

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 9, 2010

1:41 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

**OTHER LEGISLATORS PRESENT**

Representative Berta Gardner

**COMMITTEE CALENDAR**

SENATE BILL NO. 43

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

- MOVED HCS SB 43(JUD) OUT OF COMMITTEE

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

SENATE BILL NO. 244

"An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: SB 43

SHORT TITLE: SECOND VERSE OF ALASKA'S STATE SONG

SPONSOR(S): SENATOR(S) MENARD

01/21/09 (S) PREFILE RELEASED 1/9/09  
01/21/09 (S) READ THE FIRST TIME - REFERRALS  
01/21/09 (S) CRA, STA  
01/28/10 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
01/28/10 (S) Moved SB 43 Out of Committee  
01/28/10 (S) MINUTE(CRA)  
01/29/10 (S) CRA RPT 4DP  
01/29/10 (S) DP: OLSON, KOOKESH, MENARD, THOMAS  
02/04/10 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
02/04/10 (S) <Bill Hearing Canceled>  
02/09/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
02/09/10 (S) Moved SB 43 Out of Committee  
02/09/10 (S) MINUTE(STA)  
02/10/10 (S) STA RPT 5DP  
02/10/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,  
KOOKESH  
03/10/10 (S) TRANSMITTED TO (H)  
03/10/10 (S) VERSION: SB 43  
03/11/10 (H) READ THE FIRST TIME - REFERRALS  
03/11/10 (H) STA, JUD  
03/25/10 (H) STA AT 9:30 AM CAPITOL 106  
03/25/10 (H) Heard & Held  
03/25/10 (H) MINUTE(STA)  
03/30/10 (H) STA AT 8:00 AM CAPITOL 106  
03/30/10 (H) Moved HCS SB 43(STA) Out of Committee  
03/30/10 (H) MINUTE(STA)  
03/31/10 (H) STA RPT HCS(STA) 3DP 2DNP 1NR 1AM  
03/31/10 (H) DP: SEATON, GRUENBERG, PETERSEN  
03/31/10 (H) DNP: JOHNSON, GATTO  
03/31/10 (H) NR: LYNN  
03/31/10 (H) AM: P.WILSON  
04/09/10 (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  
 04/07/10 (H) Heard & Held  
 04/07/10 (H) MINUTE(JUD)  
 04/09/10 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

SENATOR LINDA MENARD  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 43, as the sponsor of the bill.

MICHAEL ROVITO, Staff  
Senator Linda Menard  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during discussion of SB 43 on behalf of the bill sponsor, Senator Linda Menard.

DAVID WOODLEY, Executive Director of Advancement Services  
University of Alaska Foundation  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified and answered questions during discussion of SB 43.

DARREN FRIDAY  
Kake, Alaska

**POSITION STATEMENT:** Testified in support of SB 43.

CONNIE DAVIS  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 43.

CONNIE MUNRO  
Juneau, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 43.

LORRAINE HOUSEMAN  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 43.

SIIKAURAQ WHITING, Mayor  
Northwest Arctic Borough  
Kotzebue, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 43.

CYRIL GEORGE  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 43.

KAYIST DOUN (ph)  
(No address provided)

**POSITION STATEMENT:** Testified during discussion of SB 43.

WALTER SAMPSON, President  
Northwest Arctic Borough Assembly  
Kotzebue, Alaska

**POSITION STATEMENT:** Testified in support for SB 43.

REPRESENTATIVE BRYCE EDGMON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 43.

REPRESENTATIVE CHARISSE MILLETT  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 43.

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

**POSITION STATEMENT:** Provided comments during discussion of SB 284.

CHARLES DUNNAGAN  
Resource Development Council (RDC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 284.

JASON BRUNE, Executive Director  
Resource Development Council (RDC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 284.

#### **ACTION NARRATIVE**

[1:41:05 PM](#)

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 1:41 p.m. Representatives Ramras, Herron, Gatto, Lynn, Gruenberg, and Holmes were present at the call to order. Representative Gardner was also in attendance.

