

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 13, 2010

9:56 a.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

CS FOR SS FOR HOUSE BILL NO. 36(FIN) AM

"An Act relating to ballot initiative proposal applications, to ballot initiatives and to those who file or organize for the purpose of filing a ballot initiative proposal, and to election pamphlet information relating to certain propositions."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 36

SHORT TITLE: INITIATIVES: CONTRIBUTIONS/ PROCEDURES

SPONSOR(S): REPRESENTATIVE(S) JOHANSEN, MILLETT, P.WILSON

01/20/09	(H)	PREFILE RELEASED 1/9/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	STA, JUD
03/25/09	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/25/09	(H)	READ THE FIRST TIME - REFERRALS
03/25/09	(H)	JUD, FIN
04/06/09	(H)	JUD AT 8:00 AM CAPITOL 120
04/06/09	(H)	Heard & Held
04/06/09	(H)	MINUTE(JUD)
04/06/09	(H)	JUD AT 1:00 PM CAPITOL 120
04/06/09	(H)	Heard & Held
04/06/09	(H)	MINUTE(JUD)
04/13/09	(H)	JUD AT 8:00 AM CAPITOL 120
04/13/09	(H)	Heard & Held
04/13/09	(H)	MINUTE(JUD)

04/15/09 (H) JUD AT 1:00 PM CAPITOL 120
 04/15/09 (H) Moved CSSSHB 36(JUD) Out of Committee
 04/15/09 (H) MINUTE(JUD)
 04/16/09 (H) JUD RPT CS(JUD) 1DP 3DNP 1NR 1AM
 04/16/09 (H) DP: COGHILL
 04/16/09 (H) DNP: HOLMES, GRUENBERG, RAMRAS
 04/16/09 (H) NR: DAHLSTROM
 04/16/09 (H) AM: LYNN
 04/18/09 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 04/18/09 (H) Heard & Held
 04/18/09 (H) MINUTE(FIN)
 02/08/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/08/10 (H) Heard & Held
 02/08/10 (H) MINUTE(FIN)
 03/15/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/15/10 (H) Heard & Held
 03/15/10 (H) MINUTE(FIN)
 03/16/10 (H) FIN AT 9:00 AM HOUSE FINANCE 519
 03/16/10 (H) Heard & Held
 03/16/10 (H) MINUTE(FIN)
 03/16/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/16/10 (H) Moved CSHB 36(FIN) Out of Committee
 03/16/10 (H) MINUTE(FIN)
 03/19/10 (H) FIN RPT CS(FIN) NT 6DP 4AM
 03/19/10 (H) DP: THOMAS, AUSTERMAN, KELLY,
 FAIRCLOUGH, STOLTZE, HAWKER
 03/19/10 (H) AM: GARA, DOOGAN, JOULE, N.FOSTER
 04/11/10 (H) TRANSMITTED TO (S)
 04/11/10 (H) VERSION: CSSSHB 36(FIN) AM
 04/12/10 (S) READ THE FIRST TIME - REFERRALS
 04/12/10 (S) JUD, FIN
 04/13/10 (S) JUD AT 9:15 AM BUTROVICH 205

WITNESS REGISTER

KYLE JOHANSEN

Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: A prime sponsors of HB 36.

SONIA CHRISTENSEN, Staff
 to Representative Kyle Johansen
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Provided a sectional analysis of HB 36.

LORNA SHAW, Executive Director

Council of Alaska Producers (CAP)

POSITION STATEMENT: Testified in support of HB 36.

CHIP THOMA

Responsible Cruising in Alaska

Juneau, AK

POSITION STATEMENT: *Suggested improvements for HB 36.

JASON BRUNE, Executive Director

Resource Development Council (RDC)

Anchorage, AK

POSITION STATEMENT: *Testified that HB 36 is one of RDC's top priorities.

HOLLY HILL, Executive Director

Alaska Public Offices Commission (APOC)

Anchorage, AK

POSITION STATEMENT: *Testified that APOC has taken no position on HB 36.

THOMAS DOSIK, Assistant Attorney General

Civil Division

Labor and State Affairs Section

Department of Law (DOL)

Anchorage, AK

POSITION STATEMENT: *Provided information related to HB 36 relative to APOC.

ACTION NARRATIVE

[9:56:25 AM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 9:56 a.m. Present at the call to order were Senators Wielechowski, McGuire and French.

HB 36-INITIATIVES: CONTRIBUTIONS/ PROCEDURES

CHAIR FRENCH announced the consideration of HB 36. [CSSSHB 36(FIN) AM was before the committee.]

[9:56:52 AM](#)

KYLE JOHANSEN, a prime sponsor of HB 36, explained that this legislation addresses disclosure and information in the initiative process. It would require disclosure once more than \$500 is spend on an initiative proposal, and it would require that at least two public hearings per judicial district be held on a proposed ballot initiative. These public hearings would

provide a formal process by which voters could learn about the impacts of the proposed ballot initiatives.

