

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 12, 2010

1:37 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

Senator Dennis Egan

COMMITTEE CALENDAR

SENATE BILL NO. 92

"An Act ratifying an interstate compact to elect the President and Vice-President of the United States by national popular vote; and making related changes to statutes applicable to the selection by voters of electors for candidates for President and Vice-President of the United States and to the duties of those electors."

- MOVED SB 92 OUT OF COMMITTEE

SENATE BILL NO. 239

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

- HEARD AND HELD

SENATE BILL NO. 284

"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 AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 92

SHORT TITLE: U.S. PRESIDENTIAL ELECTION COMPACT

SPONSOR(s): SENATOR(s) DAVIS

02/02/09 (S) READ THE FIRST TIME - REFERRALS
02/02/09 (S) STA, JUD, FIN
02/02/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
02/02/10 (S) Moved SB 92 Out of Committee
02/02/10 (S) MINUTE(STA)
02/03/10 (S) STA RPT 3DP 2NR
02/03/10 (S) DP: MENARD, FRENCH, KOOKESH
02/03/10 (S) NR: MEYER, PASKVAN
02/19/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/19/10 (S) Heard & Held
02/19/10 (S) MINUTE(JUD)
03/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/10 (S) Bill Hearing Postponed
03/12/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 239

SHORT TITLE: IGNITION INTERLOCK DEVICES/DUI/CHEM. TEST

SPONSOR(s): SENATOR(s) MEYER

01/25/10 (S) READ THE FIRST TIME - REFERRALS
01/25/10 (S) JUD, FIN
02/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/10 (S) <Bill Hearing Postponed>
03/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/10 (S) Scheduled But Not Heard
03/12/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

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 RPT 5DP
03/02/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,
KOOKESH
03/02/10 (S) FIN REFERRAL ADDED AFTER 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)
03/08/10 (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)

WITNESS REGISTER

GRANT W. HUNTER, representing himself
POSITION STATEMENT: Stated opposition to SB 92.

PAT STIDMAN, representing himself
POSITION STATEMENT: Stated support for SB 92.

RALPH STEVENSON, representing himself
POSITION STATEMENT: Stated support for SB 92.

JEFF WORTHY, representing himself
POSITION STATEMENT: Stated support for SB 92.

BARRY FADEM, President
National Popular Vote
POSITION STATEMENT: Testified in support of SB 92.

SENATOR KEVIN MEYER
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Sponsor of SB 239.

CHRISTINE MARASIGAN, Staff
to Senator Meyer
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Provided information related to SB 239 on behalf of the sponsor.

CHRIS CELL, Lieutenant
Alaska Peace Officers Association (APOA)
POSITION STATEMENT: Testified in support of SB 239.

DAVID BROWER, Assistant Attorney General
Criminal Division
Department of Law
POSITION STATEMENT: Provided supporting information related to SB 239.

KERRY HENNINGS, Driver Licensing Manager
Division of Motor Vehicles (DMV)
Department of Administration
POSITION STATEMENT: Provided information on ignition interlocks as they relate to SB 239.

DOUG WOOLIVER, Administrative Attorney
Alaska Court System
Juneau, AK

POSITION STATEMENT: Commented on ignition interlocks as they relate to SB 239.

ALPHEUS BULLARD, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Answered questions about the proposed amendments to SB 283, version A.

HOLLY HILL, Executive Director
Alaska Public Offices Commission (APOC)
Department of Administration
Anchorage, AK

POSITION STATEMENT: Answered questions related to SB 284.

JOHN PTACIN, Assistant Attorney General
Civil Division
Department of Law (DOL)
Anchorage, AK

POSITION STATEMENT: Answered questions related to SB 284.

RYNNIEVA MOSS, Staff
to Senator Coghill
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained the intent of Amendment 6 to SB 284, version A.

ACTION NARRATIVE

[1:37:19 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Senators Coghill, McGuire, Wielechowski, and French were present at the call to order.

SB 92-U.S. PRESIDENTIAL ELECTION COMPACT

[1:37:45 PM](#)

CHAIR FRENCH announced the consideration of SB 92. The bill was heard previously.

[1:38:15 PM](#)

GRANT W. HUNTER, representing himself, stated opposition to SB 92 because he can think of no reason that persons who are not entitled to vote in Alaska elections should be allowed to decide how Alaska casts its electoral votes in presidential elections. Furthermore, he said it isn't proper for one legislature to decide how electoral votes shall be used in future elections. In each election this decision should be made by a vote of the people entitled to vote in Alaska elections and subject to the electoral procedures provided by law in this state.

