely get rid of 15-5 reporting. At that time it was negotiated to expand the time

period and the amount, so it's only the maximum contributors and only within 30 days rather than 10. That was a Senate majority issue. She confirmed that she has a different recollection of that.

Number 1226

REPRESENTATIVE CRAWFORD told the members that he has an amendment that would take the amount back to reporting from \$250 up to the \$500 maximum. He said he thinks that would be more disclosure rather than less disclosure. On the 15-5 form there is a part that says a person did not get that money - that it was his/her money being contributed. It didn't come from employers, parents, or somebody else. If the 15-5 form is done away with, he said, there wouldn't be anyway to track that. [This amendment was never offered.]

MS. MILES replied that it's true that there wouldn't be a sworn statement by the contributor; however, the requirement in law remains the same, and a candidate is ultimately responsible for the legality of his/her contribution, as is the candidate's treasurer.

REPRESENTATIVE CRAWFORD suggested that if the 15-5 is no longer required, there won't be a place to check the online reporting to see where contributors have contributed to numerous campaigns; someone would have to go through all the individual campaigns to see if one contributor was contributing to 20 to 30 campaigns.

Number 1340

MS. MILES noted that the databases are undergoing some changes, and searches by contributors' names will be accessible.

Number 1362

REPRESENTATIVE STEVENS commented that it seems to him that there is duplication here because both the candidate and contributor are required to file this form. He wondered if it is truly a duplication and if it is necessary.

Number 1463

MS. MILES agreed it is a duplication of identical information. It was intended to be filed in its original form by separate entities: by the candidate or group receiving the contribution,

and by the contributor. Early on, it was a useful audit tool to the commission. Also, in some cases, it provided information that was not otherwise available because it was prior to 30 days before a primary or the end of a year, or it was in a period where other campaign disclosure reports weren't filed. Once that requirement was changed - that in fact the candidate can file them on behalf of his/her contributors - it does seem to make a lot less sense. Because now the candidates are filing a 15-5 report at the same time they're filing their campaign disclosure report, all the same information is being filed by the same people.

REPRESENTATIVE STEVENS commented that it seems to be an unnecessary burden on the candidates. A more important issue to him is that contributors are often local people who see a neighbor running and want to give some money towards the campaign and may not even know the report is due. He said he thinks it makes it extremely difficult for an Alaskan citizen who just wants to help out in a campaign. It's a good idea to at least take the \$500 level reporting by the contributor out.

Number 1583

REPRESENTATIVE WILSON asked about the civil penalty.

MS. MILES explained that the civil penalty provided by law is \$50 per day for each day that a report is late. It is administered by the commission, although it hasn't been done [before]. When a report is received late, the commission staff sends to the filer a notice of civil penalty assessment explaining how the assessment was calculated and the amount of the assessment. The person has 30 days to pay the assessment or to file an appeal to be heard before the commission to reduce the civil penalty based on mitigating factors.

REPRESENTATIVE WILSON commented that it sounds like a lot more paperwork and time for the commission.

MS. MILES agreed that the staff wasn't very enthusiastic when directed to do it.

Number 1700

REPRESENTATIVE CRAWFORD said he'd be happy to do away with the 15-5 altogether if it was available on the Internet so someone could look up one contributor and find out all of the

contributions in one search, rather than have to go through each candidate's APOC forms.

MS. MILES commented that that was certainly the intent of the commission, and the programmer has been working on it. She pointed out that it's only fair to say that a lot depends on funding support for the online project.

Number 1784

REPRESENTATIVE WILSON referred to page 5, line 21 and asked what "false factual" means.

MS. MILES answered that that section of the law is administered by the Department of Law, but she has always considered it to be false information. She noted that the false information is only about a candidate; ballot issues would not be included, and they're not in the campaign disclosure law anywhere either. The campaign disclosure law only requires that advertisements and communications be identified and disclosed but not that they be factually correct.

REPRESENTATIVE WILSON said she thought that ought to be fixed.

The committee took an at-ease from 8:35 a.m. to 8:36 a.m.

CHAIR COGHILL announced that in case HB 531 takes longer than anticipated, he was holding it to the bottom of the calendar.

HB 371 - ALASKA VETERANS' MEM.ENDOWMENT FUND

Number 1948

CHAIR COGHILL announced that the next order of business would be HOUSE BILL NO. 371, "An Act establishing the Alaska veterans' memorial endowment fund and providing for credits against certain taxes for contributions to that fund; relating to other tax credits for certain contributions; and providing for an effective date."

