

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 17, 2010

1:38 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- MOVED CSSB 284(JUD) OUT OF COMMITTEE

CONFIRMATIONS:

Alaska Public Offices Commission
Elizabeth Johnston Hickerson
Kathleen J. King

CONFIRMATIONS ADVANCED

Violent Crimes Compensation Board
Nora G Barlow
Gerad G. Godfrey

CONFIRMATIONS ADVANCED

Board of Governors of the Alaska Bar
Donald McLean, D.D.S.

CONFIRMATION ADVANCED

Board of Parole
Richard O. Larson

CONFIRMATION ADVANCED

Public Defender
Quinlan Steiner

CONFIRMATION ADVANCED

SENATE BILL NO. 202

"An Act relating to the commission of a crime when the defendant directed the conduct constituting the crime at the victim based on the victim's race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin."

- CSSB 202(JUD) OUT OF COMMITTEE

SENATE BILL NO. 297

"An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 284

SHORT TITLE: CAMPAIGN EXPENDITURES

SPONSOR(s): JUDICIARY

02/19/10	(S)	READ THE FIRST TIME - REFERRALS
02/19/10	(S)	STA, JUD
03/02/10	(S)	STA RPT 5DP
03/02/10	(S)	DP: MENARD, FRENCH, MEYER, PASKVAN, KOOKESH
03/02/10	(S)	FIN REFERRAL ADDED
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)
03/12/10	(S)	Heard & Held
03/12/10	(S)	MINUTE(JUD)
03/15/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/15/10	(S)	Heard & Held

03/15/10 (S) MINUTE(JUD)
03/17/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 202

SHORT TITLE: HATE CRIMES

SPONSOR(s): DAVIS

01/19/10 (S) PREFILE RELEASED 1/8/10
01/19/10 (S) READ THE FIRST TIME - REFERRALS
01/19/10 (S) JUD, FIN
03/08/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/08/10 (S) Heard & Held
03/08/10 (S) MINUTE(JUD)
03/17/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 297

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(s): DYSON

02/24/10 (S) READ THE FIRST TIME - REFERRALS
02/24/10 (S) JUD, FIN
03/17/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

QUINLAN STEINER, Appointee

Public Defender for the State of Alaska

POSITION STATEMENT: Testified as appointee to the position of public defender for the State of Alaska.

GERAD G. GODFREY, Appointee

Violent Crimes Compensation Board

POSITION STATEMENT: Testified as appointee to the Violent Crimes Compensation Board.

ELIZABETH JOHNSTON HICKERSON, Appointee

Alaska Public Offices Commission

POSITION STATEMENT: Testified as appointee to the Alaska Public Offices Commission.

KATHLEEN J. KING, Appointee

Alaska Public Offices Commission

POSITION STATEMENT: Testified as appointee to the Alaska Public Offices Commission.

DONALD McLean, D.D.S., Appointee

Board of Governors of the Alaska Bar

POSITION STATEMENT: Testified as appointee to the Board of Governors of the Alaska Bar.

RICHARD O. LARSON, Appointee
State Board of Parole

POSITION STATEMENT: Testified as appointee to the State Board of Parole.

SENATOR FRED DYSON
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 297.

CHUCK KOPP, Staff
to Senator Dyson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented information and responded to questions related to SB 297 on behalf of the sponsor.

ANNE CARPENETI, Attorney
Criminal Division
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Testified that DOL supports SB 297 in concept but it has some practical concerns.

JOHN PTACIN, Assistant Attorney General
Department of Law (DOL), stated that he doesn't believe that preemption is a great concern here.

POSITION STATEMENT: Testified that Amendment 4 to SB 284, version E, would not present much preemption risk.

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

POSITION STATEMENT: Provided information related to the amendments to SB 284, version E, which he had drafted.

ACTION NARRATIVE

[1:38:11 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:38 p.m. Senators Wielechowski, Coghill, and French were present at the call to order.