#### **SB 43 - SECOND VERSE OF ALASKA'S STATE SONG**

[1:41:56 PM](#)

CHAIR RAMRAS announced that the first order of business would be SENATE BILL NO. 43, "An Act adding a second verse to the official Alaska state song."

[1:42:44 PM](#)

REPRESENTATIVE HERRON moved to adopt the proposed House Committee Substitute (HCS) for SB 43(JUD), 26-LS0259\P, Bullard, 4/6/10, as the working document. There being no objection, Version P was before the committee.

CHAIR RAMRAS explained that Version P contains the second verse of the Alaska state song as it was originally authored and copyrighted. He declared his respect for both the culture and the author.

[1:44:54 PM](#)

SENATOR LINDA MENARD, Alaska State Legislature, cited a previous bill to add this second verse to the state song, Alaska's Flag. She declared that SB 43 gives recognition to the Native community by adding a second verse. She proposed that this second verse does not change the song but, instead, complements it. She compared the second verse to the Honor and Remembrance flag, as both serve to complement the history. She recounted that the 12 lines of the second verse were written in one evening by Carol Beery Davis. She cautioned that the lack of punctuation and capitalization should not be second guessed, as the author was 95 years old and could have written this verse on an old typewriter. She pointed out that the second verse celebrates not only the Native people, but also Benny Benson, the young Native who designed Alaska's state flag. She shared that Fran Ulmer, UAA Chancellor, supported SB 43, and that Ms. Ulmer had introduced a similar bill while she was in the legislature.

SENATOR MENARD emphasized that the content of the second verse recognized the contributions of Alaska Natives. She quoted Senator Albert Kookesh:

This is a little step, but it recognizes a Native person who designed the Alaska flag, it recognizes a song that says there's no bars in our culture, that culture will be elevated.

SENATOR MENARD offered her belief that the bill doesn't change history, "it simply adds to it or complements it." She stressed the importance of the bill to many people.

REPRESENTATIVE GATTO voiced his strong opposition to the addition of a second verse to the Alaska state song.

REPRESENTATIVE HERRON asked Senator Menard her reason for introducing this bill.

SENATOR MENARD replied that she had been asked to introduce it. She specified that she felt strongly about it, and that the second verse is a tribute to the Native community. She emphasized that it is a good bill.

SENATOR MENARD, in response, said that there had been a flag design contest.

[1:54:09 PM](#)

MICHAEL ROVITO, Staff, Senator Linda Menard, Alaska State Legislature, offered his belief that Benny Benson submitted the winning entry in the design contest for the Alaska state flag.

REPRESENTATIVE HERRON asked whether a contest was held to write the first verse of the Alaska state song.

MR. ROVITO replied that he did not know.

CHAIR RAMRAS, referring to the letter from the University of Alaska Foundation, dated April 7, 2010, [Included in members' packets] read the final paragraph regarding copyright and use. He directed attention to Version P, page 2, lines 6-17, and identified this as "the second verse as it was written by the author." He surmised that it was "perfect in its construction, perhaps imperfect in the intent of the author to express certain wishes that are held by some folks..." He pointed out Section 2, which is also an addition to Version P. He asked Mr. Woodley to authenticate the second verse as it appears in Version P.

[1:58:39 PM](#)

DAVID WOODLEY, Executive Director of Advancement Services, University of Alaska Foundation, declared that the University of Alaska Foundation has held the copyright to the second verse since 1986, and he verified that the verse in Version P is identical. He observed that over the years a number of changes were proposed that weren't objectionable, such as capitalization and commas, but that, as time wore on, there were more serious alterations. He shared a legal opinion from the University which stated that it would not materially affect the copyright. He expressed the desire to preserve the second verse in its originally submitted form. In response to a question, he

relayed that his duties include "all forms of records available to the foundation, be they electronic or printed copy." He relayed that the prior archivist is not available, but that the University of Alaska and the Foundation's history with the state song were being reconstructed.