MR. HUNTER said he is familiar with the argument that the majority of the people should elect the President, but Article II and Amendment 12 of the U.S. Constitution provide for the electoral votes to make that choice. Since 1860 it's been the practice in all but two states that the popular vote in a given state determines how the electors shall be chosen. Those two states divide their electoral votes by Congressional district and in practice they wouldn't have made a difference, he submitted.

MR. HUNTER cited and disputed different arguments for the national popular vote including better representation of minority views and the 2000 presidential election when the national popular vote was not the same as the electoral vote. What it really comes down to, he said, is that the legislature has no business giving away the votes of Alaskans in future elections. It may even violate the Voting Rights Act. He noted that he submitted an email supporting his views.

[1:45:27 PM](#)

PAT STIDMAN, representing himself, stated support for SB 92. Ours is a transforming democracy that is becoming more available to each and every citizen, and to protect this each individual vote must be counted, he said. There have been times when the will of the people has been overridden because of the Electoral College system, he warned. I urge you to pass this bill and get on with democracy, he concluded.

[1:47:39 PM](#)

RALPH STEVENSON, representing himself, stated support for SB 92. The national popular vote issue is simple and goes to the core of this nation's foundation. It is one vote for one person. When the country was young, rural areas needed assistance to achieve voting parity with the population centers, but that's no longer the case. The national popular vote will ensure just one thing, and that is that every voter will be important and every vote will be equal. Never would a president be elected who does not

reflect the most votes cast by the populous. Finally, he said, in this time of hyper-partisanship, this proposal enjoys a strong spectrum of bipartisan support. "It's only right that Alaska take up this measure," he concluded.

[1:49:37 PM](#)

JEFF WORTHY, representing himself, stated support for SB 92 and the national popular vote. He opined that the electoral vote and that of the Electoral College should mirror the national vote for president. He thanked the committee for taking the time to look at this issue.

CHAIR FRENCH noted that Barry Fadem testified previously but he was available if the committee had questions for him.

SENATOR WIELECHOWSKI asked Mr. Fadem his opinion of the concern that some people have that this wouldn't help small states like Alaska.

MR. FADEM, President, National Popular Vote, replied Alaska receives no attention in a presidential election because it isn't closely divided; it has nothing to do with the fact that it has just three electoral votes. It's that Alaska and other small electoral states are not closely divided. They are not battleground states. The purpose of the national popular vote proposal is to make a vote in Alaska just as valuable as a vote in a closely divided, battleground state, like New Hampshire and Ohio. He pointed out that the 12 non-battleground small states have a combined voter population of 11.5 million and Ohio has about that same number of voters. These 12 small states have 40 electoral votes among them, whereas Ohio has 20 electoral votes. In the 2008 election Ohio received 62 of 300 election visits while the 12 small states, including Alaska, received just 2 visits. He reiterated that if the national popular vote proposal passes, a vote in Alaska would become just as important as a vote cast in Ohio.

CHAIR FRENCH closed public testimony.

SENATOR WIELECHOWSKI moved to report SB 92 from committee with individual recommendations and attached fiscal note(s).

[1:53:33 PM](#)

SENATOR COGHILL objected. He said he's tried to stay open, but after a lot of thought he's concluded that this isn't the right thing to do. We should stay focused on the fact that this is a republic and that this proposal would change Alaska to a more

populist democratic structure. I prefer to maintain a republic democratic focus, he said.

SENATOR COGHILL said he's also looked at the statistical issues and has come to the conclusion that this would diminish Alaska's vote capacity almost by half. "I don't see where we gain and I see where we probably lose more of the Tenth Amendment issues that protect us as a nation of states." He acknowledged that the winner take all issue caused him pause, but even under this compact it would still be the winner take all. It's just that Alaskans would surrender their vote to somebody else. In fact, the Alaska popular vote may be overruled under this proposal.

SENATOR COGHILL pointed out that Alaska assign its electoral votes by a popular vote to Alaskans who assign the winner take all. The winner take all on this compact would be no different so we don't gain anything. "I'm going to stick with what I think is probably the best federalist approach and that is a nation of states. We're certainly a nation of people, but even in the Preamble to the Constitution it's 'We the people of the United States'" and I want to keep it that way so I'm going to vote 'No' on this bill," he concluded.

