

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 17, 2010

1:08 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 386

"An Act establishing a uniform format and procedure for citations for certain violations of state law; relating to the form, issuance, and disposition of citations for certain violations; relating to certain crimes and penalties for noncompliance with citations; and providing for an effective date."

- MOVED CSHB 386(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 287

"An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code."

- MOVED CSHB 287(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 409

"An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 386

SHORT TITLE: CITATIONS

SPONSOR(S): REPRESENTATIVE(S) HAWKER

02/23/10 (H) READ THE FIRST TIME - REFERRALS
02/23/10 (H) JUD, FIN
03/17/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 287

SHORT TITLE: UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

SPONSOR(S): REPRESENTATIVE(S) RAMRAS, GRUENBERG

01/15/10 (H) PREFILE RELEASED 1/15/10
01/19/10 (H) READ THE FIRST TIME - REFERRALS
01/19/10 (H) L&C, JUD
03/01/10 (H) L&C AT 3:15 PM BARNES 124
03/01/10 (H) Moved Out of Committee
03/01/10 (H) MINUTE(L&C)
03/04/10 (H) L&C RPT 1DP 4NR
03/04/10 (H) DP: LYNN
03/04/10 (H) NR: BUCH, CHENAULT, T.WILSON, OLSON
03/11/10 (H) JUD AT 1:00 PM CAPITOL 120
03/11/10 (H) <Bill Hearing Canceled>
03/17/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 409

SHORT TITLE: CAMPAIGN EXPENDITURES

SPONSOR(S): STATE AFFAIRS

02/26/10 (H) READ THE FIRST TIME - REFERRALS
02/26/10 (H) STA, JUD
03/02/10 (H) STA AT 8:00 AM CAPITOL 106
03/02/10 (H) Heard & Held
03/02/10 (H) MINUTE(STA)
03/09/10 (H) STA AT 8:00 AM CAPITOL 106
03/09/10 (H) Moved CSHB 409(STA) Out of Committee
03/09/10 (H) MINUTE(STA)
03/12/10 (H) STA RPT CS(STA) NT 4DP 3AM
03/12/10 (H) DP: SEATON, GRUENBERG, PETERSEN, LYNN
03/12/10 (H) AM: JOHNSON, GATTO, P.WILSON
03/12/10 (H) FIN REFERRAL ADDED AFTER JUD
03/17/10 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 386.

JULI LUCKY, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 386 on behalf of the sponsor,
Representative Hawker.

KATHERINE PETERSON, Lieutenant
Alaska State Troopers
Support Services
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 386, answered
questions.

DAVID BROWER, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 386, answered
questions.

RODNEY DIAL, Lieutenant/Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety
Ketchikan, Alaska

POSITION STATEMENT: During hearing of HB 386, answered
questions.

MIKE SICA, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As staff to the House State Affairs
Standing Committee, sponsor, presented HB 409.

DON ETHERIDGE, Lobbyist
Alaska AFL-CIO
Juneau, Alaska

POSITION STATEMENT: Testified that although the AFL-CIO is supportive of full disclosure, it has concerns with potential amendments to HB 409.

ALPHEUS BULLARD, Attorney
Legislative Legal Services Division
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Provided clarification regarding the disclaimer provisions of CSHB 409(STA).

HOLLY HILL, Executive Director
Alaska Public Offices Commission (APOC)
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 409, pointed out that 2 AAC 50.306 addresses "clearly identified".

JOHN PTACIN, Assistant Attorney General
Labor and State Affairs Section
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with CSHB 409(STA).

BARBARA HUFF TUCKNESS, Director
Governmental & Legislative Affairs
Teamsters Local 959
Anchorage, Alaska

POSITION STATEMENT: Testified in support CSHB 409(STA).

ACTION NARRATIVE

[1:08:26 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Ramras, Gatto, Gruenberg, and Herron were present at the call to order. Representatives Lynn, Holmes, and Dahlstrom arrived as the meeting was in progress.

HB 386 - CITATIONS

[1:08:43 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 386, "An Act establishing a uniform format and procedure for citations for certain violations of state law; relating to the form, issuance, and disposition of citations for

certain violations; relating to certain crimes and penalties for noncompliance with citations; and providing for an effective date."