Number 1985

REPRESENTATIVE JAMES made a motion to adopt the proposed committee substitute (CS) for HB 371, version 22-GH2003\C, Cook, 5/7/02, as a work draft. There being no objection, Version C was before the committee.

Number 2030

REPRESENTATIVE JAMES made a motion to adopt Amendment 1, which read [original punctuation provided, but formatting changed]:

Page 1, Line 1:

After the words "endowment fund", Delete:  
"providing for credits against certain taxes for contributions to that fund; providing that the amount of each tax credit for contributions to the Alaska veterans' memorial endowment fund on amounts that do not exceed \$100,000 is 50 percent and on amounts that exceed \$100,000 but do not exceed \$200,000 is 75 percent; relating to other tax credits for certain contributions;"

Page 1, Line 8, after the term "**Section 1.**"

Delete all language from "AS 21.89.070(c) through Page 3, line 1.

Page 3, line 2:

Delete "**Sec. 4.**"

Page 4, line 13:

Delete all language beginning with line 13 through page 9, line 12.

Page 9., Line 13:

Delete: "**Sec. 17.**"

Insert: "**Sec. 2.**"

Page 9, line 20:

Delete: "sec. 4"

Insert: "sec.1

Page 10, Line 1:

Delete: "**Sec. 18.**"

Insert: "**Sec. 3.**"

CHAIR COGHILL objected.

REPRESENTATIVE JAMES explained that Amendment 1 takes out the tax credit provisions in the bill. She said she would do everything in her power to raise money for this fund but is not willing to do the tax credit at this time. She noted that the title would be changed with this amendment.

Number 2179

CAROL CARROLL, Director, Central Office, Administrative Services Division, Department of Military & Veterans Affairs (DMVA), explained that the tax credit had two sections. The first \$100,000 allowed 50 percent credit and the second \$100,000 in the original bill allowed 100 percent of that as a tax credit. The Senate reduced the second \$100,000 down to 75 percent tax credit.

CHAIR COGHILL asked if there was further objection to Amendment 1. There being no further objection, Amendment 1 was adopted.

Number 2198

REPRESENTATIVE JAMES moved to report CSHB 371, version 22-GH2003\C, Cook, 5/7/02, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 371(STA) moved from the House State Affairs Standing Committee.

HB 531 - ELECTIONEERING COMMUNICATIONS/DISCLOSURES

[Contains discussion of SB 363 and HB 177]

Number 2224

CHAIR COGHILL announced that the committee would resume the hearing on HOUSE BILL NO. 531, "An Act relating to communications and elections, to reporting of contributions and expenditures, and to campaign misconduct in the second degree; relating to disclosure by individuals of contributions to candidates; and providing for an effective date."

Number 2299

REPRESENTATIVE CRAWFORD made a motion to adopt Amendment 1, which read:

Page 2, line 17:

Delete "advertising"

Insert "communication [ADVERTISING]"

There being no objection, Amendment 1 was adopted.

Number 2375

REPRESENTATIVE CRAWFORD made a motion to adopt Amendment 2, which read:

Page 4, line 17, following "candidate":  
Insert "or proposition, as that term is defined  
in AS 15.13.065(c)"

CHAIR COGHILL objected.

Number 2460

REPRESENTATIVE FATE asked what inserting "proposition" does to the intent of the bill.

Number 2484

MS. MILES answered that current law requires all political communication with respect to candidates or ballot propositions to be reported. With the change in language from "advertisement" to "communication", the specification of ballot proposition being included was left off. Amendment 2, as proposed, would make sure that communications intended to influence the outcome of a ballot question are included and subject to the law.

Number 2535

MR. BALASH noted that there may be a similar amendment to this on the Senate floor [to SB 363, the bill similar to HB 531].

Number 2552

The objection was removed. There being no further objection, Amendment 2 was adopted.

Number 2588

REPRESENTATIVE CRAWFORD asked Mr. Balash to explain "nongroup entity".