SENATOR WIELECHOWSKI said he isn't sure how he'd vote if he had to push the up or down button today but there have been good arguments on both sides, which is healthy for the democracy. He clarified that his motion is to move the bill on to the next committee for further debate. He said he'll give the bill a "No Recommendation" as it leaves the committee, but he firmly believes that moving it on is the best course of action.

[1:57:08 PM](#)

A roll call vote was taken. The motion to report SB 92 from committee passed on a 3:1 vote with Senator Wielechowski, Senator McGuire and Senator French voting yea and Senator Coghill voting nay.

CHAIR FRENCH announced that on a vote of 3:1, SB 92 moves from the Senate Judiciary Standing Committee.

At ease

SB 239-IGNITION INTERLOCK DEVICES/DUI/CHEM. TEST

[1:59:24 PM](#)

CHAIR FRENCH announced the consideration of SB 239.

SENATOR MCGUIRE moved to adopt work draft committee substitute (CS) for SB 239, labeled 26-LS1210\S, as the working document. There being no objection, version S was before the committee.

2:00:07 PM

SENATOR KEVIN MEYER, Sponsor of SB 239, said that two years ago he worked to get legislation passed pertaining to ignition interlock devices as part of sentencing for driving under the influence (DUI) of alcohol. The law has been in place for over a year and he has discovered that this effective tool hasn't been used as often as anticipated. He reported that in 2009 there were 3,513 court ordered installations, yet only 218 ignition interlock devices were installed. This should be a concern for everyone, particularly since it has been proven that these devices do keep people who have been drinking from starting the car and driving, he said.

SB 239 specifies the time period in which the ignition interlock device would be needed correlated to the sentencing for the various offenses. For the first time DUI the interlock device would be required for six months. The bill also lists installation of an ignition interlock device as a condition of sentencing that could not be suspended. He noted that the previous bill made this an option, which was a mistake.

2:03:02 PM

SENATOR COGHILL asked if contractors could handle the increased capacity if these devices were mandated as a part of sentencing for DUI cases.

SENATOR MEYER replied during the initial bill hearings two vendors indicated that they would not have a problem meeting the need.

CHRISTINE MARASIGAN, Staff to Senator Meyer, added that those two providers contacted the sponsor's office recently to say that it doesn't work to have probation and the ignition interlock device tied because people were either waiting out their probation so that they didn't have to have the ignition interlock installed or they weren't getting the device put on in the first place if their probation was in any way suspended. The providers indicated that they could be doing a lot more installations. We took that into consideration when we looked at separating the two, she said.

SENATOR COGHILL questioned how installations and management would be handled in the less populated and rural areas of the state.

MS. MARASIGAN replied the original bill provided exemptions to accommodate people who don't have access to these services. This has not changed.

SENATOR COGHILL asked if the two vendors have had any trouble keeping the devices working in extreme cold weather. He noted that was a concern when the bill passed initially.

[2:06:34 PM](#)

SENATOR MEYER said they've found that most of the court-ordered ignition interlock installations have been in Fairbanks, and they appear to work fine in cold weather.

CHAIR FRENCH noted the repealed subsection (r) and asked if the source of the problem was that the different probation periods allowed people to escape the ignition interlock requirement.

MS. MARASIGAN said Mr. Wooliver highlighted that language when the sponsor began talking about decoupling the requirement for an ignition interlock from probation. What has happened is that people on probation for DUI would decide not to drive so they wouldn't get an ignition interlock or they wouldn't get one if their probation period didn't match the time requirement for the ignition interlock. Nor would it be a part of their sentence, she said.

[2:08:41 PM](#)

SENATOR WIELECHOWSKI expressed appreciation that the sponsor was attempting to fix the problem and said he supported the bill.

CHAIR FRENCH agreed and restated the stunning disparity between the court orders versus the installations.

SENATOR COGHILL said he wonders if the low numbers reflect that some Anchorage judges are ordering chemical treatment for those convicted of DUIs.

SENATOR MEYER suggested the committee ask Mr. Wooliver why ignition interlock devices aren't used much in Anchorage. Perhaps it's because the judges are ordering other programs, but that's obviously where most of the DUIs occur, he said.

MS. MARASIGAN reiterated that some people who have been convicted of DUI simply opt not to drive.

SENATOR MEYER said the intention here is to keep people from driving when they're drinking. Opting not to drive at all is just fine.

