

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

May 4, 2002
1:35 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Ben Stevens
Senator Bettye Davis

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

HOUSE BILL NO. 285

"An Act adding a second verse to the official Alaska state song."
HEARD AND HELD

CS FOR HOUSE BILL NO. 509(STA)

"An Act relating to Alaska children's trust registration plates;
and providing for an effective date."

MOVED CSHB 509(STA) OUT OF COMMITTEE

SENATE BILL NO. 363

"An Act relating to electioneering communications and
communications intended to influence the outcome of an election
and to campaign misconduct in the second degree; and providing
for an effective date."

MOVED CSSB 363(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 285 - No previous action to record.

HB 509 - See State Affairs minutes dated 4/30/02.

SB 363 - See State Affairs minutes dated 4/23/02 and 4/25/02.

WITNESS REGISTER

Mr. Bill Lawrence
Aide to Representative Carl Morgan
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 285.

Ms. Constance Davis
5405 Thane Rd.
Juneau, AK 99801

POSITION STATEMENT: Testified in support of HB 285.

Ms. Constance Monroe
120 W. 9th St.
Juneau, AK 99801

POSITION STATEMENT: Testified in support of HB 285.

Ms. Harriet Roberts
2305 Franklin St. #604
Juneau, AK 99801

POSITION STATEMENT: Testified in support of HB 285.

Mr. J. Allan MacKinnon
P.O. Box 32760
Juneau, AK 99803-2760

POSITION STATEMENT: Testified in support of HB 285.

Mr. Joe Balash
Aide to the Senate State Affairs Committee
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 363.

Ms. Brooke Miles
Executive Director
Alaska Public Offices Commission
Department of Administration
2221 E. Northern Lights
Anchorage, AK 99508-4149

POSITION STATEMENT: Testified on SB 363.

ACTION NARRATIVE

TAPE 02-28, SIDE A

1:35 p.m.

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 1:35 p.m. Present were Senators Phillips, Stevens and Chairman Therriault. Senator Davis arrived at 1:40 p.m.

The first order of business before the committee was HB 285.

#HB 285

HB 285-SECOND VERSE OF ALASKA'S STATE SONG

CHAIRMAN THERRIAULT said it was not his intent to move HB 285 that day but he would like to hear public testimony.

MR. BILL LAWRENCE, Aide to Representative Carl Morgan, sponsor of HB 285, said it was the appropriate time to officially add the second verse of the Alaska State Song to state law because it was the 75th anniversary of the Alaska State Flag. He said it would be a long overdue honor to the late Carol Beery Davis, who authored the second verse and gifted it to the University of Alaska in 1987. The verse commemorated Bennie Benson, who designed the Alaska State Flag, and recognized the natural beauty and splendor of Alaska. He said the second verse had been sung throughout Alaska for many years. He said:

Officially putting the second verse in the state statute will not solve all of our problems, but it's a small step toward creating peace and harmony among all the people in the state. It's basically the right time to do the right thing.

CHAIRMAN THERRIAULT asked if there were any questions for Mr. Lawrence. There were none.

MS. CONSTANCE DAVIS, daughter of Carol Beery Davis read the following statement:

I would like to give you a little summary of my family history on this eventful occasion. My paternal grandfather arrived in Juneau early in 1891 for a short stay, working for the Nowell Mining Co. as a bookkeeper. With paints, brushes and canvas, my grandmother landed at the Juneau docks a few months later. She planned to paint Alaskan scenery for a month or two. The following year they were married in the Log Cabin church. Both of them came from England.

My mother came to Juneau in 1920 to play for the silent movies at the Palace Theater, a three-month, temporary job that lasted for seven years. By that time, Marie Drake was a good friend, the contest to choose a flag for Alaska was underway, and my father was a member of the Final Awards Committee to choose the flag. Mother took notes of the events at that time. Later she wrote that once the design was chosen, Marie felt that the school children of Alaska would understand the historical event better if they had words to recite,

something like those in her head. The Territorial Commissioner of Education gave his approval, and so the first step towards a song was born.

