

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 7, 2010

1:25 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 110(FIN)

"An Act relating to the preservation of evidence and to the DNA identification system."

- MOVED HCS CSSB 110(JUD) OUT OF COMMITTEE; ADOPTED A HOUSE
CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 284(FIN)

"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; prohibiting expenditures and contributions by foreign nationals in state elections; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 110

SHORT TITLE: PRESERVATION OF EVIDENCE/DNA I.D. SYSTEM

SPONSOR(S): SENATOR(S) FRENCH

02/17/09 (S) READ THE FIRST TIME - REFERRALS
02/17/09 (S) JUD, FIN
02/25/09 (S) JUD AT 1:30 PM BELTZ 211
02/25/09 (S) Heard & Held
02/25/09 (S) MINUTE(JUD)
03/20/09 (S) JUD AT 1:30 PM BELTZ 211
03/20/09 (S) -- MEETING CANCELED --
04/01/09 (S) JUD AT 1:30 PM BELTZ 211
04/01/09 (S) -- MEETING CANCELED --
04/06/09 (S) JUD AT 1:30 PM BELTZ 211
04/06/09 (S) Moved CSSB 110(JUD) Out of Committee
04/06/09 (S) MINUTE(JUD)
04/07/09 (S) JUD RPT CS 1DP 3NR NEW TITLE
04/07/09 (S) DP: FRENCH
04/07/09 (S) NR: THERRIAULT, WIELECHOWSKI, MCGUIRE
04/13/09 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/13/09 (S) Heard & Held
04/13/09 (S) MINUTE(FIN)
03/12/10 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/12/10 (S) Moved CSSB 110(FIN) Out of Committee
03/12/10 (S) MINUTE(FIN)
03/15/10 (S) FIN RPT CS 5DP 2NR NEW TITLE
03/15/10 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN,
ELLIS
03/15/10 (S) NR: HUGGINS, OLSON
03/17/10 (S) TRANSMITTED TO (H)
03/17/10 (S) VERSION: CSSB 110(FIN)
03/19/10 (H) READ THE FIRST TIME - REFERRALS
03/19/10 (H) JUD, FIN
04/07/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 284

SHORT TITLE: CAMPAIGN EXPENDITURES

SPONSOR(S): JUDICIARY

02/19/10 (S) READ THE FIRST TIME - REFERRALS
02/19/10 (S) STA, JUD
03/02/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

03/02/10 (S) Moved SB 284 Out of Committee
 03/02/10 (S) MINUTE(STA)
 03/02/10 (S) STA RPT 5DP
 03/02/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,
 KOOKESH
 03/02/10 (S) FIN REFERRAL ADDED AFTER JUD
 03/08/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/08/10 (S) Heard & Held
 03/08/10 (S) MINUTE(JUD)
 03/12/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/12/10 (S) Heard & Held
 03/12/10 (S) MINUTE(JUD)
 03/15/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/15/10 (S) Heard & Held
 03/15/10 (S) MINUTE(JUD)
 03/17/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/17/10 (S) Moved CSSB 284(JUD) Out of Committee
 03/17/10 (S) MINUTE(JUD)
 03/18/10 (S) JUD RPT CS 3DP 1AM NEW TITLE
 03/18/10 (S) DP: FRENCH, WIELECHOWSKI, MCGUIRE
 03/18/10 (S) AM: COGHILL
 03/23/10 (S) FIN AT 1:30 PM SENATE FINANCE 532
 03/23/10 (S) Heard & Held
 03/23/10 (S) MINUTE(FIN)
 03/29/10 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/29/10 (S) Moved CSSB 284(FIN) Out of Committee
 03/29/10 (S) MINUTE(FIN)
 03/29/10 (S) FIN RPT CS 4DP 1NR NEW TITLE
 03/29/10 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN
 03/29/10 (S) NR: HUGGINS
 04/01/10 (S) TRANSMITTED TO (H)
 04/01/10 (S) VERSION: CSSB 284(FIN)
 04/05/10 (H) READ THE FIRST TIME - REFERRALS
 04/05/10 (H) JUD, FIN
 04/07/10 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR HOLLIS FRENCH
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: As sponsor, introduced SB 110.

WILLIAM OBERLY, Executive Director
Alaska Innocence Project
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on SB 110.

JEFFERY MITTMAN
Alaska Civil Liberties Union (ACLU) of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 110.

SENATOR HOLLIS FRENCH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as chair of the Senate Judiciary Standing Committee, sponsor of SB 284.

SCOTT SMITH, Legislative Liaison
Alaska Broadcasting Association
Anchorage, Alaska;
Co-owner
KBOK/KRXX Radio
Kodiak, Alaska

POSITION STATEMENT: Testified on behalf of ABA and on behalf of himself during the hearing on SB 284.

JOHN PTACIN, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 284.