[2:10:41 PM](#)

CHRIS CELL, Lieutenant, Alaska Peace Officers Association (APOA), said she represents about 900 Alaskans statewide, many of whom are charged with picking up the pieces after drunk driving accidents. She said they would like to do less of this, which is why APOA supports SB 239, which requires interlock ignition devices as a mandatory part of DUI sentences. 2008 National Highway Transportation Safety Board statistics show that someone in the U.S. is killed in a drunk driving crash once every 45 minutes so any tool that helps to keep drunk drivers off the road and holds them accountable for their actions would be helpful.

LIEUTENANT CELL said law enforcement is particularly interested in reforming and deterring those persons who become "hard core" drunk drivers. These are drivers who are found to be driving with a blood alcohol level that is twice the legal limit. A 2005 survey of these drivers indicated that hard core drunk drivers believe that their actions would have been changed had more severe penalties been imposed for earlier offenses. 70 percent of the hard core drunk drivers surveyed said they believe that the requirement for an ignition interlock device would have changed their drunk driving. We should listen to these people, she said.

[2:12:43 PM](#)

DAVID BROWER, Assistant Attorney General, Criminal Division, Department of Law (DOL), said he is an Alaska traffic safety resource prosecutor and he sees that tying the requirement for an ignition interlock to the time of probation can be a problem depending on the length of the sentence. He related that the probation period for a first time DUI is long enough to have an ignition interlock and there's probably enough time on a second DUI, but even though every felony DUI judgment has a requirement for an ignition interlock device, he suspects that there have been no felony DUI people who have ever gotten one.

MR. BROWER said a lot of what this bill does is to put all ignition interlock issues and sentencing issues for DUI in Title 28, the drunk driving statute. When it [only] referred to AS

12.25.102, the judge could either sentence somebody as a condition of probation or as a condition of sentence. In this case it would be a condition of sentence, he said.

SENATOR COGHILL asked if many of the 3,513 court ordered ignition interlock devices were part of a sentence for felony DUI.

MR. BROWER said felony DUIs are included in that number, but that's not the only reason for the disparity. Some of the other reasons include people who are on probation for 2 years and don't want to get an ignition interlock device. The assumption is that they decide to wait two years so that they no longer need an ignition interlock device. This bill amends that so that once a person gets their license back they would have to have an ignition interlock installed for a certain period of time. But it would be a fallacy to think that people who have revoked licenses don't drive because most of them do. "Repeat drunk drivers, as a general rule, do not have a license and I think that most people with a felony DUI have been driving without a license," he said.

[2:17:23 PM](#)

SENATOR COGHILL said his reason for asking was to find out how many of those 3,513 court orders may not have been mandated because it was a felony DUI and it was understood that they did not have a right to drive.

MR. BROWER said the way the statute is currently written everyone gets an ignition interlock order as a condition when they regain the privilege to drive. That doesn't change in this bill. He said he doesn't know how many people haven't yet become eligible for an ignition interlock or even a license.

SENATOR WIELECHOWSKI asked if there is data indicating that this reduces recidivism.

MR. BROWER replied there isn't any data from Alaska, but a study of other states indicates that there is benefit. A recent National Transportation Safety Administration report said that while ignition interlocks are on they work, but once they've been removed people tend to fall back into their old patterns.

SENATOR WIELECHOWSKI said the data that was presented for the initial bill was impressive and it weighed heavily in his support. He stressed the importance of making decisions that are based on evidence and science and suggested that DOL and the

Court System should be interested in tracking this to know whether or not this policy is working. My guess is that it will have huge positive impacts, he added.

MR. BROWER said that will be done. He added that this bill doesn't change the current law so much as it cleans it up to ensure that more people get ignition interlocks installed.

[2:20:28 PM](#)

CHAIR FRENCH said he's still a bit puzzled because he thought the law had been written in a manner to allow judges to not impose an ignition interlock as a condition of sentence, but the sponsor said that a judge ordered an ignition interlock 3,513 times in 2009. There seems to be a disconnect between the court orders and the number installed and it seems to be related to the fact that a lot of people are saying they just won't drive while they're on probation. He asked if it's really the case that 3,300 Alaskans are waiting out the ignition interlock period or if there are other answers.

MR. BROWER replied that doesn't seem reasonable, but he doesn't have any other answers.

CHAIR FRENCH observed that this will do away with the ability for people to wait out their probation period during which they would be required to have an ignition interlock. This says a person with a DUI has to get an ignition interlock for six months when they get their license back.

[2:23:06 PM](#)

KERRY HENNINGS, Driver Licensing Manager, Division of Motor Vehicles (DMV), Department of Administration, introduced herself.

CHAIR FRENCH asked what, if anything, DMV will do to ensure that a person who has lost their license because of a DUI gets an ignition interlock when they apply to get their license back.

