

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 2, 2010

8:04 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Paul Seaton, Vice Chair
Representative Peggy Wilson
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

Representative Carl Gatto
Representative Craig Johnson

OTHER LEGISLATORS PRESENT

Representative Scott Kawasaki

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Personnel Board

Dr. Keith J. Hamilton - Soldotna

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 409

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

- HEARD & HELD

HOUSE BILL NO. 401

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

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 409

SHORT TITLE: CAMPAIGN EXPENDITURES

SPONSOR(S): STATE AFFAIRS

02/26/10	(H)	READ THE FIRST TIME - REFERRALS
02/26/10	(H)	STA, JUD
03/02/10	(H)	STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

DR. KEITH HAMILTON

Soldotna, Alaska

POSITION STATEMENT: Testified as appointee to the Personnel Board.

MIKE SICA, Staff

Representative Bob Lynn

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 409 on behalf of the House State Affairs Standing Committee, sponsor, which is chaired by Representative Lynn.

JOHN PTACIN, Assistant Attorney General

Labor and State Affairs Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Discussed a memorandum from the attorney general and answered questions during the hearing on HB 409.

PATTY WARE

Regulation of Lobbying

Alaska Public Offices Commission (APOC)

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 409.

HOLLY ROBERSON HILL, Executive Director

Alaska Public Offices Commission (APOC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 409.

ALPHEUS BULLARD, Attorney at Law
Legislative Legal Council
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Provided comments and answered questions during the hearing on HB 409.

ACTION NARRATIVE

[8:04:02 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:04 a.m. Representatives Seaton, Wilson, Petersen, and Lynn were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

CONFIRMATION(S): PERSONNEL BOARD, DR. KEITH J. HAMILTON

[8:04:35 AM](#)

CHAIR LYNN brought before the committee the appointment of Dr. Keith Hamilton to the Personnel Board. [The committee packet contains biographical information on Dr. Hamilton.]

[8:05:09 AM](#)

DR. KEITH HAMILTON, testifying as appointee to the Personnel Board, offered his background. He said he is an educator who was involved with the Faith-Based and Community Initiatives Council. He said he understands what serving on the Personnel Board entails and thinks he would serve on the board as a fair and unbiased individual who does not necessarily "come in with any political or government experience."

[8:06:00 AM](#)

REPRESENTATIVE SEATON remarked that Dr. Hamilton's resume is impressive, and he said he appreciates Dr. Hamilton's desire to serve the state.

[8:06:23 AM](#)

REPRESENTATIVE SEATON moved to advance the confirmation of Dr. Keith Hamilton to the joint session of the House and Senate.

There being no objection, the nomination of Dr. Keith Hamilton to the Personnel Board was advanced.

HB 409-CAMPAIGN EXPENDITURES

[8:07:17 AM](#)

CHAIR LYNN announced the next order of business was HOUSE BILL NO. 409, "An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; and providing for an effective date."

CHAIR LYNN reviewed that there was a recent [U.S.] Supreme Court decision involving corporations being defined as a "person" and making independent campaign expenditures in support of or in opposition to a candidate or initiative. He said the decision has had repercussions throughout the political community and affects the all people.

[8:09:21 AM](#)

CHAIR LYNN said the committee's purpose today is not to debate the U.S. Supreme Court decision. Chair Lynn said the committee recently heard a bill he sponsored, which addresses the same issue; however, he said that bill would be held in order to work with the committee sponsored HB 409. He said he thinks everyone will acknowledge the need to create some "side bars" - some rules - before the end of this session. He stated that the proposed bill is a bipartisan effort.

[8:11:45 AM](#)

MIKE SICA, Staff, Representative Bob Lynn, Alaska State Legislature, presented HB 409 on behalf of the House State Affairs Standing Committee, sponsor, which is chaired by Representative Lynn. He stated that when the U.S. Supreme Court decision was made on January 21, 2010, all Alaska's prohibitions on independent expenditures were likely made unconstitutional. He said the House State Affairs Standing Committee has worked quickly to address this issue, sending a letter to the governor of Alaska by February 12, which outlined the committee's concerns. Mr. Sica reported that on Friday, February 19, the attorney general issued a legal analysis supporting "the kind of things this bill is doing" related to disclosures and

disclaimers and ensuring fair and credible elections while upholding people's right to free speech. He expressed appreciation for all those who have been involved with the proposed legislation.

[8:13:43 AM](#)

MR. SICA paraphrased the sectional analysis, which read as follows:

Section 1.Amends language relating to the applicability of AS 15.13 (state election campaigns) to clarify that the chapter applies to all contributions, expenditures, and communications made for the purpose of influencing the outcome of an election covered by the chapter.

Section 2.Requires the Alaska Public Offices Commission (APOC) to make certain information available to the public within 24 hours after being received by the commission and amends language relating to APOC's duties to clarify that the commission will assist all persons to comply with the requirements of AS 15.13.

Section 3.Amends AS 15.13.040(d) to clarify that every person making an expenditure must report to the commission unless the person is exempted from reporting by another provision of the chapter.