ACTION NARRATIVE

[1:25:07 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:25 p.m. Representatives Ramras, Herron,

Gatto, and Lynn were present at the call to order. Representatives Gruenberg and Holmes arrived as the meeting was in progress.

SB 110 - PRESERVATION OF EVIDENCE/DNA I.D. SYSTEM

[Contains discussion of some of the provisions of HB 316, and mention that aspects of HB 316 have been added to Version M of SB 110.]

[1:25:17 PM](#)

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 110(FIN), "An Act relating to the preservation of evidence and to the DNA identification system."

[1:28:32 PM](#)

REPRESENTATIVE HERRON moved to adopt the proposed House committee substitute (HCS) for CSSB 110(FIN), Version 26-LS0560|M, Luckhaupt, 4/7/10, as the work draft.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He then removed his objection.

CHAIR RAMRAS, after ascertaining that there were no further objections, announced that Version M was before the committee.

[1:29:08 PM](#)

SENATOR HOLLIS FRENCH, Alaska State Legislature, as sponsor of SB 110, explained that a vast majority of the provisions in the bill are also in HB 316, which is sponsored by the House Rules Standing Committee by request of the governor and addresses evidence preservation and post conviction deoxyribonucleic acid (DNA) procedures. He said SB 110 was filed last year and received the support of interested parties, including Representative Stoltze, the Department of Law, the Department of Public Safety, the [Alaska] Association of Chiefs of Police, the [Alaska] Innocence Project, and the Alaska Civil Liberties Union (ACLU). He relayed that SB 110 was originally an evidence

preservation bill, but has had added to it the post conviction DNA aspects of HB 316.

SENATOR FRENCH, regarding the preservation of evidence, noted that while SB 110 requires evidence to be preserved "for the period of time that the crime remains unsolved", Version M adds, "or 50 years whichever ends first". He related that that is on page 2, line 30.

REPRESENTATIVE GRUENBERG expressed concern that if a law enforcement officer or prosecutor did not want to save evidence, under the proposed legislation, he/she could declare the crime solved and dispose of that evidence. He said the related language in CSHB 316(JUD), Version26-GH2812\R, on page 2, line 25, through page 3, line 13, is more specific, and that language read as follows:

Sec. 12.36.200. Preservation of evidence.

(a) Except as otherwise provided in this section and notwithstanding AS 12.36.010 - 12.36.090, an agency shall preserve

(1) evidence that is obtained in relation to an investigation and relevant to the prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434 for the following periods:

(A) 18 months after the entry of a judgment of conviction of the crime;

(B) if the conviction for the crime is appealed, one year after the judgment becomes final by the conclusion of direct review; or

(C) if a timely application for post-conviction relief is filed within the periods stated in (A) and (B) of this paragraph, the date that a judgment dismissing or denying the application for post-conviction review becomes final;

(2) biological material, contained in or found on evidence, relevant to an investigation and prosecution of a person convicted of a felony under AS 11.41, until the person is unconditionally discharged for the crime, until the person is not longer required

to register as a sex offender, or until the periods of time provided in (1) of this subsection have expired, whichever is longest; biological material must be preserved in an amount an manner that is sufficient to develop a DNA profile under technology available at the time that the biological material is preserved.

REPRESENTATIVE GRUENBERG said he likes the 50-year aspect of Version M, but reiterated his concern that someone could throw out the evidence and declare the investigation over. He asked Senator French if he would consider adding the language from HB 316.

SENATOR FRENCH indicated that he would prefer not to include that language, noting that language on page 3, subsection (d), beginning on line 22, contains the protections that Representative Gruenberg is seeking.

[1:36:03 PM](#)

SENATOR FRENCH noted that while both bills set up a task force, as shown on page 14, line 12, Version M would add the Alaska Native Justice Center to that task force. He told the committee that his intent was to add return of property provisions that Senator Dyson and others have been working on over the years; however, that language did not make it into Version M.

CHAIR RAMRAS inquired of his staff whether that is an issue that is included in an upcoming amendment. [No answer is audible.]

[1:40:14 PM](#)

WILLIAM OBERLY, Executive Director, Alaska Innocence Project, testified that SB 110 is the product of the hard work of many interested parties, but with compromise made by everybody. He expressed his hope that evidence from old cases that is currently in the possession of law enforcement agencies will be retained until after the task force makes its report regarding the most appropriate processes for evidence retention.

[1:41:50 PM](#)

JEFFERY MITTMAN, Alaska Civil Liberties Union (ACLU) of Alaska, stated, "We join in the comments of the Innocence Project and also support this bill."

[1:42:37 PM](#)

REPRESENTATIVE GRUENBERG restated his previous concern regarding preserving evidence.

SENATOR FRENCH, in response to Representative Gruenberg, explained that under Version M, no biological evidence may be destroyed until the individual convicted with that evidence, his/her attorney, the public defender agency, and the district attorney are notified.

