

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 17, 2003

1:10 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative John Coghill
Representative Jim Holm
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Tom Anderson, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 106

"An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as it applies in the act setting standards of conduct for legislators and legislative employees, to define 'regular' and 'substantial' as those terms describe activities for which a person receives consideration for the purpose of influencing legislative or administrative action."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 106

SHORT TITLE: DEFINITION OF LOBBYING

SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
02/14/03	0216	(H)	READ THE FIRST TIME - REFERRALS
02/14/03	0216	(H)	JUD
02/14/03	0216	(H)	REFERRED TO JUDICIARY
02/28/03		(H)	JUD AT 1:00 PM CAPITOL 120
02/28/03		(H)	Heard & Held
02/28/03		(H)	MINUTE(JUD)
03/17/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

BROOKE MILES, Executive Director
Alaska Public Offices Commission (APOC)
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 106.

PAMELA LaBOLLE, President
Alaska State Chamber of Commerce (ASCC)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 106.

TAMMY KEMPTON, Regulation of Lobbying
Alaska Public Offices Commission (APOC)
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 106.

PETE ROBERTS
Homer, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 106 and suggested a change.

GRAHAM G. STOREY, Executive Director
Nome Chamber of Commerce
Nome, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 106.

MARGARET WOLFE
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 106.

STEVE CLEARY, Executive Director
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 106.

ANDREE McLEOD
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 106.

ACTION NARRATIVE

TAPE 03-21, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives McGuire, Holm, Coghill, Samuels, and Gara were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

HB 106 - DEFINITION OF LOBBYING

Number 0032

CHAIR MCGUIRE announced that the only order of business would be HOUSE BILL NO. 106, "An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as it applies in the act setting standards of conduct for legislators and legislative employees, to define 'regular' and 'substantial' as those terms describe activities for which a person receives consideration for the purpose of influencing legislative or administrative action." [In members' packets was a proposed committee substitute (CS), Version 23-LS0405\H, Craver, 3/15/03, and a proposed amendment.]

CHAIR MCGUIRE reminded the committee that HB 106 was drafted based on the framework already contained in the Alaska statutes regarding lobbying. She noted that many on the committee, excluding Representative Gara, have heard complaints regarding the four-hour limitation. There have also been complaints regarding: how one would know when the four-hour limitation is being violated, what are the definitions of "communication" and "lobbying", and what is one supposed to do for registration. She noted that about 11 folks from different sectors of business throughout the state met with her, and although the complaints varied, most people were concerned that during [an upcoming] meeting of the Alaska State Chamber of Commerce (ASCC), they would meet with legislators and have a dinner, and then be over the four-hour limit.

CHAIR MCGUIRE noted that initially, [HB 106] increased the number of hours contained in the statute. However, after further review and discussion with various folks, she said she decided to change focus, move away from the current statutory framework, and look at a different model. This has led to

conversations between Chair McGuire's office, the Alaska Public Offices Commission (APOC), and the ASCC in order to develop language that would meet the goal without allowing professional lobbyists not to register. With this in mind, she explained, Colorado's statute and various ideas have been combined into a CS.

CHAIR McGUIRE reminded the committee that in California there are essentially no restrictions, but one must report everything. In Washington there is a categorization of the different levels. Colorado [statutes] define a volunteer lobbyist versus a professional lobbyist on the basis of compensation. However, the statutes in all of the aforementioned states are different than the proposed [committee substitute (CS)] in that [the other states] allow any lobbyist the ability to give money to any candidate, whereas the proposed CS still prevents a professional lobbyist from donating to candidates outside his/her district; she added that this has been upheld by the Alaska Supreme Court.

Number 0404

CHAIR McGUIRE explained that Barbara Craver [Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency] reviewed the existing regulations and law in an attempt to develop comprehensive legislation. She relayed Ms. Craver's opinion that much of [the work addressing lobbyists] had been done piecemeal since 1976. She noted that on page 4, line 21 of the CS [Version 23-LS0405\H, Craver, 3/15/03], "payment" is defined. Furthermore, Section 7 includes an entirely new [paragraph] defining "communicate directly". She offered her belief that in the past, APOC's position was to exclude testimony provided in public hearings as well as preparation and research, and suggested that the aforementioned was done through regulation. [Version H] incorporates [such a provision] into law, she added. Also, [Version H] defines "lobbying". She then posed a situation in which a lobbyist bumps into [a legislator] on his/her way to the floor session, and opined that such is lobbying [due] to the person attempting to influence [the legislator]. She opined that this [definition of "lobbying"] is meant to discount communications between friends when the discussion isn't related to legislation.

CHAIR McGUIRE explained that she and Brooke Miles, Executive Director, APOC, had discussed and liked the notion of [defining "lobbyist"] based on the percentage of compensation as opposed to the percentage of hours. However, the drafter inadvertently

expressed the [definition of "lobbyist"] as a percentage of time rather than a percentage of compensation. Therefore, she added, there will be an amendment offered to [define "lobbyist" in terms of the compensation received in a calendar month]. The aforementioned proposed amendment reads [original punctuation provided]:

Pg. 6, Ln. 1 &2

"(A) is employed as an employee, [SPENDS] earns not more than 25 percent of [THE TIME] their employee compensation in a calendar month [FOR WHICH THE PERSON RECEIVES COMPENSATION FROM THE PERSON'S EMPLOYER]..."

CHAIR MCGUIRE said she has a strong belief in the First Amendment as well as in the continued use of watchdogs - agency oversight - with regard to the dealings of the legislature. She said she believes that four hours of contact in a 30-day period is too little. "What we have been doing over the last 20-some-odd years is basically ignoring the law, and I think most people will admit that," she stated. She viewed that as a bad practice. Furthermore, the legislature being located in Juneau poses a particular challenge because when people spend the money to fly into Juneau, they want to have as much contact with the legislature during that possibly one-time visit. Moreover, the short length of the session means that legislation moves in a quick fashion and thus the contact necessary with various legislators will amount, on average, to more than four hours in a calendar month.