Section 4.Adds new requirements to the expenditure report required under AS 15.13.040(d) and specifies that (1) if the report is filed by a person who is not an individual, it must be certified by the person's treasurer or fiscal officer, and (2) the report must be filed in accordance with AS 15.13.110(g).

Regarding Section 2, he directed attention to a conforming language change on page 2, line 4, wherein APOC would be required to assist "**all persons**" rather than candidates, groups, and individuals.

Regarding Section 4, he directed attention to new language beginning on page 3, line 5, which read:

If the report is filed by a person that is not an individual, the report must be certified as correct by the treasurer or fiscal officer of the person.

MR. SICA offered his understanding that the intent of that language is to ensure accuracy. He noted that other new language in Section 4 includes requirements, including: "**the name, address, and nationality of each officer and director of the person**", "**principal occupation**", and "**employer of the contributor**".

MR. SICA, in response to Chair Lynn, explained the purpose of the proposed requirement to report nationality is "to capture whether the person behind these independent expenditures was a foreign corporation."

[8:17:06 AM](#)

MR. SICA returned to the sectional analysis. He paraphrased Sections 5 through 10, which read as follows:

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 any other person.

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 under AS 15.13.040(d) must report the true source of the contributions as the "contributor."

Section 7.Provides that no person, other than an individual exempt from reporting under AS 15.13.040(h), may make an expenditure unless the source of the expenditure has been disclosed.

Section 8.Amends language in AS 15.13.084 to clarify that a person may not make an expenditure anonymously unless it is made (1) for certain communications, (2) in connection with a ballot proposition as that term is defined by AS 15.13.065(c), and (3) by an individual acting independently of any other person.

Section 9.Amends language in AS 15.13.086 to conform with the bill's repeal of AS 15.13.067.

Section 10. 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 a political party to (1) identify the person's principal officer, (2) include a statement from that officer approving the communication, (3) provide the address of the person's principal place of business, and (4) identify certain contributors to the person.

MR. SICA, regarding Section 10, said the "certain contributors" would be the five largest donors.

[8:20:13 AM](#)

MR. SICA continued paraphrasing the sectional analysis, directing attention to Sections 11 through 16, which read as follows:

Section 11. Adds a new subsection to AS 15.13.090 that does not permit a communication to be made by a person other than a candidate, individual, or political party, unless the person's principal officer has certified to APOC that the officer has reviewed the communication, and based on the officer's knowledge, the communication is not defamatory and does not contain defamatory statements.

Section 12. Requires expenditure reports filed under AS 15.13.040(e) to be filed within three days of the expenditure being made, except for an expenditure that exceeds \$250 and that is made within nine days of an election must be reported to APOC within 24 hours of the expenditure being made.

Section 13. Amends the language of AS 15.13.111(a) to oblige all persons who are required to report under AS 15.13 to preserve certain records for a period of six years.

Section 14. Removes language from AS 15.13.135 that permitted only individuals, groups, or nongroup entities to make independent expenditures in support or in opposition to a candidate for public office. Adds language requiring all persons making certain independent expenditures to comply with AS 15.13.090.

Section 15. Repeals AS 15.13.067, a provision permitting only certain persons to make expenditures in an election for public office and AS 15.13.140(a), a provision that provided that AS 15.13 should not be interpreted to prohibit a person from making independent expenditures in support or in opposition to a ballot proposition or question. As the chapter now reads, there is no ambiguity as to whether the chapter prohibits persons from making independent expenditures relating to a ballot proposition or question.

Section 16. Gives the Act an immediate effective date.

MR. SICA, regarding Section 15, offered his understanding that registration before expenditure is already in AS 13.15.050; therefore it is redundant in AS 15.13.067.

[8:23:28 AM](#)

REPRESENTATIVE GRUENBERG directed attention to an article in The New York Times, entitled, "Anonymous Donation," which brings up the possibility of corporate contributions being funneled through nonprofit organizations. He questioned whether it would be constitutional for the legislature to prohibit this.

MR. SICA responded that he has discussed this issue, but has not had communication from Legislative Legal and Research Services regarding it.

[8:25:20 AM](#)

REPRESENTATIVE PETERSEN, regarding the issue of nationality, offered his understanding that even though a person who is not a U.S. citizen is not allowed to vote, under the proposed legislation, a foreign national would be able to influence Alaska's elections. He opined that that is not right, and he said he does not think the people of Alaska would like that to happen.

CHAIR LYNN responded that he would not want that to happen. He said it is illegal for a foreign national to contribute to any candidate, and he opined that it should also be illegal for "that person representing the corporation to essentially do the same thing, even though it's an independent expenditure." He

said the proposed requirement to identify nationality is there for the purpose of full disclosure. He stated his concern that it should also be disclosed when a corporation is "an Alaska subsidiary of a foreign nation."

[8:27:41 AM](#)

MR. SICA added that the legislature legally could prohibit not just foreign corporations, but subsidiaries therein, and it may wish to consider that in the future. He echoed Chair Lynn's comment that the proposed requirement to identify nationality is for the purpose of full disclosure.