When mother was approached to add a second verse to the state song, she believed that it was important to do so, and that her old friend, Marie, would approve. Using the themes of unity, history, progress and the state's natural beauty, she carefully composed the verse with her enduring love for Alaska. It was her last gift. She was 95 years old.

CHAIRMAN THERRIault asked if there were any questions for Ms. Davis. There were none.

MS. CONSTANCE MONROE said she was an adult educator who was retired from the Department of Education. When she came to Alaska in 1971, she felt the state song was limited in its recognition of only gold miners and not other Alaskans, especially the first Alaskans. She said she discovered that this was not oversight, it was a historical situation because the first verse written by Marie Drake was initially a poem to honor the flag and was not expected to be the state song.

She said she was a good friend with Representative Alvin Osterback's wife Marie because of their work on the Governor's alcohol and drug commission. She said she spoke with Representative and Mrs. Osterback and Senator Frank Ferguson about the possibility of having a second verse for the state song and opening it up for a statewide contest. She said they thought about it and discussed it with their colleagues and came to the conclusion that it probably wouldn't be advantageous for the State to hold a contest. However, if there was a gift of someone providing a second verse, they could look at it and see whether or not it was appropriate.

She lost her job in 1985 because of the economic downturn. She said she called Carol Beery Davis and said she would probably be moving and was very sad that they never got a second verse for the Alaska State Song. The next morning she received a call from Carol Beery Davis asking her to come to look at a draft of the second verse that was going to be a gift to the State. Carol Beery Davis asked if she would take it to Representative Osterback and Senator Ferguson and see if they thought it was appropriate. She said they loved it.

MS. MONROE said the second verse had been a struggle since the 1970s. It passed the House of Representatives in 1986 but failed

in the Senate. She said she hoped the committee's leadership would provide support for the second verse. She said it honored everyone in Alaska including the first Alaskans, minorities and people who came from everywhere to live in the state.

CHAIRMAN THERRIAULT asked why they felt a contest was not appropriate at the time.

MS. MONROE said they were concerned that there would be too much disagreement over what the second verse was supposed to be. She said they couldn't come up with guidelines that were not insulting and it would have been too difficult for a committee to choose something. She said they didn't have the financial backing. She noted that when the gift was received, they went through the proper procedures with the University in Fairbanks to have the verse held in trust.

She said the second verse had been sung across the state. She said because she was working with community education and school districts she was able to request that the second verse be sung at graduations. She said when Senator Ferguson was honored for his work with vocational education, the second verse was sung at the ceremony.

She said Alvin and Marie Osterback, who have always been strong supporters, are still waiting to see the second verse come to fruition. She said she thought the whole native caucus felt it was time as well.

She said they should have held a contest, but they didn't have the leadership at the time to do so. They couldn't use money from the Department of Education. She noted that there was not a contest held for the first verse and they wanted some continuity in how the verse was chosen.

SENATOR PHILLIPS said he went to the museum and saw Bennie Benson's submission for the Alaska State Flag contest. He said Bennie had submitted a written piece along with the design and a lot of the phrases in the song came from that. He said the first verse was a carryover and the submission of the first verse was part of the submission of the flag.

CHAIRMAN THERRIAULT said he thought Senator Phillips was trying to say that although the first verse was not part of a contest, the wording was taken from the concepts in Bennie Benson's written comments on his flag submission. Therefore, it had stemmed from the contest. He said he asked a question about the Alaska State Song in his questionnaire. In response, a number of

people said they had some ideas. He said it was also suggested to him that a well-known music instructor in Fairbanks might have an excellent idea. He said the way the first verse links in with the contest for the design of the flag, people are interested in having an opportunity to suggest wording if there is to be a second verse. He said that if people had known the State was looking for a gift of a second verse, there probably would have been a lot of suggestions.

MS. MONROE said that was probably true. She asked if he would have liked to judge that.

CHAIRMAN THERRIAULT said he understood that would be a difficult task.

MS. MONROE said she strongly supported Carol Beery Davis' verse as the second verse of the Alaska State Song. She said it was beautiful that a pioneer of Alaska wrote it as a gift to the first Alaskans, minorities and all the residents of the state. She said she thought the words were appropriate and was hoping that it would be passed out of committee.

