

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

April 10, 2010

10:12 a.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**

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 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  
 04/09/10 (H) Heard & Held  
 04/09/10 (H) MINUTE(JUD)  
 04/10/10 (H) JUD AT 10:00 AM CAPITOL 120

**WITNESS REGISTER**

LORNA SHAW, Executive Director

Council of Alaska Producers  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments and responded to a question during discussion of 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.

CHARLES A. DUNNAGAN, Attorney at Law  
Resource Development Council for Alaska, Inc.  
Anchorage, Alaska

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

SENATOR HOLLIS FRENCH  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of SB 284, spoke as chair of the Senate Judiciary Standing Committee, sponsor.

ALPHEUS BULLARD, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** Spoke as the drafter of SB 284.

#### **ACTION NARRATIVE**

[10:12:16 AM](#)

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 10:12 a.m. Representatives Ramras, Lynn Holmes, Dahlstrom, Herron, and Gatto were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

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

[10:12:39 AM](#)

CHAIR RAMRAS announced that the only 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."

[10:14:37 AM](#)

LORNA SHAW, Executive Director, Council of Alaska Producers, pointed out that in Alaska, the mining industry spends hundreds of millions of dollars in Alaska for general operations every year, employs thousands of Alaskans, and pays significant state and local taxes; and that most of the mines and projects in Alaska are owned by foreign corporations. When the mining industry in Alaska is attacked by a ballot initiative, it must have the right to defend itself. For example, the mining industry were targeted by a ballot initiative in 2008, and it's likely that that initiative would have passed had foreign contributions been prohibited. It is therefore imperative that foreign corporations doing business in Alaska have the ability to protect themselves by engaging in ballot initiative campaigns, particularly given that similar initiatives could be brought forth in the future. The Council of Alaska Producers supports disclosure and transparency in election campaigns, and does not support limiting discourse. In conclusion, she reiterated that foreign corporations must retain the ability to participate in campaigns.

CHAIR RAMRAS, remarking on some of the benefits that result from foreign corporations doing business in Alaska, indicated that the committee would be addressing Section 10, which pertains to expenditures and contributions by foreign nationals.

CHAIR RAMRAS then relayed that public testimony on SB 284 was closed.

[10:22:47 AM](#)

CHAIR RAMRAS [made a motion to adopt] Amendment 1, labeled 26-LS1448\P.19, Bullard, 4/9/10, which read:

Page 5, line 25, following ";":  
Insert "or"

Page 5, line 28:  
Delete "; or"  
Insert "."

Page 5, line 29, through page 6, line 2:  
Delete all material.

REPRESENTATIVE HOLMES objected for the purpose of discussion, and offered her understanding that Amendment 1 would delete proposed AS 15.13.068(b)(5) from Section 10 of the bill.

CHAIR RAMRAS concurred. He noted, however, that proposed AS 15.13.068(c) would remain unchanged.

[10:24:53 AM](#)

JOHN PTACIN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), in response to questions, indicated that even with the adoption of Amendment 1, proposed AS 15.13.068 would still prohibit foreign nationals from making contributions or expenditures in connection with elections, just as federal law currently does; and that Section 10 does not address the issue of disclosure.

CHAIR RAMRAS said that although he doesn't have a problem with proposed AS 15.13.068(b)(1)-(4), he feels that proposed AS 15.13.068(b)(5) creates an ambiguity. In response to other questions, he offered his understanding that proposed subsection (c) specifies that proposed AS 15.13.068 conform to federal law, and posited that Amendment 1 provides a reasonable compromise and addresses the concerns of those currently opposed to Section 10.

[10:28:31 AM](#)

CHARLES A. DUNNAGAN, Attorney at Law, Resource Development Council for Alaska, Inc., in response to a question, opined that proposed paragraph (5) would present commerce problems, and is facially unconstitutional under case law - including that resulting from the recent U.S. Supreme Court case, Citizens United, Appellant v. Federal Election Commission - because it would treat domestic corporations differently depending on whether they were subsidiaries of a foreign national. He expressed support for Amendment 1, and concurred that Section 10 would conform state law to federal law. He surmised that the goal of Section 10 is to prevent foreign money from being

funneled into Alaska's elections in order to affect the outcome. In response to another question, he offered his understanding that as currently written, proposed paragraph (5), because it doesn't include a reference to proposed AS 15.13.068(b)(1), would not apply to a domestic subsidiary of a foreign national who is an individual.