CHAIR LYNN said the idea is to give the public information by which to know if they may have been influenced by foreign persons.

[8:28:51 AM](#)

REPRESENTATIVE PETERSEN noted that the disclosure showing the name of the group or candidate who sponsored an election advertisement shows at the bottom of the television screen in small print. Adding further names will make it difficult for the average person to be able to read. He asked if there is any way to require the advertisement sponsorship to be announced audibly. He suggested that that would allow the public to instantly recognize a foreign corporation name.

CHAIR LYNN pointed out that many U.S. corporations have foreign sounding names, because America is comprised of a myriad of ethnicities.

[8:30:39 AM](#)

MR. SICA said the proposed requirement to report nationality, to which Representative Petersen referred, is related to filing reports. He then highlighted language on page 5, lines [8-11], which read as follows:

Sec. 15.13.090. Identification of communication.

(a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the person [CANDIDATE, GROUP, NONGROUP ENTITY, OR INDIVIDUAL] paying for the communication.

CHAIR LYNN said he hopes the media would help in identifying the sponsor of the [political] advertisement.

[8:31:35 AM](#)

REPRESENTATIVE SEATON regarding nationality, said Alaska is currently relying on federal law, which prohibits foreign nationals from contributing to a campaign, "et cetera." He said he is waiting on a response from Legislative Legal and Research Services as to whether federal law preempts state law from instituting "a mirror kind of language." If not, he suggested that the committee adopt an amendment incorporating that restriction into state law.

[8:32:49 AM](#)

REPRESENTATIVE GRUENBERG remarked that no law is more effective than the state's ability to enforce it. He said the committee is getting into an issue that involves legal "tracing," which he explained is an expensive process of finding out where the money leads. He questioned how much money would be needed to enforce the law.

[8:33:25 AM](#)

MR. SICA offered his understanding that the current fiscal note is \$131,000. He said he does not know how much additional money would be needed to do tracing and cover investigations.

[8:33:46 AM](#)

REPRESENTATIVE SEATON offered his understanding that Representative Kawasaki was concerned about hidden funds. He directed attention to language on page 4, line 9, which read:

"contributor" means the true source of the funds, property, or services being contributed.

REPRESENTATIVE SEATON expressed his hope that the committee would obtain a legal opinion as to the meaning of that language and what the penalties would be if someone was shown to be attempting to hide the true source of funds.

[8:34:58 AM](#)

REPRESENTATIVE P. WILSON opined that the penalty for hiding funds must have an impact. She talked about perception and truth and taking a message out of context, and she emphasized that the legislature must punish those giving other than the

facts. She said, "So, I think this goes a little further than just financing"

CHAIR LYNN concurred.

[8:36:15 AM](#)

REPRESENTATIVE GRUENBERG stated that making a good case requires right, remedy, and enforcement. He mentioned the Pebble Mine case and said having a penalty in place is extremely important. He relayed that AS 12.55.035 addresses how corporations are punished. He said the statute has some loopholes, but he suggested that the committee consider its implications. He said corporations can influence legislation or the election of candidates not only by bribing people, but also by committing various campaign violations, and he reemphasized the importance of addressing "terrific potential losses for the public" through enacting "good remedy statutes."

CHAIR LYNN responded, "I like that."

[8:38:33 AM](#)

MR. SICA cautioned that the intent of the legislation is not to penalize people for "exercising their political speech that they now have through the [U.S.] Supreme Court decision."

[8:41:06 AM](#)

JOHN PTACIN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law, said he would outline some points from a memorandum from the attorney general, dated 2/19/10 [included in the committee packet]. As shown in the summary of the memorandum, Mr. Ptacin said that under Citizens United v. Federal Election Commission ("Citizens United"), Alaska may not prohibit political speech altogether in candidate elections; therefore, AS 15.13.067 and AS 15.13.135 are likely unconstitutional. In response to Representative Wilson, he explained that the aforementioned statutes have been called into question "to the extent that they prohibit independent expenditures attenuated to free speech and candidate elections."

MR. PTASIN said given the current "landscape of the law," the department also considered how current disclosure and disclaimer law applies to corporations and labor unions. He said [AS 15.13.040], as currently written, requires corporations and

labor unions making independent expenditures in candidate elections to disclose that speech within 10 days of making it. Regarding disclaimer law, Mr. Ptasin said AS 15.13.084 does apply; the corporation or labor unions cannot make that speech anonymously. He said that in the memorandum, it was noted that AS 15.13.084 could lead to some confusion where a corporation or labor union could force the issue and make a political speech expenditure. He said a question he thinks the committee and many proposed bills are trying to address is what it means to make speech not be anonymous.

MR. PTASIN continued as follows:

We did point out that there is this issue with true source ... of funds. Arguably there's a gap in the law, because a corporation can make an expenditure from its own treasury. But the real question, and I think that what a lot of the legislators this session are trying to understand is: How do we follow the money from person to person down into the actual act of speech? And I think that's what these bills are trying to address.