REPRESENTATIVE GATTO offered his understanding that any changes to the song can violate the copyright.

MR. WOODLEY replied that the Foundation did not pursue violations against changes made by song users. He established that they wanted to "preserve the intent of the work as a whole." He relayed that the Foundation had only taken an aggressive stance in cases of use for purposes that the author did not intend. He declared an obligation to protect the second verse, as copyrighted, to the fullest possible extent.

CHAIR RAMRAS asked to clarify that Version P includes the exact copy of the archived version for the second verse.

MR. WOODLEY concurred.

[2:06:26 PM](#)

DARREN FRIDAY offered to sing the second verse for the committee in order to clarify that the second verse was both flowing and melodic.

[2:09:09 PM](#)

[Mr. Friday then led the group in singing the state song, Alaska's Flag.]

[2:12:18 PM](#)

CONNIE DAVIS shared that she was the daughter of Carol Beery Davis, the author of the proposed second verse of the state song. She noted that Marie Drake [author of the state song, Alaska's Flag] and her mother arrived in Juneau at about the same time and became lifelong friends. She recalled that her father was part of the final awards committee to choose the design for the Alaska flag. She commented that Marie Drake wrote the first verse so that school children could read and understand it. She surmised that Ms. Drake would be in favor of the second verse. She offered that the second verse is in context with those times. She noted that the American Legion posts throughout Alaska managed the flag design contest, and

that this was arranged by the Commissioner of Education, whose secretary was Marie Drake.

2:15:40 PM

CHAIR RAMRAS, referring to a letter from Myron Naneng, Sr., President of the Association of Village Council Presidents (AVCP), which read: [original punctuation provided] [Included in members' packets]:

Dear Representative Herron;

Please pass on to the House Judiciary Committee that the Association of Village Council Presidents does not support the passing of SB 43 as it stands. Instead, we would rather support a competition open to the youth of Alaska for any new verses to the Alaska State Song. A competition open to youth would inspire all those to participate in creating an wonderful way to celebrate and honor the State of Alaska through song.

We support the goal of including Alaska Natives in the proposed new verse, but feel that the words in the verse itself may be constructed in a more appropriate manner. Therefore, please consider our recommendation for a competition.

MS. DAVIS questioned whether a current contest would be in context with the 1927 flag contest, and speculated that a current song version might contain rap lyrics.

2:18:02 PM

CONNIE MUNRO reflected on the history of the second verse discussions during the early 1970s. She remembered that the Native community had not wanted a second verse writing contest, and had expressed the possibility that someone would write a second verse that recognized all the cultures, and offer it as a gift. She recalled her conversation with Carol Beery Davis about writing a second verse. When Ms. Davis finally wrote the second verse at the age of 95, Ms. Munro added, Ms. Davis offered it as a gift.

MS. MUNRO pointed out that there was not a contest for the first verse. She suggested there was no reason not to accept this gift. She stated that the second verse recognized all cultures,

especially the first Alaskans. She emphasized that Alaskan Natives needed to be recognized in the state song.

[2:21:10 PM](#)

LORRAINE HOUSEMAN reflected on the second verse legislation presented by Fran Ulmer to the legislature in 1987. She indicated that there was overwhelming resistance for any changes to the state song, especially from the Pioneers of Alaska. She offered her belief that the "Alaskans dear" mentioned in the original song version includes all Alaskans. She opined that the state song describes the flag and the intent and excitement of Benny Benson.

