

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

April 24, 2001
3:45 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Drue Pearce
Senator Bettye Davis

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

CS FOR HOUSE CONCURRENT RESOLUTION NO. 1(RLS) am
Relating to establishing a Task Force on a Statewide Comprehensive
Energy Plan.

MOVED SCS CSHCR 1(STA) OUT OF COMMITTEE

HOUSE BILL NO. 137

"An Act relating to records of veterans of the armed forces; and
providing for an effective date."

MOVED HB 137 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 177(STA)

"An Act placing certain special interest organizations within the
definition of 'group' for purposes of Alaska's campaign finance
statutes; and requiring disclosure of the true source of campaign
contributions."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HCR 1 - No previous action recorded

HB 137 - No previous action recorded

HB 177 - See State Affairs minutes dated 4/19/01

WITNESS REGISTER

Patrick Flynn
Staff to Representative Berkowitz
Alaska State Capitol, Room 404

Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HCR 1

Steve Conn
Alaska Public Interest Research Group (AkPIRG)
P.O. Box 101093
Anchorage, AK 99510
POSITION STATEMENT: Testified on HCR 1 and SB 177

Carol Carroll
Director, Administrative Services Division
Department of Military & Veterans Affairs
400 Willoughby Ste. 500
Juneau, AK 99811
POSITION STATEMENT: Testified on SB 137

Tom Amodio
Legal advisor, Conservation Council
No address provided
POSITION STATEMENT: Testified on HB 177

Brooke Miles
Assistant Director
Alaska Public Offices Commission
Department of Administration
2221 E. Northern Lights Room 128
Anchorage, AK 99508-4149
POSITION STATEMENT: Available for questions on HB 177

Susan Schrader
Alaska Conservation Voters
P.O. Box 22151
Juneau, AK 99802
POSITION STATEMENT: Testified on HB 177

ACTION NARRATIVE

TAPE 01-20, SIDE A

Number 001
#HCR1

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:45 p.m. Present were Senators Davis, Pearce, Phillips and Chairman Therriault.

The first order of business was HCR 1.

HCR 1-STATEWIDE COMP ENERGY PLAN TASK FORCE

PATRICK FLYNN, staff to Representative Berkowitz, introduced HCR 1 because the sponsor was in another meeting. He explained HCR 1 would establish a task force to develop a statewide comprehensive energy plan. There is no all-inclusive document that offers development of Alaska's energy resources to the benefit of Alaskans. He offered to go over the membership of the task force or simply answer questions.

SENATOR PEARCE asked why the Regulatory Commission of Alaska (RCA) was not included in the task force.

MR. FLYNN said they were included in the original version of the legislation but they did not respond to the letter sent to them asking for their comments. It was decided to include a member who would represent consumer interests specifically as opposed to the more general responsibilities of the RCA. The Alaska Village Electric Cooperative and Alaska Rural Electric Cooperative Association are represented and provide balance that is similar to having a member of RCA on the task force.

CHAIRMAN THERRIAULT thought lack of response probably reflects their busy schedule.

MR. FLYNN said they took no offense.

CHAIRMAN THERRIAULT asked Mr. Flynn to speak to the proposed amendment.

MR. FLYNN said it is a cleanup amendment whereby the Alaska Industrial Development and Export Authority (AIDEA) may appoint the person as opposed to the chair of AIDEA making the appointment. They have no complaints with the change.

CHAIRMAN THERRIAULT said it is more than that. Currently on page 2, line 20 it says, "one member of the export authority who is appointed by the chair of the authority;". The new language says, "one member appointed by the Alaska Industrial Export Authority;". The member does not actually have to be a member of the export authority. He asked if that was okay.

MR. FLYNN said it was. Most members are not required to be members of the organizations that are appointing them.

CHAIRMAN THERRIAULT asked Senator Davis to sponsor the amendment on behalf of Representative Berkowitz.

SENATOR DAVIS said she would be happy to move amendment 1.

CHAIRMAN THERRIAULT asked for objections and there were none. He called for further testimony.