1:08:59 PM

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, informed the committee that HB 386, the "Ticket Simplification Act," was crafted largely with the assistance and insistence of the Department of Public Safety (DPS). This legislation, he explained, provides DPS the authority to prescribe a uniform citation format and process for moving citations forward. The intent is to have much greater efficiency with the necessary paperwork for the state's justice system and facilitate the utilization of electronic records for which consistent format is essential for processing.

1:11:30 PM

JULI LUCKY, Staff, Representative Mike Hawker, Alaska State Legislature, relayed on behalf of the sponsor, Representative Hawker, that the legislation has a lot of redundant language throughout the 63 sections of HB 386. She directed the committee's attention to a document entitled "HB 386 Uniform Citations - Overview." She explained that Sections 21-31 of HB 386 encompass the uniform citation process and format. The aforementioned sections outline the format of each citation, clarify when an officer can issue a citation versus making an arrest, and set standard and consistent deadlines for delivery of citations to the court, answering citations when not required to go to court, and what must be done with scheduled offenses. Scheduled offenses are offenses for which one doesn't have to go to court and for which there is a specific fine or bail associated with the offense. These sections also outline recordkeeping processes and have a consistent penalty for failure to pay a fine or appear in court. Ms. Lucky noted that the legislation is long because the various deadlines are located in the [corresponding] statute. This legislation consolidates those deadlines in this statute and references the individual statutes to AS 12.25.175-12.25.230.

REPRESENTATIVE HOLMES recalled that the sponsor statement relates the goal of allowing more fines to be paid through the courts' online e-payment system. However, the language in the legislation refers to mailing or personally delivering the fines to the clerk of the court. She asked whether the language in HB 386 would allow payment online.

MS. LUCKY offered her understanding that since the language to which Representative Holmes referred to is exists, it would allow fines to be paid online. However, she suggested that perhaps DPS staff could answer as she isn't familiar with the process of payment.

[1:14:58 PM](#)

KATHERINE PETERSON, Lieutenant, Alaska State Troopers, Support Services, Department of Public Safety, in response to Representative Holmes, answered that citizens are already allowed to pay fines online under the existing statutory language that HB 386 uses. She added that the language of HB 386 allows the electronic transfer of information to the courts in a more timely fashion. The aforementioned allows payment online in a quicker and easier fashion. Currently, even if a court is set up to allow online payments, there is delay because the court hasn't received the citation or entered the citation into its system.

REPRESENTATIVE HOLMES surmised then that the language she referenced is used in statute and should allow online e-payments without amending HB 386.

LIEUTENANT PETERSON confirmed that to be correct.

REPRESENTATIVE GATTO, referring to the language on page 7, asked how the language "shall accept" the citation would be enforced.

[1:17:05 PM](#)

DAVID BROWER, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), noted that he helped draft HB 386. He explained that he didn't believe that the proposed language change would matter because the same individuals who won't accept the citation can't be forced to sign the citation. He said he thought the language would streamline the process as the [intent] of the legislation is to make things occur quicker without signing. The language, he explained further, would eliminate the necessity of having certain offenses for which one has to sign and certain offenses for which one doesn't have to sign. He noted that in another section the language may allow the person [refusing the citation] to be arrested.

REPRESENTATIVE GATTO surmised then that the final authority is with the arresting officer who serves the citation. He said he wasn't clear that the language of HB 386 says that those who refuse the citation can be arrested.

MR. BROWER said that's already in Title 12. There are certain offenses for which an officer doesn't have the authority to arrest unless the individual refuses to identify himself/herself or (indisc.). In further response to Representative Gatto, Mr. Brower pointed out that if an officer is going to issue a citation the officer has to have probable cause to believe the offense occurred, which is the same with a driving under the influence (DUI) charge. The officer, in a situation in which a potential DUI offender refused the field sobriety tests, would have to have enough articulable reasons to probable cause to arrest without the field sobriety tests.

[1:21:08 PM](#)

REPRESENTATIVE HOLMES inquired as to the reasoning for replacing the deleted language on page 6, lines 10-11, with "**reasonably believes**".

