

HOUSE FINANCE COMMITTEE
March 15, 2010
1:36 p.m.

[1:36:13 PM](#)

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:36 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Allan Austerman
Representative Mike Doogan
Representative Anna Fairclough
Representative Neal Foster
Representative Les Gara
Representative Reggie Joule
Representative Mike Kelly
Representative Woodie Salmon

MEMBERS ABSENT

None

ALSO PRESENT

Representative Kyle Johansen, Sponsor; Sonia Christensen, Staff, Representative Kyle Johansen, Sponsor; Paula Scavera, Legislative Liaison, Department of Labor and Workforce Development; Grey Mitchell, Director, Division of Labor Standards and Safety, Department of Labor and Workforce Development.

PRESENT VIA TELECONFERENCE

Holly Hill, Director, Alaska Public Offices Commission; Tom Dosik, Assistant Attorney General, Department of Law; Tim June, Self, Haines.

SUMMARY

HB 36 INITIATIVES: CONTRIBUTIONS/ PROCEDURES

HB 36 was HEARD and HELD in Committee for further consideration.

#hb36

HOUSE BILL NO. 36

"An Act prohibiting initiatives that are substantially similar to those that failed within the previous two years; relating to financial disclosure reporting dates for persons, groups, and nongroup entities that expend money in support of or in opposition to initiatives, initiative information contained in election pamphlets, initiative petitions, initiative petition circulators, and public hearings for initiatives; and requiring a standing committee of the legislature to consider initiatives scheduled for appearance on the election ballot."

[1:37:00 PM](#)

REPRESENTATIVE KYLE JOHANSEN, SPONSOR, spoke to the legislation. He appreciated the committee's cautious deliberation.

Representative Johansen spoke to Amendment 1.

Page 2, line 6:

Insert a new bill section to read:

"**Sec. 3.**AS 15.13.050 is amended by adding a new subsection to read:

(c) if a group intends to make contributions or expenditures only in support of or opposition to a single initiative on the ballot, the title or common name of the initiative must be part of the name of the group. If the group intends to make contributions or expenditures only in opposition to a single initiative on the ballot, the group's name must clearly state that it opposes that initiative by using a word such as "opposes," "opposing," "in opposition to," and "against" in the group's name."

Renumber the following bill sections accordingly.

SONIA CHRISTENSEN, STAFF, REPRESENTATIVE KYLE JOHANSEN, SPONSOR explained Amendment 1. She noted that the amendment echoes 15.13.050 for ballot measures. She informed that 15.13.050 states that groups formed to support or oppose certain candidates must state the candidate's name and title to clarify their purpose. The title of the ballot measure must exist in the group's title making their support or opposition apparent.

[1:42:11 PM](#)

HOLLY HILL, DIRECTOR, ALASKA PUBLIC OFFICES COMMISSION (via teleconference) agreed that Amendment 1 covers a gap in the statute.

Representative Gara questioned the word "only" on lines 1 and 4. He proposed a hypothetical suggestion in which a group might oppose many different initiatives. He opined that the amendment applies if the group intends to make contributions or expenditures "only" in support or opposition. He suggested dropping the word only. Representative Johansen clarified that the intent of the amendment was to include the title in the disclosure.

Co-Chair Stoltze asked if a citizen was in support or opposition of an initiative, would reporting requirements be necessary. Ms. Hill replied that a provision in law for control groups solely to support or oppose a candidate increases group accountability.

Co-Chair Stoltze asked if the opposition of candidates would change the dynamics of their reporting requirements. Ms. Hill was unsure.

TOM DOSIK, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference) responded that if a group engages in activity supporting greater than one ballot initiative or more than one candidate then a different set of reporting requirements exist. He believed that the amendment states that groups can weigh in on ballot initiatives without changing their names.

Co-Chair Stoltze requested comment on the reference language. Mr. Dosik responded that he could provide the requested language for the committee later in the day.

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Representative Gara suggested dropping the word only as it would allow easy evasion of the provision.

Co-Chair Stoltze introduced Amendment 2.

Page 1, line 1, following **"initiatives"**:

Insert **"and those who file or organize in order to file them"**

Page 4, following line 30:

Insert a new bill section to read:

***Sec. 8.** AS 15.13.400(8) is amended to read:

(8) "group" means

(A) every state and regional executive committee of a political party; [AND]

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with eh authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent

of its money to one on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate; and

- (C) any combination of two or more individuals acting jointly who organize for the principal purpose of filing an initiative proposal application under AS 15.45.020 or who file an initiative proposal application under AS 15.45.020.