REPRESENTATIVE GATTO said he was troubled by that discrepancy as well.

REPRESENTATIVE HOLMES indicated acceptance of Amendment 1.

MS. SHAW, in response to a question, indicated that Amendment 1 would address her organization's concern as well.

REPRESENTATIVE HOLMES removed her objection.

REPRESENTATIVE LYNN objected.

MR. PTACIN, in response to comments and questions, clarified that Section 10 would amend state statute such that it would mirror current federal regulation; surmised that the question is whether proposed paragraph (5) is really necessary or adds anything of value, particularly given that the remainder of [Section 10] already provides sufficient enforcement authority; and explained that Section 10 only prohibits expenditures and contributions by foreign nationals in connection with an election.

A roll call vote was taken. Representatives Holmes, Dahlstrom, Herron, Gatto, and Ramras voted in favor of Amendment 1. Representative Lynn voted against it. Therefore, Amendment 1 was adopted by a vote of 5-1.

REPRESENTATIVE GATTO indicated an interest in reviewing the remainder of proposed AS 15.13.068(b) further at a later time.

[10:38:47 AM](#)

CHAIR RAMRAS made a motion to adopt Amendment 2, labeled 26-LS1448\P.18, Bullard, 4/9/10, which read:

Page 8, line 4, following "transmitted":  
Insert "solely"

Page 8, lines 4 - 5:

Delete "and in the communication that includes an audio component"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

CHAIR RAMRAS - citing the expense of television advertisements and remarking on the large amount of information that the bill requires to be disclosed in certain situations - explained that Amendment 2 would alter proposed AS 15.13.090(d) such that the information that must be read aloud would only apply to communications transmitted solely via audio such as radio advertisements. He also expressed disfavor with the concept of requiring small entities/groups to disclose as much information as large entities/groups, due to the high cost of advertising in general.

MR. PTACIN, in response to questions, explained that that which must be read aloud must be clearly discernable, and whether it ultimately proves to be discernable must be determined on a case-by-case basis.

[10:45:32 AM](#)

SENATOR HOLLIS FRENCH, Alaska State Legislature, as chair of the Senate Judiciary Standing Committee, sponsor of SB 284, in response to questions, noted that under proposed AS 15.13.090(d) as currently written, the disclosure that must be read aloud applies to all forms of communications; reiterated that under Amendment 2, proposed AS 15.13.090(d) would only apply to communications transmitted solely via audio; and explained that currently under proposed AS 15.13.090(c)-(d), television advertisements must include both written disclosure and audio disclosure. On the latter point, he added that oftentimes, for various reasons, people only listen to television advertisements, and so any written disclosure they contain wouldn't be seen, and therefore his preference would be to require both radio and television advertisements to include an audio disclosure, at least for a couple of election cycles in order to ensure that those whom he termed "these new players in Alaska elections, unions and corporations" [provide full disclosure].

REPRESENTATIVE GATTO remarked that depending on the size of one's television screen, even a written disclosure could become indiscernible.

SENATOR FRENCH acknowledged that point.

CHAIR RAMRAS, in response to a comment, again remarked on the expense of television advertisements, and opined that without the adoption of Amendment 2, only large entities/groups will be able to afford television advertising if they have to include a lengthy audio disclosure whereas small entities/groups are going to find the current requirements of proposed AS 15.13.090(d) too burdensome financially.

REPRESENTATIVE LYNN expressed objection to Amendment 2.

SENATOR FRENCH mentioned that according to information he'd received from the APOC, small entities/groups typically don't purchase television advertising in support of or in opposition to ballot measures because it's much too costly to begin with; such entities/groups tend to spend their advertizing dollars on less expensive forms of communication.

REPRESENTATIVE GATTO questioned whether the term "easily heard" as used in proposed AS 15.13.090(d) provides a sufficient standard.