MR. PTASIN, regarding foreign corporations, said the memorandum points out that federal law does not allow foreign nationals or foreign associations to make expenditures in state candidate elections. He relayed that the U.S. Supreme Court decision resulting from the Citizens United case did not invalidate that federal law, but it also did not rule whether or not there is a compelling government interest in upholding that law.

[8:44:42 AM](#)

REPRESENTATIVE PETERSEN asked Mr. Ptasin if he is saying there seems to be gray area when it comes to whether foreign entities, governments, or individuals will be allowed to try to influence elections; therefore, if the state specifically excluded those entities from Alaska election law, that may be unconstitutional.

MR. PTASIN responded that Representative Petersen's question is difficult to answer, because [the U.S. Supreme Court] "spent about two sentences addressing the issue of [2 U.S.C. § 441e]." He stated, "All they said is they don't have to address it in this case, and they don't rule whether there is a compelling government interest in that law as opposed to restricting expenditures by United States corporations and labor unions in this context then." He said it is difficult to predict whether

or not there will be a compelling government interest in that area.

[8:45:53 AM](#)

REPRESENTATIVE SEATON asked if the Office of the Attorney General believes that there is federal preemption in that restriction or it would be possible for Alaska to enact state law mirroring the restrictions in federal law.

MR. PTASIN answered that in other states' expenditure restriction laws, which are now likely unconstitutional, the definitions of corporations include "any corporation foreign or domestic." He said he cannot find anything to show that that distinction would "represent a compelling government interest at this point." He stated, "I think it merits a lot more work to determine whether there is preemption in that area and to kind of flush out that idea."

REPRESENTATIVE SEATON asked what the state's recourse would be if it relies on federal law and a foreign national spends money in state election. He asked if there needs to be state statute addressing this issue.

MR. PTASIN responded that Alaska's current law does not contemplate distinguishing between foreign national corporations and associations and U.S. corporations, because "we" used to have an outright ban on all expenditure. The attorney general memorandum points out that there is no state law on this issue, he said. Mr. Ptasin offered his perspective that he is almost certain he could not bring a federal elections campaign case in front of APOC; the issue could not be litigated in state courts.

[8:48:08 AM](#)

REPRESENTATIVE PETERSEN said even though Alaska might not be able to restrict a foreign corporation or foreign government from getting involved in an election, the state would not be restricted in how it requires disclosure.

MR. PTASIN responded as follows:

Laws which burden political speech are always subject to scrutiny, and the government must always show a compelling government interest in passing that law, and ... [its] interest needs to be narrowly tailored. With respect to foreign nationals, ... to the extent

there is a compelling government interest, I think that's an issue that has to be thought about. ... Given that standard, when you're trying to burden free speech, there has to be a compelling government interest to do any kind of disclosure or disclaimer law.

[8:49:30 AM](#)

REPRESENTATIVE PETERSEN concluded then that Alaska would have to require the same disclosure by everyone as a matter of fairness and "to pass scrutiny."

MR. PTASIN replied that that is more of an equal protection issue. He said, "When you talk about this particular set of laws, you just have to pass strict scrutiny, and the government has to show a compelling government interest for requiring that type of disclosure." He said he thinks there is room to treat certain groups one way versus another, and he said "these laws already contemplate that." For example, he said individuals have different types of filing requirements than [corporations].

[8:50:13 AM](#)

CHAIR LYNN concluded that the proposed legislation would "buy us some time" by "disclosing disclosing." He suggested that future legislation may pass some restrictions that would pass scrutiny.

MR. PTASIN responded as follows:

The new disclosure and disclaimer landscape ... certainly builds on what's already in place. And again, disclosure and disclaimer laws are subject to strict scrutiny. And these laws are ... subject to challenge from groups or from corporations or labor unions - whoever you're applying the burden to, but at this point, it's passed into law

[8:51:18 AM](#)

REPRESENTATIVE GRUENBERG asked Mr. Ptasin to confirm that the remedies available to APOC are contained in AS 15.13.390, and that they involve only civil penalties.

MR. PTASIN responded that there are criminal sanctions for certain violations in another section of statute.

[8:51:52 AM](#)

REPRESENTATIVE GRUENBERG asked Mr. Ptasin if he is aware of whether Alaska allows APOC to seek a court order or any type of injunctive relief if there is an egregious case, and whether he is aware of "any other types of remedies that are on the books in any other jurisdiction."

[8:53:02 AM](#)

MR. PTASIN answered no.

[8:53:41 AM](#)

REPRESENTATIVE P. WILSON cited two sentences from the summary of the aforementioned memorandum, which read as follows:

Alaska's laws continue to regulate corporate and labor union political speech through disclaimer and disclosure requirements. However, some disclaimer and disclosure laws that provide specific standards for reporting and identification of expenditures do not currently apply to corporations and labor unions.

REPRESENTATIVE P. WILSON concluded as follows:

So, in that mode, we should be able to say we are just covering those ... in areas ... that ... weren't covered before and feel comfortable doing that.