MS. HOUSEMAN cited reasons for not changing the state song. She related that Benny Benson was born in 1913 in Chignik. She shared that his mother, a Russian Aleut, died when he was three. His father, a Swede, was a fisherman, and was unable to support three children, so he took Bennie to an orphanage in Unalaska. She read from transcripts written by Benny Benson, recorded between 1967- 72:

I had a hard time holding back tears as I was leaving my brother, Carly, my other buddies, and missionaries to go help my dad at his fox farm near Chignik, and to meet my step-mother, Annie, for the first time. Thinking back, I must say that the sixteen years that I spent at the Jesse Lee Home was some of the happiest years of my life, which may be hard for some to believe, especially with some of the tales told about storms at Unalaska. The mission taught me to love God and my neighbors, to respect my elders, and to care for others in need.

MS. HOUSEMAN shared that he was a humble, giving person that everyone loved, and then read on:

I could never express in words the gratitude I feel for the loving care given to my brother Carly and myself by those devoted Methodist missionaries. Whenever I hear the Alaska flag song, with the words of the poem, written by Marie Drake in 1927, and which were put to music by Elinor Dusenbury in 1940, I get a tingle down my spine as memories of the Jesse Lee Mission come to mind, especially of those times we sang together at the old piano, or organ, at Unalaska. It was in 1955 when I met Marie Drake in Seattle, and

we were photographed together. She was a lovely person and I carried that photo of us with me for many years.

MS. HOUSEMAN relayed that Benny went to the Alaska Native Hospital in Anchorage, in 1967, for circulation problems in his legs. She read from an interview with him by the Anchorage Daily Times:

He tried art on for size via the adult evening class route in Kodiak, but lost interest almost immediately. "It wasn't for me," he said. However, Benson works well with his hands and considers himself no slouch when it comes to designing small water crafts, skiffs, and things of that sort. Benson is proud of his flag, but reserves his out and out enthusiasm for the Alaska flag song. As a matter of fact, he thinks it can sit right up there comfortably next to America the Beautiful and the National Anthem. "Like the flag, it fits the state," he said.

MS. HOUSEMAN opined that as he was so proud of the song, there was nothing more that could be added to honor him. She recounted that he was a member of the Kodiak Native Association, the Kodiak Elk Lodge, and the American Legion. She expressed her disagreement with adding a second verse to the Alaska state song.

[2:33:05 PM](#)

CHAIR RAMRAS, referring to an article in the Fairbanks Daily Miner by Dermot Cole, read:

This is what the 13 year old Benson said of his simple design, chosen as a winner out of 142 entries. "The blue field is for the Alaska sky and the forget-me-not, an Alaska flower. The North Star is for the future state of Alaska, the most northerly in the Union. The Dipper is for the Great Bear, symbolizing strength." Davis applied her own interpretation about Benson's design which differs from his. She opened her verse with the words, "A native lad chose the Dipper's stars for Alaska's flag that there be no bars among our cultures." In a legislative hearing on Tuesday, our colleague Senator Albert Kookesh claimed that not adopting Davis' words would be a refusal to honor Benny Benson. "If we don't want to recognize

Benny Benson through the second verse, then the individuals who are going to be hurt are not the non-Native people of the state, it's the Native people of the state."

[2:34:42 PM](#)

SIIKAURAQ WHITING, Mayor, Northwest Arctic Borough, reflected on the amazing diversity within Alaska. She pointed out that visitors came to see the diversity of enriching cultures. She supported the original song to celebrate the cultures within the state.

[2:36:43 PM](#)

CYRIL GEORGE shared that he feels that the words run deep with the people who wrote them, as they tell others why they fell in love with the land. He said he was taught to take good care of the land, and that it will always feed you, and you learn to love the land. He reflected on growing up at Sheldon Jackson School, and reading about great athletes who were natives of a place, but not Indian. He noted that Juneau had seen many changes.

MR. GEORGE reminisced about the "whites-only" signs, and his father's difficulty in explaining them. He expressed his support for the words of the Alaska flag song, and his awe for songwriters. He stated the need to "keep working in that direction" for making Alaska the best state in the Union.