Renumber the following bill sections accordingly.

Ms. Hill informed that Section 1 of the original bill states "every individual person nongroup entity or group contributing a total of \$500 organized for the principal purpose of filing an initial proposal application." The department suggested that the definition of group could be modified to clarify that initiative proposals are included; otherwise a person might argue that they are exempt because the definition of group includes people who organize against an election.

Representative Johansen spoke in support of the amendment, but deferred to the committee's opinion.

Representative Gara opined that the amendment requires only registration and donor disclosure for people supporting an initiative. Ms. Hill commented that the amendment requires reporting during the time period after submission of the application until certification of the ballot initiative and requires all expenses to influence the approval of the ballot initiative application.

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Representative Gara asked if the amendment addresses a situation in which a person donates money to an initiative proposal following its debut on the ballot. Ms. Hill responded that reporting that occurs up to the certification of the initiative is zero reporting. However, the staff of the Alaska Public Office Commission has interpreted that expenditures made to influence the ballot measure would be reportable after that date. She understood that the amendment would include expenditures to influence

the approval of the ballot initiative proposal. She provided an example.

Mr. Dosik agreed with Ms. Hill's statement. The original bill read "groups contributing a total of \$500 or more to a group organized for the principal purpose of filing an initiative." Group has a very specific meaning. A group is organized for the principle purpose of influencing the outcome of an election. He asked that the definition of group be expanded.

Representative Gara asked about this year's ballot initiative on abortion. The provision suggests that if a group is organized to place the issue on the ballot then donors' names must be disclosed but if a group is organized to stop an issue then the disclosure is not required.

Mr. Dosik was not aware of incidents of organization to counter a process. Representative Gara informed that groups occasionally organize to stop initiatives. Mr. Dosik understood that groups actively campaign against issues once they are on the ballot.

[1:55:31 PM](#)

Ms. Hill commented that if Part C read that "any combination of individuals acting jointly who organize for the principal purpose of influencing the filing of an initiative proposal," that might accommodate the concerns of Representative Gara. Co-Chair Stoltze requested further input from Ms. Dosik.

Co-Chair Stoltze addressed Amendment 3 by request of the administration.

Page 1, line 1:

Delete **"and to ballot initiatives"**

Insert **", to ballot initiative and referenda, to issues placed on the ballot to determine whether a constitutional convention shall be called, a debt shall be contracted, an advisory question shall be approved or rejected, or a municipality shall be incorporated, and to constitutional amendments submitted to the public for a vote"**

Page 2, line 9, following "15.13.060":

Insert **"15.13.074(b)**

Page 7, line 13, following "APPLICABILITY":

Insert "(a)"

Page 7, following line 15:

Insert a new subsection to read:

"(b) This Act applies only to a ballot proposition, as that term defined in AS 15.13.065(c), but excluding an initiative covered under (a) of this section, placed on the ballot after the first statewide election on or after the effective date of this Act."

Ms. Hill stated that the insertion of 15.13.074(b) into the list of exceptions of 15.13.065(c) would eliminate a gap in the statutes. She noted recent cases in which respondents have argued that because 15.13.074(b) was not listed in the laundry list of exceptions in 15.13.065(c) it did not apply to ballot initiatives. The amendment's addition to the statute would clarify.

Representative Johansen expressed concern about the amendment and the lack of new legislation filed by the administration to repair the issue.

[1:58:45 PM](#)

Representative Austerman queried the title change.

Ms. Hill directed the question to the Attorney General.

Mr. Dosik was unaware of the title change's history.

Co-Chair Stoltze suspected that the title change reflects the contents of the bill.

Co-Chair Stoltze noted the legislation's labor issue.

Representative Austerman asked who drafted the amendment. Co-Chair Stoltze replied the administration.

Representative Johansen explained that his aide was working with the Alaska Public Offices Commission (APOC) but the Attorney General's office was not in contact with APOC.

Co-Chair Stoltze commented on the accountability of Representative Johansen and his staff.

Representative Doogan offered another amendment that would expand disclosure in a few ways: First to ensure that if someone is either supporting or opposing an initiative that would provide the names of the three largest contributors.

[2:03:08 PM](#)

The second suggestion is requiring people who contribute to initiatives to follow the same requirements as those contributing to a political campaign. He offered to work with the sponsor's office to draft the amendment.

Co-Chair Stoltze requested a general analysis of the section related to the employee requirements.