[8:54:42 AM](#)

MR. PTASIN said there certainly has been discussion as to how [AS 15.13.090 and AS 15.13.135] can apply to corporations and labor unions. He indicated that proposed bills currently before the legislature contemplate "even further discussion from that," based on the [proposed] changes to [AS 15.13.040 (d) and (e)].

[8:55:29 AM](#)

REPRESENTATIVE SEATON noted that Mr. Ptasin had mentioned two statutes that he believed susceptible to constitutional challenge: AS 15.13.067, which would be repealed by HB 409; and AS 15.13.135. He asked Mr. Ptasin if he is comfortable that the changes proposed in HB 409 would "take care of that situation," or if he would recommend further changes be made.

[8:56:19 AM](#)

MR. PTASIN responded, "What you've done to [AS 15.13.135] is just not made any kind of restriction language in there, so it does open it to the ... full panoply of entities and people in groups who can make expenditures. So, I don't see anything in the way that you've done that to ... raise an issue."

[8:57:02 AM](#)

REPRESENTATIVE SEATON, regarding "true source of funds", on page 4, line 9, asked Mr. Ptasin if this language would give the department "ample cause to take a complaint through APOC or through the courts."

MR. PTASIN responded that trying to "follow the money" can be an arduous process. He indicated that the proposed legislation would require "the one making the message to tell you who the source of funds is." He stated, "If there's an implication that there's one corporation giving to another corporation, giving to another corporation, and funneling it all the way to the messaging, conceivably under that language, we could take the case and try to relate it all the way back to the true source of funds, but I'd like to take a harder look at that."

[8:59:31 AM](#)

REPRESENTATIVE SEATON referred to language on page 3, beginning on line 5, which read as follows:

If the report is filed by a person that is not an individual, the report must be certified as correct by the treasurer or fiscal officer of the person.

REPRESENTATIVE SEATON asked Mr. Ptasin if that language would be sufficient to "attach liability to an individual if that is shown to be willfully done."

MR. PTASIN pointed out that HB 409 further proposes that the report must contain, for all contributions to the person that exceed \$100, [**the date of the contribution and amount contributed by each contributor**]. He said that proposed requirement would give the department the precursor to determine whether or not there was a violation. Furthermore, he said the proposed requirement for six years of record keeping would give the department "broad subpoena power to ask the questions that

need to be asked if an allegation's made." He said he would like to take a second look at "that language."

[9:02:58 AM](#)

REPRESENTATIVE PETERSEN asked then if it would be possible legally to find someone guilty if the intent to hide true identity could be proved.

MR. PTASIN responded that his experience has shown that proving intent can be difficult; however, the stronger the disclosure and disclaimer laws are, the better the chance is of finding "certain things."

[9:04:52 AM](#)

REPRESENTATIVE GRUENBERG directed attention to AS 15.13.390 (f)(1), which read as follows:

(f) A party who has filed a civil action under AS 15.13.380 (1) is not entitled to trial by jury on the civil action;

REPRESENTATIVE GRUENBERG said he would like to know if it is constitutional to not allow a juried trial.

REPRESENTATIVE GRUENBERG questioned whether the aforementioned language on page 3, beginning on line 5, should be amended to say that the report should be certified "under penalty of perjury".

MR. PTASIN responded that any "burdening speech" would have to "survive strict scrutiny, narrow tailoring, [and have] compelling government interest." He said he thinks there is compelling government interest to keep individuals from lying to the public. He indicated that the issues of narrow tailoring and "whether perjury is the lever" have not been vetted at this point.

[9:05:56 AM](#)

REPRESENTATIVE GRUENBERG said "the conspiracy statute" apparently applies only to serious crimes. He explained, "I'm wondering if the stuff we're talking about here would be covered by conspiracy, because that would seem to me to be a relatively easy way of prosecuting a violator." He asked Mr. Ptasin if he would consider that idea.

[9:07:41 AM](#)

REPRESENTATIVE SEATON clarified that the committee is anticipating two communications: one regarding the nationality prohibition and whether the state could enact such a law, and the other one regarding the true source of funds, which is related to the conspiracy issue.

[9:08:44 AM](#)

MR. PTASIN, in response to Representative Gruenberg, said that as the attorney who works on APOC issues, he is ready to enforce any laws that are passed. In response to a follow-up question, he said the Department of Law and APOC work closely on investigations. He said APOC receives complaints and the department is relied upon to ensure that investigations move forward.

[9:11:21 AM](#)

MR. PTASIN, in response to Representative Seaton's former summary of the questions that would be answered for the committee, offered his understanding that the Department of Law is going to consider certification under penalty and conspiracy issues, and Legislative Legal and Research Services is going to look at the nationality preemption issue.

[9:11:52 AM](#)

REPRESENTATIVE SEATON clarified that the question for the attorney general is related to the federal law regarding foreign nationals and "how that would flow into this new area where we ... could have foreign directors of a corporation" - how the department "would be able to prosecute that." He said that is a different questions from that which he is asking Legislative Legal and Research Services to answer.