STEVE CONN, Executive Director of AkPIRG, testifying via teleconference said the list of petition signatories included in committee packets came from individuals who passed by the AkPIRG table during the Anchorage Earth Day event. He said these individuals are interested in emerging energy technology and the role it might play in the state. They would like to participate in hearings and dialogs that would translate into the development of an energy plan. It is encouraging to see there is no fiscal note accompanying the concurrent resolution. AkPIRG would like to be a part of the endeavor and thinks the timing is appropriate.

CHAIRMAN THERRIAULT proposed dropping "any" on page 1, line 13 in honor of wordsmith, Kay Brown. There was no objection to the adoption of amendment number two.

SENATOR DAVIS moved SCS CSHCR 1(STA) and zero fiscal note from committee with individual recommendations. There was no objection.
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#HB 137

HB 137-RECORDS OF VETERANS

CAROL CARROLL, Director of the Division of Administrative Services in the Department of Military and Veterans Affairs (DMVA), introduced HB 137 as a government efficiency bill that would repeal a statutory requirement that the recorders office send copies of veteran's separation papers to the Bureau of Vital Statistics (BVS). As a courtesy, DMVA has been keeping veterans' separation papers and they will now be sending the separation papers they collect to the recorders office.

Sharon Young from the recorders office was on line to answer any questions. There were none.

CHAIRMAN THERRIAULT called for questions. There were none.

There was a zero fiscal note and no amendments offered.

He asked for the will of the committee.

SENATOR PEARCE moved HB 137 and zero fiscal note from committee with individual recommendations. There was no objection.
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#HB 177

HB 177-CAMPAIGN FINANCE: GROUPS & DISCLOSURE

CHAIRMAN THERRIAULT said it was not his intent to move the bill that day. He was still digesting the legal decisions made over the last several years that are pertinent to the issue and conversing with the legal department about the limitations placed on the legislature as to what they can and cannot do.

During the previous hearing, there were questions about the legal opinions written on HB 177. Tom Amodio, author of the legal opinion, was on line to answer questions and was asked to give a synopsis of the April 13 memo.

TOM AMODIO, Conservation Council legal advisor, explained his opinion was based on the Alaska Supreme Court decision in State v. American Civil Liberties Union (ACLU) and the subsequent advisory opinion by the Alaska Public Offices Commission (APOC). In that opinion, the Alaska Supreme Court said corporations that have no business ties are permitted to engage in election related activities and are therefore exempt from the corporate ban. The court also said that those types of organizations have rights similar to those of individuals. This forms the basis for the following legal analysis.

HB 177 purports to do two things. First, it revises the definition of "group" to include organizations such as the Alaska Conservation Voters (ACV). This presents a problem because ACV activities are primarily unrelated to election activities. Incorporating them and similar organizations into the definition of group subjects them to reorganization to all the restrictions and reporting requirements of a group. They have many non-election related activities that fall outside of APOC jurisdiction and do not come within the statutory campaign finance laws found in AS 15.13. For instance, ACV does lobbying and education. HB 177 would affect contributions to ACV that are for purposes other than to influence elections. He urged greater balance because they are entitled to accept contributions in excess of \$1,000 that are not intended to influence the election or defeat of a candidate.

If a narrow interpretation of the Supreme Court decision is taken to say only the ACV political fund is subject to the restrictions and reporting requirements, then the problem is it basically transforms that fund into a political action committee (PAC) or group. The ACLU decision of the Supreme Court upheld the ban that the organizers of business corporations may form a PAC and raise money from non-business sources and participate in elections that way. The same people who might form "Business Inc." could also form "Business PAC" and participate in elections that way as long as

"Business PAC" does not accept money from prohibited sources.

The court could have said the same thing with relation to ACV but it found that, constitutionally, there is a difference. ACV, although not established for election related purposes, was created to voice its opinion on conservation issues. It's not permissible to restrict those activities by declaring it a PAC and subjecting it to all the group restrictions and reporting requirements.

CHAIRMAN THERRIAULT asked about the determination that they had rights similar to individuals: Can they be regulated like individuals? In state statutes there are groups and individuals and each has requirements. Non-group entities would be swept into the group classification under HB 177. It's questionable how workable that is but why couldn't they be limited like individuals?

MR. AMODIO said there is a conceptual problem. Of course, the legislature may impose limits it feels are appropriate but normally, an individual may not accept money from another in order to engage in campaign election related activities. That changed an individual into a group or an illegal conduit. In the eye of the law, a corporation is generally viewed as a single entity and therefore an individual even though it has many shareholders.