SB 284-CAMPAIGN EXPENDITURES

1:38:59 PM

CHAIR FRENCH announced the consideration of SB 284 and asked for a motion to adopt the committee substitute (CS) that incorporates the amendments that were adopted at the 3/15/10 hearing.

1:39:34 PM

SENATOR WIELECHOWSKI moved to adopt CS for SB 284, labeled 26-LS1448\E, as the working document. There being no objection, version E was before the committee.

CHAIR FRENCH moved to adopt Amendment 1, labeled 26-LS1448\E.1, and objected for discussion purposes. He explained that the drafter suggested that it would be helpful to the Alaska Public Offices Commission (APOC) to include definitions for "director" and "officer" for this new subsection.

AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR FRENCH
TO: CSSB 284(JUD), Draft Version "E"

Page 4, following line 5:

Insert a new bill section to read:

"* **Sec. 7.** AS 15.13.040 is amended by adding a new subsection to read:

- (q) For purposes of (e) of this section,
 - (1) "director" means a member of the board of directors of a corporation or any person performing a similar function with respect to any organization;
 - (2) "officer" means a president, vice president, secretary, or treasurer, principal financial officer, or comptroller of a corporation, or any person routinely performing functions similar to those of a president, vice president, secretary, or treasurer, principal financial officer, or comptroller with respect to any organization."

Renumber the following bill sections accordingly.

SENATOR WIELECHOWSKI asked if APOC requested the definitions.

CHAIR FRENCH replied he wouldn't make that representation, but the definitions will probably help APOC now that directors and officers must be identified in campaign advertisements. He noted that John Ptacin with the Department of Law (DOL) also suggested that this would be helpful to APOC.

SENATOR WIELECHOWSKI asked if there was any rationale for adding this in Section 7 as opposed to the end of the bill where definitions usually are found.

[1:42:08 PM](#)

CHAIR FRENCH pointed out that it would fall at the end of the lengthy disclosure statute, AS 15.13.040. It refers to bill Section 4, which amends AS 15.13.040(e). Much of this section is new language and page 3, lines 22-23, talks about officers and directors. The definitions will probably help APOC understand who is supposed to report, he said.

SENATOR WIELECHOWSKI said he had no objection to the amendment.

[1:44:10 PM](#)

CHAIR FRENCH withdrew his objection to Amendment 1. Finding no further objection, he announced that Amendment 1 is adopted.

[1:44:20 PM](#)

CHAIR FRENCH moved to adopt Amendment 2, labeled 26-LS1448\E.3, and objected for discussion purposes.

AMENDMENT 2

OFFERED IN THE SENATE BY SENATORS FRENCH AND COGHILL
TO: CSSB 284(JUD), Draft Version "E"

Page 5, line 17, through page 6, line 4:

Delete all material and insert:

"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. In addition, a person shall clearly
(1) provide the person's address or
the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer;

(B) a statement from the principal officer approving the communication; and

(C) identification of the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication

[CANDIDATES AND GROUPS MAY IDENTIFY THE NAME OF THEIR CAMPAIGN CHAIRPERSON]."

Page 6, line 16:

Delete "(a)(2)(C)"

Insert "(a)(1)"

Page 6, line 17:

Delete "(a)(2)(D)"

Insert "(a)(2)(C)"

Page 6, line 26:

Delete "AS 15.13.090(a)(2)(D)"

Insert "AS 15.13.090(a)(2)(C)"

CHAIR FRENCH explained that Amendment 2 is about disclaimer to the public, identifying the communications that are advertised. It addresses much of an amendment to version R that Senator Coghill offered and withdrew during the 3/15/10 hearing. Basically, it rewrites the language in Section 11 of the current draft removing the idea that candidates and groups may identify persons associated with their campaign and clearly stating that every person shall provide that identifying information. Candidates do this now, he said. He pointed out that the amendment further says that persons other than an individual candidate must provide the name and title of the principal officer; a statement from that officer approving the communication; and the name, city, and state of the principal residence or place of business of each of the person's five largest contributors during the 12-month period before the communication. The balance of the amendment makes conforming changes.