CHAIRMAN THERRIAULT asked if there were any additional questions for Ms. Monroe. There were none.

MS. HARRIET ROBERTS said she was retired from the Department of Health and Social Services. She said she had lived in Alaska for 20 years. She said when she came to Alaska she had the Alaska State Song card in her purse. She said the ferry trip took several days and her husband couldn't sleep. He asked for the card because he wanted to read it. She said he couldn't believe they were actually in Alaska. He said it was so beautiful it was like heaven. She said, "When you sing this song, all this flashes in your mind." She said when the second verse came to the Legislature, Camp #2 of the Alaska Native Brotherhood and the Alaska Native Sisterhood passed a resolution in support of the second verse. She said she couldn't speak for the other camps, but she was sure they supported it as well. She said Dorothy Wallace had also come forward in support of the verse.

CHAIRMAN THERRIAULT asked if she was representing the Alaska Native Brotherhood and the Alaska Native Sisterhood Camp #2.

MS. ROBERTS said their grand president Delores Cadiente was on a trip and their local president Alberta Aspen wasn't able to attend the meeting so she was testifying for them.

CHAIRMAN THERRIAULT asked if there were any questions for Ms.

Roberts. There were none.

MR. J. ALLAN MACKINNON said he was a lifelong Alaskan and resident of Juneau. He wanted to speak in support of the second verse and felt it should have been adopted years ago.

He said he was one of the founders and director of the Juneau Oratorio Choir and was supportive of the Alaska Youth Choir. He said the musical director of the Alaska Youth Choir, Missouri Smythe, could not attend the hearing. He said the Alaska Youth Choir incorporated the second verse into their programming at all their presentations. He traveled with the group to Brooklyn, New York and they performed the second verse there. He said the Juneau Oratorio Choir was probably one of the first choruses to sing both verses during one governor's inauguration ceremony.

He said Carol Beery Davis was very much a friend to the native community. She was authorized to translate the native oral tradition of songs and other pieces onto paper, many of which were preserved in museums and the State Library.

He said he spent 10 or 12 years learning piano from Carol Beery Davis. He remembered her talking about Marie Drake and Elinor Dusenbury. He said the three were contemporaries and very well known and well thought of in their writings and poetry. Marie Drake took certain elements of Bennie Benson's wording and put them into a poem that was of the proper length and meter. Carol Beery Davis was a contemporary of Marie Drake's and also used some of Bennie Benson's wording, creating a verse of the proper length and meter.

He said there were certain times when contests were appropriate, but this was not one of them. He said naming a state ferry, town sites or other things might be appropriate contests for the youth. He said his teenaged son wrote poetry but he would not want to have to consider his writing in a contest setting.

He urged the committee to adopt the second verse as it was and make it an official part of the statutes. He said it would be taking the writings of two contemporary individuals who were very well thought of out of historical context if they were to reopen the issue of who would write the second verse.

2:00 p.m.

CHAIRMAN THERRIAULT asked if there were any questions for Mr. MacKinnon. There were none. He asked if there was anybody else

who wished to testify on HB 285. There was nobody. He announced that the bill would probably come back up for final action on Tuesday, May 7, 2002.

HB 285 was held in committee.
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The next order of business before the committee was HB 509.

#HB 509

HB 509-ALASKA CHILDREN'S TRUST LICENSE PLATES

CHAIRMAN THERRIAULT said there was a hearing on HB 509 the previous week. He said he spoke with Senator Davis regarding the bill because she had not been able to attend the meeting. He noted they had stopped short of a final vote. He said if there were not any amendments from committee members, he would entertain a motion on HB 509.

SENATOR DAVIS moved HB 509 out of committee with attached fiscal note and individual recommendations.

CHAIRMAN THERRIAULT noted there was a slight increase in revenue on the fiscal note.

There being no objection, HB 509 was moved out of committee with attached fiscal note and individual recommendations.
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The final order of business before the committee was SB 363.