[2:44:25 PM](#)

KAYIST DOUN (ph) explained that although the Tlingit society is matrilineal, when she introduces herself, she also honors her father. This reflects an honor and a balance created by her parents. She shared that her mother knew Carol Beery Davis and appreciated her respect for the Native culture. She offered her opinion that both Trevor Davis and Carol Beery Davis were "giants in their respect for the Native culture." She surmised that the proposed second verse recognizes not only Benny Benson, but also Carol Beery Davis.

[2:47:05 PM](#)

WALTER SAMPSON, President, Northwest Arctic Borough Assembly, pointed out that Alaska is home to all of us, and is a diverse culture. He expressed an appreciation for the opportunity of

communities to offer input on issues discussed on a state level. He said he supports the addition of a second verse in SB 43. He directed attention to the first line of the second verse, which "talks about natives, we are all native Alaskans." He pointed to the third line and the tenth line which both reference cultures, and he said, as the word is plural, it means diverse cultures. He noted that line four refers to natives, not native, and he opined we are all native Alaskans. He offered his belief that the second verse of the Alaska flag song in SB 43 represents all Alaskans.

[2:51:17 PM](#)

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on SB 43. He reflected that the testimonies had served to "re-center us."

REPRESENTATIVE LYNN offered his belief that the Alaska flag song is an anthem, and is shown special respect.

REPRESENTATIVE GATTO again expressed his disfavor with adding a second verse to the Alaska state song, opining that the song should be retained as is for historical purposes. He stated that he wanted "to protect the history."

CHAIR RAMRAS offered a reminder that Version P contains the original language of the second verse as written by Carol Beery Davis.

[2:58:54 PM](#)

REPRESENTATIVE BRYCE EDGMON, Alaska State Legislature, relayed that he is a singer, a song writer, and an Alaska Native. He shared that he knows both the songwriting craft and the Alaska Native issues quite well. He acknowledged the heartfelt testimonies and agreed that adding a second verse was more than the mere act of extending the song. He cautioned members against proposing that the words are for or against any issues. He stated that he has never heard the second verse sung in Southwest Alaska. He opined that if a second verse is added, the words should exemplify the prominence of Alaska Natives. He expressed his comfort with the first verse, and he suggested that the addition of a second verse should include the input of all Alaskans, on a statewide level.

[3:04:10 PM](#)

REPRESENTATIVE CHARISSE MILLETT, Alaska State Legislature, shared that the Alaska state song is very important to all Alaskans. She opined that the second verse was not meant to be divisive, but has become so. She wondered what would be the reaction of the author, Marie Drake. She agreed that it was necessary to honor each other, and to understand and honor the many cultures that are in Alaska. She said that she thinks the song is perfect [as is].

REPRESENTATIVE HOLMES acknowledged that this is a heartfelt issue for both sides, and expressed her desire for the bill to move forward to the House floor to allow all the members an opportunity to debate the bill.

REPRESENTATIVE GRUENBERG reflected on the necessity to move forward together as Alaskans. He stated that all things that can bring us together can also be used to drive people apart. He expressed hope that the bill will help bring people together. He offered his support of the bill.

[3:10:28 PM](#)

REPRESENTATIVE GRUENBERG moved to report HCS SB 43(JUD), 26-LS0259\P, Bullard, 4/6/10 out of committee with individual recommendations.

REPRESENTATIVE GATTO objected.

A roll call vote was taken. Representatives Lynn, Gruenberg, Holmes, Herron, and Ramras voted in favor of HCS SB 43(JUD), 26-LS0259\P, Bullard, 4/6/10. Representative Gatto voted against it. Therefore, HCS SB 43(JUD) was reported out of the House Judiciary Standing Committee by a vote of 5-1.

The committee took an at-ease from 3:11 p.m. to 3:15 p.m.

### **SB 284 - CAMPAIGN EXPENDITURES**

[3:15:01 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."