MR. BROWER answered that the language change doesn't have any practical difference. He opined that the deleted language, "has reasonable and probable cause to believe", is redundant. Probable cause is the language used when an officer makes a determination to arrest someone for a particular crime; the elements of the crime have to be met. In this case, [the elements of the crime] are whether the individual is dangerous or has committed a particular crime and there is already probable cause for that crime. He said that the primary concern of the officer at the time is whether the individual is a danger to himself/herself or others.

REPRESENTATIVE GRUENBERG pointed out that the language on page 3, lines 13-14, which is new language, is essentially the same as the language on page 3, lines 6-7. He asked whether a peace officer with probable cause who boards a boat has the right to search without a warrant for things in plain view.

MR. BROWER suggested that if the items are in plain view, then the officer isn't searching.

REPRESENTATIVE GRUENBERG clarified then whether in such a situation the office could seize items without a warrant.

MR. BROWER offered his belief that if the items are contraband, the officer already has the right to seize the items. He clarified that although the section has been repealed and reenacted, the officer still has to have probable cause of a violation prior to boarding the boat. The aforementioned, he pointed out, isn't new. Certainly, if the officer is aboard the boat and sees contraband in plain sight, the officer would be able to seize it.

REPRESENTATIVE GRUENBERG related his understanding that per Section 8, the officer will be able to board the craft simply because the officer has probable cause to believe the violation has occurred. He related his assumption that some of those violations wouldn't necessarily have given the officer probable cause to board the watercraft. Representative Gruenberg expressed concern that the officer would be able to board the watercraft and then things that wouldn't have otherwise been in plain view would be in plain view and could be seized without a search warrant.

REPRESENTATIVE GRUENBERG asked if under the current law and the proposed law whether an officer would be able to seize things that would be in view once the officer can legally board the vessel. Therefore, would that allow the officer, under the plain view doctrine, to seize items he/she couldn't have otherwise seized without a warrant, he asked.

MR. BROWER offered his understanding that Section 8 doesn't change existing law.

MS. LUCKY surmised that Representative Gruenberg's question is whether, under current law, officers can board and seize.

REPRESENTATIVE GRUENBERG expressed concern that Section 8 would give the officer a legal reason to board where none existed before and without reference to probable cause. He offered to obtain information on this matter from Legislative Legal Services.

[1:27:57 PM](#)

REPRESENTATIVE GRUENBERG asked if the deleted language, "be in writing" in Section 14, is a requirement that's found elsewhere in HB 386.

MR. BROWER remarked that he couldn't conceive of a citation that isn't in writing.

REPRESENTATIVE GRUENBERG asked whether, in AS 12.25.175-12.25.230 there is a requirement that a citation be in writing. If there isn't, then he opined that somewhere [statute] should specify that citations must be in writing.

MR. BROWER remarked that a citation must contain certain things, which would necessarily be in writing.

REPRESENTATIVE GRUENBERG requested that he be directed to the page and line of such a requirement.

REPRESENTATIVE GRUENBERG referred to the language on page 4, line 5, which is elsewhere in the legislation. The language requires the department to deposit the citation and a copy with the court on or before the 10th working day after the citation's issuance. Representative Gruenberg expressed the desire that it wouldn't be grounds for a motion for dismissal if the aforementioned fails to be done in a timely fashion.

MS. LUCKY directed Representative Gruenberg to page 9, lines 21-22.

MR. BROWER pointed out that the language on page 6, lines 30-31, specifies that "the officer shall prepare a written citation and issue it to the person".

[1:31:17 PM](#)

REPRESENTATIVE GATTO pointed out that on page 6, lines 10-11, the language "has reasonable and probable cause to believe" has been replaced with "reasonably believes". However, throughout the legislation the language "probable cause" is used. He questioned whether the language should be consistent throughout.

MR. BROWER explained that in any crime probable cause means that the officer has probable cause to believe that every element has occurred. Therefore, the language "probable cause" didn't seem to fit the provision that addresses a situation in which the officer believes the person is dangerous because there are no elements.

REPRESENTATIVE HERRON, returning to the discussion of Section 14 and the deletion of the language "be in writing", related that he reviewed the statute reference to AS 12.25.175-12.25.230 and surmised that "written citation" means the same as "be in writing".

MR. BROWER replied yes.