SENATOR FRENCH indicated that he was amenable to leaving the determination of whether a particular audio disclosure could be "easily heard" up to the APOC.

A roll call vote was taken. Representatives Dahlstrom, Herron, Gatto, and Ramras voted in favor of Amendment 2. Representatives Holmes and Lynn voted against it. Therefore, Amendment 2 was adopted by a vote of 4-2.

[10:55:23 AM](#)

CHAIR RAMRAS [made a motion to adopt] Amendment 3, labeled 26-LS1448\P.9, Bullard, 4/5/10, which read:

Page 7, line 10:

Delete "**five**"

Insert "**three**"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

SENATOR FRENCH said he doesn't have a strong view either way, but added that in light of the adoption of Amendment 2, he also doesn't see the harm in requiring the name of the top five contributors to be included in the written disclosures.

MR. PTACIN, in response to a question, relayed that the state of Washington requires communications to disclose the top five contributors, but ventured that although thus far there haven't been any challenges to that requirement, the more modest a burden of disclosure is, the better chance it has of being considered constitutional. In response to a further question, he explained that in situations where an entity/group has more than five top contributors and all contribute an equal amount, the state of Washington allows the entity/group to pick which five of its top contributors to disclose. He indicated that forthcoming APOC regulations might address that point further.

CHAIR RAMRAS asked Mr. Ptacin to suggest language that would provide the APOC with statutory guidelines on this issue.

MR. PTACIN indicated that that might be difficult, and surmised that that's why Washington chose to address the issue via regulation.

CHAIR RAMRAS expressed disfavor with doing so in Alaska.

[11:00:45 AM](#)

REPRESENTATIVE LYNN suggested amending Amendment 3 such that the word, "five", on page 7, line 10, of the bill, would be changed to the word, "four".

CHAIR RAMRAS said he would object to such an amendment.

The committee took an at-ease from 11:01 a.m. to 11:02 a.m.

SENATOR FRENCH, in response to comments on the issue of how to determine which of several equally-top contributors should be disclosed in a communication, expressed a preference for leaving it up to the APOC to address that issue via regulation.

CHAIR RAMRAS expressed a preference for providing the APOC with statutory guidelines instead.

MR. PTACIN mentioned that allowing the entity/group to choose which of several equally-top contributors should be disclosed in a communication would be less burdensome from a legal standpoint.

REPRESENTATIVE GATTO suggested that entities/groups could simply address it internally by returning a portion of some of their top contributors' contributions.

CHAIR RAMRAS characterized that as cumbersome, and again expressed disfavor with leaving the statutes ambiguous on this point.

[11:07:33 AM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), said he could draft an amendment to address that point statutorily, [one that would specify that it is the entity/group itself that gets to choose which of its equally-top contributors to disclose in a communication.

SENATOR FRENCH, in response to questions, explained that currently under the bill, audio communications need only include the names of the top five contributors, whereas written and video communications must include the names of the top five contributors and their addresses.

MR. PTACIN, in response to questions, confirmed that the provision Amendment 3 is proposing to change applies to all forms of communication.

[11:13:00 AM](#)

REPRESENTATIVE LYNN made a motion to amend Amendment 3 such that the word, "five", on page 7, line 10, of the bill, would be changed to the word, "four".

CHAIR RAMRAS objected.

A roll call vote was taken. Representatives Lynn, Gruenberg, and Holmes voted in favor of the amendment to Amendment 3. Representatives Dahlstrom, Herron, Gatto, and Ramras voted against it. Therefore, the amendment to Amendment 3 failed by a vote of 3-4.

A roll call vote was taken. Representatives Herron, Gatto, Dahlstrom, and Ramras voted in favor of Amendment 3. Representatives Lynn, Gruenberg, and Holmes voted against it. Therefore, Amendment 3 was adopted by a vote of 4-3.