MS. HENNINGS replied DMV's current practice won't change. When someone applies for a limited privilege or to regain their privilege and there is an ignition interlock order in place, DMV requires proof of installation.

CHAIR FRENCH asked how DMV would know that an ignition interlock order is in place.

MS. HENNINGS replied that comes in on the DUI judgment and the record is annotated upon receipt.

CHAIR FRENCH asked what happens if a person applies to get their license back and says they don't have a car.

MS. HENNINGS explained that if someone comes in to apply for limited privileges they need to have a designated vehicle to put the ignition interlock on. She added that DMV also can issue identification cards in lieu of a license.

[2:26:01 PM](#)

SENATOR COGHILL said he'd like to know if there have been any challenges to this because he can see that someone who uses the same vehicle might say that they are being treated unfairly.

CHAIR FRENCH asked Mr. Wooliver if he knows of any problem that the Court System has with respect to issuing ignition interlock orders.

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said he isn't aware of any problems associated with issuing the orders, but he is aware that part of the reason for the bill is to make changes like not suspending an ignition interlock device.

CHAIR FRENCH asked if he has any feedback to offer from the judges' perspective.

MR. WOOLIVER said judges hear that it can be expensive but he is unaware of any implementation difficulties other than the practical aspects of a harsh sentence that is sometimes difficult for people to meet. He added that he was stunned to learn that less than 10 percent of the people who were ordered to get an ignition interlock actually have them.

[2:29:20 PM](#)

CHAIR FRENCH closed public testimony and announced he would hold SB 239 in committee.

SB 284-CAMPAIGN EXPENDITURES

[2:29:45 PM](#)

CHAIR FRENCH announced the consideration of SB 284 and said that today the committee would work on amendments. He noted that Mr. Ptacin from the Department of Law (DOL), Mr. Bullard from Legislative Legal and Research, and Ms. Hill from the Alaska

Public Offices Commission (APOC), were on line to explain aspects of the amendments.

[2:31:02 PM](#)

CHAIR FRENCH moved Amendment 1, labeled 26-LS1448\A.3, and objected for discussion purposes.

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR FRENCH

Page 2, line 28:

Following "an":

Insert "**independent**"

Following "expenditures":

Insert "**made and contributions received**"

CHAIR FRENCH said this is to make it clear that the report has to include the money you spend and the money you have taken in.

SENATOR WIELECHOWSKI said perhaps he's missing a nuance in the statute, but it would seem that if an expenditure is being made, regardless of whether it's independent, it would require reporting.

CHAIR FRENCH asked Mr. Bullard to summarize the contents of the memorandum he sent regarding this amendment

ALPHEUS BULLARD, Attorney, Legislative Legal and Research Services, explained that right now AS 15.13.040(d) and (e) that address expenditures both in the bill and also in current law are applied under APOC regulations to AAC 50.336 only to independent expenditures. Responding to Senator Wielechowski's comment, he said that expenditures for candidates, nongroup entities, and groups have to be reported under AS 15.13.110 so it's been the practice of APOC to require only independent expenditure reports under these statutory subsections.

CHAIR FRENCH recapped that in Section 3, AS 15.13.040(d) is being amended and it is a reporting requirement that applies only to independent expenditures.

MR. BULLARD said yes and the other line of the amendment is to better describe what that section is doing.

CHAIR FRENCH withdrew his objection to Amendment 1 and asked if there was further objection.

SENATOR COGHILL objected for further discussion. He related that he agrees with the amendment, but he would like the committee to consider an amendment he prepared that includes the contents of Amendment 1 and also conforming changes on page 6, lines 13-15.

CHAIR FRENCH suggested that the committee finish with Amendment 1 and then address his proposal as Amendment 2.

SENATOR COGHILL agreed and removed his objection to Amendment 1.

CHAIR FRENCH found no further objection and announced that Amendment 1 is adopted.

[2:36:05 PM](#)

SENATOR COGHILL moved Amendment 2. He explained that it consists of lines 4-11 of amendment 26-LS1448\A.7 to SB 284. Lines 1-3 were adopted as Amendment 1.

AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR COGHILL
TO: SB 284

Page 6, line 13, following "An":
Insert "independent"

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

Page 6, line 15, following the first occurrence of
"an":
Insert "independent"

CHAIR FRENCH objected for discussion purposes.

SENATOR WIELECHOWSKI asked Mr. Bullard if there was a reason that Amendment 1 didn't insert the word "independent" on page 6, lines 13-15 as Amendment 2 did.