Number 2620

MR. BALASH explained that some of these statutes appear as if nongroup entities are not included, and that is because when Legislative Legal prepares for the upcoming session, it deals with the statutes as they read on the first day of session. Because HB 177 was vetoed by the governor and then overridden by

the legislature after session had begun [in 2001], all of the files and databases Legislative Legal was working from didn't include those changes from HB 177. Instead of Legislative Legal trying to keep up on the statutes in real time, it simply throws down a line of demarcation and works from there through the course of the session. There are statutes in place for the revisor to deal with these issues. In no way are nongroups expected or anticipated to be excluded from any of these requirements.

REPRESENTATIVE CRAWFORD referred to page 4, line 16, and said he thought "nongroup entity" should be deleted unless there is a good reason not to.

MR. BALASH explained that the reason nongroup entities are excluded in that particular case is due to a U.S. Supreme Court decision [McIntyre v. Ohio Elections Comm'n] that involved a situation in Ohio where there was a school bond proposition, and a grandmother wanted to do her part to support the efforts of the school district to get the bonding measure passed. She made a flyer and passed it out, but she didn't put a "paid for" statement on it. Under Ohio's election laws, she is required to do that. The ACLU [American Civil Liberties Union] helped her challenge it all the way through the Supreme Court. The Supreme Court said in that situation, her speech did not in any way pose a threat or have an appearance of corruption. She wasn't dealing with a public official, and the communication was initiated by her and was also limited - it wasn't a \$50,000 ad campaign. The court has said that expenditures that are minor in dollar value and are initiated by an individual don't have to be regulated. They can fall under the First Amendment and get some additional protection. The ad has to be placed by a nongroup entity and cost less than \$500. He noted that any ad placed in the newspapers around the state or any direct mailings will cost more than \$500.

Number 2800

REPRESENTATIVE CRAWFORD referred to the example Mr. Balash just used and asked if "individual" wouldn't cover that. He wondered if a nongroup entity was like Common Sense [for Alaska] and would it be excluded.

MR. BALASH replied whether or not Common Sense for Alaska fits the definition of a nongroup entity is unclear at this point. In HB 177, a nongroup entity was defined by a three-part test: it cannot engage in business, its assets do not belong to any

shareholders, and it's not under the influence of business. If Common Sense for Alaska wanted to make expenditures during a campaign season, it would have to demonstrate that it is insulated from the influence of business.

REPRESENTATIVE CRAWFORD said he wasn't sure what a nonentity group is and how it's defined. He wondered if the District 22 Democrats, Common Sense for Alaska, or other issue-type groups are nongroup entities. It seems to him if they're going to be included in HB 177, they should be included in HB 531.

Number 2903

MS. MILES acknowledged that the commission staff has also been trying to figure out exactly what a nongroup entity is. She reported that there are none registered. Previously, there was a regulation providing for qualified nonprofit corporations to participate in elections in a manner similar to individuals but with the giving power of a group. There was only one association that had qualified and participated, and that resulted in a significant amount of controversy. In the past legislative session, HB 177 was passed which changed that and described a nongroup entity "as a 'person' other than an individual that takes action the major purpose of which is to influence the outcome of an election and that meets the same three-part test described by the court in ACLU v. State of Alaska following campaign finance reform. That is, they cannot participate in business activities, they do not have shareholders who have a claim on corporate earnings, and that they're independent from the influence of business."

MS. MILES pointed out that under the new guidelines provided in HB 177, these nongroup entities could register with the commission and then have the same giving power as an individual. Commission staff doubts there will be any nongroup activity because it makes more sense for these associations to form a standard political action committee.

TAPE 02-54, SIDE B  
Number 2990

MS. MILES said the political action committee may accept contributions and then give up to \$1,000 to a candidate. These nongroup entities are small associations informally combined that may wish to combine money and support a candidate. Because their giving level is only half of that of a political action committee and their limitations and restrictions are the same,

it really wouldn't make sense for someone to go that route, she noted.

Number 2965

CHAIR COGHILL said that pulling [nonentity groups] out in this amendment still doesn't change the conundrum.

MS. MILES agreed that that issue would still have to be dealt with.

Number 2849

MR. BALASH pointed out that in HB 177, the nongroup entities consistently throughout the statute are treated in a similar fashion to individuals, and that's why they're mentioned in the same breath as an individual in this case; that was done deliberately.

[Representative Crawford did not offer other amendments he had prepared.]

Number 2777

REPRESENTATIVE FATE moved to report HB 531, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 531(STA) moved from the House State Affairs Standing Committee.

#### **ADJOURNMENT**

Number 2749

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:04 a.m.