3:19:34 PM

JOHN PTACIN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), explained that DOL feels that Alaska's expenditure restrictions on corporations, labor unions, and other entities is likely unconstitutional. He noted that SB 284 considers the current disclaimer and disclosure laws and changes the law for restricting expenditures by corporations and labor unions in candidate elections. He allowed that disclosure and disclaimer laws are still given a lot of scrutiny, as they uncover hidden interests and deter reporting violations. He emphasized that disclaimer and disclosure laws still need to show that they are only a modest burden on free speech rights.

3:22:17 PM

CHARLES DUNNAGAN, Resource Development Council (RDC), referring to Section 10 on page 5, opined that the general rule for expenditures and contributions by foreign nationals tracked federal law, but he directed attention to line 29, (b)(5), which disallowed election contributions from domestic subsidiaries. He offered his belief that this created a class of U.S. corporations that no longer have First Amendment rights in an Alaskan election. He pointed out that contributions by foreign nationals are already illegal in a state election. He opined that this would add a new class of person to be discriminated against.

MR. DUNNAGAN explained that domestic subsidiaries of American corporations have been given a right to participate in elections, but that subsection (b)(5) eliminates that right. He said that it was not necessary to create a rule to prevent direct and indirect contributions from foreign nationals because it was already illegal. He opined that this created concerns for First Amendment, due process, and equal protection rights. He expressed concern for the drafting of parts of the bill. He pointed to proposed AS 15.13.068(b)(2)-(4), which defines domestic subsidiary and noted that there was not a mention of individual foreign nationals. He said that for an individual foreign national with a wholly owned corporation, the domestic subsidiary rule did not apply, while an Alaskan working for a company of more than 50 percent foreign ownership could not participate in an election campaign. He commented that issuing

public traded stock was how American businesses raised money. He opined that this change could affect the investment decisions of foreign investors.

MR. DUNNAGAN referred to a March 17, 2010, memorandum from Legislative Legal and Research Services [Included in members' packets.] which raised questions for the right of Alaska to pass a law different than federal law and regulation. He stated that this part of SB 284 is badly drafted legislation. He directed attention to page 6, lines 3-7, subsection (c), which "prohibits conduct only to the extent that federal law prohibits the same conduct." He referred back to page 5, line 29, (b)(5), and noted that this was not in federal law, and opined that subsection (c) would nullify subsection (b)(5). He stated that courts do not like to interpret legislation as nullifying itself. He called this section "a complete litigation magnet" and that there was no idea how the court will interpret it. He emphatically stated that he "cannot see how this provision has anything to do with disclaimer or disclosure rules."

CHAIR RAMRAS agreed that he wants to encourage disclosure but did not want to limit discourse.

REPRESENTATIVE GRUENBERG asked if the concern was for all of Section 10, or solely for subsection (b)(5).

MR. DUNNAGAN, responding to Representative Gruenberg, offered his belief that all of Section 10 is problematic, as it parrots existing law. He reflected that Section 10(b)(5) "is a mess and it's clearly unconstitutional."

[3:31:41 PM](#)

REPRESENTATIVE GRUENBERG directed attention to paragraph (5), and asked if Mr. Dunnagan was aware of any other jurisdiction that has enacted anything similar, and if there was a court challenge.

MR. DUNNAGAN replied no.

REPRESENTATIVE GRUENBERG asked whether there was federal precedent for Section 10, if paragraph (5) were eliminated.

MR. DUNNAGAN agreed.

REPRESENTATIVE GRUENBERG asked if any states have enacted state laws similar to that remainder of Section 10 [without paragraph (5)].

MR. DUNNAGAN replied that he did not know.

REPRESENTATIVE GRUENBERG asked about any court cases for challenges to similar federal legislation.

MR. DUNNAGAN replied that there were none, and he was not aware of any pending litigation.

REPRESENTATIVE GRUENBERG asked if there was concern with any other provisions of SB 284.

MR. DUNNAGAN replied that his comments and concerns were for Section 10 specifically.