MR. BULLARD replied the requests for the amendments were slightly different. The request that resulted in the drafting of 26-LS1448\A.7 was only to insert the "independent" language.

SENATOR WIELECHOWSKI asked if Amendment 2 tracks Amendment 1.

MR. BULLARD said he would describe the changes as an aid to the reader rather than substantive legal changes. The result of Amendment 1 is that the person turning to 15.13.110(g) now will be reminded that the report is the independent expenditure report.

CHAIR FRENCH removed his objection and announced that without further objection, Amendment 2 is adopted.

[2:39:43 PM](#)

CHAIR FRENCH moved Amendment 3, labeled 26-LS1448\A.4, and objected for discussion purposes. He explained that the idea behind the amendment was to make certain that people (meaning individuals, nongroups, groups, corporations, and unions making independent expenditures) create a separate bank account to receive money for funds that will be expended in these efforts. It's easier for everyone to know that a separate account is necessary so that no one is tempted to draw from a general treasury. It also makes it easier for APOC and others to look at the records of the person making the expenditures in the event of an alleged violation.

AMENDMENT 3

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR FRENCH

Page 4, following line 4:

Insert a new bill section to read:

"* **Sec. 7.** AS 15.13 is amended by adding a new section to read:

Sec. 15.13.052. Independent expenditures; political activities accounts. (a) Before making an independent expenditure in support of or in opposition to a candidate or before making an independent expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual, candidate, or nongroup entity with an annual operating budget of \$250 or less, shall establish a political activities account. The political activities account may be a separate account in the person's general treasury. The political activities account must be administered using generally accepted accounting principles. All funds used by the person to make independent

expenditures must be drawn from the person's political activities account.

(b) Records necessary to substantiate the requirements of (a) of this section must be made available for inspection by the commission.

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

Renumber the following bill sections accordingly.

CHAIR FRENCH asked Mr. Bullard to convey the suggestions that he attached to Amendment 3.

MR. BULLARD directed attention to the language in Section 4 on page 3 that says that the person making the independent expenditure has to include information about the contributions they have received in every independent expenditure report. The memo suggests that this section might be more at home in the new bill section proposed in Amendment 3. Although this is neither legally nor constitutionally required, it may be a more practical and workable solution for both APOC and for those people making independent expenditures, he said.

[2:42:52 PM](#)

CHAIR FRENCH summarized that he is suggesting that the independent expenditure report, referenced in Section 4, should be incorporated into the account of monies contributed to and spent from the political activities accounts.

MR. BULLARD said that's right; they would merely have the duty to report when funds were transferred into the account or when funds were leaving the account. They wouldn't have to separately account for contributors on a report of an expenditure. He said he isn't sure how it would work in practice.

CHAIR FRENCH asked Holly Hill if she had followed the discussion regarding Amendment 3 and the way it would integrate with the current reporting requirements as envisioned by the bill.

HOLLY HILL, Executive Director, Alaska Public Offices Commission (APOC), Department of Administration, said she didn't have a copy of the amendments so she would defer to Mr. Ptacin.

[2:44:39 PM](#)

JOHN PTACIN, Assistant Attorney General, Civil Division, Department of Law (DOL), said it doesn't seem that Mr. Bullard is suggesting that a corporation cannot make an expenditure using its own coffers. Rather, he's suggesting that to keep the reporting as clean as possible, that they create another account for all the contributions come in, including contributions from a corporation or labor union general treasury.

CHAIR FRENCH agreed that it isn't restricting where the money comes from; it's setting up one location that APOC or others can go to find out the amount of money a particular entity collected and how they spend it.

MR. PTACIN said he doesn't see an issue with the suggestion. Any law that burdens political speech in this area is subject to strict scrutiny so there would need to be a compelling government interest and narrow tailoring. This appears on its face to be narrowly tailored to a government interest as long as there isn't some outright restriction that the corporation can't spend its money and be the speaker.

[2:46:18 PM](#)

CHAIR FRENCH said he wanted give Ms. Hill an opportunity to consider whether or not there's a way to integrate Section 4 and the new Section 7 proposed in Amendment 3. He suggested the committee address Amendment 3 and at some later time address Mr. Bullock's suggestion.

He asked if there's something in law that says that candidates have to establish political activities accounts or if it's just a really good idea that candidates follow.

MS. HILL said she can't cite the statute or regulation, but APOC does advise candidates to keep separate campaign accounts.