MR. PTASIN, in response to a question from Representative Seaton, said he can enforce state laws, but needs to think about what the state's role would be regarding the language in HB 409 that addresses foreign nationals.

[9:13:48 AM](#)

PATTY WARE, Regulation of Lobbying, Alaska Public Offices Commission (APOC), reported that four out of five APOC

commissioners met with legislators in Juneau last week and, while APOC does not take an official position on legislation, the commissioners made it clear that this is an urgent matter for which legislation must be passed this session with an immediate effective date. She thanked the committee for introducing HB 409.

[9:14:32 AM](#)

REPRESENTATIVE SEATON directed attention to the aforementioned language, "contributions to the person that exceed \$100", on page 3, line 20, and he asked if that is the current limit. He said he does not think the intent of the committee is to change the standard.

MS. WARE offered her understanding that the amount in current statute is \$100. She deferred to the executive director of APOC for confirmation.

[9:15:36 AM](#)

HOLLY ROBERSON HILL, Executive Director, Alaska Public Offices Commission (APOC), said one of her staff has told her that is correct. Regarding a previous comment by Mr. Ptasin, she cited AS 15.13.380(f), which read as follows:

(f) If the complaint involves a challenge to the constitutionality of a statute or regulation, necessary witnesses that are not subject to the commission's subpoena authority, or other issues outside the commission's authority, the commission may request the attorney general to file a complaint in superior court alleging a violation of this chapter. The commission may request the attorney general to file a complaint in superior court to remedy the violation of a commission order.

MS. HILL then cited Regulation 2AAC 50.476, which she said allows APOC to refer matters to the attorney general. She stated that AS 15.56.012, AS 15.56.014, and AS 15.56.016 involve campaign misconduct which is criminal in nature. She said, "So, the mechanism would be a referral by the commission to the AG's office for more action taken against particular matters." In response to Representative Seaton, she confirmed that AS 15.13.040(a)(2)(B)(ii) shows \$100 in the aggregate.

[9:17:37 AM](#)

REPRESENTATIVE GRUENBERG offered a hypothetical example in which one corporation funnels money through a nonprofit corporation. He asked, "Would there be any possible problem with asserting ... in personam jurisdiction in a case like that, and, if so, should we consider a statutory amendment to allow you to have jurisdiction in that case to the maximum extent constitutionally permissible?"

MR. PTASIN responded that under 074(f), a corporation couldn't give to a group or a nongroup entity.

REPRESENTATIVE GRUENBERG said he would like an opinion from the attorney general regarding whether that would be constitutional after the Citizens United case. He said his question regarding jurisdiction still stands.

MR. PTASIN explained that 074(f) is a contribution law, which does not allow certain corporations, labor unions, and those types of entities, to make a contribution to a group or a nongroup entity or a candidate.

REPRESENTATIVE GRUENBERG said he understands what Mr. Ptasin has said, but he wants to know if, in view of the Federal Election Commission v. Massachusetts Citizens For Life case and Citizens United, 074(f) is still constitutional.

MR. PTASIN explained as follows:

074(f) is a contribution law, and ... Citizens United ... is an expenditure case, so, I don't see any reason why 074 is on any different grounds than it was prior.

[9:20:56 AM](#)

ALPHEUS BULLARD, Attorney at Law, Legislative Legal Council, Legislative Legal and Research Services, Legislative Affairs Agency, related that currently foreign nationals, under 2 USC 441 E, are prohibited from direct or indirect involvement in a federal, state, or local elections of candidates, ballot initiatives, or questions. Currently under federal law, those entities are not allowed to use a foreign expenditure to influence an election.

CHAIR LYNN said he assumes a board of directors may cast a vote related to the support or opposition to a candidate or issue,

and he questioned whether a foreign national serving on that board would be participating in an election when casting a vote.

MR. BULLARD answered as follows:

It would be a fact-intensive analysis as to where the decision was made and how it was made and who made that decision. The American subsidy could only use that subsidy's funds from their American general treasury to fund any sort of independent expenditure in a state election. They wouldn't be able to use the foreign parents' funds, et cetera.

MR. BULLARD, in response to a follow-up question from Chair Lynn, stated his belief that under federal law, it would be prohibited for a foreign national to be at the root of a [board's] decision.

CHAIR LYNN asked how it is possible to determine who was the determining influence in a closed board meeting.

MR. BULLARD said he does not have an answer for that question.

[9:24:49 AM](#)

MR. BULLARD, regarding conduit contributions and true source language, noted that there is a 2001 attorney general's opinion interpreting the true source language found in AS 15.13.040. The opinion is that true source, in that context, means the ultimate source of the contribution. He continued as follows:

I believe the issue is more of a sort of "boots-on-the-ground" investigatory issue than it is a legal issue. True source is true source; I don't believe it's ambiguous. It's not money from the general fund; it's where that money came from before it was in that organization's general fund [that] would be its true source.

MR. BULLARD said he does not know how much there is that can be done in statute or how desirable it would be to attempt to "isolate that notion of true source" in statute.