CHAIR FRENCH asked for an explanation of the pre-certification phase of the initiative process.

SONIA CHRISTENSEN, Staff to Representative Kyle Johansen, explained that initiative proposals require three prime sponsors, signatures from 100 registered Alaskan voters, and the initiative language, all of which is submitted to the lieutenant governor. If the topic and language pass constitutional muster and once the initial signatures are verified, the sponsors are approved to collect signatures statewide.

[10:02:34 AM](#)

SENATOR COGHILL joined the committee.

CHAIR FRENCH observed that once the signatures have been gathered one or more parties push the measure during the election phase.

MS. CHRISTENSEN agreed and added that that's the phase when the initiative is approved for the ballot. This includes verifying the signatures that are sorted by House district.

CHAIR FRENCH suggested that for the purpose of discussing the bill that they refer to the pre-certification phase, the signature phase, and the election phase. He then asked Ms. Christensen to briefly review the 16 sections of the bill.

MS. CHRISTENSEN provided the following sectional analysis:

- Section 1 changes the reporting requirement for initiatives to capture the timeframe from the first application with the Division of Elections up until the lieutenant governor certifies the bill. It states that every individual, person, nongroup entity, or group that has contributed \$500 or more to a group organized for the purpose of filing an initiative proposal application or that has filed an initiative proposal application would be required to report their contributions.

[10:05:18 AM](#)

CHAIR FRENCH asked if it would be a reportable expenditure if he hired a lawyer to help draft language for a ballot initiative.

MS. CHRISTENSEN replied it's a non-reportable expenditure. She continued the sectional analysis.

- Section 2 adds language [to AS 15.13.050(a)] and requires groups to register [with APOC before making expenditures supporting or opposing an initiative proposal that was filed with the lieutenant governor.] This covers the signature-gathering phase.
- Section 3 requires a group that intends to spend more than 50 percent of their funds to support or oppose a ballot initiative to include the title of the initiative in the name of the group.

CHAIR FRENCH said he'll ask APOC about using the word "intends" as it applies to a group and if it might not be preferable to impose the requirement once the group does spend a majority of its funds.

MS. CHRISTENSEN continued the sectional analysis.

- Section 4 [expands the meaning of "proposition" under AS 15.13.065(c) to include an initiative proposal application filed with the lieutenant governor.] This is to include the signature-gathering phase.
- Section 5 removes the reference to "an initiative" from AS 15.13.110(e) so that the special disclosures can be applied to initiatives in the early phases of the process. The notion is that referendums and recalls aren't as great an issue as statewide ballot measures.
- Section 6 [adds a new subsection AS 15.13.110(g)] addressing disclosures for initiatives. Disclosure is required once the \$500 threshold is met and then the reports must be submitted quarterly.

[10:08:57 AM](#)

CHAIR FRENCH asked her interpretation of the last sentence in Section 6.

MS. CHRISTENSEN offered her understanding that the language mirrors what is already in statute and deferred to APOC for any further explanation.

- Section 7 expands the definition of "contribution" to include payments rendered during the signature-gathering phase.

- Section 8 expands the definition of "expenditures" to include those made during the signature-gathering phase.
- Section 9 changes the definition of a group to include those organized to file an initiative proposal application. This was suggested by APOC.
- Section 10 echoes the existing [AS 15.45.040] and confines an initiative to a single subject.
- Section 11 requires signature gatherers to carry a full copy of the initiative, not just a summary.

10:11:15 AM

- Section 12 requires the lieutenant governor to hold two reasonably noticed public hearings in each judicial district. A schedule is provided, testimony may be oral or written, and participants do not need to be physically present.

CHAIR FRENCH noted that Alpheus Bullard, who is with Legislative Legal, wrote a memo specifically pointing out that this language presents no First Amendment infringement whatsoever.

MS. CHRISTENSEN added that the House Judiciary Committee worked hard on the language.

CHAIR FRENCH asked about the possibility of transmitting these hearings by webcam to the Internet.

10:14:00 AM

REPRESENTATIVE JOHANSEN noted that the energy committee meeting that was held in Bethel was live streamed to over 30 villages.

MS. CHRISTENSEN continued the sectional analysis.

- Section 13 adds "special election" to AS 15.58.010, which requires an election pamphlet to be sent to each household prior to each state general and state primary election.
- Section 14 adds "special election" to AS 15.58.020(b), which relates to information in primary election pamphlets.

CHAIR FRENCH mused about constitutional changes and who really is best served by initiatives being on the primary ballot when in fact few voters go to the polls for primary elections.

REPRESENTATIVE JOHANSEN agreed that it's an interesting issue and commented that he'd be happy to co-sponsor the

constitutional amendment if Senator French would do the heavy lifting.

MS. CHRISTENSEN continued the sectional analysis.

- Section 15 requires a legislative standing committee to review initiatives that the lieutenant governor certifies for placement on the ballot. This is another opportunity for a public hearing.
- Section 16 is the effective date clause.