CHAIR MCGUIRE acknowledged the argument that one can just pay \$100 and register as a lobbyist and have unlimited communication with the legislature. However, she said she disagreed because a lobbyist that makes money should register as one, whereas an individual merely expressing his/her opinion as a citizen shouldn't have to [register] as a lobbyist unless he/she is getting paid for expressing his/her opinion.

CHAIR MCGUIRE said she welcomes all constructive conversation. She also acknowledged her frustration, however, with the characterization by some of media that HB 106 attempts to let all lobbyists slide through the cracks, not register, and provide undue influence. She stressed that the aforementioned is not her goal.

Number 0877

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), Department of Administration, said that she finds [Version H] far more acceptable than the original, adding that the original version was troubling because it appeared to make it possible for even a professional lobbyist to not be subject to the law. She opined that [Version H] appears to do little if any harm to the public's right to know the identity and activities of those who are paid to and who make payments to influence the actions of the state's public decision makers. Ms. Miles noted that [Version H] would not have a fiscal impact. In conclusion, Ms. Miles also noted that she was only speaking on behalf of APOC's staff rather than APOC itself, since it hasn't had the opportunity to review [Version H].

Number 0981

REPRESENTATIVE HOLM moved to adopt CSHB 106, Version 23-LS0405\H, Craver, 3/15/03, as the work draft. There being no objection, Version H was before the committee.

REPRESENTATIVE GARA sought confirmation that APOC isn't taking a position on this legislation at this point.

MS. MILES answered that she wasn't prepared to provide an official APOC position. This legislation is on APOC's agenda for its meeting in Juneau next week, she said, and APOC may or may not have an official opinion on this legislation. She noted that it isn't unusual for the commission to adopt a neutral position because of the realization that it's the legislature's constitutional responsibility to write the laws while it's the executive branch's - in this instance, APOC's - responsibility to administer or enforce the law. She indicated that [any possible] concern would surround a significant loss of public information or a fiscal impact, and if either were the case, APOC may weigh in.

REPRESENTATIVE GARA surmised, then, that Ms. Miles wasn't offering her personal opinion as to whether existing law or this legislation would be preferable.

MS. MILES said that [APOC] staff always appreciates the intent to provide a brighter line, a more objective method for determining when a person who isn't specifically retained or employed to be a lobbyist would be subject to the law. In past investigations or public inquiries, the four-hour requirement was difficult to substantiate with evidence. Therefore, the ability to review an employee's work time and payroll records

[in order to establish whether the individual is a lobbyist] would be easier.

Number 1141

REPRESENTATIVE GARA relayed his view that [Version H] makes it even more difficult to prove. He reminded everyone that the [existing] law provides that a lobbyist couldn't donate outside his/her district when that individual spends four hours of face-to-face, phone, or letter writing time during a month in order to influence legislation. He posed a situation in which the chief executive officer (CEO) spends a week of his time lobbying to change the oil tax laws in Alaska. He inquired as to how it would be easier to track 25 percent of a person's salary time versus four hours of face-to-face, phone, and letter writing time.

MS. MILES clarified that letter writing has never been subject to the four-hour limit because it hasn't been considered direct communication under APOC's regulations; that would remain the case under this legislation. The problem substantiating evidence for face-to-face time and telephone time [arises] if the legislators and/or staff don't track it. She indicated that people don't always track meetings either, which creates difficulties as well. However, the work assignments and payroll records of a company can be obtained. She made mention of APOC's subpoena power.

REPRESENTATIVE GARA posed a situation in which the CEO of a hazardous waste management company spends a full week in Juneau, but not 25 percent of that CEO's salary time for the month. Furthermore, if that CEO doesn't keep time records, how would that situation be easier for APOC to decipher?

MS. MILES answered that there would be payroll records. The APOC could substantiate that the individual was in Juneau for the week, unless the individual was on leave without pay in which case the individual wouldn't be subject to the law.

REPRESENTATIVE GARA pointed out that the payroll records wouldn't specify how much of the week the lobbyist spent lobbying legislators. Therefore, APOC would still have to determine how much of that week the CEO spent lobbying, which is the same problem that exists with the four-hour rule.

MS. MILES agreed.

REPRESENTATIVE GARA viewed the situation [under the proposed legislation] as more difficult for APOC because it would have to count not just four hours but upwards of 40 hours before determining whether the person violated the law.

MS. MILES replied that she didn't know [whether it will be more difficult]. Off of the top of her head, she said, she felt that basing it on the pay would be a more objective measure, although, in the end, Representative Gara's position may be true.

Number 1340

REPRESENTATIVE GRUENBERG requested that Ms. Miles review the CS and amendments and produce an analysis of each change this legislation makes to existing law, regulation, and APOC policies, including APOC's [informal] opinions.

MS. MILES agreed to do so.

CHAIR MCGUIRE returned to Representative Gara's earlier remarks and offered that the intent is to move away from time [as a defining element for lobbyists]. She mentioned that in the proposed amendment, the 25 percent refers to earnings/compensation, not time. If an individual is compensated to influence legislators and if over 25 percent of that individual's salary per month is for the purpose of lobbying legislators or administrators, then that individual would be considered a lobbyist.

REPRESENTATIVE GARA posed the following hypothetical situation of a corporate CEO who is expected by his employer to work 50 hours a week, approximately 210 hours a month. That corporate CEO lobbies the legislature for a full 40 hours during that month, and, therefore, spends a little less than 25 percent of his/her work time that month lobbying. He offered his understanding that the aforementioned CEO will never have to report to the public that he lobbied the legislature, and, furthermore, after the legislative session, that CEO would be allowed to donate to candidates outside of his district as well as hold fundraisers for candidates outside of his district. Would that be correct, he asked.

MS. MILES answered that it may be correct under certain circumstances. However, if part of the CEO's job is to influence the actions of the legislature, then [Version H] would require the CEO to register before engaging in lobbying

activities. If [lobbying] isn't part of the CEO's work agreement, then the individual would fall under the 25-percent-compensation test.