[9:25:59 AM](#)

REPRESENTATIVE GRUENBERG asked, "So, it's a factual question?"

MR. BULLARD offered his understanding that Representative Gruenberg was referring to the issue of true source, and to that he answered yes.

[9:26:18 AM](#)

REPRESENTATIVE PETERSEN asked if the State of Alaska would be allowed to require that the true source of funds be disclosed as a part of the advertisement.

MR. BULLARD responded that although he can imagine squabbles occurring regarding true source in that context, he does not know what the state's interest is and whether it would be a compelling interest.

[9:27:44 AM](#)

CHAIR LYNN asked if it would be possible to require a corporation to disclose when it is a subsidiary of a foreign corporation.

MR. BULLARD answered that like prohibiting or limiting an expenditure, a disclosure provision is a burden on speech and, while the jurisprudence is not crystal clear, it needs to be narrowly tailored to a compelling state interest. He said he is not certain whether such a requirement would be interpreted by a court to satisfy compelling state interest. He added, "It's possible."

CHAIR LYNN explained he was thinking that, at least, a disclosure could be made at the bottom of a television advertisement or written advertisement, or at the end of a radio announcement.

MR. BULLARD responded that there are possible constitutional arguments that that would offend equal protection of First Amendment rights of association and arguments regarding whether such a requirement would be justified by a compelling state need. He said he does not know the answer to that question.

[9:29:12 AM](#)

REPRESENTATIVE SEATON directed attention to Section 11, on page 6, lines 4-9, which read as follows:

Sec. 11. AS 15.13.090 is amended by adding a new subsection to read:

(c) A person other than a candidate, individual, or political party may not make a communication under (a) of this section unless the person's principal officer has certified to the commission in writing that the officer has reviewed the communication, and, based on the officer's knowledge, the communication is not defamatory and does not contain any defamatory statements.

REPRESENTATIVE SEATON said there has been discussion regarding whether it would be better to have a chief executive or board of directors, rather than the principal officer, do the certification. He asked Mr. Bullard if there is a legal reason why the committee should choose one over the other, or whether this is a policy call.

[9:31:14 AM](#)

MR. BULLARD responded that he has not given this provision the legal analysis it deserves; therefore, he is not certain how the provision would work. He said the only analogous provisions with which he is familiar are within the federal Sarbanes-Oxley Act [15 USC 7241 section 302 and 18 USC 1350 section 906], which requires a chief financial officer of various large corporations to certify the disclosures that they sign off on in an attempt to bring accountability to a personal level. He said he does not know what the litigation surrounding those has been or how analogous that is to the provision here in HB 409.

REPRESENTATIVE SEATON requested a legal opinion. He said the chief area of concern for him is that limited liability companies (LLCs), corporations, and unions have more rights and protection than individuals making that same communication.

CHAIR LYNN said he shares Representative Seaton's concern.

[9:35:30 AM](#)

REPRESENTATIVE GRUENBERG mentioned two ways of proving defamation, related to knowing a statement is defamatory and reckless disregard of the truth. He said they are found in New York Times v. Sullivan. He asked Mr. Bullard if the language in Section 11 could be expanded with a conceptual amendment, which may include the following language: "based on the officer's knowledge" or "in reckless disregard of the truth".

MR. BULLARD said that language could be included; however, since the legal test for legal defamation under New York Times v. Sullivan "has that on board," he said it is not clear that the amendment would be necessary.

REPRESENTATIVE GRUENBERG explained that he is concerned about clarity. He remarked that it is possible that something said can be untrue, without being defamatory. He asked if it would be constitutional to expand the bill language to include not only defamatory statements, but also "serious untruths" that may be politically injurious or affect an election.

MR. BULLARD said he is unsure.

REPRESENTATIVE GRUENBERG indicated that he would talk further with Mr. Bullard at a later date. He said he wanted to flag the issue.

[9:38:54 AM](#)

REPRESENTATIVE PETERSEN indicated that he would like feedback from Mr. Bullard regarding an amendment in which he held interest.

The committee took an at-ease from [9:40:22 AM](#) to [9:41:49 AM](#).

[9:41:52 AM](#)

CHAIR LYNN, after ascertaining that there was no one else who wished to testify, closed public testimony.

[9:43:35 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 1, labeled 26-LS1495\R.1, Bullard, 3/1/10, which read as follows:

Page 2, line 27:

Delete "**not less than 24 hours after the report is filed**"

Insert "**within 24 hours after the filing of the report**"

REPRESENTATIVE GRUENBERG objected for discussion purposes.

REPRESENTATIVE SEATON explained that Amendment 1 would change the language to that which better meets the intent of the committee. In response to Representative Gruenberg, he offered

his understanding that as soon as reports come in to APOC, they are available to the public; therefore, APOC would be able to comply with Amendment 1.

[9:46:41 AM](#)

MS. HILL confirmed that Representative Seaton is correct that anything that "comes through the door" is available to the public. She noted that currently those items being filed by Excel spreadsheet may need adjusting before printing for the public, unless APOC is able to simply e-mail that information to a person. She stated, "Changing it to 'within 24 hours' - as long as that is not presumed to be electronic filing - that's acceptable to APOC."