[1:46:25 PM](#)

SENATOR COGHILL opined that this makes it easier to understand and it puts parity between candidates and persons. He said he still objects to reading aloud the five largest contributors because it will be awkward, but he'll work with it in this committee.

CHAIR FRENCH removed his objection to Amendment 2. Finding no further objection, he announced that Amendment 2 is adopted.

CHAIR FRENCH set SB 284 aside for the time being.

CONFIRMATIONS

CHAIR FRENCH announced the next order of business would be confirmation hearings.

[1:48:49 PM](#)

KATHLEEN KING, Appointee, Alaska Public Offices Commission, said she was appointed to the commission about a year ago and during that time she has worked on mitigation criteria and rewriting some APOC practices and procedures. The Citizens United ruling brings some problems and a great deal of work, and she looks forward to being an effective tool in helping to surmount some of this.

CHAIR FRENCH mentioned the Pebble Mine case and asked if she has enjoyed sitting in judgment on large cases like that.

MS. KING replied she has enjoyed it. She added that she's not an attorney but she's been involved in the legal field for about 25 years, sometimes sitting as an arbiter and judge. This adds to that experience, she said.

CHAIR FRENCH and Senator Coghill thanked Ms. King for her service.

[1:51:31 PM](#)

Dr. DONALD MCLEAN, D.D.S., Appointee, Board of Governors of the Alaska Bar, said he had been in practice as a dentist since 1981 and had served as a public member on the Board of Governors of the Alaska Bar for the past three years. He opined that his reappointment would provide continuity to the board, and that he is well suited for the position because he's willing to speak up and say what appears to be important at the time.

CHAIR FRENCH and Senator Coghill thanked Dr. McLean for his service.

[1:54:52 PM](#)

ELIZABETH JOHNSTON HICKERSON, Appointee, Alaska Public Offices Commission, said she has served on the commission since 2006 and it's been a very good experience. She would like to continue to serve because she wants to finish some things that she helped start.

[1:56:54 PM](#)

SENATOR EGAN joined the committee.

CHAIR FRENCH asked if the APOC work leaves time to pursue another livelihood.

MS. HICKERSON replied the APOC meetings represent just a fraction of what the commissioners are asked to do so it's very time consuming, but she does have time to volunteer at her son's school and to do work for the church.

CHAIR FRENCH thanked Ms. Hickerson and noted that the other members indicated their appreciation for her continued service.

[1:58:50 PM](#)

GERAD G. GODFREY, Appointee, Violent Crimes Compensation Board, said he has been serving since 2003. At first his purpose in serving was personal having had family members who were victims of violent crime. It was somewhat cathartic to be able to make something good come of his family tragedy, he said. Since that time he has learned a lot and feels that the board has made a difference for other innocent victims of violent crimes. The board has had a good relationship with the Legislature and has worked hand-in-hand on a number of policy issues. Senators French and Coghill have been particularly helpful and welcoming, he said. Having the Legislature as a willing partner is in large part why he is willing to serve another term.

CHAIR FRENCH, Senator Coghill, and Senator Egan each thanked Mr. Godfrey and expressed gratitude that he was willing to serve another term.

[2:03:26 PM](#)

RICHARD O. LARSON, Appointee, Parole Board, related that he served 29 years for the Alaska Department of Corrections (DOC) and he believes that experience and training could be useful to the Parole Board. He currently serves on the Matanuska School Board and he can see that this would be a good combination. He said he hoped to be a positive influence.

CHAIR FRENCH asked if he had occasion to attend any Parole Board hearings when he worked with DOC.

MR. LARSON replied he did not; he oversaw probation and parole and prepared information for the Parole Board.

CHAIR FRENCH noted that Mr. Larson had been involved in corrections since 1976.

MR. LARSON said that's correct; he started working at McLaughlin Youth Center in 1976 and retired as the superintendant of Mat-Su Pretrial in 2005.

CHAIR FRENCH expressed confidence that he would bring an excellent perspective to the Parole Board and wished him good luck in his service.