CHAIR RAMRAS noted that that language appears in subsection (d) on page 3, line 22, through page 4, line 10.

SENATOR FRENCH said he thinks Representative Gruenberg's concern that someone would throw out evidence would be alleviated to a large degree by the provisions of subsection (d). He added that the task force, which would be created by the bill, would address many of these concerns and "bring to these issues a collective wisdom of a broad array of criminal justice experts." He stated his assumption that that task force would then present any concerns found in the bill to the legislature.

[1:45:04 PM](#)

REPRESENTATIVE GRUENBERG concurred with respect to biological evidence. However, he observed that the language in [paragraph (1)], on page 2, lines 28-30, of Version M, involves non-biological evidence. He then offered his understanding that in HB 316, language regarding non-biological evidence is found on page 2, line 25, through page 3, line [6], while language regarding biological evidence is found on page 3, lines 7-13 [text provided previously].

CHAIR RAMRAS offered his understanding that the main focus of the bill is on domestic violence and sexual assault.

REPRESENTATIVE GRUENBERG pointed out, however, that the bills address both biological and non-biological evidence. He asked if there would be any "fall-out" between present time and when the task force issues its report.

[1:47:08 PM](#)

SENATOR FRENCH related that during his six years as state prosecutor, he was unaware of anyone summarily disposing of evidence for any reason, and he said he would be stunned if that were to occur between now and the time the task force comes back with its report.

[1:47:47 PM](#)

CHAIR RAMRAS expressed satisfaction with the discussion that has transpired between the Office of the Attorney General, Senator French's office and his own office.

REPRESENTATIVE GRUENBERG inquired whether anyone else on the committee would like the issue pursued further. [No one commented.]

[1:48:18 PM](#)

REPRESENTATIVE GATTO referred to the language beginning on page 3, line 22, which says that "An agency required to preserve biological evidence under (a) of this section may destroy biological evidence before the expiration of the time period in (a)(2) of this section" if the agency mails a certified delivery of notice to certain people, [as previously referenced by Senator French]. He indicated that mailing a notice does not guarantee that the notice is received.

[1:49:07 PM](#)

SENATOR FRENCH offered his understanding that the term "certified delivery notice" would mean that the person who receives the notice would [sign for it]. Furthermore, he

highlighted the language on page 4, lines 6-10, which read as follows:

(3) no person who is notified under (2) of this subsection, within 120 days after receiving the notice,

(A) files a motion for testing of the evidence; or

(B) submits a written request for continued preservation of the evidence.

[1:49:47 PM](#)

REPRESENTATIVE GATTO pointed out, though, that the key word is "mails". He opined that it does not matter if the address turns out to be wrong or the person is not able to read English, for example. He stated his belief that that does not constitute a significant notification. He surmised that the goal is to ensure that the notification has been received by a recipient.

[1:50:45 PM](#)

REPRESENTATIVE HERRON recalled that this issue has been visited in previous hearings, during which a conceptual amendment had been adopted to require acknowledgment of receipt, so that the sender knows that the intended recipient actually received the missive.

SENATOR FRENCH asked if [Representative Gatto] would like a requirement for "return proof of delivery."

REPRESENTATIVE GATTO said he would like a requirement for "return receipt requested".

CHAIR RAMRAS asked Senator French if he finds that suggestions acceptable.

SENATOR FRENCH responded, "That's seems reasonable to me."

[1:51:37 PM](#)

SENATOR FRENCH covered changes that were made to HB 316 [in the second part of SB 110], with the acquiescence of the Department of Law. He noted that language requiring applicants to pay costs of evidence retrievable has been deleted. He said timeliness provisions, which are in two parts of the bill, have been changed. The most significant change, he noted, is on page 15, lines 4-6. He said the issue is regarding which prisoners now in prison can ask for new testing of DNA. Under SB 110, prisoners would have 10 years from the day the bill would pass to bring forth a challenge. The federal law provides that people currently in prison have an unlimited amount of time, and SB 110 would be more stringent.

[1:53:53 PM](#)

REPRESENTATIVE GRUENBERG said he is still troubled by the issue he raised previously - that someone could destroy evidence prematurely.

SENATOR FRENCH said that the intentional destruction of evidence would "put someone in the crosshairs of a prosecution."

REPRESENTATIVE GRUENBERG pointed out, though, that the prosecution could say, "We're permitted to do it under this law."

SENATOR FRENCH stated that he does not share that concern.

[1:55:21 PM](#)

SENATOR FRENCH directed attention to language on page 7, lines 10-14, which he said addresses the level of guilt that a defendant can have admitted to and still get a DNA test done in the future, and which read as follows:

(C) the applicant did not admit or concede guilt under oath in an official proceeding for the offense that was the basis of the conviction or a lesser included offense except that the court in the interest of justice may waive this requirement.