CHAIRMAN THERRIAULT asked if there is any prohibition to creating a category of regulation and oversight on non-group entities.

MR. AMODIO thought it was possible if it is done properly and with due care. Those qualified organizations are subject to Alaska law just like any others. He just does not believe they can be put into the group category as HB 177 presently does.

CHAIRMAN THERRIAULT asked if it is correct that the Alaska Conservation Foundation is the umbrella group and is a 501(c)3 non-profit and Alaska Conservation Voters is a (c)4 group.

MR. AMODIO thought that was correct.

CHAIRMAN THERRIAULT asked if it is correct that Alaska Conservation Voters is a non-profit (c)4 that is formed as a group.

MR. AMODIO said no, not to his knowledge. Prior to the issuance of the State v. ACLU decision, APOC's view was that merely by being Alaska Conservation Voters Inc. they were prohibited from participating in elections so they did have a PAC at one time. They report as a group based on APOC's advisory opinion and they report funds spent out of their separately maintained political election

related activity fund.

CHAIRMAN THERRIAULT asked Mr. Amodio whether he had advised them previously on the structure.

MR. AMODIO said he advised them on campaign finance and related matters. The filing of Alaska Conservation Foundation as a non-profit was prior to his involvement and it was structured in accordance with federal tax laws, which is not his area of expertise. He has a general understanding of the interplay but his primary role is to understand the campaign finance laws as they pertain to them. At one time, their only means of participating in a candidate election was to form a PAC and they did that. Under the ACLU decision, they were permitted to participate directly in the election. The APOC decision clarified that.

CHAIRMAN THERRIAULT asked whether he quoted Austin v. Michigan Chamber of Commerce.

MR. AMODIO said he did not quote from it but is familiar with the case.

CHAIRMAN THERRIAULT commented he drew heavily from the Federal Election Commission (FEC) v. Massachusetts Citizens for Life (MCFL) case. It seems to him that Austin has paid particular attention to the use of non-profits general treasury and the possible use of such non-profits as conduits for money. He asked for possible application in the Austin decision as far as what may and may not be done.

MR. AMODIO thought Austin also addresses the issue of money that is prohibited in terms of business. He thought he remembered the Chamber of Commerce had strong ties to business entities and so although it refined the MCFL case somewhat, it is less directly relevant to this case. The Alaska Supreme Court interpretation of this issue referred to MCFL in defining non-business organization as exempt from the corporate ban of participating in an election.

CHAIRMAN THERRIAULT said in Austin the courts found the chamber of commerce was tied to corporations and could not be used as the conduit. But, if the Alaska Conservation Foundation also accepts corporate contributions and that money is passed on to the Alaska Conservation Voters, wouldn't this be contrary to that decision?

MR. AMODIO did not know whether the foundation accepts corporate contributions or not. He did know the money from the foundation is restricted funds that may not be used for election related activities. It goes into the general fund but must be accounted for

separately and may not be used to influence an election.

CHAIRMAN THERRIAULT said he had a sheet that shows \$20,000 in group contributions to year 2000 candidates. He asked for confirmation that the money is accounted for separately and none of the money flowing from the foundation went to contributions given by the group. Can (c)3 funds be passed to (c)4 or is there a line required by federal law?

MR. AMODIO again stressed this is not his area of expertise but he thought (c)3 funds could be passed to (c)4 but there may be restrictions on how they may be used. In the case of ACV, it is his understanding that they may not be used for election related candidates or activities but he wasn't sure about ballot propositions. They must be used for ACV non-candidate election activities. Under federal law, more than half of ACV activities must be non-election related.

CHAIRMAN THERRIAULT asked for the name of an attorney who works in this area of the law.

MR. AMODIO said the attorney ACV uses for advice on federal tax matters is Greg Colvin from San Francisco. He would provide contact numbers.

CHAIRMAN THERRIAULT affirmed that the year 2000 financial report shows substantial amounts of Alaska Conservation Foundation money allocated for education and a variety of different programs. He would like to discuss federal restrictions with attorney Colvin.