REPRESENTATIVE GRUENBERG offered his belief that one potential reason for including subsection (b)(5) would be to:

Prevent a foreign national that would be precluded from contributing, from simply forming a domestic subsidiary to get around the law. It seems to me that there is an old equity maxim that says 'the law will not permit something to be done indirectly that could not be done directly.' Isn't this a valid state purpose to prevent somebody from setting up a shell domestic corporation to evade the general prohibition?

[3:35:02 PM](#)

MR. DUNNAGAN agreed, but then he questioned the agenda for what is currently written. He relayed that it is a difficult question, especially as to how many levels [of corporate ownership] this would apply. He pointed out that there are not many definitions and almost no court guidance. He again voiced his belief that direct and indirect contributions from foreign nationals are illegal. Referring to domestic subsidiaries, he said that indirect contributions are already illegal. He said that SB 284 creates a problem, as it will not allow foreign nationals a 51 percent ownership in a business, and this will make it difficult for a business to raise capital. He opined that SB 284 goes beyond what is necessary to protect Alaska from inappropriate influence from foreign nationals.

REPRESENTATIVE GRUENBERG replied that SB 284 did not prohibit foreign ownership; it only prohibited a political contribution from the business. He posited that if the only reason to set up a domestic subsidiary was for its political contributions, then it would be a sham.

MR. DUNNAGAN responded that he did not agree, as the reference in SB 284 was to "domestic corporations controlled by a foreign entity." He opined that with the passage of SB 284, a business could follow lawful procedures and yet violate the law, which itself would be a violation of both the First Amendment and the United States Supreme Court's ruling in Citizens United v. Federal Election Commission.

[3:38:53 PM](#)

JASON BRUNE, Executive Director, Resource Development Council (RDC), shared that the RDC had been actively involved in ballot measures, including "the cruise ship head tax initiative, the gas reserves initiative, and the clean water initiative." He went on to say:

The industries that were targeted by these initiatives have spent billions of dollars investing in this state. Each industry employs hard working Alaskans, and each pays significant taxes to the state treasury. Be it fishing, tourism, oil and gas, or mining, RDC members have a vested interest in defending their investments. By doing business in Alaska these businesses have demonstrated that they have a dog in any initiative fight and they should be allowed to participate in the process. However, ... [proposed AS 15.13.068] appears to potentially impact an investor's ability to fight an initiative that targets them because they are a domestic subsidiary of a foreign corporation.

MR. BRUNE offered his understanding that according to Legislative Legal and Research Services, proposed AS 15.13.068 only applies to a domestic subsidiary of a foreign national to the extent that the foreign national is making the decision or is financing that domestic subsidiary's involvement in a state election, and does not prohibit a domestic subsidiary of a foreign national from involving itself in state elections if it's using money that was made in Alaska or the United States, and the decision to spend the money was made by the domestic subsidiary. Offering some examples, he pointed out that that

interpretation only raises more questions such as who is it that's ultimately making the decision to spend money to defend a company against initiatives, and whether the bill would apply in situations where the domestic entity isn't yet making money in Alaska. He urged the committee to either clarify proposed AS 15.13.068 or delete it entirely. In conclusion, he stated that the RDC supports open discourse, open disclosure, and transparency in election campaigns, but is very much opposed to any law that would prohibit contributions that would allow RDC members to fight initiatives that target their industries.

[3:43:05 PM](#)

REPRESENTATIVE GRUENBERG agreed that Section 10 was "not just the disclosure, it's prohibition," and stated that he understood the concern.

CHAIR RAMRAS concurred, stating that it limits discourse, and he stated concern that it would limit commerce.

REPRESENTATIVE GRUENBERG asked whether there is any precedent supporting the argument that it is unconstitutional to deny this type of free expression, a prohibition against expenditures by a foreign national.

MR. BRUNE offered to research the issue and respond immediately.

REPRESENTATIVE GRUENBERG asked that Mr. Ptacin also respond to the same question on precedents.

[CSSB 284(FIN) was held over.]

[3:46:32 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:46 p.m.