SENATOR FRENCH offered his understanding that the House Judiciary Standing Committee agreed that the entry of a guilty or a nolo contendere plea is not an admission of guilt. The Department of Law agrees to that, he noted. He said a conceptual amendment is needed so that the language on page 7, beginning on line 31, parallels the aforementioned language on lines 10-14.

SENATOR FRENCH said the next provision is a deletion of the requirement for an attorney affidavit. He indicated that locating the attorney who worked on a particular case could be difficult. He mentioned another provision that was deleted, which he indicated had to do with a requirement related to evidence sought to be tested as part of the investigational prosecution. Senator French directed attention to page 8, lines 22-27, which read as follows:

(9) the proposed DNA testing of the specific evidence may produce new material evidence that would

(A) support the theory of defense described in (7) of this section; and

(B) raise a reasonable probability that the applicant did not commit the offense;

SENATOR FRENCH said the federal DNA testing bill was leaned on heavily as the gold standard when drafting SB 110. He said when he found that the federal bill was passed by a Republican House and Senate and signed by President George W. Bush, it gave him confidence that the bill was not "leaning too far in the wrong direction."

[1:58:23 PM](#)

REPRESENTATIVE GATTO referred back to language in subparagraph (C), on page 7, lines 10-14 [text previously provided], and asked the bill sponsor to explain how a person could say he/she is guilty, without that being an acceptable guilty plea.

SENATOR FRENCH, regarding "the entry of a guilty or nolo contendere plea", said innocent people plead guilty with some

regularity - for example, to take the fall for a relative, because he/she does not understand the system, or doesn't understand English - and this language is trying to prevent that.

[1:59:54 PM](#)

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on SB 110.

[2:00:35 PM](#)

CHAIR RAMRAS moved to adopt Conceptual Amendment 1, such that "standards for return of property" is added to duties of the task force on page 14, line 1.

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG suggested that language should instead be added to subsection (d), on page 14, lines 23-27.

The committee took a brief at-ease at 2:01 p.m.

[2:02:15 PM](#)

CHAIR RAMRAS withdrew his motion to adopt Conceptual Amendment 1.

CHAIR RAMRAS moved to adopt Conceptual Amendment 2, on page 14, line 27, following paragraph (2), to insert a paragraph (3), such that "standards for return of property" is added to duties of the task force. There being no objection, Conceptual Amendment 2 was adopted.

[2:03:00 PM](#)

CHAIR RAMRAS moved to adopt Conceptual Amendment 3, to conform the language on page 7, line 31, through page 8, line 3, with the language on page 7, lines 10-14.

REPRESENTATIVE HOLMES objected for purposes of discussion.

[2:04:32 PM](#)

The committee took a brief at-ease.

[2:05:08 PM](#)

CHAIR RAMRAS withdrew Conceptual Amendment 3.

[2:05:16 PM](#)

REPRESENTATIVE HOLMES moved to adopt Conceptual Amendment 4, as follows:

Page 7, line 31, through page 8, line 3:

Delete all material

Insert "(3) the applicant did not admit or concede guilt under oath in an official proceeding for the offense that was the basis of the conviction or a lesser included offense, except that the court in the interest of justice may waive this requirement; for the purposes of this subparagraph, the entry of a guilty or nolo contendere plea is not an admission or concession of guilt;"

CHAIR RAMRAS asked if there was any objection to Conceptual Amendment 4. There being no objection, it was so ordered.

[2:06:25 PM](#)

REPRESENTATIVE GATTO moved to adopt Conceptual Amendment 5, on page 3, line 27, such that the words "return receipt requested" would be added where the bill drafter thinks it belongs. There being no objection, Conceptual Amendment 5 was adopted.

[2:06:56 PM](#)

REPRESENTATIVE HERRON moved to report the proposed House committee substitute (HCS) for CSSB 110(FIN), Version 26-LS0560\M, Luckhaupt, 4/7/10, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

There being no objection, HCS CSSB 110(JUD) was reported from the House Judiciary Standing Committee.

[2:07:31 PM](#)

CHAIR RAMRAS moved to adopt the proposed House Concurrent Resolution, Version 26-LS1644\A, Luckhaupt, 4/6/10, as a work draft. There being no objection, it was so ordered.

CHAIR RAMRAS [moved to report] the proposed House Concurrent Resolution, Version 26-LS1644\A, Luckhaupt, 4/6/10, out of committee with individual recommendations. There being no objection, the House Concurrent Resolution [which later became HCR 25] was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:08 p.m. to 2:10 p.m.

SB 284 - CAMPAIGN EXPENDITURES

[2:10:41 PM](#)

CHAIR RAMRAS announced that the final order of business would be CS FOR SENATE BILL NO. 284(FIN), "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; prohibiting expenditures and contributions by foreign nationals in state elections; and providing for an effective date."