[2:06:31 PM](#)

QUINLAN STEINER, Appointee, Public Defender for the State of Alaska, said this is his fifth year as public defender. He came to the position with an idea about changes that could make the agency stronger and more efficient. These plans have been successfully implemented, but they are ongoing and he would like to continue to work on them.

He recounted the work he's done to boost the recruiting and training programs in an effort to have better trained attorneys; to decrease the turnover rate and increase experience levels; and to restructure the agency to promote better supervision of the cases. The latter included breaking the agency into regional sections with three separate divisions, which gives supervisors more direct control over case management. All of these changes have helped clients, improved the quality of the representation, and been more efficient, he said.

MR. STEINER said the agency is also focused on information management. Now paralegals do more discovery and document management, which is more efficient and the outcomes for the cases are better. The process is still paper-oriented but he would like to see that shift to electronic transfer of information. He related that he is working on that initiative through the criminal justice working group. The PDA has procured and implemented a new case management system to help accommodate that, he said.

[2:09:57 PM](#)

CHAIR FRENCH noted that his resume indicated that in 1992 he served as a loan officer for a bank in Juneau.

MR. STEINER related that after he graduated from college he worked in the National Bank of Alaska (NBA) training program eventually becoming a loan officer in Juneau. Although he enjoyed the experience he decided he would prefer a legal career. He became a public defender immediately after graduation and has been one since.

CHAIR FRENCH said he knew Mr. Steiner privately and professionally and was happy he was willing to serve again.

SENATOR COGHILL thanked Mr. Steiner for his work and for helping him understand more about public defending.

CHAIR FRENCH said that concludes the interviews and stated the following:

In accordance with AS 39.05.080 and AS 18.85.030, the Senate Judiciary Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration: Board of Governors of the Alaska Bar - Donald McLean; Public Defender - Quinlan Steiner; Alaska Public Offices Commission - Elisabeth Hickerson; Alaska Public Offices Commission - Kathleen King; Violent Crimes Compensation Board - Gerad Godfred; [and Parole Board - Richard Larson]. This does not reflect an intent by any members to vote for or against the confirmation of the individuals during any other sessions.

CHAIR FRENCH found no objection and announced that the names would be forwarded.

SB 284-CAMPAIGN EXPENDITURES

[2:14:06 PM](#)

CHAIR FRENCH returned attention to SB 284. He moved to adopt Amendment 3, labeled 26-LS1448\E.2, and objected for discussion purposes.

AMENDMENT 3

OFFERED IN THE SENATE BY SENATOR FRENCH
TO: CSSB 284(JUD), Draft Version "E"

Page 5, line 24, following "**(2)**":

Insert "except as provided by (d) of this section,"

Page 6, line 15:

Delete "a new subsection"

Insert "new subsections"

Page 6, line 17, following "section,":

Insert "a communication that includes a print or video component must have"

Page 6, lines 17 - 18:

Delete "must be read, in a manner that is easily heard, or"

Page 6, lines 19 - 21:

Delete ", 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"

Page 6, following line 26:

Insert a new subsection to read:

"(d) Notwithstanding the requirements of (a)(2)(A) - (D) of this section, in a communication transmitted through radio or other audio media and in the communication that includes an audio component, the following statement or statements, as applicable, must be read in a manner that is easily heard:

This communication was paid for by (person's name).

I am (name and, if applicable, title of the principal officer of the person) and I approve this message.

The top contributors of (person's name) are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(D))."

CHAIR FRENCH explained that this amendment separates the different disclaimers to the public that are required when an advertisement is in print versus either the radio or television. The idea is to reduce the amount of speaking in an audio advertisement so that it isn't onerous. He clarified that this pertains to ads by corporations or unions, not individual candidates.

SENATOR EGAN said he appreciates the amendment and if it needs tweaking after the next election cycle it can be addressed next year.

CHAIR FRENCH said that's a good point for the entire bill. We'll make it as strong as possible, but I have no doubt we'll revisit this topic in the near future, he said.

[2:17:20 PM](#)

CHAIR FRENCH removed his objection to Amendment 3. Finding no further objection, he announced that Amendment 3 is adopted.