REPRESENTATIVE GRUENBERG opined that in Section 24 the language ", as repealed and reenacted by sec. 26, ch. 28, SLA 2000, and by sec. 41, ch. 12, SLA 2006," could be deleted. He suggested that such technical language could be deleted throughout the legislation.

MS. LUCKY informed the committee that such language is found in Sections 8 and 24. She then explained that the language is part of the Boating Safety Act, which will be repealed and is why there are two duplicative sections. Therefore, the Session Laws of Alaska (SLA) must be edited because when sunsets occur the previous statute takes the place of the new statute. In further explanation, Ms. Lucky pointed out that Sections 8 and 24 have different effective dates because they're conditional upon the eventual sunset of the Boating Safety Act. If the Boating Safety Act never sunsets, Sections 8 and 24 will never come into play.

[1:35:15 PM](#)

REPRESENTATIVE GRUENBERG, referring to Section 21 on page 5, expressed his desire that the citation form should be required to be done by regulation under the Administrative Procedure Act (APA). However, the language on page 5, line 30, uses the language "may" rather than "shall". Without such a change, the commissioner could simply decide to adopt standards and not do it through regulation. He explained that the aforementioned change would clarify that the form of the regulations must go through the regular notice and public comment procedure for adoption of regulations under APA.

MR. BROWER noted his agreement with Representative Gruenberg, but added that he had no doubt that the DPS commissioner would adopt regulations, which would be pursuant to AS 44.62. Since citations affect the general public it will have to be a regulation.

CHAIR RAMRAS surmised this had to do with migrating to an electronic citation form. He inquired as to Lieutenant Dial's thoughts regarding whether the language on page 5, line 30, should be "may" or "shall".

[1:37:26 PM](#)

RODNEY DIAL, Lieutenant/Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety, related that at this time the department would prefer "may". However, he said that the department wouldn't oppose changing the language to "shall" because he believes the department would adopt regulations anyway.

REPRESENTATIVE GRUENBERG opined that it's extremely important to provide the opportunity for public comment on the form of the regulations.

LIEUTENANT DIAL responded that he didn't see any reason why the department wouldn't accept that proposed change.

CHAIR RAMRAS interjected that he prefers "may".

[1:38:25 PM](#)

REPRESENTATIVE HERRON asked if there is any other provision, beyond that in Section 22, that replaces the language "has reasonable and probable cause to believe" with "**reasonably believes**".

MR. BROWER said that he would have to research that issue further, but noted that something similar is in Title 47 for mental commitments.

REPRESENTATIVE HERRON expressed concern and opined that he's not convinced that [the proposed language] is the appropriate approach.

REPRESENTATIVE GATTO, returning to the language on page 5, line 30, asked if the DPS commissioner, as a matter of course, regularly adopts regulations under AS 44.62. If not, is there an alternative, he asked.

MR. BROWER informed the committee that any commissioner, commission, or board that adopts regulations does so under Title 44. He then pointed out that Section 21(b) says "The commissioner of public safety shall provide or prescribe citation forms for use by peace officers and other persons who are authorized by law to issue citations." Currently, the things required to be included in a citation are in statute in court rule and DPS currently has a uniform citation that it uses and is used by some other police agencies in the state. Mr. Brower said that at this point he didn't know whether the

commissioner of DPS has adopted regulations regarding citations, but reiterated that any regulations are adopted under AS 44.62.

REPRESENTATIVE GATTO asked if using "shall" would be a hindrance such that there may be regulations that ought to be established outside of AS 44.62.

MR. BROWER pointed out that Section 48 amends AS 44.41.020 such that DPS "shall establish by regulation standardized forms for citations ..." while under Section 21 similar language uses the term "may".

REPRESENTATIVE GRUENBERG related his understanding that Section 21 only relates to the forms of the citation. He asked if that's correct.

MS. LUCKY answered that she interpreted it that way as well.

REPRESENTATIVE GRUENBERG surmised, then, that Section 21(c) might be read in conflict with Section 48. Since it's the intent to require regulations under Section 48, he opined that the "may" language on page 5, line 30, should be changed to "shall" so as to avoid any conflict.

MS. LUCKY stated that she supported such a change.

CHAIR RAMRAS, upon determining no one else wished to testify, closed public testimony.