SENATOR COGHILL added that there is a requirement for candidates to have an account that registers the name of the campaign and the treasury. The statute or regulation specifies what has to be included in the account name and the particular APOC reporting forms that are used.

[2:48:12 PM](#)

SENATOR WIELECHOWSKI referenced the language on lines 7 and 8 of Amendment 3 and questioned whether the intent was to say "\$250 or more" rather than "\$250 or less," which is the language in the amendment.

MR. BULLARD said this requirement applies to all persons other than an individual, a candidate, or a nongroup entity with an annual operating budget of \$250 or less.

CHAIR FRENCH summarized that if you're an individual, candidate, or nongroup entity with an annual operating budget of \$250 or less, you are not captured under the requirement to establish a political activities account.

MR. BULLARD said that's correct.

SENATOR WIELECHOWSKI commented that the language is awkward.

CHAIR FRENCH removed his objection and announced that without further objection, Amendment 3 is adopted. He noted that this section could see further change when Ms. Hill sees how it interacts with Section 4 or if a committee member finds a better way to express to whom this does and does not apply.

[2:50:07 PM](#)

CHAIR FRENCH said Amendment 4 and Amendment 5 are both about disclaimers. This is putting words in the advertisement that helps viewers, readers, or listeners understand who is speaking with regard to elections.

CHAIR FRENCH moved Amendment 4, labeled 26-LS1448\A.6, and objected for discussion purposes.

AMENDMENT 4

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR FRENCH

Page 5, line 27, following "the":

Insert "name and city and state of residence or principal place of business, as applicable, of each of the"

Page 5, line 29, following "communication":

Delete ", with the words "top five contributors""

Page 6, following line 11:

Insert a new bill section to read:

"* **Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable, (a)(2)(D)

of this section, the following statement or statements must be read, in a manner that is easily heard, or placed in the communication so as to be easily discernable, or, in a communication that is transmitted by a method that includes both audio and video components, be read in a manner that is easily heard and placed in the communication so as to be easily discernable:

This communication was paid for by (person's name and city and state of principal place of business).

The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(D))."

Renumber the following bill sections accordingly.

SENATOR WIELECHOWSKI asked what AS 15.13.040(e)(5) says.

2:53:15 PM

MR. BULLARD replied it's a reference to the contributors in Section 4 on page 3, paragraph (5).

SENATOR WIELECHOWSKI asked if this would apply to a company like Exxon or if it's designed for groups.

MR. BULLARD directed attention to the words "if any" on page 5, line 28, and explained that the concern about contributors is more about trade organizations and entities where a number of persons have come together to engage in some advocacy and less about a major corporation like Exxon.

SENATOR COGHILL said his concern with requiring information about the five largest contributors is that it could create a situation where there's more information than people are willing to handle and the intended impact might be diminished. He suggested instead that the principal officers identify themselves and provide information about the communication because this looks like it will take a full 30 seconds to communicate this information. Let me know if I'm wrong on that, he said.

2:56:35 PM

CHAIR FRENCH responded there may be a need to run a test with a stopwatch to see what it'll take to get this information into a 30 second advertisement.

SENATOR COGHILL clarified that he supports full disclosure, but this is reportable information that people will get in other venues. It may not be well received in this venue because it'll be ignored, he added.

CHAIR FRENCH asked Mr. Bullard how far you can go with respect to requiring an audible disclosure in a 30 second television advertisement without infringing on a corporation's or union's or candidate's First Amendment rights.

MR. BULLARD replied disclosure would be less burdensome than either a total prohibition or a limitation, but he can't say with any certainty where the line is for too much disclosure in this context.

[2:59:13 PM](#)

SENATOR WIELECHOWSKI stated that he absolutely believes that it is a compelling state interest to require as much disclosure as possible and he supports listing at least the top five contributors and their location. "I'm inclined to err on the side of more disclosure because I think that big money in elections is dangerous to representative democracy." I support your amendment, he concluded.

CHAIR FRENCH thanked him for his comments and added that he wouldn't be surprised to see his words in a brief some day.

MR. PTACIN said he will echo that thought and he applauds the conversation. The discussion about compelling government interest certainly helps establish a record for future litigation. We are talking about free speech and these laws are subject to challenge, he said.

CHAIR FRENCH said he will associate himself with Senator Wielechowski's comments because he thinks he's right. The federal government has experience in this area, but the State of Alaska has never allowed corporations or unions to participate directly in campaigns for or against candidates. Because this is a whole new landscape, it's a good idea to start with restrictions that are as tight as possible. We can deal with it if a court later orders the state to loosen the restrictions, he said.