GREY MITCHELL, DIRECTOR, DIVISION OF LABOR STANDARDS AND SAFETY, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT commented that the issue was whether the workers hired to gather signatures for ballot initiatives would be considered employees or independent contractors. He stated that there was no real problem with the bill. He explained that the email responses were posted.

Co-Chair Stoltze asked if many investigations were performed by the Department of Labor and Workforce Development.

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PAULA SCAVARA, LEGISLATIVE LIAISON, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT replied that if a person files unemployment, the department investigates whether or not the company paid unemployment insurance tax. If the company has not then an investigation is initiated. She noted that a certain number of random audits are accomplished each year. Co-Chair Stoltze asked if an audit of professional initiative gatherers had taken place. Ms. Scavera did not know the answer to the question.

Representative Fairclough asked if a wage-an-hour employee is required to collect signatures. Mr. Mitchell responded that all factors must be considered to determine whether or not the person is an employee versus an independent contractor.

[2:09:47 PM](#)

Representative Fairclough referred to Section 10. She asked if the section included a requirement to hire a person under the wage-an-hour laws of the state. Mr. Mitchell answered no.

Representative Fairclough asked if the section precludes a contract. Mr. Mitchell responded no.

Co-Chair Stoltze asked if a person is hired on a contingency fee, would it create greater scrutiny if the person is a traditional employer. Mr. Mitchell responded that the different methods of payment tend to create a red flag regarding an independent contractor.

[2:12:25 PM](#)

Representative Gara expressed concerns about whether the bill would make gathering signatures too expensive to pursue initiatives. He addressed the provision on wages. He asked if an employee is required to be paid around the clock while travelling. Mr. Mitchell responded that the requirement is that a person is paid while doing productive work and is not required to pay around the clock.

Co-Chair Stoltze asked to know the impact of the legislation on volunteers. Mr. Mitchell did not know.

Representative Gara asked about a provision in which the Lt. Governor must organize public hearings. He supposed that the Lt. Governor could refuse the public hearings.

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Representative Johansen agreed that committee work on the language would be helpful. Representative Johansen could not imagine the Lt. Governor using a trick to kill a ballot measure.

Representative Fairclough discussed matching the limits to \$3,000 from outside contributions. She asked if the aspect was included in an amendment. Ms. Christensen responded that the legal opinion dated February 25, 2010 listed on Page 3, Question 2 highlights that the legislature cannot limit the amount of contributions coming into ballot measures. The U. S. Supreme Court has differentiated

between campaign contributions and ballot measure contributions. Ballot measure contributions are considered a free speech issue; therefore, a limit on the amount of money inhibits free speech.

Representative Johansen added that an individual can be unduly influenced or corrupted but an idea cannot.

Representative Fairclough understood that the state can limit people contributing but their residency is without influence.

TIM JUNE, SELF, HAINES (via teleconference), stated that the initiative process is critical and protected by the Alaska Constitution. The initiative process is not a right granted to the people, but a power reserved by the people and it transcends any right granted. He asked for consideration of whether the process diminishes or restricts the power of the people or unnecessarily burdens the sponsor's first amendment rights in terms of free speech and gathering signatures. He opined that the financial burden placed on petitioners with the 30 district requirement is extreme and precludes the intent of initiatives. He encouraged a return to allowing the initiative to qualify by a certain number of voter signatures rather than the district requirements.

[2:25:30 PM](#)

Mr. June addressed Section 8 which includes a clause stating that initiatives must be confined to one subject. He opined that prohibiting a similar initiative within a two year limit was counter to the constitutional intent. He stated that increasing the burden would counter the power of the people to pass necessary initiatives.

Mr. June commented on fraudulent signature gatherers who are paid large amounts of money for organizing signature gathering and affecting it. He objected to the idea established in Section 19 and the presence of a standing committee in the legislature. He stated that the power resides in the people and the legislature must respect that.

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Mr. June addressed the zero fiscal note. He suggested revisiting the zero nature of the note as the state is required to hold public hearings in the four judicial districts and some cost will be attached.

Co-Chair Stoltze commented that he was opposed to the change in the Constitution. Mr. June stated that his comments were not presented as a criticism, but merely an observation of the reality of the effect of the proposed legislation.

Representative Gara asked about the section including the provision stating that if an initiative failed one year it is not eligible the next. Co-Chair Stoltze responded that the section was in an older version of the bill.

HB 36 was HEARD and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 2:32 PM