CHAIR FRENCH set SB 284 aside for the time being.

SB 297-RETURN OF SEIZED PROPERTY

[2:17:57 PM](#)

CHAIR FRENCH announced the consideration of SB 297.

SENATOR FRED DYSON, sponsor of SB 297, noted that he has a committee substitute (CS) to propose.

[2:18:46 PM](#)

CHUCK KOPP, Staff to Senator Dyson, said SB 297 ensures that seized property is held only as long as is necessary so as to not jeopardize the case. The bill provides in Title 12 an identifiable process for an individual to petition the court for the recovery of their property in circumstances where they are not otherwise able to reach agreement with interested parties.

MR. KOPP related that prosecutors statewide have indicated that the current process could use refinement, particularly when the property is of significant value. The Alaska Peace Officers' Association has endorsed the proposed CS, which additionally states that within 10 days of a request for return of property and upon reasonable notice to interested parties, the agency shall request a hearing before the court.

CHAIR FRENCH asked for a motion to adopt the CS.

[2:21:49 PM](#)

SENATOR COGHILL moved to adopt the judiciary work draft CS for SB 297, labeled 26-LS1536\R, as the working document. There being no objection, version R was before the committee.

CHAIR FRENCH noted the letter of support from law enforcement and asked the sponsor if he had anything else to say about the bill.

SENATOR DYSON related anecdotal stories to demonstrate the need and noted that some heavy equipment operators don't call the police when their equipment is stolen because the return time is too long.

[2:24:53 PM](#)

ANNE CARPENETI, Attorney, Criminal Division, Department of Law (DOL), said getting property back to victims of crime is very important, but the problem is that the state sometimes needs to hold the seized property as evidence in a criminal procedure. The defense often has an interest in that too. She said she is concerned and would like to talk to the sponsor about the 10-day limit for retaining the property after a request and the provision that allows both the defense bar and the prosecution to weigh in. If the police have to give the evidence back it breaks the chain of custody. She also suggested the possibility of cross referencing this with other bills. For example, a bill under consideration now pertains to retention of evidence for a long period of time. She summarized that the bill is generally a good idea and DOL could support the concept but it has concerns.

[2:27:19 PM](#)

SENATOR MCGUIRE joined the committee.

CHAIR FRENCH asked Ms. Carpeneti at the next hearing to provide concrete ideas about how to address the concerns she articulated and announced he would hold SB 297 in committee.

SB 202-HATE CRIMES

[2:28:06 PM](#)

CHAIR FRENCH announced the consideration of SB 202 and asked for a motion to adopt the proposed committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt the judiciary work draft CS for SB 202, labeled 26-LS1097\E, as the working document. There being no objection, version E was before the committee.

CHAIR FRENCH explained that the CS was prepared at his request to add "gender identity" to the list of improper objects of crime. It provides a definition of gender identity and adds it to the aggravator statute for the same reason that sexual orientation was added.

[2:29:29 PM](#)

THOMAS OBERMEYER, Staff to Senator Bettye Davis, sponsor of SB 202, said the CS is appropriate.

CHAIR FRENCH asked for committee discussion or a motion.

SENATOR EGAN moved to report CS for SB 202 from committee [with individual recommendations and attached fiscal note(s).]

SENATOR COGHILL objected. He expressed the view that the crimes that are currently on the books already include these crimes that are based on motivation of prejudice, bias or hatred. He said he agrees that if it were law it should be in the aggravator statute, but he isn't ready to go there yet.

[2:31:50 PM](#)

CHAIR FRENCH said that as a former prosecutor he is very familiar with the idea of proving an individual's intent to a jury and it is not easy. Because it is so difficult to prove intent, he believes that this statute would be used extremely infrequently should this become law. He pointed out that before anyone would be convicted of this crime, a jury would have to decide unanimously and beyond a reasonable doubt that the individual's conduct was directed at the victim for the reasons listed in the statute.

A roll call vote was taken and the motion passed 3:2 with Senators Wielechowski, Egan, and French voting yea and Senators Coghill and McGuire voting nay. Therefore, CSSB 202(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 2:33 p.m. to 2:34 p.m.