#SB 363

SB 363-CAMPAIGN FINANCE PROVISIONS

CHAIRMAN THERRIAULT noted there was a new proposed CS, version L.

MR. JOE BALASH, Aide to the Senate State Affairs Committee, outlined the following changes in the CS:

- The former Section 1 regarding the "paid for by" statement was removed.
- Testimony from Ms. Brooke Miles of the Alaska Public Offices Commission (APOC) suggested that the 15-5 reporting burden on contributors might be unnecessary so Sec. 9 repealed that requirement. Sections 1, 2, 3, 4, and 5 of the CS conformed to that by removing "contribution and" from contribution and

expense expenditure reporting requirements.

- It was decided that defining communications that could and could not be regulated in the definitions section and making them part of the definition of an expenditure would accomplish the intent of SB 363. If something were defined as an expenditure, it would be subject to all the disclosure requirements and restrictions would be put on where money could be raised. Money could not be raised from a corporation or labor union and no more than 10% of it could be raised outside of the state. Depending upon the type of organization there were limitations on the amount that could be raised from individuals. To this end, the language, "includes an express communication and an electioneering communication, but does not include and issues communication" was added in lines 17-19 in Sec. 6.
- Sec. 7 defined a communication. This was not intended to be an exhaustive list of items that might be a communication but identified the kind of things that were traditionally seen in campaigns.
 - o Paragraph (13) excluded communications that cost \$500 or less to comply with the Supreme Court's 1995 *MacIntire* decision. In that case a woman felt so strongly about a local school bond proposal that she printed a flyer and distributed it. She was found to be in violation of Ohio statutes. The exception provided protection to keep that from happening.
 - o Paragraph (14) defined an electioneering communication as a communication that "occurs within 30 days preceding a primary election or a municipal election, or within 60 days preceding a general election," "directly or indirectly identifies a candidate" and "addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified." This came from the *Buckley v. Valeo* decision, which said express advocacy could be regulated but issue advocacy could not be regulated. Finding a line between the two had been very difficult. Congress recently passed the Shays-Meehan version of the McCain-Feingold legislation. The parts of the definition regarding the timeframe and identifying a candidate came from that legislation. The other aspect of the definition regarding attributing a position to a candidate was a further step toward trying to define advocacy that can be regulated.
 - o Paragraph (15) defined an express communication as "a communication that, when read as a whole, and with limited reference to external events, is susceptible of

no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." This came from the *Furgatch* decision.

- Sec. 8 changed the crime of campaign misconduct in the 2nd degree to conform to the changes in SB 363.
- Sec. 9 repealed AS 15.13.080, which was the 15-5 reporting requirement.
- Sec. 10 provided for an immediate effective date.

SENATOR PHILLIPS wanted to make it clear that the section regarding the "paid for by" statements had been removed from SB 363.

MR. BALASH said it had been.

CHAIRMAN THERRIAULT said the courts wanted a bright line so citizens would know when they crossed the line and were doing an activity that required disclosure or had limitations on funding sources. The courts said if the citizens had no way of knowing when they crossed the line, it had a chilling effect on free speech because they might not express opinions that might get them into trouble. He said a clear line was drawn in SB 363. He said the *Buckley v. Valeo* decision listed some words that had been taken as a complete list. He said with the definition of express communication in SB 363, those magic words wouldn't necessarily need to be used for a communication to qualify.

MR. BALASH said that was correct.

CHAIRMAN THERRIAULT said that went back to the *Furgatch* decision, which said it was nonsensical to use a list of words because anybody with a thesaurus could circumvent it.

MR. BALASH said that was correct.

CHAIRMAN THERRIAULT said a communication such as, "We want to develop industry in Alaska, Senator Gene Therriault has been striving to create jobs and we just wanted you to know that," would qualify as an electioneering communication even though it didn't say to vote for or against the candidate. Because it identified an issue of importance, identified a candidate and attributed a position to that candidate and was being done around an election it would be an electioneering communication. He said SB 363 tried to draw a line that indicated to a citizen the criteria under which you were trying to influence the outcome of an election. The courts said that when you were trying to influence the outcome of an election, the government had a right

to limit the influence individuals or out-of-state sources of funds could exert on elections. He said SB 363 combined a number of court cases and the McCain-Feingold legislation to try to define when the intent of issue advocacy is to affect the outcome of an election. He asked Mr. Balash if he wished to discuss anything else.