[1:44:30 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 2, lines 14, following "section.":

DELETE "The citation is considered a summons for a failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 2 line 29, through page 3, line 2: DELETE ALL MATERIAL AND INSERT:

"* **Sec. 6.** AS 04.21.065(j) is repealed and reenacted to read:

(j) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the bail amount established under

(g) of this section or to appear in court as required."

Page 10, following line 13

INSERT a new bill section to read:

"* **Sec. 32.** AS 16.05.165 (a) is amended to read:

(a) When a peace officer stops or contacts a person concerning a violation of this title except AS 16.51 and AS 16.52 or of a regulation adopted under this title except AS 16.51 and AS 16.52 that is a misdemeanor, the peace officer may, in the officer's discretion, issue a citation to the person as provided in AS 12.25.175 - 12.25.230 [AS 12.25.180] .

RENUMBER following sections accordingly

Page 10, line 26 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

REPRESENTATIVE HOLMES objected for the purpose of discussion.

MS. LUCKY explained that Amendment 1 is basically clean up. Amendment 1 inserts citations that were omitted and omits the language "The citation is considered a summons for a failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant." He requested that Mr. Brower speak to the aforementioned language being deleted by Amendment 1.

[1:45:30 PM](#)

MR. BROWER explained that numerous existing statutes indicate that an individual who was cited into court to either pay a fine or attend court and did neither, the citation would be considered a summons for a misdemeanor. However, he opined that the language was meaningless. If the original citation was for a violation, it couldn't revert to a misdemeanor. It's clear that failure to obey a citation is a violation of AS 12.25.230, he stated.

MS. LUCKY, in response to Representative Gruenberg, clarified that the document [entitled "Amendments to HB 386 (26-LS1525\A)] merely describes Amendment 1.

REPRESENTATIVE HOLMES withdrew her objection.

There being no further objection, Amendment 1 was adopted.

[1:47:00 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, as follows:

Page 5, line 30;
Delete "may"
Insert "shall"

REPRESENTATIVE DAHLSTROM objected for discussion.

CHAIR RAMRAS then announced that without objection Amendment 2 was adopted.

[1:47:30 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HB 386, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE HERRON objected, and reiterated concern that the change on page 6, lines 10-11, could be utilized elsewhere. He then removed his objection.

There being no further objection, CSHB 386(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:48 p.m. to 1:50 p.m.

HB 287 - UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

[1:50:25 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 287, "An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code."

CHAIR RAMRAS moved to adopt the proposed committee substitute (CS) for HB 287, Version 26-LS1300\E, Bannister, 3/17/10, as the working document. There being no objection, Version E was before the committee.

[1:50:54 PM](#)

REPRESENTATIVE GRUENBERG, speaking as a joint prime sponsor, explained that HB 287 addresses one discrete issue of estate planning in which a person who is given an estate asset in a will or trust may wish to skip (indisc.) so it's not taxed twice. The aforementioned would save a lot of money in estate taxes. Currently, there is one section of the Uniform Probate Code that addresses the aforementioned, but it has become more complicated and sophisticated since its adoption in the early 1970s. Therefore, the commissioners on uniform state laws have updated it and enacted an entire act on this matter. This legislation, HB 287, adopts that uniform act, after being "Alaskanized" by trust attorneys [in the state]. He reminded the committee that when former Representative Gabrielle LeDoux introduced legislation addressing this matter a few years ago, he was concerned because it didn't address back child support. The legislation before the committee today includes a provision by which one can't escape paying back child support. He related that after recent discussions, one of the Alaska provisions was removed from the legislation and one of the uniform provisions was reinserted. He said he hadn't heard of any objection to it.

CHAIR RAMRAS, upon determining no one wished to testify, closed public testimony.

[1:54:53 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed committee substitute (CS) for HB 287, Version 26-LS1300\E, Bannister, 3/17/10, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 287(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:55 p.m. to 1:57 p.m.

HB 409 - CAMPAIGN EXPENDITURES

[1:57:20 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 409, "An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; and providing for an effective date." [Before the committee was CSHB 409(STA).]