SB 284-CAMPAIGN EXPENDITURES

[2:34:41 PM](#)

CHAIR FRENCH returned attention to SB 284.

SENATOR WIELECHOWSKI moved to adopt Amendment 4, labeled 26-LS1448\E.4.

AMENDMENT 4

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 284(JUD), Draft Version "E"

Page 1, line 4, following "campaigns;":

Insert "prohibiting expenditures and contributions by foreign nations in state elections;"

Page 4, following line 28:

Insert a new bill section to read:

"* **Sec. 9.** AS 15.13 is amended by adding a new section to read:

Sec. 15.13.068. Expenditures and contributions by foreign nationals. (a) A foreign national may not, directly or indirectly, in connection with an election under this chapter, make a contribution or expenditure or make an express or implied promise to make a contribution or expenditure.

(b) In this section, "foreign national" includes

(1) an individual who is not a United States citizen or lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20);

(2) a foreign government, every political subdivision of a foreign government, every official, agent, or representative of a foreign government, and every agency, corporation, or instrumentality of the foreign government or of a political subdivision of a foreign government;

(3) a person outside of the United States, unless it is established that the person is an individual and a citizen of and domiciled in the United States, or that the person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business in the United States;

(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or

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

contribution or an expenditure of the domestic subsidiary or domestic corporation.

(c) The provisions of this section apply only to the extent permitted by federal law."

Renumber the following bill sections accordingly.

CHAIR FRENCH objected for discussion purposes.

SENATOR WIELECHOWSKI explained that the contents of this amendment appear in the House version of SB 284 and it seems like a reasonable provision that will help bring some parity between the two bills. It expressly prohibits foreign nationals from participating in Alaska elections and includes a definition of "foreign national." This is similar to the federal law and the drafter didn't believe it would present constitutional problems.

CHAIR FRENCH noted that he and Senator Wielechowski each received legal opinions on this amendment raising the issue of preemption. He read the following from Mr. Bullard's 3/17/10 memorandum:

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly. Because [2 U.S.C. 441e] already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

[2:37:55 PM](#)

SENATOR COGHILL said it sounds as though a corporation like Ford Motor Company would be prohibited under this.

SENATOR WIELECHOWSKI said he doesn't believe that's the case.

CHAIR FRENCH called a point of order to say that those concerns would be addressed by what will be Amendment 5. Amendment 4 says a foreign national and it's directly to that individual not so much the corporation.

SENATOR WIELECHOWSKI added that Ford Motor Company or Exxon Corporation could participate because the definition of foreign

national doesn't exclude them. However, an Indonesian branch of Ford could not contribute to an Alaska election. He said he believes that this amendment tracks federal law and he understands legislative legal to say that based on the Supreme Court case, it's a bit unclear the extent to which foreign nationals can participate in elections. Legislative legal believes that a federal law is in place and the question is if it applies to state or local elections. This amendment tries to extend it to state or local elections, he said.

CHAIR FRENCH asked Mr. Ptacin his thoughts on Amendment 4.

[2:40:39 PM](#)

JOHN PTACIN, Assistant Attorney General, Department of Law (DOL), stated that he doesn't believe that preemption is a great concern here. Field preemption is the only variation of federal preemption that possibly could apply and that occurs only when there is a pervasive scheme showing that Congress intends to be the exclusive regulator in an area. It doesn't seem to be the case that the federal government is the only entity that would be regulating participation by a foreign national in a state or municipal election, he said.

CHAIR FRENCH asked Mr. Bullard if he had anything to add on the issue of preemption.

[2:42:17 PM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, said he believes that there may be some preemption risk. He explained that the amendment was drafted in a manner to make it applicable to the extent that it is permitted by federal law and to mitigate preemption concerns. He cautioned that he doesn't know if it's ironclad proof.

CHAIR FRENCH withdrew his objection to Amendment 4. Finding no further objection, he announced that Amendment 4 is adopted.