Next, he asked about independent expenditures and whether he agreed that the state has a right to compel disclosure on the source of the funds.

MR. AMODIO said under Buckley v. Vallejo that is correct. Independent expenditures can't be restricted but it can require reporting on the source.

CHAIRMAN THERRIAULT asked whether ACV and the foundation share office space and whether that is permissible.

MR. AMODIO could not say for sure.

CHAIRMAN THERRIAULT said in the Austin case the court talked about the corporate structure available to entities through which wealth may be accumulated. Considerable wealth is being accumulated through allowed governmental structures but it is difficult to track how much is going into the political arm of the organization

and how much is allocated for educational purposes. He asked why the courts or the legislature should not be concerned with that when they were clearly concerned in the Austin case. Justice Brennan wrote, "Corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions. We therefore hold that the state has articulated a sufficiently compelling rationale to support its restriction on independent expenditures by corporations." Why would this not also be applied to ACV?

MR. AMODIO thought it was a misunderstanding of accumulating wealth. The Austin court was talking about companies with business activities and business shareholders and using that to amass wealth. British Petroleum and similar companies would be appropriate examples. ACV and similar entities do not have any business activities. They raise money but it is not through the operation of a business. In addition, well over half of their money goes to non-election related activities. Clearly they fall under the MCFL idea that they are created around an issue. In this instance it is to disseminate information about conservation and conservation related activities. Under the First Amendment, they have the right to speak out on those issues and to raise money so their voice can be heard.

The Austin case does not override that and the Alaska Supreme Court in ACLU did not bar those activities.

CHAIRMAN THERRIAULT asked whether the state would have a compelling interest if most of the money were coming from outside the boundaries of the electorate. Would this give a greater requirement for disclosure and placement of restrictions because there are restrictions on individual campaigns soliciting funds from out of state?

MR. AMODIO recalled the Alaska Supreme Court upheld those types of restrictions.

CHAIRMAN THERRIAULT said that if these entities could not be categorized as a group and there are some difficulties in treating them as individuals and another structure is created, that applies only to these non-group entities. He asked if ACV could be restricted on the amount of money that could come to them from out of state sources and then into political activities.

MR. AMODIO said it's correct for money going into political activities but the term political may mean political but not elections. It would be correct to say the legislature may be able

to impose restrictions on money for election candidates and election related activities coming from out of state. He didn't think restrictions could be imposed on amounts received for non-election related activities because they are outside the jurisdiction of APOC and AS 15.13.

CHAIRMAN THERRIAULT asked if he was referring to an event such as a contribution coming from an out of state foundation to support an Earth Day activity.

MR. AMODIO said yes, that type of contribution goes toward non-election related activities.

CHAIRMAN THERRIAULT asked if he differentiates between funds flowing directly through and to an individual candidate from soft money expenditures in an election year.

MR. AMODIO thought the federal district court recently made that type of distinction and his letter was written just after that decision was made. The court said the legislature could not impose restrictions on the amount of soft money. Alaska Conservation Voters' primary activities are not for influencing elections. It has important Earth Day activities, lobbying activities and education activities that speak out on environmental issues in a non-candidate election forum. The legislature cannot impose campaign finance restrictions on those activities, such as restricting the percentage of monies from out of state entities.

CHAIRMAN THERRIAULT asked for the contact number for the San Francisco tax attorney in case there were questions regarding tax structure and how money has to be accounted for. The mixture of federal law, state law and (c)3, (c)4 requirements is more complicated than anticipated.

He asked if committee members had any questions for Mr. Amodio and they did not.

Brooke Miles was on line to answer questions. She had no additional comments since the last meeting and there were no questions directed at her.

Side B

MR. CONN, Executive Director of AkPIRG, asked if there have been amendments to the legislation that reflect Judge Singleton's decision.

CHAIRMAN THERRIAULT said that SB 103 is currently in the rules committee. They adopted a rules committee substitute after Judge

Singleton's decision.

MR. CONN responded he hopes the inquiry directed in HB 177 is a good faith attempt to react to a court decision in a global sense and not a focused investigation of the single entity that has made use of an exemption in the name of a political organization. He encouraged members to view the subject as a moving target. He stated,

[He} sees a subject that is moving to some ultimate resolution in a bundled up sense at a high court level. In the mean time, our own law has not been examined by a third party academic institution to determine for everyone's edification whether or not campaign finance restrictions, reforms and disclosures have a bearing on the direction and participation in the political process.