REPRESENTATIVE GARA pointed out that most employment contracts don't go to that level of specificity. He posed a situation in which an employee's contract didn't speak to lobbying but an issue to the corporation comes up one month and the employee spends a week speaking to the legislature, but it amounts to less than 25 percent of the time the employee is expected work. In such a situation, wouldn't the individual avoid public scrutiny because the individual wouldn't be required to report as a lobbyist? And then this individual could donate [to candidates outside his district] after the session is over. He asked if that would be correct under this legislation.

MS. MILES replied that she was unsure. However, she acknowledged the possibility that some CEOs could spend less than 25 percent of their compensatory time attempting to influence the legislature and, then, once the campaign cycle begins, be able to donate up to \$500 to the candidate of their choice.

Number 1668

PAMELA LaBOLLE, President, Alaska State Chamber of Commerce (ASCC), opined that the remarks from APOC staff that [the original legislation] would keep professional lobbyists from having to register raised an invalid specter. She stressed that the laws and regulations enacted by the legislature and the administration have significant impact on the cost for businesses because the only taxpayers to the state treasury are corporate and business taxpayers. Furthermore, it is not uncommon for business people to travel to Juneau to communicate with legislators and administration staff while in town [in order] to maximize time spent in Juneau. It also isn't uncommon for business people to go on trade missions with the administration because those in business have the expertise with regard to the industries' operations and the cost to the industries.

MS. LaBOLLE said that moreover, business people also speak with legislators and administrators at conferences and other events. Although the aforementioned activities may be a very small part of what an individual does for his/her business or company, APOC determined through regulation that such [a person] would be considered a lobbyist. Therefore, she explained, ASCC requested

that the legislature create a new definition that will continue to regulate professional, paid lobbyists, but not restrict business people that are not in the business of lobbying and for whom lobbying is not part of their job.

MS. LaBOLLE said that she could understand Representative Gara's concern with regard to business people being able to give money to candidates outside their district. However, she pointed out that Representative Gara represents a relatively small, well-defined area of the state when compared to others. For example, Representative Foster has a district that covers hundreds of square miles of Alaska. She questioned how those with large districts are supposed to travel throughout their vast district if they have to rely solely on money from those constituencies. Although the aforementioned is another subject, it impacts this discussion, said Ms. LaBolle.

Number 1920

MS. LaBOLLE opined that the media has been overlooked in that news editors and columnist can write unlimited opinion pieces with the intent of influencing legislation or administrative action. However, those folks don't have to register as lobbyists and, thus, their First Amendment rights aren't impacted, she added. Furthermore, state and municipal employees are exempt from the existing law and would be exempt from the proposed law. She offered her belief that public officials and employees can lobby an unlimited amount of time for laws and regulations that increase the cost of government or business. She said that professional lobbyists, already defined in law, and business people who want to spend more than four hours speaking about the very laws and regulations impacting the way they do business are the individuals that have to register [as a lobbyist] and must pay to do so.

MS. LaBOLLE turned to Version H and noted that she was aware of the change with regard to the 25 percent of time spent [per month] lobbying and was satisfied with that. However, she said she couldn't speak to the 25 percent of income stipulation in the aforementioned proposed amendment. In conclusion, Ms. LaBolle relayed ASCC's belief that the state will benefit by providing business owners greater access to state government.

REPRESENTATIVE HOLM stated that [legislators] rely on the expertise of individuals in order to make more informed judgments. In many cases, the legislation [requiring the expertise] is not special interest legislation. Therefore, he

inquired about Ms. LaBolle's assertion that municipal and state employees receive extra compensation for being present in Juneau and lobbying for their own pocketbooks. He pondered whether the law should be changed so that those individuals have to follow through with the same registration and reporting requirements as private businesses.

Number 2104

MS. LaBOLLE acknowledged that the aforementioned [concept] had been discussed among [ASCC members]. She relayed her belief that it would be fair if as many Alaskans as possible have the opportunity to provide as much input as necessary for the legislature and the administration to make informed decisions. She opined that restricting the time business people and lobbyists are allowed to spend with the legislature is tantamount to restricting the number of books one could check out from the library. Therefore, she acknowledged, she didn't know whether further limiting peoples' [access to the legislature] is going in the appropriate direction.

REPRESENTATIVE HOLM said that he is somewhat disillusioned by the process. While people are trying to be make [the legislature] informed, there are accusations charging the legislature with an inability to make a just decision because [those informing the legislators] are attached to some enterprise. However, those attached to a state union are [treated differently].

MS. LaBOLLE said that it's unfair when business people with all the facts and information on a issue are eliminated from the process while public employees don't have the same constraint placed on their First Amendment rights.

REPRESENTATIVE SAMUELS noted that he was involved in politics in two ways. In one capacity he would fly to Juneau to try to influence legislation. He also was involved in politics as a small-business person who made appointments with legislators to discuss issues impacting his business. In those cases, he would automatically exceed the four-hour limit, although he wasn't a professional lobbyist. Furthermore, he said he didn't even know about APOC then and was probably in violation. He remarked that he didn't sympathize with the large companies [that lobby the legislature], but did sympathize with the "little person" who wants to influence the government.

TAPE 03-21, SIDE B

Number 2371

REPRESENTATIVE GARA pointed out, however, that under the current law, citizens can speak to legislators regarding changing legislation. Furthermore, under current law, people who are paid [to influence legislation] can speak to legislators as much as desired. Therefore, there is no prohibition against accessing government, and businesses can be heard under the current law. He opined that the real question is whether businesses, after being heard, should be allowed to donate to the legislators with whom they've spoken. The aforementioned is of concern, he said. Why, he asked, is it not good enough that business people can be heard as much as they want to be heard under current law? Why change the law to then let them donate and hold fundraisers after the session for the people with whom they've spoken to?

MS. LaBOLLE responded by asking why business people should have any fewer rights to participate in the electoral process than anyone else. Furthermore, she asked why business people have to pay \$100 in order to speak more than four hours and have forms to fill out and report. She also mentioned that failing to fill out the reports correctly or in a timely manner engenders a fine of \$50 a day. She emphasized that business people are a class of citizens who want to have the same rights as everyone else when it comes to participating in the legislative, administrative, and electoral processes.