CHAIR RAMRAS expressed an interest in getting the bill right the first time to ensure that he does not leave behind legislation that is ambiguous.

[2:14:53 PM](#)

SENATOR HOLLIS FRENCH, Alaska State Legislature, speaking as the chair of the Senate Judiciary Standing Committee, sponsor of SB 284, and noting that members' packets include a sectional

analysis, explained that Section 1 of SB 284 amends language to clarify that the chapter applies to all contributions, expenditures, and communications made for the purpose of influencing the outcome of an election; that Section 2 adds language to clarify that the commission will assist all persons to comply with the requirements of AS 15.13; and that Section 3 amends AS 15.13.040(d), to clarify that every person making an independent expenditure must make a full report of those expenditures, unless the person is exempt from report. He reminded the committee that "persons" includes corporations and labor unions.

[2:16:10 PM](#)

CHAIR RAMRAS asked what the term "exempt from reporting" entails.

SENATOR FRENCH directed attention to language on page 6, lines 14-25, which read as follows:

Sec. 15.13.084. Prohibited expenditures. A person may not make an expenditure

(1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any person [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER INDIVIDUAL];

(B) made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065(c); and

(C) made for
(i) a billboard or sign; or
(ii) printed material, other than an advertisement made in a newspaper or other periodical;

SENATOR FRENCH offered his understanding that this is the only category of expenditure still unreported and allowed to be anonymous under state laws, and it is a "remnant" the sponsor chose not to address in SB 284.

SENATOR FRENCH, in response to Chair Ramras, said the bill does not affect current laws regarding candidates; however, if a person donates \$50 to an independent expenditure for or against a candidate, the person's name and the amount donated will be reported to the Alaska Public Offices Commission (APOC).

CHAIR RAMRAS said he would be offering an amendment so that the same rules that apply to candidates would apply to the proposed bill. He indicated that language on page 3, lines 16-20, addresses this issue.

[2:19:14 PM](#)

SENATOR FRENCH noted that that is Section 4, and he emphasized that Section 5 does not pertain to candidates; there is a separate reporting section in AS 15.13.040 that covers the reports made by candidates. Section 4 pertains to groups, non-group entities, labor unions, and corporations, he said.

CHAIR RAMRAS cited paragraph (5), on page 3, lines 16-20, which read as follows:

(5) the aggregate amount of all contributions made to the person, if any, for the purpose of influencing the outcome of an election; for all contributions to the person that exceed \$100 in the aggregate in a year, the date of the contribution and amount contributed by each contributor; and for a contributor

CHAIR RAMRAS concluded that that means there would be no APOC record for anyone who gives under \$100. He expressed concern that that could lead to the aggregation of many small donations, resulting in "an amorphous entity that is spending money." He said that seems to defeat some of the "more sledgehammer-like" provisions of SB 284.

[2:21:38 PM](#)

SENATOR FRENCH explained that Section 5 amends language in AS 15.13.040(h), to clarify that the reporting requirements of AS

15.13.040(d) do not apply to an expenditure made by certain individuals acting independently of every other person; that [Section 6] amends AS 15.13.040(p) to clarify that a person who is required to disclose contributions received by that person in an expenditure report must report the true source of the contributions as the contributor; and that [Section 7] defines director and officer for the purposes of AS 15.13.040(e), as that subsection is amended [by the bill].

[2:23:04 PM](#)

SENATOR FRENCH, in response to questions from Chair Ramras pertaining to Section 5, concurred that the language refers to a single individual with a single issue, and explained that the \$500 limit in a calendar year applies to billboards, signs, or printed material concerning a ballot proposition.

[2:25:03 PM](#)

SENATOR FRENCH explained that Section 8 is a provision that requires entities to establish a political activities account. Currently, he said, candidates set up these accounts without being required to do so, and the bill sponsor chose to make it a requirement now that new entities will be taking part in Alaska elections, so that their expenditures can be better monitored. Senator French explained that Section 9 amends AS 15.13.067 to clarify who may make an expenditure that is not an independent expenditure in a state election for public office.

CHAIR RAMRAS directed attention to language in Section 8, on page 4, lines 29-31, which read as follows:

(c) Each person who has established a political activities account under this section shall preserve all records necessary to substantiate the person's compliance with the requirements of this section for each of the six preceding years.

CHAIR RAMRAS asked how long the records would be held.

SENATOR FRENCH answered six years.

CHAIR RAMRAS asked the intent behind such a long period of time. He said he does not mind the provision being applied to unions, corporations, or environmental groups, but questioned holding to the same standard persons who have a more narrow focus. He explained, for example, that he doesn't want a group that has raised \$50,000 in order to positively influence a government obligation (GO) bond, and then is shut down in perpetuity, to have to hold that information for 6 years.

SENATOR FRENCH recommended that Mr. Ptasin address this issue.