[9:47:21 AM](#)

REPRESENTATIVE GRUENBERG removed his objection. There being no further objection, Amendment 1 was adopted.

[9:47:48 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 2, labeled, 26-LS1495\R.2, Bullard, 3/1/10, which read as follows:

Page 2, line 26, following "public":
Insert "on the commission's Internet website"

Page 2, line 27:
Delete "not less than 24 hours"
Insert "within three days"

REPRESENTATIVE GRUENBERG objected for discussion purposes.

REPRESENTATIVE SEATON, in response to Chair Lynn, offered his understanding that "three days" means three consecutive days.

[9:49:00 AM](#)

MS. HILL responded that currently APOC does not have the ability to post within 3 days. In response to Chair Lynn, she relayed that the timing is closely tied to electronic filing. She explained that APOC's electronic filing system is a database from the mid '90s and slows down with more than one user; therefore, the more staff applied to the problem, the slower the system becomes.

[9:49:59 AM](#)

REPRESENTATIVE SEATON opined that it is incumbent upon the legislature to modernize the method of reporting to the public; however, he acknowledged that APOC currently does not have the means to carry out Amendment 2.

REPRESENTATIVE SEATON withdrew Amendment 2.

[9:50:35 AM](#)

MS. HILL, in response to Representative Gruenberg, said APOC has a \$600,000 capital improvement project (CIP) request in the fiscal year 2011 (FY 11) budget for the purpose of continuing the commission's filing project called, "Insight." She said the first phase of that filing was the lobbyist module, which is up and running, but not without glitches. The CIP for FY 10 will correct those glitches and provide APOC with interim solutions that can assist with posting data. It will not be as "searchable" as the Oxford database, she remarked, but will be a method by which to load data more efficiently. Ms. Hill said the Insight filing program is the process that was envisioned by the legislature, but APOC does not have the funding to "engage in a second task order." In response to a follow-up question, she expressed her personal preference to not have a delayed effective date.

[9:53:00 AM](#)

REPRESENTATIVE SEATON, in response to Chair Lynn, said as soon as the legislature and the administration acquire a system that works, he is certain that APOC will be using it.

CHAIR LYNN stated that without objection, Amendment 2 was withdrawn.

[9:53:50 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 3, labeled 26-LS 1495\R.3, Bullard, 3/1/10, which read as follows:

Page 6, line 12:
Delete "three days"
Insert "24 hours"

Page 6, lines 12 - 16:

Delete "An expenditure report filed under this subsection must include any expenditure not yet reported that was made before the filing of the report. However, an expenditure that exceeds \$250 and that is made within nine days of an election shall be reported to the commission not later than 24 hours after the expenditure is made."

REPRESENTATIVE GRUENBERG objected for discussion purposes.

REPRESENTATIVE SEATON said Amendment 3 addresses the time in which an independent expenditure report must be filed. In response to Chair Lynn, he explained that this report is that which must be turned in by the entity making the independent expenditure; it does not relate to APOC's timing in making information public.

REPRESENTATIVE GRUENBERG said he has no problem with the first part of the amendment, but questioned the reason for deleting the language [from page 6, lines 12-16].

[9:56:05 AM](#)

MR. BULLARD, at the request of Representative Seaton, explained as follows:

The reason that that language appears in the bill and not the amendment is [that] with the three-day provision, ... you want things in the last nine days to be reported - certain expenditures - within 24 hours. And there was also the concern that an expenditure that was made on the tenth day before the election could be reported within three days, but an expenditure within nine days would have to be reported within 24 hours. So, it's possible that for two days certain expenditures would drop out. Once all the expenditure reports required under [AS] 15.13.040(e) must be filed within 24 hours, the rest of that is arguably superfluous.

[9:57:28 AM](#)

REPRESENTATIVE GRUENBERG moved to divide Amendment 3 into Amendment 3a and Amendment 3b. He said Amendment 3a would include the first [three lines] of Amendment 3, while Amendment 3b would include [the last 5 lines].

[9:57:47 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 3a, which read as follows:

Page 6, line 12:
Delete "three days"
Insert "24 hours"

There being no objection, Amendment 3a was adopted.

CHAIR LYNN announced that Amendment 3b was tabled.

[9:58:08 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 4, labeled 26-LS1495\R.7, Bullard, 3/1/10, which read as follows:

Page 2, line 31, following "an":
Insert "**independent**"

Page 6, line 11, following "An":
Insert "independent"

Page 6, line 12, following "An":
Insert "independent"

Page 6, line 14, following "an":
Insert "independent"

REPRESENTATIVE SEATON said Amendment 4 relates to expenditure reports.

There being no objection, Amendment 4 was adopted.

[10:00:09 AM](#)

REPRESENTATIVE SEATON requested that the committee get a committee substitute to incorporate the amendments that were adopted.

[HB 409 was held over.]

[10:01:39 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:02 a.m.