CHAIR FRENCH pointed out that in this state three companies account for 90 percent of the state's revenue so they are going to have a profound interest in participating directly in elections for the very understandable reason of relieving their tax burden. For these reasons it's very important to have strong laws in place to let people know who is speaking to them, he said.

[3:01:59 PM](#)

SENATOR COGHILL said he too is interested in full disclosure and he understands the need for tight restrictions. But if we're going to ask for disclosures on each advertisement then we should also ask candidates to disclose their top five contributors on a campaign advertisement, he said. I don't think we want to do that but there needs to be equity, and if we're asking them to speak not with a single voice but a combined voice of the top five contributors we might actually be putting more burden on that individual voice than is necessary.

CHAIR FRENCH said it's a good point, but very different rules apply to candidates as opposed to corporations making independent expenditures. Most candidates will have 20-30 contributors at the maximum \$500 per calendar year level so you'd have to figure out a way to select the top three or top five. "I'll leave that to you if you want to craft an amendment to work that out," he said.

[3:03:53 PM](#)

SENATOR WIELECHOWSKI opined that this doesn't stop any individual corporation or union from saying anything. This addresses laundering and unions or corporations who want to hide behind another group. They have a legal right to do that, but this legislation says that the public has a right to know who is behind that group. Hiding behind groups is my big concern and that's what this is aimed to stop, he said. There is absolutely a compelling state interest in defining the top contributors so we can curtail trying to skirt disclosure, he said.

SENATOR COGHILL said it's a good debate to have but he continues to believe that the principals should speak for a corporation rather than the top five contributors.

CHAIR FRENCH removed his objection to Amendment 4 and asked if there was further objection.

SENATOR COGHILL objected. "I really feel very strongly that we need to go in a different direction," he said.

A roll call vote was taken. Amendment 4 was adopted on a 3:1 vote with Senators Wielechowski, McGuire, and French voting yea and Senator Coghill voting nay.

CHAIR FRENCH said the legislation in the House identifies the top three contributors but not their physical address so it's likely that this section will receive further attention.

SENATOR COGHILL said he wouldn't offer Amendment 5, labeled 26-LS1448\A.9, because it's the argument he used to try to defeat Amendment 4.

[3:08:15 PM](#)

SENATOR COGHILL moved Amendment 6, labeled 26-LS1448\A.8.

AMENDMENT 6

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR COGHILL

Page 4, lines 5 - 14:

Delete all material and insert:

"* **Sec. 7.** AS 15.13.067 is amended to read:

Sec. 15.13.067. Who may make expenditures. Only the following may make an expenditure that is not an independent expenditure in an election for candidates for elective office:

- (1) the candidate;
- (2) an individual;
- (3) a group that has registered under AS 15.13.050; and
- (4) a nongroup entity that has registered under AS 15.13.050."

Page 5, lines 3 - 11:

Delete all material.

Renumber the following bill sections accordingly.

[3:09:03 PM](#)

RYNNIEVA MOSS, Staff to Senator Coghill, explained that Amendment 6 rewrites Section 7 to clarify that the Alaska State Legislature is only changing statutes to deal with the Citizens United decision, which deals with corporations and independent expenditures. The language is a better choice with respect to preserving the intent of the decision, she said.

CHAIR FRENCH summarized that Section 7 was rewritten in a positive rather than negative manner and the material on page 5, lines 3-11, was deleted in the belief that it would be captured in the rewritten section.

MS. MOSS agreed. She added that the original draft deleted material in Section 7 and reinserted it in Section 10.

CHAIR FRENCH asked Mr. Bullard to speak to the amendment.

MR. BULLARD said that in the past corporations and unions were not allowed to make expenditures on behalf of candidates and all this bill does is allow them to make independent expenditures. My concern is that I don't know if this change is significant, but it has the potential to be so in the future depending on which direction the statutes go, he said.

[3:12:40 PM](#)

CHAIR FRENCH noted, with some surprise, that the AS 15.13.050 registration requirements are still in the bill on lines 9 and 10 of the amendment.

CHAIR FRENCH removed his objection to Amendment 6. Finding no further objection, he announced that Amendment 6 is adopted.

He asked the members to read Mr. Ptacin's letter dated 3/9/10 before the next hearing because the concerns he articulated may elicit additional amendments.

CHAIR FRENCH held SB 284 in committee for further work.

[3:13:47 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 3:13 p.m.