REPRESENTATIVE GARA suggested making the form filing requirements easier and changing the \$100 filing fee, which, incidentally, only applies if the individual receives compensation for lobbying to change the law. He asked if Ms. LaBolle would be satisfied with those changes or would she also want changes allowing lobbyists to have greater ability to donate to candidates outside their district and hold fundraisers for candidates outside their district.

MS. LaBOLLE specified that [ASCC] is merely saying that the business community is being treated as a separate class of citizens in Alaska and aren't afforded the same rights.

Number 2227

CHAIR McGUIRE noted that she has taken money from the public employee unions that she supports, and that these same unions have sent people down to talk with her about issues they are concerned with.

REPRESENTATIVE GARA, addressing Ms. LaBolle, said:

If we got rid of the provisions of this bill that let people who get paid to influence legislation donate more money to candidates, if we got rid of those provisions and kept the rules the same as they are today for people who receive compensation to influence legislation, if we left those rules the same about donations but just made the filing forms more friendly for you, made the \$100 registration fee maybe a lower amount, if we just address the registration fee and the filing requirements for you, would you be happy to leave the law the same as it is today as it relates to donations by people who get paid to influence legislation?

MS. LaBOLLE said no. She said that ASCC wants business people to have the same rights as private citizens. She indicated that she still has a problem with the regulation that says a regular and substantial portion of someone's time is four hours per month. She opined that when the original legislation specifying that someone who spends a regular and substantial portion of time be registered as a lobbyist, it was not meant for that to be merely four hours per month, as was interpreted via regulation. However, because no one challenged that regulation at the time, and since further layers of change to the statute have been made, members of the business community are now feeling intimidated into having to register as lobbyists, she remarked.

CHAIR McGUIRE opined that when making laws, they should be written using the most objective terms possible. Keeping time, however, is not objective, and she surmised that doing so is difficult for APOC. She mentioned that the goal [of HB 106] is to provide an objective analysis regarding what it means to be a professional lobbyist. She opined that someone who derives income from lobbying should register as a lobbyist, be subject to disclosure laws, and be prohibited from donating to a wide variety of districts. She mentioned a newspaper article that had made the point that lobbying laws are designed to protect legislators from lobbyists.

Number 1972

REPRESENTATIVE GRUENBERG turned to Ms. LaBolle and noted her comment regarding infringement of First Amendment rights. He

remarked that no one's First Amendment rights are being infringed upon, since nothing prevents a businessperson or anyone else, for that matter, from lobbying. The current law merely stipulates that one must pay a small registration fee, provide some financial information, and file some reports. The only thing one can't do, under current law, is serve as a campaign manager or director. Incidentally, he noted, the "Wisconsin federal court" struck down the latter restriction as being an infringement on free speech; therefore, perhaps the legislature should investigate whether the current restrictions on lobbyists with regard to campaign issues are constitutional. He opined that when a person makes the choice to lobby for legislation, that's his/her personal choice; he/she merely has to decide whether it is worth it to give up the ability to donate to people outside his/her district in favor of being able to lobby.

MS. LaBOLLE opined that this is not such a small choice. She pointed out that the business community is concerned with having to disclose their financial information, since this information would ultimately be available to competitors.

REPRESENTATIVE GRUENBERG opined, however, that if someone is lobbying for a piece of legislation, the public has a right to know whether he/she has a financial interest in that legislation, at least in some manner. He suggested that instead of using a sledgehammer on the current law, the legislature should simply look into specifically changing what types of information must be disclosed, for example, making an exception for a business's client list and other proprietary information.

MS. LaBOLLE argued that business people are not lobbyists; rather, they are merely citizens with a vested interest in what government does. She noted that she is a lobbyist and made the choice to give up some of her rights; however, she did not want business people to have to make that same choice and be required to fill out reports.

Number 1678

TAMMY KEMPTON, Regulation of Lobbying, Alaska Public Offices Commission (APOC), Department of Administration, after noting that she is the "Juneau branch administrator" for APOC, indicated that she has brought for the committee copies of the registration and reports that lobbyists must complete. She said, "I think it's really important to know that employers do not have to provide their client list. I'm not sure why that

misinformation is out there, but employers do not have to provide a client list."

REPRESENTATIVE GRUENBERG surmised, then, that only legislators have to provide such a list.

MS. KEMPTON agreed. She said that the reports that are filed by lobbyists and by employers of lobbyists are not nearly as onerous as the financial disclosures that public officials have to file. She continued:

The papers in front of you, that's all that gets filed with us. Lobbyists file monthly during session; they file quarterly thereafter. So they file a total of eight reports. There is no annual report, wrap-up report, at the end of the year. Employers of lobbyists file quarterly, so they file four reports in a year. There is a fine if you file late and you don't have good cause for it. For good cause your fine can [be] totally waived or at least reduced, but the fine is not \$50 a day; the fine is \$10 a day. So, I wanted to make those points first while they were still fresh in everyone's mind.

CHAIR MCGUIRE noted that the forms Ms. Kempton provided are titled "2003 Lobbyist Registration Statement," "2003 Lobbyist Report," and "2003 Employer Of Lobbyist Report."

MS. KEMPTON noted that these forms are also available on APOC's web site. She surmised that Version H appears to do little if any harm to the public's right to know the identity of and the amounts spent by persons to influence legislative or administrative action. An employee who spends 25 percent or less time - or, via the aforementioned proposed amendment, 25 percent or less of his/her compensation - in a 30-day period will not have to register. However, the employer is required to report all payments made for services, time, and/or expenses of that employee for or in connection with direct communication with a public official if the employer also has a registered, professional lobbyist. So, businesses that have a professional lobbyist and send people here to talk to legislators have to tell APOC who was sent, and how much was paid in terms of compensation, travel, and per diem. So, to a certain extent, APOC should still be getting that information, she added.