REPRESENTATIVE LYNN, speaking as the chair of the House State Affairs Standing Committee, sponsor of HB 409, explained that CSHB 409(STA) is intended to address the U.S. Supreme Court decision on Citizens United. The legislation isn't about the decision itself, but rather about letting constituents throughout the state know who contributes and makes expenditures in corporations and unions. He explained that the Citizens United decision basically established corporations and unions as persons and thus they can contribute and make individual expenditures as would individual candidates so long as that independent decision isn't coordinated with a candidate or an entity putting together an initiative. Representative Lynn expressed concern about foreign nationals who are part of the decision-making process in terms of [the candidates] and/or initiatives they will support or oppose. Language in HB 409 addresses some of those concerns. Representative Lynn pointed out that with elections around the corner time is of the essence with this legislation.

[2:00:22 PM](#)

MIKE SICA, Staff, Representative Bob Lynn, Alaska State Legislature, speaking as staff to the House State Affairs Standing Committee, sponsor, informed the committee that Alaska is one of twenty-four states developing disclosure and disclaimer laws regarding independent expenses by corporations, labor unions, and limited liability companies (LLCs). He explained that in many of the sections of HB 409, the legislation specifies a definition of "person" that includes "corporations, companies, partnership, firm, associations, organizations, business trust society, natural person, union". He pointed out that Section 4, the disclosure section, and Section 11, the disclaimer section, are the [major focus] of HB 409. Mr. Sica then turned to the aforementioned U.S. Supreme Court ruling in which it specifies that the federal government can still prohibit foreign nationals from being involved in federal and state election campaigns through independent expenditures. The legislation before the committee addresses that matter in HB 409 by condensing the federal law while basically accomplishing what the ruling requires. He related his belief that any federal preemption problems with the federal government are addressed by placing in state code the language of the federal law.

MR. SICA then highlighted various changes made in the prior committee. On page 5, Section 10 originally included the

ability to make anonymous expenditures in certain restricted circumstances. However, the aforementioned was deleted in CSHB 409(STA). He pointed out that the language on page 6, Section 11(a)(2)(D) requires that corporations, unions, and LLCs that utilize an audio and video component of their campaign or independent expenditure advertisement clearly identify the name and city and state of residence of the top three contributors. He noted that requirements surrounding communications continues in Section 12, on page 7, of CSHB 409(STA).

CHAIR RAMRAS inquired as to whether the term ["easily discernable"] is in existing law. He also inquired as to its definition, noting that the "paid for" portion of an advertisement can be done very quickly.

MR. SICA stated that the term is being added.

REPRESENTATIVE LYNN offered his understanding that the term means a person of normal hearing can understand what's being said.

CHAIR RAMRAS questioned how quickly someone can speak and remain [easily discernable].

REPRESENTATIVE GATTO questioned whether [easily discernable] refers to an unaltered voice speed.

[2:08:16 PM](#)

REPRESENTATIVE GRUENBERG concurred with Representative Gatto that [the term should refer to an unaltered voice speed] such that it should be heard and understood. Representative Gruenberg noted that this term was added by an amendment he proposed. He then pointed out that on page 7, line 16, following "The" the term "three" should be inserted as that was part of the amendment adopted in the House State Affairs Standing Committee.

MR. SICA directed the committee's attention to the language on page 7, lines 8-9, which refers to Section 11(a)(2)(D) on page 6. The language in Section 11(a)(2)(D) on page 6, lines 20-21, specify that it's the "**three largest contributors**".

REPRESENTATIVE GRUENBERG acknowledged that point.

CHAIR RAMRAS asked if in a television commercial, the top three contributors have to be communicated via audio and video or just in print on the screen.

MR. SICA offered his understanding that in a television commercial the top three contributors would have to be communicated via audio and [print on the screen]. This requirement would allow a hearing impaired individual to see the list and a visually impaired individual to hear the list.

CHAIR RAMRAS questioned why there's suddenly a requirement to relate the information via audio, when that hasn't been the practice in the past. He expressed concern that it's a "knee jerk reaction" to the U.S. Supreme Court ruling. He said that he doesn't like "knee jerk legislation."

MR. SICA opined that it is drawn from the U.S. Supreme Court decision, which he further opined seems to provide people as much information as possible to make the best decisions possible.