[2:29:27 PM](#)

REPRESENTATIVE GATTO noted that the language on page 4, line 22, read, "nongroup entity with an annual operating budget of \$250 or less", and he asked if that should read "or more".

SENATOR FRENCH said he questioned that language as well, but he deferred to Mr. Bullard or Mr. Ptasin for clarification.

[2:30:05 PM](#)

REPRESENTATIVE HERRON asked for confirmation that the State of Alaska and a municipality cannot advocate for the passage of a GO bond because both are considered to be a person, according to statute.

SENATOR FRENCH responded that he thinks either one could advocate for a GO bond, but questioned whether they can spend public monies to do so. In response to a follow-up question, he said he thinks it is accurate to say this is because both are considered to be a person under statute.

[2:31:02 PM](#)

SENATOR FRENCH returned to the sectional analysis. He acknowledged there has been a lot of concern about the new U.S. Supreme Court ruling allowing not only corporations, but also foreign corporations and foreign nationals to participate in elections in Alaska. He explained that Section 10 addresses the

issue of foreign nationals and is drawn directly from federal law. He maintained that it is important to mirror federal law so the state APOC can use the same blocking provisions that the FEC would use should a foreign national begin to spend money in the state's elections.

CHAIR RAMRAS asked how this provision would affect those foreign companies with American subsidiaries.

[2:32:26 PM](#)

SENATOR FRENCH replied that that issue is best exemplified in [paragraph (5)] of Section 10. He explained that Section 10 lists those entities considered to be foreign nationals. The language of paragraph (5) is on page 5, line 29, through page 6, line 2, and read as follows:

(5) a domestic subsidiary of an entity described in (2) - (4) of this subsection or a domestic corporation controlled by an entity described in (2) - (4) of this subsection, if that entity finances, participates in, or selects a person who participates in the making of a contribution or an expenditure of the domestic subsidiary or domestic corporation.

SENATOR FRENCH said the issue is the degree to which the foreign company is controlling the subsidiary.

[2:34:05 PM](#)

CHAIR RAMRAS said although he does not know who pays for the advertising for the Pebble Mine partnership, it is apparent through discussions with the three producers that the decisions are made by a higher authority - "the mother ship." He asked how the standard would be set.

[2:35:58 PM](#)

SENATOR FRENCH surmised that it will always be difficult for APOC or any other entity to prove that instruction for the

placement of the expenditure that came from a local subsidiary was or was not ordered by a higher corporate force.

CHAIR RAMRAS expressed concern about ambiguity and that paragraph (5) of Section 10 may dampen discourse rather than expand it.

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SENATOR FRENCH said SB 284 engenders philosophical debates regarding who participates.

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SENATOR FRENCH explained that Section 11 provides that no person, other than an individual exempt from reporting, may make an expenditure, unless the source of the expenditure has been disclosed; Section 12 amends language in AS 15.13.084 to clarify that a person may not make an expenditure anonymously unless it is made for certain communications, as discussed previously; and Section 13 expands the communication identification requirements of AS 15.13.090 to apply to communications made by all persons, and additionally requires a person other than a candidate, individual, or political party to: one, identify the person's principle officer; two, include a statement from that officer approving the communication; three, provide the address of the person's principle place of business; and four, identify the person's five largest contributors. He offered his belief that Sections 13 and 14 would be the topic of debate and amendment as the bill goes forward.

REPRESENTATIVE HERRON opined that print advertising should be distinguished from electronic, visual, and audio. He recommended that in advertisement there be a five-second profound statement for or against an issue, which clearly puts forth who is making the statement.

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CHAIR RAMRAS noted that when an Alaska Gasline Inducement Act (AGIA) hearing took place in Fairbanks a couple years ago, he

assembled 17 businesses that each put in \$1,000 related to a rally 900 constituents attended in support of getting natural gas to Fairbanks. He expressed his desire to preserve the opportunity for the public to participate and to be protected.

[2:44:04 PM](#)

SENATOR FRENCH explained that Section 14 provides how communication identification requirements must be met in print, video, and audio advertising. He noted that the identification requirement for radio and other audio media [as shown on page 8, lines 7-11], is more succinct, in order to fit within the time allotted in radio advertising. In response to Chair Ramras, he said he timed a radio advertisement; however, the timing was not the same as it would be under SB 284, because the person doing the voice-over included the city, state, and place of business. He opined that the listener would be well-served to know if an entity advertising is actually backed by three top oil companies. In response to Chair Ramras, he indicated that the identification portion of the radio advertisement was 10-12 out of 30 seconds, which he said he finds acceptable.

CHAIR RAMRAS said that is not acceptable to him.