Number 1468

MS. KEMPTON relayed that APOC staff is troubled by a couple of exclusions listed in Section 7 regarding direct communication. The first one, paragraph (13)(A), is troubling because it excludes any and all testimony in front of public bodies such as [the House Judiciary Standing Committee]. She added:

I have recently done the history of the lobbying law, and it was [the House Judiciary Standing Committee] who actually did the majority of the work in 1976 on the lobbying law. And they were very clear about what they meant about public testimony, because that was something that they went over a lot. And what they were trying to do was make sure that the public who were not being paid to testify didn't have to register as lobbyists; they didn't want them to become lobbyists strictly because they had come and testified. What they meant to get - I'm not sure they wrote it as well as they might have, but hindsight is always better once you see how things get interpreted later - ... and what they said very clearly at their hearings was that the people who were paid to come and talk to them and then later track them down in the halls and in their offices and [discuss] it more, those were the people who should be registering.

CHAIR McGUIRE mentioned that she was willing to work on that definition because she did not mean to exclude the professional lobbyist. She indicated that she had meant to exclude the businessperson that comes down to testify.

MS. KEMPTON pointed out however, that the House Judiciary Standing Committee, back in 1976, had also intended to include business employees who were being paid to come down and influence the legislature. "So ... when employees came and testified and then later tracked them down and lobbied some more, those were the people they were trying to get," she added. She went on to say, "They didn't think it was that difficult to get the professional lobbyist; what they were looking at were the employees."

Number 1310

MS. KEMPTON, in response to a question, suggested that paragraph (13)(A) be modified so that it only includes people who are solely testifying in public hearings. "We want to make clear that we are not trying to get the person who pays their own way to come here and sit down and talk to you people and that's the

extent of what they do; we certainly don't want to have them feeling like they're supposed to be registered," she added. And, of course, right now, people who don't receive compensation don't have to and never have had to register as lobbyists. "We want to be able to keep that very clear distinction," she remarked.

REPRESENTATIVE GRUENBERG, in response to the question of whether plane tickets are considered compensation, pointed out that this issue is addressed on page 6, line 5, in that reasonable reimbursement for such is not considered compensation.

CHAIR MCGUIRE asked Ms. Kempton to draft substitute language for paragraph (13)(A) before the committee next hears this legislation.

MS. KEMPTON agreed to do so.

CHAIR MCGUIRE noted that current regulation defines "communicate directly" as: "to talk, either in person or by telephone, with any public official or legislative employee; it does not include time spent in the research, drafting, preparation, or adaptation of documents for use by the lobbyist."

MS. KEMPTON pointed out that the other part of Section 7 that troubles APOC staff is paragraph (13)(E), which exempts a person meeting or speaking with a public official while in the company of that person's registered lobbyist. She said, "We weren't sure why that was included there, but we're also concerned, and the attorneys on the committee would certainly know this better than I, but the concern is that that may not pass muster."

Number 1154

REPRESENTATIVE GARA agreed that the aforementioned provision is "completely troubling." He elaborated:

The way I read it, it would allow a corporate CEO to come down here with a paid lobbyist ... and if they came into your office, they could spend all month with you, but since they're with a paid lobbyist, they're not considered a lobbyist. I think that's what [subparagraph] (E) says. If you lobby but you're sitting next to somebody who is a professional lobbyist, you can still donate, you can still hold fundraisers, you're not considered a lobbyist. I think it's pretty clear.

CHAIR McGUIRE mentioned that the aforementioned language was meant to address situations in which the company employee is able to relay more of an issue's specific technical details than the lobbyist can.

MS. KEMPTON pointed out, however:

The other problem we saw with it is, that means if a CEO and their registered lobbyist come in and talk to you, the CEO would never run the risk of being considered a lobbyist, but if they come in with their vice president, now they could run that risk. And so there just seems to be some equal protection problems with this [subparagraph] as it's written. And I think what we were looking more at - both for this one and for [paragraph (13)(A) - rather] than to say, "We'll do away with them altogether," is to ensure that, rather than exempt it from "communicate directly", have them count [it] towards that 25 percent of their compensation because, especially (E), they really are in there lobbying.

CHAIR McGUIRE surmised, then, that the suggestion is to have those types of communications count towards the 25 percent of one's salary which goes toward lobbying.

REPRESENTATIVE GRUENBERG, referring to the proposed amendment, said it does not track and it is not grammatically correct. He asked, "How can you tell whether your 25 percent is related to lobbying or not unless you track it in time?" It seems to add another layer to it, he remarked, noting that he does not see the nexus or how the provision can be enforced.

Number 0937

CHAIR McGUIRE mentioned that the proposed amendment came from conversations she'd had with Ms. Miles.

REPRESENTATIVE GRUENBERG argued, however, that if a person receives a yearly salary of \$100,000, one would not know whether 25 percent of it was for lobbying as opposed to some other duty. He went on to say:

I don't know how you can quantify that, unless you were to try and do it by time and unless you're a lawyer who keeps track of their time; nobody else

does, as far as I know, and I think lawyers are somewhat getting away from that now, too, to task-based kinds of [calculations].

CHAIR MCGUIRE remarked, "This comes from Colorado," and that she would try to find out more information regarding its applicability prior to the legislation's next hearing. She added, "This is a tried-and-true method in other states."

REPRESENTATIVE GRUENBERG said, "I would hope we don't vote on this [amendment] today until we know on that; I would ask you to postpone it until next time."

CHAIR MCGUIRE said, "Okay."

MS. KEMPTON, returning to Version H, said:

We do feel that a really important accomplishment of [Version H] is that it does provide ... clearer definitions than the current law does. And bright-line definitions are easier for the public to understand, which is the most important thing. They're also easier for us to enforce, which, of course, is just a nice little extra. The really important part is so that when the public reads this, they know whether or not they're a lobbyist, or they know what constitutes lobbying. And the current law doesn't define lobbying; this Version [H] does. I think that's a really good addition. I had a lobbyist the other day tell me, "Well, it's not defined; how do I know when I'm lobbying?"

MS. KEMPTON thanked legislative staff for working with her, and the committee for providing her with an opportunity to testify.