[11:14:45 AM](#)

REPRESENTATIVE LYNN made a motion to adopt Amendment 4, labeled 26-LS1448\P.11, Bullard, 4/6/10, which read:

Page 8, following line 11:

Insert a new subsection to read:

"(e) The provisions of this subsection apply to a person who makes an independent expenditure for a communication described in (a) of this section. If the person paying for the communication is not a natural person, the provisions also apply to the responsible officer or officers of the corporation, company, partnership, firm, association, organization, labor organization, business trust, or society who approves the independent expenditure for the communication. A person who makes a communication under this subsection may not, with actual malice, include within or as a part of the communication a false statement of material fact about a candidate for election to public office that constitutes defamation of the candidate. For purposes of this subsection, a statement constitutes defamation of the candidate if the statement

(1) exposes the candidate to strong disapproval, contempt, ridicule, or reproach; or

(2) tends to deprive the candidate of the benefit of public confidence."

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE LYNN indicated that [Amendment 4 would add a new subsection (e) to proposed AS 15.13.090, and this subsection would prohibit a person from, with actual malice, including a false statement of material fact about a candidate in a communication the person pays for if the false statement constitutes defamation of the candidate].

REPRESENTATIVE GRUENBERG - referring to Amendment 4's use of the phrase, "with actual malice" - offered his recollection that in the 1964 U.S. Supreme Court case New York Times Company v. L. B. Sullivan, the standard used was, "with actual malice or reckless disregard for the truth".

REPRESENTATIVE GRUENBERG suggested amending Amendment 4 conceptually such that the words, "or with reckless disregard of the truth" be added after the phrase "with actual malice". He clarified that his intent would be for the drafter to use the exact wording from Sullivan.

[11:17:43 AM](#)

MR. BULLARD explained that the concept of, "with reckless disregard of the truth" was already one of the elements of the definition of the phrase, "with actual malice".

REPRESENTATIVE GRUENBERG surmised, then, that Amendment 4 need not be amended.

MR. PTACIN, in response to a question, offered his belief that Amendment 4 would make defamation of a candidate via a communication a violation of APOC law, and noted that in instances where the violator is not a natural person, the provision would apply to the entity's responsible officers - those who approved the expenditure for the communication.

REPRESENTATIVE LYNN added that Amendment 4 would put those who purchase communications [and those who approve of their purchase] on notice that they need to be careful with regard to what's included in the communications or they could be held liable.

MR. DUNNAGAN, in response to a question, indicated disapproval of Amendment 4 - in terms of it being pertinent to the goals of the bill - and mistrust that its proposed language would be inserted into the correct place in statute.

CHAIR RAMRAS characterized Amendment 4 as superfluous.

[11:21:05 AM](#)

SENATOR FRENCH expressed support for Amendment 4, opining that it would be a good idea to put those whom he'd previously termed the "new players in Alaska elections" - corporations and unions - on notice that Alaska's election laws apply to them as well.

REPRESENTATIVE GRUENBERG opined that as a matter of good policy, it's important for the legislature to stand firmly behind the principle that one shouldn't be allowed to "slander and liable" another person. He expressed his hope that any objections to Amendment 4 would be removed.

MR. PTACIN, in response to questions, indicated that the statutes governing the APOC don't currently include a prohibition against defamation, with actual malice, of a candidate; reiterated his understanding of what Amendment 4 does and who it would apply to; noted that the idea that a candidate can seek redress from someone who defames the candidate is an

aspect of tort law; and relayed that he doesn't find the language of Amendment 4 to be either wide open or ambiguous.

REPRESENTATIVE GRUENBERG pointed out that the same standard contained in Amendment 4 is already used when holding a corporation criminally liable.

CHAIR RAMRAS opined that Amendment 4 would invite ambiguity.

REPRESENTATIVE HOLMES removed her objection to the motion to adopt Amendment 4.

CHAIR RAMRAS objected.

[11:25:18 AM](#)

A roll call vote was taken. Representatives Gatto, Lynn, Gruenberg, and Holmes voted in favor of Amendment 4. Representatives Dahlstrom, Herron, and Ramras voted against it. Therefore, Amendment 4 was adopted by a vote of 4-3.

[CSSB 284(FIN), as amended, was held over.]

[11:25:42 AM](#)

#### **ADJOURNMENT**

The House Judiciary Standing Committee meeting was recessed at 11:25 a.m. to a call of the chair. [The meeting was reconvened April 11, 2010.]