SENATOR FRENCH explained that Section 15 requires expenditure reports to be filed within 10 days of the expenditure being made. He offered his understanding that a related House bill "took a stricter view of that." He explained that Section 16 amends the language of AS 15.13.111(a) to require all persons who are required to report to preserve certain records for a period of six years; Section 17 removes language from AS 15.13.135 that permitted only individuals, groups, or nongroup entities to make independent expenditures [supporting or opposing a candidate] and adds unions and corporations.

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CHAIR RAMRAS reiterated his concern about entities that form for one purpose and then disband.

SENATOR FRENCH offered his understanding that those types of entities would be a group entity focused on doing a good work in the community without making a profit or existing past that effort.

CHAIR RAMRAS surmised that the type of group he is trying to preserve and protect is included in the language that is deleted by Section 17.

SENATOR FRENCH noted that the terms "group" and "nongroup entity" are also being deleted from Section 16, on page 8, line 19, because "person" is all-encompassing now so that everyone is treated equally.

CHAIR RAMRAS expressed concern with a one-size-fits-all plan and what it might do to smaller entities that are not planning to exist beyond a certain project, such as the aforementioned 17 contributors to the rally.

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SENATOR FRENCH pointed out that in this regard, the bill does not change existing law; it just includes the new players - the corporations and unions - into the same provisions of law that existed before the U.S. Supreme Court decision.

SENATOR FRENCH continued with the sectional analysis. He explained that Section [18] addresses what will happen if an entity breaks the law, and replaces "candidate, group, or individual" with "person". He noted that campaign misconduct in the second degree is a Class B misdemeanor. He explained that Section 19 repeals AS 15.13.140(a), which is a provision that provided that the chapter should not be interpreted to prohibit a person from making independent expenditure in support of or in opposition to a ballot propositional question. He said Section 19 removes ambiguity. Finally, Senator French explained that Section 20 gives the Act an immediate effective date.

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SENATOR FRENCH, in response to Representative Lynn, offered his understanding that implicit in every bill passed is a severability clause.

[2:52:10 PM](#)

SCOTT SMITH, Legislative Liaison, Alaska Broadcasting Association; Co-owner, KBOK/KRXX Radio, testifying on behalf of ABA and himself, stated that all broadcasters fully respect the need for transparency. He expressed his chief concern that under SB 284, radio stations would become crippled in the process of a long disclosure, and clients would decide against advertising via radio. He related an instance when that happened in the past.

MR. SMITH said radio stations tend to sell commercials in 30- and 60-second units. He said he created a simulation of an advertisement using the form of disclosure that would be required under SB 284, and his professional disc jockey (DJ) was able to read the disclosure in 13.5 seconds, which would mean nearly 50 percent of a 30-second commercial going toward this purpose. He said that is a major portion of advertisers' budgets going to disclose who they are, which could really discourage the smaller group, as mentioned by Chair Ramras, from advertising on air.

MR. SMITH, in response to Representative Gatto, said the speed at which he asked his DJ to read when testing the timing of the disclosure was "hard speed." He said hard speed is clear and audible, but not as fast as a "lightening read." In response to a follow-up question, he said regulations require a DJ to read in a reasonable manner in order to be understood.

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MR. SMITH, in response to Representative K. Holmes, estimated that the aforementioned test run could have been trimmed to 9 seconds. In response to Representative Lynn, he said it is impossible to guess how much revenue may be lost as a result of people not advertising through radio because of the proposed disclosure requirement, but he said the concern is great enough

for him to have flown to Juneau to testify. He said he thinks smaller groups would be more greatly affected.

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REPRESENTATIVE GRUENBERG noted that there are 3 provisions in the bill that address that question. First, language on page 6, line 29, requires that all communications be clearly identified. Second, language on page 7, line 28, requires the communication to be easily discernable. Finally, language on page 8, line 6, requires the audio communication to be read in a manner that is easily heard. He questioned the use of the word "heard" and suggested instead that the bill sponsor consider use "understood".

REPRESENTATIVE LYNN suggested "easily discernable".

REPRESENTATIVE GRUENBERG concurred. He explained that he is hard of hearing and sometimes hears words without out completely understanding them.

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REPRESENTATIVE GATTO asked whether the public cares about who - other than candidates, organizations, or campaigns - pays for advertising.

MR. SMITH said he has no data in that regard. He noted that there are a series of Federal Communications Commission (FCC) regulations that would also apply, in terms of disclosure; there are requirements beyond any surveys that could be done.

CHAIR RAMRAS again relayed that his concern is whether the bill would dampen discourse.

MR. SMITH, in response to Chair Ramras, said that during a municipal election there are anywhere from 5-9 different entities working on different issues and an equal number of private groups. In a major statewide election, he related, there tends to be more people involved within organized groups both inside and outside the state. He surmised the reason for

this is because statewide elections bring forth more voters, which requires more outreach to communicate messages beyond the big cities. In response to comments and a question, he indicated that as the fifth largest city in the state, Kodiak would have statewide groups involved with its elections.