CHAIRMAN THERRIAULT said many of the questions are centered on the Alaska Conservation Alliance and Alaska Conservation Voters because they have taken this to a level that is unanticipated in state statute. He is also looking at other entities in the state that might be using a similar structure in accumulating and channeling funds.

He asked Susan Schrader whether she would answer some questions on structure and flow and she agreed. He asked whether he was correct that the foundation [Alaska Conservation Foundation] is at the top and funds flow to Alaska Conservation Voters. The Alaska Conservation Alliance is the contact for lots of the grass roots organizations around the state.

SUSAN SCHRADER, Alaska Conservation Voters representative, disagreed. She explained the Alaska Conservation Foundation makes grants to many different non-profit entities. Individuals in the conservation field in the state don't view them as an umbrella group but as a foundation. They are different than the Rockefeller Foundation in that they get foundation money and then they give it out to Alaska conservation groups.

Alaska Conservation Alliance and Alaska Conservation Voters are more correctly the umbrella groups for all the other conservation groups in the state. They are the outgrowth of the Alaska Environmental Lobby and the Alaska Environmental Assembly that have been in existence for years. Alaska Conservation Alliance is the (c)3 organization and Alaska Conservation Voters is the (c)4 organization. When you call either the Juneau or Anchorage ACV office, the phone may be answered either Alaska Conservation Alliance or Alaska Conservation Voters. All paid staff work for both organizations and office space is shared by both organizations at both locations. They do not share space with the Alaska

Conservation Foundation.

SENATOR HALFORD joined the meeting.

CHAIRMAN THERRIAULT asked if it is correct that each of the organizations solicit contributions themselves.

MS. SCHRADER said that is correct. There are currently 44 member organizations and six or eight of them are associate members. Some of the associate members are businesses and they are members of ACA. ACV has about 35 member organizations, none of which is a business; they are all non-profits such as Anchorage Audubon and Southeast Alaska Conservation Council.

CHAIRMAN THERRIAULT asked for confirmation that the foundation provides funding for grants to many individuals including Conservation Alliance.

MS. SCHRADER said she was not particularly involved in ACA fund raising so she is not sure if monies from ACF is distributed to the alliance or to the voters. She could find out however.

CHAIRMAN THERRIAULT said he was puzzled how any money could come from a (c)3 and move into a (c)4 and be used for any kind of political activities because the (c)3 is educational and strictly non-political by the federal code.

MS. SCHRADER said her understanding is similar in that a (c)3 may not do any type of candidate work. Tom Amodio said that no money from ACF is used for ACV's election-related activities.

CHAIRMAN THERRIAULT asked for examples of non-election related activities in which ACV participates.

MS. SCHRADER said most of her work is done under the lobbying efforts, there is a volunteer lobbyist program and participants are paid a small per diem and travel expenses are paid, the score card and newspaper are produced.

CHAIRMAN THERRIAULT asked if those were activities (c)3 money could flow through to.

MS. SCHRADER said she doesn't know about ACF funds but yes, (c)3 money can be used. For years Alaska Environmental Lobby was a (c)4 and in the 1980s and early 1990s many members were (c)3s and they would pay dues to the (c)4 and the (c)4 lobbied on behalf of those member groups. However, Alaska Environmental Lobby never did any candidate work.

CHAIRMAN THERRIAULT apologized for grilling Ms. Schrader because it isn't really her job to answer these types of questions. He asked

if there was a more appropriate individual to whom he could direct his questions.

MS. SCHRADER suggested contacting the executive director, Mary Core.

CHAIRMAN THERRIAULT read from a letter from Richard Caulfield. "In the past year we have achieved this by raising approximately \$5 million." It's difficult for the state to figure out how the money is flowing through to educational activities, Earth Day or lobbying and how much is for use in campaigns or soft money contributions. That is one of the things the legislature is interested in finding out and trying to track. It's money that has been gathered under the structure that is allowed by the government. The Austin case has some implications for the state to consider.

He said the bill would be held in committee and adjourned the meeting at 4:45 p.m.

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