MR. BALASH said the standard of intending to influence the outcome of an election was used throughout AS 15.13 and tried to describe the things that were done in the course of a campaign and the disclosure of those items. The 4th Circuit Court of Appeals in *Perry v. Bartlett* decided that a similar definition used in North Carolina was too vague and not specific enough for the public to know when they were required to disclose their publications. Because this wasn't a 9th Circuit Court of Appeals or a U.S. Supreme Court decision, it didn't necessarily apply in Alaska. However, it should be looked at to find out exactly what standard was used in deciding the case.

CHAIRMAN THERRIAULT asked if there were any further questions for Mr. Balash. There were none.

MS. BROOKE MILES, Executive Director of APOC, said she applauded the committee for their courage in defining express communication and issues communication. She said APOC staff really appreciated a bright line being drawn. She said she suspected the courts would decide the definitions eventually. She wanted to discuss Section 1. She said she did not have a problem with removing the contributor reporting requirements, but she did find issue with the language. She said it would probably be better to delete all the language in this section after the word "commission" on page 1, line 7. She said the rest of the language in (d)(1)(A) and (B) would cause confusion. She said independent expenditures made of behalf of a candidate or ballot question were reportable in any amount so the \$500 limit would cause confusion. She said a strict reading might compel a group that talked to a candidate and wanted to buy a communication to think they would have to report.

CHAIRMAN THERRIAULT said he wanted to make sure that she was suggesting to delete all of the language in Section 1 after the word "commission" on page 1, line 7.

MS. MILES said that was correct.

SENATOR PHILLIPS asked if that would end on page 2 at line 9.

MS. MILES said that was correct.

CHAIRMAN THERRIAULT asked if this deletion would change other sections of the statute.

MS. MILES said it would be necessary to retain paragraph (2) because it talked about being exempted from the reporting requirement because of the *MacIntire* decision.

CHAIRMAN THERRIAULT asked if she was talking about the language in Sec. 2.

MS. MILES said the language starting on page 2, line 4 provides for the *MacIntire* exemption for small expenditures. She said that should not be deleted.

SENATOR PHILLIPS said he wanted to make sure he understood what she was suggesting. He said it would be necessary to put a period on page 1, line 7, after the word "commission," and delete everything thereafter on page 1 and the first three lines on page 2, but leave paragraph (2), which would be renumbered to (1).

MS. MILES said it could also be incorporated but his description was correct.

SENATOR PHILLIPS moved a conceptual Amendment #1 putting a period after the word "commission" on page 1, line 7, deleting everything after that on page 1 and lines 1-3 on page 2 and leaving paragraph (2).

CHAIRMAN THERRIAULT said he wasn't so sure the drafters would want to put a period after "commission."

SENATOR PHILLIPS said that was where the section would end.

CHAIRMAN THERRIAULT said they would probably want to put a comma and go on to paragraph (2). He said as long as it was a conceptual amendment, the drafters could work with it.

TAPE 02-28, SIDE B

CHAIRMAN THERRIAULT asked if there was any objection to conceptual Amendment #1.

SENATOR PHILLIPS asked Ms. Miles if that was all.

MS. MILES said it was. She said she was happy to see Internet communications included. She said APOC had been discussing Internet communications more and more over the last few years and

they considered them to be subject to the law but it would be helpful to have it codified.

CHAIRMAN THERRIAULT said the Internet was becoming a bigger tool for good and bad. He wanted to make sure that dropping the 15-5 requirement was not going to create problems. He also wanted to be sure the 15-5s would be needless paperwork after the changes in SB 363.