Number 0779

REPRESENTATIVE GARA said he wanted to know "how much of a gaping hole we're putting into the existing law as far as allowing people to donate to candidates after they've lobbied them." He elaborated:

If you look at page 6, lines 1-7, that announces the new 25-percent rule, which takes the place of the old four-hours-per-month rule in some sense. ... The way I read it, I don't think a single CEO anywhere in the state would ever have to register as a lobbyist under

this new law. But I want to find out if I'm wrong. So, let's assume you have a CEO who, like many professionals, let's say, is assumed to work 50 hours a week - that's the expectation of the employer. And so, let's say that's roughly 210 hours a month in a four-and-a-quarter-week month. So, this CEO of an oil company [for example] works 210 hours a month in a four-and-a-quarter-week month. Can you tell me how much that CEO would be able to work to influence legislation and still not have to register as a lobbyist and still be able to donate to candidates and hold fundraisers outside of their district? Up to how much are we letting these people do now without reporting, under this section?

MS. KEMPTON said she could not provide that information without a calculator.

CHAIR MCGUIRE, notwithstanding Representative Gruenberg's request to delay the adoption of the proposed amendment and her initial agreement to do so, asked for a motion in order that the amendment's specific language be before the committee.

REPRESENTATIVE GARA asked if Ms. Kempton could be provided with a calculator.

Number 0657

REPRESENTATIVE HOLM made a motion to adopt Conceptual Amendment 1 [text previously provided].

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He asked members to read the amendment so that they, too, could see that it is not grammatically correct.

CHAIR MCGUIRE remarked that the purpose of making Amendment 1 conceptual was to allow the drafters leeway.

REPRESENTATIVE HOLM said: "It reads like this, 'Who is employed as an employee earns not more than 25 percent of their employee compensation in a calendar month'."

REPRESENTATIVE GRUENBERG said, "That doesn't make sense."

CHAIR MCGUIRE reiterated that since Amendment 1 is conceptual, the drafters could work on it more. She suggested the committee vote on the amendment.

REPRESENTATIVE GRUENBERG pointed out, however, that if the amendment is intended to address compensation for lobbying, it currently lacks any reference to lobbying.

CHAIR MCGUIRE observed that the phrase, "incurred while lobbying" can be found on line 5 of the language that's being amended on page 6.

REPRESENTATIVE GRUENBERG withdrew his objection.

REPRESENTATIVE GARA objected.

Number 0407

A roll call vote was taken. Representatives Gruenberg, Coghill, Holm, Samuels, and McGuire voted in favor of adopting Conceptual Amendment 1. Representative Gara voted against it. Therefore, Conceptual Amendment 1 was adopted by a vote of 5-1.

CHAIR MCGUIRE remarked that with the adoption of Conceptual Amendment 1, the committee could now address the 25-percent-of-compensation issue.

REPRESENTATIVE GARA returned to his earlier example, and again asked how much lobbying a CEO who works 200 hours a month could do during a month without having to register as a lobbyist.

MS. KEMPTON calculated that it would be 50 hours.

REPRESENTATIVE GARA surmised, then, that in this example, the CEO could lobby 50 hours a month, the public would never know that person lobbied because he/she does not have to register, and that person could donate to all of the legislators he/she lobbies during that month.

MS. KEMPTON replied:

Possibly. And the reason I say possibly is because it would depend on the company that [he/she] ... is working for. If the CEO is working for a company that has a registered lobbyist, their compensation and expenditures for coming down here will be reported, and where it gets reported on those forms I handed out is on the "Employer of Lobbyist Report: Schedule B."

REPRESENTATIVE GARA said, "Let's assume we're talking about a corporation that doesn't have a registered professional lobbyist on board; instead, they've decided they're going to use their CEO, so they don't have a professional lobbyist."

MS. KEMPTON replied that the answer for that example is yes, such a person could lobby 50 hours a month, not have to register, and donate to everyone he/she lobbies.

CHAIR McGUIRE noted that the aforementioned example is hypothetical, and that although the legislature directs policy, it is then up to the agency to write regulations reflecting that policy.

Number 0156

REPRESENTATIVE COGHILL mentioned that it might be difficult to calculate the [compensatory] value of a person's time spent in the airport attempting to fly into Juneau, for example, so that he/she can talk to legislators.

CHAIR McGUIRE said that that was one of the reasons for moving toward "this Colorado model of compensation."

REPRESENTATIVE COGHILL pointed out, however, that compensation must be extrapolated "out of a time element."

CHAIR McGUIRE turned to the issue of volunteer lobbyists, and stated that they, too, must fill out a form. "So it isn't that the public doesn't have any idea whatsoever about what's going on; ... they do know."

TAPE 03-22, SIDE A

Number 0001

REPRESENTATIVE GARA indicated that that statement is incorrect. The public only gets to know a [volunteer lobbyist] is spending 50 hours a month lobbying if a corporation also employs a professional lobbyist; if the corporation does not do so, then the public does not get to know. In response to Representative Coghill, he noted that time spent in the airport or in a hotel would not count toward lobbying under either current law or Version H. He ventured that the only time that counts is the time actually spent lobbying the legislature, adding, "so we really wouldn't have this specter of people who just come down for a couple of days who would all of a sudden have to register."

CHAIR McGUIRE remarked that apparently Representative Gara is clearer about the laws than is APOC.

REPRESENTATIVE GARA countered, "I think the agency would agree with me."

CHAIR McGUIRE stated, "That's not the case; they've had a lot of difficulty in terms of interpreting this."

REPRESENTATIVE SAMUELS asked how APOC would even know whether somebody from a small company spent more than four hours lobbying the legislature.

MS. KEMPTON said that APOC frequently does not know unless someone brings the issue forward, for example, by calling APOC and saying: "So and so is in the legislature lobbying and I don't see them on the [lobbyist] directory."

REPRESENTATIVE HOLM remarked that most CEO's don't sign contracts saying how many hours they will work. Thus, he surmised, a percent of compensation is "the only way you can look at it."

Number 0327

PETE ROBERTS remarked that Version H is a step in the right direction; four hours is arbitrary, subjective, and means nothing because "in some cases, 15 minutes will do it and in some cases 14 days won't." He suggested, however, that perhaps it would be better to calculate one-quarter or one-third of compensation for a whole legislative session, since one cannot predict whether one will need to spend a lot of time lobbying during the first two months of session, for example, but not any time thereafter.