[2:11:26 PM](#)

REPRESENTATIVE LYNN reminded the committee that this legislation addresses the elective process, not selling items. He said he doesn't believe trying to protect [and inform] voters is a "knee jerk reaction"; it's important to know who is making expenditures for or against a candidate or an issue.

CHAIR RAMRAS pointed out that candidates in the last election cycle who had a television advertisement didn't have to say who paid for the advertisement, while those with radio advertisements were required to say who had paid for the advertisement. He asked if Representative Lynn believes voters haven't been aware who paid for advertisements in the past.

REPRESENTATIVE LYNN indicated that he was amenable to an amendment to change that proposed requirement.

REPRESENTATIVE DAHLSTROM asked if Representative Lynn would want an individual running for office to disclose the top three donors in even a 30 second advertisement.

REPRESENTATIVE GRUENBERG said that he brought forth the amendment that inserted the provisions requiring the top three contributors be listed in order to aid two classes of people: the visually impaired and individuals who merely listen to the

television without watching it. In further response to Representative Dahlstrom, Representative Gruenberg said that he hadn't thought of addressing it prior. He noted that the timing for listing the three names has amounted to eight seconds. Representative Gruenberg then highlighted that under federal law, advertisements for drugs must auditorily state all the potential side effects, which takes much longer than eight seconds. The aforementioned is required because people feel it's important, which he said he believes is also the case for elections.

MR. SICA interjected that the language "easily discernable" is already in the code. He then directed the committee's attention to page 8, lines 25-26, which is from where the language "easily discernable" came.

REPRESENTATIVE DAHLSTROM expressed concern with the lack of a legal definition for "easily discernable" and the possibility that it could lead to litigation. Although Representative Dahlstrom related that she's supportive of full disclosure, she pointed out that Alaska consists of various levels of education, various cultures, and various languages.

[2:16:46 PM](#)

DON ETHERIDGE, Lobbyist, Alaska AFL-CIO, related that the Alaska AFL-CIO is supportive of full disclosure. However, he expressed concern that a forthcoming amendment is cumbersome for organizations to fulfill the [requirement]. He informed the committee that some of the [AFL-CIO] organizations have over 8,000 members scattered throughout the state, [all of] which would have to be notified prior to collecting or making expenditures. Currently, under law any of the membership of the [AFL-CIO] can opt out of any political action contributions or funds from their union dues being spent for political action, which was the result of the Beck decision.

REPRESENTATIVE GATTO asked if Mr. Etheridge is referring to a political action committee (PAC).

MR. ETHERIDGE confirmed that PACs are what [the AFL-CIO] uses for political actions.

REPRESENTATIVE GATTO pointed out that the U.S. Supreme Court decision says that dues, not just PAC contributions, can be contributed. He further pointed out that those who contribute to PACs know that the funds are being [contributed to a

political campaign or issue], while those who pay dues don't know whether dues funds are being used to contribute to a political campaign or issue. Therefore, it's important, he opined, to notify the dues payor.

MR. ETHERIDGE noted his agreement that the member who pays dues has a right to know, but the language regarding "contributions" is of concern because it would apply to PACs.

REPRESENTATIVE GATTO opined that the legislation isn't addressing PACs. However, he emphasized that currently there is no law regarding knowledge of how the dues are spent.

MR. ETHERIDGE stated that the Alaska AFL-CIO doesn't have a problem with the legislation, but is concerned with a potential amendment that would extend this disclosure to any membership contributions, dues, or fees and the PACs are contributions.

[2:22:01 PM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal Services Division, Legislative Affairs Agency, offered to provide clarification regarding the disclaimer provisions of CSHB 409(STA), proposed AS 15.13.090(c)-(f). He explained that the language on page 7, lines 12-13, which says "be read in a manner that is easily heard", modifies audio communication. The language "placed in the communication" refers to print or video. The aforementioned language is utilized on page 8, lines 20-21. Mr. Bullard clarified that although colloquially people "discern" things with their ears, "to discern" is a visual function. Therefore, audio communications must be read in a manner that's easily heard. With regard to the discussion of effect on candidate elections, he directed the committee to page 6, lines 11-12, which specifies that the disclaimer applies only to a person other than a candidate, individual, or political party.