[3:05:01 PM](#)

CHAIR RAMRAS asked how the requirement for three top people would be grouped from various organizations.

MR. SMITH relayed that he had been asked to come before the legislature to ask - should there be a requirement to name more than the top contributor - that another method for people to see that be provided, either through APOC or by means of a directive to go to another source. His interpretation, he added, is that the company name would be sufficient, because that would identify who the interested party is and the message. He said it would be obvious who was behind an advertisement if, for example, it was an advertisement to promote drilling for oil and BP's name was listed.

CHAIR RAMRAS questioned if naming BP three times would satisfy the requirement to list the top three contributors. He offered an example of a union listed, and he questioned how three members of that union would be chosen to list.

MR. SMITH offered his hope that merely listing the name of the union would be enough, because that would disclose the organization involved. He added that seeing the names listed of three people inside of that union would not mean much to him as a voter.

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REPRESENTATIVE GRUENBERG noted that up until recently his office was tracking cases in which Citizens United was discussed, to gather any information that may help in determining how any federal or state court was interpreting or utilizing opinions in that case. He asked if any related information has come out in the last three weeks.

[3:09:31 PM](#)

JOHN PTACIN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), explained that there were two cases in the last three weeks - one in the District Court of Appeals in Washington, D.C. He reviewed that there is a provision in federal law that did not allow "a bunch of people to ... group assemble." Furthermore, the provision limited the amount of money that groups could bring in from individual contributions. As a district court case, he noted, it does not really impact any of the analysis in SB 284. He related that there was another case that upheld certain limits on "soft money," which is also a provision that is not addressed in SB 284. He noted that there is a case coming to the U.S. Supreme Court at the end of the term, in which the court will discuss extending anonymous speech into new areas, and that discussion may have an impact depending on how far the court goes.

[3:10:40 PM](#)

MR. PTACIN, in response to a follow-up question, said there was a Washington state ballot initiative that was held about two years ago. The question raised was whether the signatures can be withheld from public disclosure; whether a person signing, who could be harassed because of signing, could petition to keep that signature from public view. This distinction may or may not expand the court's position on what can and cannot be anonymous action in political speech, and whether that is, in fact, political speech. He said that is scheduled for argument at the end of the month, and he surmised there would be a decision by late June.

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REPRESENTATIVE HERRON questioned whether there would be some way to clarify that the person advocating and spending money for any issue is for or against an issue - a direct statement made in audio advertising. He clarified that as a television viewer, he is more interested in being given a clear message as to whether

the person involved in the advertisement is for or against a particular issue.

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MR. PTACIN said whether a person is for or against an issue must be implicit in the advertisement. Adding a secondary disclaimer is an issue he said he would like to review further.

REPRESENTATIVE HERRON clarified that he is only concerned about the issue as it pertains to audio and visual advertisement; he said he is not concerned about print.

CHAIR RAMRAS summarized that this issue seems to be about disclosure and discourse - whether or not seeking to expand upon the former will risk dampening the latter. He expressed concern about ambiguities and how they are handled by APOC.

[3:16:21 PM](#)

MR. PTACIN noted that the case APOC v. Stephens taught that ambiguity cannot be held against somebody who violates the statutes - at least in a monetary sense. He clarified, "If there's ambiguity in any of these statutes, the enforceability of it is diminished." With respect to dampening discourse, he said that is the debate after Citizens United. That case, he said, allowed a number of entities that could not speak before do so now. The question going forward is going to be whether a disclosure or disclaimer law will overly burden that newly found right.

CHAIR RAMRAS again questioned whether the regulation of rights that have been restored to persons will result in impairing disclosure for smaller groups.

MR. PTACIN said the real question is whether there is an election pending with a bond initiative, ballot initiative, or candidate election looming, because "that's when the jurisdiction comes to fore."

CHAIR RAMRAS asked, "If BP runs an ad, who are their largest contributors?"

MR. PTACIN said BP Alaska would be permitted to run an advertisement with domestic profits. The money would come from its own corporate treasury; there would not be any contributors. In response to a follow-up question, he said whether or not BP would have to follow the "top three contributors" rule under SB 284 would depend on whether there are other entities that are contributing to BP in order to fund that messaging. He offered his understanding that the top contributors would not have to be listed if they did not exist.

CHAIR RAMRAS said as a lay person that is not how he reads the requirement; however, he acknowledged that he sees others in the room nodding. He then asked who would be the top three contributors to a union with 10,000 members.

MR. PATAVIN reiterated his understanding that if the entity is using general treasury funds to advertise, then there would not be any contributors to that political messaging. However, if the union pooled money from some other entity, then that would be another matter.

CHAIR RAMRAS again expressed concern over ambiguity and expressed a wish to discuss the issue further.

[CSSB 284(FIN) was held over.]

[3:21:38 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:21 p.m.