Number 0427

GRAHAM G. STOREY, Executive Director, Nome Chamber of Commerce, noted that the vast majority of CEO's and business owners in the Nome area run small businesses. He opined that the current four-hour limitation is unreasonable. With regard to time spent lobbying, he said that although he is getting paid to testify today, he has spent 118 minutes waiting for the opportunity to do so.

REPRESENTATIVE GRUENBERG offered an apology on behalf of the committee for Mr. Storey's wait.

Number 0579

MARGARET WOLFE said that as a citizen, she wants to know everyone who is being paid or compensated in any way for lobbying the legislature. That includes the businessperson who will charge the expenses to his/her business; it includes the salaries, the consultation fees, and the contracts. "Anybody who is being paid to talk to the legislature on behalf of any particular group or interest, I want to know who those people are, I want them registered as lobbyists, I don't care whether it's four or four hundred hours," she stated.

CHAIR McGUIRE suggested that Ms. Wolfe ask Representative Gara to introduce a bill that will require all state employees to register as lobbyists. She asked Ms. Wolfe whether she would support such a bill.

MS. WOLFE said:

Not when you call them and ask them to come in and tell you things; that's different. If they do it on their own time, and they do it at their own behest, and if they do it on vacation time, that's fine. But I know that the committees often call employees in to talk to them, and then it's a part of their job.

CHAIR McGUIRE said she did not disagree. She opined that the same analogy would hold true if she were to ask a businessperson to come in and testify.

MS. WOLFE disagreed. She said the businessperson is going to charge those expenses back to the company, whereas the state employee isn't going to get any more money.

CHAIR McGUIRE asked, "So do you support regulation of the testimony, or the lobbying, of public employees or municipal employees of any kind of any nature of any amount of hours of time?"

MS. WOLFE replied, "No; if they're coming in to you, and I assume that they're doing it on work time, then they better have a work reason for being there."

CHAIR McGUIRE asked:

Can you envision a situation where an employee might be in a contract dispute with a company, and both have two different sides of an issue ..., perhaps a contract dispute that's before the legislature? Do think it's fair that one side gets the opportunity for unlimited access and influence over the legislature when the other side does not?

Number 0749

MS. WOLFE pointed out that she is not speaking about limiting access. She reiterated that she does not care how many hours are spent; she simply wants to know whether someone is getting paid to influence the legislature.

CHAIR McGUIRE remarked, "So, in other words, you would support government employees or municipal employees simply registering and letting us know the time that they're spending and what they're influencing us on."

MS. WOLFE responded, "And if they're doing it on their own behalf, then they better be taking vacation time to do it."

REPRESENTATIVE GARA thanked Ms. Wolfe. He went on to say:

I'm just going to state for the record that my comments have maybe not been understood perfectly well by the Chair. I, too, object to the idea that somebody, regardless of whether you're a CEO or a small-business person, can spend large amounts of time trying to influence legislation and keep the public from knowing that they're doing that. So, I'm not so focused on the CEO example, either. I think if you spend time trying to influence legislation and you're paid for it, the public should know.

CHAIR McGUIRE asked Representative Gara whether he would support the addition of requiring public and municipal employees to declare when they are attempting to influence legislation or administrative action.

REPRESENTATIVE GARA replied:

There's never been a demonstrated problem that municipal employees are spending large amounts of time down here trying to influence legislation, but if

that's a problem, I'll certainly work with you on it. Right now, we're talking about allowing private businesses to influence legislation, and, since that's what the bill does, I've directed my comments to that problem. But I'd work with you if wanted to start addressing something having to do with public employees.

REPRESENTATIVE SAMUELS asked, "How do we know, if they're not registered; how do we know there's not a problem?"

REPRESENTATIVE GARA said that during his time as a legislator, he has had no state employees walk through his office, on their work time, trying to lobby to influence legislation. There have been school board folks, he remarked, but not state employees or municipal employees, while on city or state payroll, spending 40 hours a month trying to influence legislation. "At least none that I have seen, but if that is a problem, then let's deal with it," he added. But there is a huge disconnect with trying to deal with any perceived public employee problem by opening the floodgates to private corporate and business donations to candidates, as this bill would do, he concluded.

Number 0907

STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), said:

I appreciated your earlier comments ... Madam Chair, about keeping the donation and the fundraiser ban on professional lobbyists, and also your comments directed towards continuing to have watchdogs. And I believe the Alaska Public Offices Commission has been a great watchdog for Alaska for a long time, and I hope they continue to receive your support, particularly in the lobbying arena. I did have some comments prepared from last time, when I thought there were a lot of misunderstandings, but it seems like there are still many misunderstandings as to what lobbying is, and I certainly could have some of them myself.

Ms. LaBolle of the [ASCC] was [likening] ... trade missions, ... which I assume would be to other states or other countries, ... to lobbying, and, frankly, that's mind-boggling to me that ... businesses would be invited to go on a trade mission and have to

consider that lobbying, as well as testimony in front of your committee today. As the rule stands, as I understand it, this is not lobbying, and so the gentleman up in Nome didn't spend ... his two minutes nor his two hours lobbying today. And if you testify at a public hearing, that is not lobbying. And we already heard Ms. Kempton correct Ms. LaBolle, who was exaggerating the fines at \$50 a day, when really they're only \$10. The registration fee is not onerous and draconian, as we've heard before.

Number 1009

MR. CLEARY continued:

Really, the law as it is now is protecting Alaska and allowing open access to the lobbyists, who are, in turn, influencing our politicians. And it's very important for Alaskans to continue to have that. As we've seen through the hearing today, it comes out that a company, without employing a professional lobbyist, could have one or more lobbyists who could lobby up to 40-50 hours a month and not have to register. So, my question to the committee is, why would the company get a registered lobbyist in the first place?