[2:23:44 PM](#)

HOLLY HILL, Executive Director, Alaska Public Offices Commission (APOC), pointed out that current regulation, 2 AAC 50.306, sets out "clearly identified" as follows:

(2) in all audio, audio-visual, automated telephone, or electronic communications, the information must be

(A) visual and of sufficient size and duration to be read by the viewer;

(B) spoken and audible at the same volume as the communication; or

(C) both visual and spoken, as set out in (A) and (B) of this paragraph.

[2:24:46 PM](#)

JOHN PTACIN, Assistant Attorney General, Labor and State Affairs Section, Department of Law, began by reminding the committee that any disclaimer and disclosure law that burdens free speech is subject to strict scrutiny. He opined that proposed laws must be narrowly tailored to serve compelling government interest. Turning to CSHB 409(STA), Mr. Ptacin said that Section 4 seeks more disclosure from corporations, companies, and labor unions. Section 4 twice mentions a suspect classification: "nationality". The legislation requires officers, directors, and contributors to report their nationality on APOC forms within 24 hours of making the expenditure. He pointed out that the Citizens United case didn't address whether there's a compelling government interest to keep foreign influence out of political speech and candidate elections. Therefore, he wasn't sure whether there's a compelling government interest. Still, such classification is subject to strict scrutiny because it may or may not burden free speech and it's also a suspect classification.

MR. PTACIN explained that under federal law foreign nationals aren't allowed to participate in the decision-making process for such an expenditure. However, the addition of proposed AS 15.13.068 in CSHB 409(STA) further disallows foreign nationals to make such an expenditure in a candidate election. Therefore, the question becomes whether it's significant enough for a corporation or labor union to specify, in APOC filings, that they have foreign nationals acting as leaders in their organizations despite the fact that the law already specifies that they have nothing to do with the expenditure process. He opined that the courts would have to address whether there's a compelling government interest or real harm. Mr. Ptacin informed the committee that with regard to proposed AS 15.13.068, he didn't see any conflict between the federal and the proposed law. Although there may be some argument for field preemption because there is substantial federal regulation in this area, he didn't believe that federal preemption should be an issue for Section 8.

MR. PTACIN then turned attention to Section 10 of CSHB 409(STA), which requires that the MacIntyre v. Ohio Elections Commission decision be placed back in the legislation. Under the U.S. Constitution some expenditures should remain anonymous. He identified those anonymous expenditures as leaf letting. He moved on to Section 12, which includes a provision regarding precertification speech that isn't defamatory. The aforementioned provision may be too onerous of a burden to place on an officer of a corporation or labor union. He mentioned that Section 12 includes a requirement that foreign government ownership be disclosed in advertisements if the foreign government owns 10 percent of the advertisement. Again, the court may be called upon to vet whether there's a compelling government interest or not, particularly given that foreign nationals can't be part of the expenditures process.

MR. PTACIN highlighted that the legislation proposes that the expenditure be reported within 24 hours of an expenditure being made, incurred, or authorized. Given that standard, the 24-hour rule would require close accounting from third-party vendors. The reporting accuracy may or may not suffer under the 24-hour standard. He pointed out that the 10-day standard allows entities making these types of expenditures time to obtain a fair and accurate report before filing with APOC. Furthermore, the 24-hour filing proposed by CSHB 409(STA) would result in a lot of single filings that could've been avoided with the 10-day rule that allows multiple independent expenditures on one form. Mr. Ptacin questioned whether the 24-hour rule is the most appropriate approach to obtain the most clear and accurate filings to the public. In closing, Mr. Ptacin offered his belief that wherever [HB 409] can provide clarity, the better enforceability of these laws will result.

[2:31:11 PM](#)

BARBARA HUFF TUCKNESS, Director, Governmental & Legislative Affairs, Teamsters Local 959, related support for CSHB 409(STA). If requirements are made of a corporation, she expected those same requirements to be placed on labor organizations. However, labor organizations are a bit different in that it has members versus stockholders. Ms. Huff Tuckness opined that CSHB 409(STA) creates a level playing field for all.

CHAIR RAMRAS, upon determining no one else wished to testify, closed public testimony on HB 409, and relayed that CSHB 409(STA) would be set aside.

2:33:16 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:33 p.m.