SENATOR WIELECHOWSKI moved to adopt Amendment 5, labeled 26-LS1448\E.5.

AMENDMENT 5

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 284(JUD), Draft Version "E"

Page 1, line 4, following "**campaigns;**":

Insert "**prohibiting certain expenditures in state election campaigns;**"

Page 5, following line 16:

Insert a new bill section to read:

"* **Sec. 11.** AS 15.13.084 is amended by adding a new subsection to read:

(b) A person that is owned or controlled, in any part, by a foreign national may not make an expenditure. In this subsection, "foreign national" includes

(1) an individual who is not a United States citizen or lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20);

(2) a foreign government, a political subdivision of a foreign government, a official, agent, or representative of a foreign government, and an agency, corporation, or instrumentality of a foreign government or of a political subdivision of a foreign government;

(3) a person outside of the United States, unless it is established that the person is an individual and a citizen of and domiciled in the United States, or that the person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and that the person's principal place of business is in the United States;

(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or

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

Renumber the following bill sections accordingly.

CHAIR FRENCH objected for discussion purposes.

SENATOR WIELECHOWSKI said this amendment addresses a concern he's had about foreign nationals that have ownership interests in Alaskan corporations. It would prohibit any corporation, union, or foreign national from making an expenditure in an Alaska election. If a corporation had stockholders that are not Americans, those stockholders would not be able to participate in making expenditures, he said.

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SENATOR COGHILL questioned whether a corporation that had a subsidiary that was incorporated in Alaska and a director that was a foreign national would be able to make internal changes so that Alaska citizen within the corporation would be put in as principals under Alaska reporting laws. He said his belief is that they will trade people even if they are wholly owned or partially owned.

SENATOR WIELECHOWSKI said if a corporation is owned or controlled in part by a foreign national then they would not be entitled to make an expenditure under this amendment.

SENATOR COGHILL said he's trying to figure out if this means the corporation itself or the individuals within the corporation because it seems that this is now driving into a separation.

SENATOR WIELECHOWSKI confirmed that the intent is that if a corporation is foreign owned or controlled, then they would not be able to make an expenditure.

CHAIR FRENCH said the operative language is on line 7. It says "a person" - meaning a corporation or group or nongroup or union - that is owned or controlled in any part. That language will attract a lot of attention, he said.

CHAIR FRENCH thanked Mr. Bullard for the extensive amount of work he'd done on this legislation and asked him to comment on the concerns he expressed in two separate memorandums regarding Amendment 5.

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MR. BULLARD said this amendment raises First Amendment and associational and equal protection issues. First, it paints with a broad brush, he said. Because any large, publicly traded corporation is likely to have some foreign shareholders, a court would likely interpret this provision, if it were enacted, as an indirect prohibition against independent expenditures made by large corporations or anyone so affected. He said he also

believes that there are equal protection issues. For example, if a large corporation like AT&T had one foreign shareholder with whatever percentage ownership interest, that domestic corporation would be treated differently than a domestic corporation that had no foreign shareholders.

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SENATOR WIELECHOWSKI withdrew Amendment 5. He said that this was an attempt to address his concerns about opening the doors to foreign nationals influencing Alaska elections, but he understood the constitutional warnings.

CHAIR FRENCH said we had a Supreme Court decision to deal with and we've been trying to craft a bill that would stand up to the beating it may get in other committees. Finding no further amendments or committee discussion, and noting that public testimony had been taken, he asked for a motion.

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SENATOR WIELECHOWSKI moved to report CS for SB 284, version E as amended, from committee with individual recommendations and attached fiscal note(s).

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SENATOR COGHILL objected to make a comment. He said he agreed with the concept of the last amendment and he would continue to look for a solution to the top five contributors because it's still a concern. He then expressed appreciation for the diligence with which Senator French put this must-pass piece of legislation forward. I have no further objection, he said.

CHAIR FRENCH announced that without objection CSSB 284(JUD) moved from the Senate Judiciary Standing Committee.

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There being no further business to come before the committee, Chair French adjourned the meeting at 2:52 p.m.