There are currently 11 companies registered in Alaska who have four or more lobbyists. I'm looking at the Exxon Mobil Corporation, right here, with six lobbyists. If they had six lobbyists who split their time equally, none of them would be required to report it [if] they didn't go over 25 percent. There's other corporations like VECO [Corporation] with four lobbyists; they could split it equally or even just cut back a little bit to 24 percent, then they don't have to register with the state. Alaskans aren't going to know about it, and they're influencing our politicians and, more importantly, they're able to donate to everybody, across the board, [and] hold fundraisers for everybody.

Now, really I'll finish with what I think is the main issue here: Citizen access to government versus business access to government. And obviously, citizens run businesses. I would never dispute that. But if a businessperson comes to Juneau to talk to

more than their Senator and Representative, then they're a lobbyist, plain and simple. They're trying to influence legislation that isn't for citizen purposes; it's for their business purposes. And those are the kind of people that Alaskans need to know about because ... these special interests have an undue influence on our political system, so much so that we've come up with these regulations to monitor that. And this bill is bad public policy because it would undermine that. I thank you for the opportunity to testify; I'd be happy to answer any questions.

Number 1124

CHAIR McGUIRE offered her belief that currently, testifying in front of committee does count toward the time limit, whereas with Version H, it would not. She added that APOC staff have indicated that they would prefer that such continue to count toward a time limit. She suggested that small businesses can't afford to hire professional lobbyists, and that the discussion today was in the interest of small businesses as opposed to big businesses such as Exxon Mobil Corporation.

REPRESENTATIVE SAMUELS noted that according to a newspaper article, over 92 percent of Alaskan businesses have less than five employees. He said he agrees that professional lobbyists for large businesses should be regulated.

REPRESENTATIVE GARA clarified that one can testify before committees as much as one wants and not be considered a lobbyist as long as he/she is not getting paid while testifying. He went on to say:

What we're dealing with in this bill is regulating people who get paid to lobby. But citizens don't have to register as lobbyists if they're not getting paid to change the law. The small-business issue is an interesting one. Certainly we want small businesses to be able to approach their representatives. They can; under current law they can approach their representatives. The question is whether they can donate to the representatives they meet.

And I would just point out one real-world example. The Chamber of Commerce is a conglomeration of small and large businesses ... to the extent they support the Chamber's policies. The Chamber is working on

rolling back a certain portion of our minimum wage; that's one of their agenda items. I think, regardless of whether you're a small-business owner [or] a large-business owner, if you're coming down to the legislature to try and convince us to roll back the minimum wage, if you're trying to influence legislation and you're being paid for it, I think the public has a right to know.

CHAIR MCGUIRE opined that currently someone who is not getting paid can testify as much as one wants, but only so long as it does not exceed four hours in a month.

Number 1395

ANDREE McLEOD thanked the committee for the opportunity to testify, both at this meeting and at the prior hearing of HB 106. She remarked that intimidation is the undercurrent of HB 106. She went on to relay that she was involved at the municipal level in getting lobbying regulations enacted. She said she'd noticed that that system was broken when she realized that whenever anyone sitting on the assembly had to vote on an issue, he/she would first gaze at someone specific in the audience for a reaction. This municipal lobbying law was put into place in 2000. She said that this system, which had been broken, is almost fixed; almost in that the amounts being paid to lobbyists is still not known. Money is a tool that is used to assess political activity, she remarked; politics is all about relationships, and assessing those relationships is done through tracking money with the help of existing statutes and regulations

MS. McLEOD said:

There is a purpose to the regulation of lobbying in the Alaska statutes, and it is that the people are entitled to know the identity, ... income, expenditures, and activities of those persons who pay, are paid or reimbursed for expenses, or who make expenditures or other payments in an effort to influence legislative or administrative action. That's there for you to protect. It's not up for discussion, I don't think; it's there. So ... the more you try to drive those activities underground, the more you direct that information underground and out of the public light, the less transparent those activities become.

And then the risk to the member of the public, in order to follow that money trail, increases. And one of the things I experienced as I was trying to bring about some type of change into the dynamics of our municipal government was the level of intimidation that came my way. I have to be careful in what I say because I don't want to be sued, but I was verbally assaulted, I was very intimidated.

Number 1540

And right now we have a clearinghouse; we have a place to go when we want to find out information. And it's a very safe environment; we can do it safely. If you take these activities, that now occur, and you put them underground, and just because you define lobbying as something else, [it] doesn't mean that those activities don't occur anymore. They'll just be called something else.

MS. McLEOD continued:

When we talk about relationships in politics, it is very personal, and in order to bring some type of rhyme or reason to all of these relationships, it gets emotional. And we need to stay rational, and [tracking] money is a way to keep it rational. Having a clearinghouse that provides the information so that people can go to get this information - practically anonymously we can get this information - then it no longer becomes personal and we can stay rational with it.

And I think paramount to anything that you do, you not only protect the public's right to know, which is put in statute, you not only protect the people to find out that information, but you protect it in a way that you maintain a safe environment so that they can find out what's going on without bringing any undue risk to themselves or their families. And I thank you for all the time you're taking on this; ... as Representative Coghill said, ... I hope you would all bring a respect for the system and the institution of our government, our rules, and the people who fit them together. Please remember the public's right to know - we're not irrelevant.

Number 1640

CHAIR McGUIRE thanked Ms. McLeod and said:

I don't have a different goal in mind than anything that you've just said. What I'm looking at is a system that isn't working by the ... agency's own admission. It's difficult, if not impossible, to keep track of what four hours means. So that kind of watchdog that you're talking about - that kind of action - is not occurring right now. It's not because they're incompetent; it's because it's a very difficult system to try to keep track of. I do think it's important to have a watchdog, I do think it's important to have this agency, but I think we need to try to come up with some method ... that is more objective versus subjective. And so that is what we're trying to do. I don't have a different goal than any single thing that you said, and I hope you understand that.

CHAIR McGUIRE announced that HB 106 [Version H, as amended] would be held over. [Note to the reader: On 5/17/03, HB 106 - Definition of Lobbying had all text removed and became HB 106 - Telecommunications & RCA Actions.]

ADJOURNMENT

Number 1693

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:15 p.m.