MS. MILES said APOC staff believed there was probably still some value in the 15-5s for contributions given to political parties or ballot proposition groups, the two groups to which an individual can contribute more than \$500. She said \$5000 could be contributed to a political party in a calendar year and contributions to ballot proposition groups were unlimited. She said the 15-5s provided meaningful information in the time periods when other information was not available. She said without the 15-5s the first information on contributions to ballot proposition groups would not be available until 30 days before the general election. She said that would also hold true to some extent with political parties.

CHAIRMAN THERRIAULT asked if Ms. Miles only saw that problem with regards to contributions to ballot proposition groups.

MS. MILES said yes.

CHAIRMAN THERRIAULT asked if that could be easily retained.

MS. MILES said the 15-5 language could be written to require a contributor report for contributions of more than \$500 made to ballot proposition groups. She said ballot propositions were often very controversial and if the 15-5 report was required for contributions to ballot proposition groups, APOC could have some information available for the public.

CHAIRMAN THERRIAULT said Senator Phillips told him they could work on that in the Senate Rules Committee.

SENATOR PHILLIPS said SB 363 was a Senate Rules Committee bill.

CHAIRMAN THERRIAULT said he wanted to deal with the 15-5 reports and remove the requirements that didn't make sense. But if they were a source of valuable information, he didn't want to lose that. He said Ms. Miles had said it was nice to have bright lines.

MS. MILES said bright lines make it easier to conduct training,

review the courts, and identify advertisements.

CHAIRMAN THERRIAULT said the courts like bright lines as well.

MS. MILES said it would probably go before the courts eventually. She said the definitions seemed very similar to the new federal statutes, especially the timelines separating electioneering from issue advocacy.

CHAIRMAN THERRIAULT said they were from the federal legislation. SB 363 added some further definition to electioneering communications by adding that they attributed a position on an issue to an identified candidate.

MS. MILES said for the most part, the changes would be enacted before advocacy became a big issue.

CHAIRMAN THERRIAULT said communications that would be defined as electioneering communications would be allowed at any other time except for right before an election.

MS. MILES said if they did it right before the election, they would be required to file a report and the money spent on the communication would have to be funding authorized by the State.

CHAIRMAN THERRIAULT said that was because at that point the communication would be trying to influence the outcome of an election and the State would be able to require disclosure and limitations on outside sources of money.

MS. MILES said that was correct. She said an outside corporation would not be allowed to engage in that kind of activity within close proximity to an election.

CHAIRMAN THERRIAULT asked about the fiscal note.

MS. MILES said it would be revised.

MR. BALASH said he had a fiscal note for \$30,000 to distribute to the committee.

CHAIRMAN THERRIAULT asked if that fiscal note would change with the new CS.

MS. MILES hoped it would. She said it would still be necessary to conduct a training program so everybody understood the changes in the law but the other problems she had discussed earlier would no longer exist.

CHAIRMAN THERRIAULT read the following from the fiscal note:

This bill creates additional requirements for candidates and groups when identifying their paid political communications. It represents significant administrative difficulties in that it also creates a new kind of political communication (electioneering) which is defined and enforced by the Division of Elections. The funding request is for training, paper and printing, and enforcement.

MS. MILES said she didn't see the same enforcement concerns. Initially, she was concerned with the requirement that production costs be included in the "paid for by" statement. She said most of the inquiries APOC received were about the "paid for by" statement and they spent a lot of time working with groups and candidates to get them corrected. She said a lot of people might have made mistakes with production costs because they might not have been sure of them and given an estimate. She said with the new CS that would no longer be a concern. She still felt it was necessary to have funds to let everybody know about the changes.

SENATOR DAVIS asked if the CS had been adopted.

CHAIRMAN THERRIAULT said it had not. He noted that they had discussed conceptual Amendment #1 without the CS before them. He said they were working on an unofficial document. He asked for a motion on the L version.

SENATOR PHILLIPS moved the L version of SB 363 with conceptual Amendment #1 out of committee with attached fiscal note and individual recommendations.

There being no objection, CSSB 363(STA) moved out of committee with attached fiscal note and individual recommendations.

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ADJOURNMENT

There being no further business before the committee, the Senate State Affairs Committee meeting was adjourned at 2:35 p.m.