[10:17:04 AM](#)

SENATOR COGHILL suggested using the word "hearing" rather than "review" because it's not clear what "review" means for a committee.

CHAIR FRENCH said he'd also like to know who would decide which committee.

REPRESENTATIVE JOHANSEN said his vision was to use the jurisdiction of the Uniform Rules to determine the particular committee. With respect to the terminology, he said he's open to suggestions to make it more specific. He clarified that the intent is that the Legislature would in no way be able to tinker with a citizen initiative, but that it could hear from the affected department about the potential impact.

[10:19:37 AM](#)

CHAIR FRENCH asked who would make the assignment to ensure that this takes place.

REPRESENTATIVE JOHANSEN replied he didn't have a solution.

CHAIR FRENCH said, "We'll think of something."

LORNA SHAW, Executive Director, Council of Alaska Producers (CAP), said she is testifying in support of HB 36. CAP is a mining trade association whose 13 members were the target of the 2008 ballot initiative that was officially titled the "Clean Water Initiative." CAP preferred to term it the "Anti-Mining Initiative.

She highlighted that three different versions of the initiative were submitted to the lieutenant governor for approval and two were approved for signature gathering. CAP wasn't sure which version would be on the ballot until six weeks prior to the election. People were approached by signature gatherers

statewide and asked to "sign here to stop Pebble" even though the word "Pebble" didn't appear in either version. Furthermore, signature gatherers appeared to be unable and unwilling to engage in discussion about details and rarely if ever did they have a copy of the initiative itself.

[10:22:32 AM](#)

MS. SHAW said a major flaw in the initiative process is the lack of vetting, and opined that it's critical that voters are given the information to understand what the initiative does and does not do and not what the backers intended for it to do. Noting that APOC essentially gagged DNR on ballot measure 4, she said the legislative hearings and state agency input required in HB 36 can only help voters. These public hearings will be far more helpful than forums hosted by groups with an agenda relative to the initiative. HB 36 also provides for more and better financial disclosure, she said. With ballot measure 4 it was expected and clearly reported that the mining companies were defending themselves, but it was unclear who was paying for other side. HB 36 will provide earlier answers.

MS. SHAW said the initiative process in Alaska is important, but it's also important to ensure that voters have information about who is behind an initiative, who is paying for it, the effects and meaning, and the unintended consequences. HB 36 will improve the initiative process, she concluded.

[10:24:48 AM](#)

CHIP THOMA, Responsible Cruising in Alaska, said this organization brought the successful statewide head tax initiative in 2006. He reported the following statistics:

- 73 percent of all initiatives filed with the lieutenant governor never appear on a ballot.
- Of the remaining 27 percent, 15 percent fail at the ballot and 12 percent pass.
- In the last 15 years just 8 of the approximately 75 initiatives have passed the ballot.
 - Two related to term limits.
 - Two related to campaign disclosure reform.
 - Two related to game management.
 - One related to medical marijuana.
 - One related to the head tax.

MR. THOMA opined that HB 36 is dramatically better legislation thanks to Senator Coghill's efforts when he sat on the House

Judiciary Committee, and suggested that a further improvement would be to include the phrase "or opposing" throughout the legislation. This will level the playing field because in the initiative process the opposition outspends the proponents by a five to one margin. For example, the organizations that opposed the "Pebble Initiative" spent more than \$9 million. He further suggested that the committee specify the penalties for a violation of the public hearings section on page 7 and expressed agreement with Senator Coghill that the standing committee should conduct hearings rather than reviews.

[10:29:42 AM](#)

SENATOR WIELECHOWSKI noted that Section 1 talks about groups that are formed for the purpose of influencing the outcome of a proposition, which would apply to both pro and con.

MR. THOMA suggested it would be clearer to insert "or opposing" after "filing" on page 1, line 10.

CHAIR FRENCH noted parenthetically that the Citizens United decision changed the landscape in terms of who will play in these matters and that a separate piece of legislation was introduced that uses the group term "person" in an effort to be more inclusive.

JASON BRUNE, Executive Director, Resource Development Council (RDC), stated that HB 36 is one of RDC's top priorities. He said that although the RDC may question the appropriateness and the role of the initiative process as a means of governing, the RDC appreciates the democratic rights of Alaskans to change state law through the initiative process. Over the last few years, however, a number of proposed initiatives have been brought forward that have not had the best interests of the state or its citizens in mind. Furthermore, the sponsors have used tactics during the signature-gathering phase to mislead the public and misconstrue the issues.

MR. BRUNE said the RDC believes that openness and transparency must be at the forefront of good government and that the framers of the state constitution were wise to include the initiative process. It's interesting, however, that constitutional delegate Vic Fischer voted against the article on the initiative, arguing that it is a device that lends itself most to special interest groups. He opined that Mr. Fisher was prophetic because citizens have witnessed these special interests embracing the initiative process over the last decade. In fact, in the last five years the Alaska business community has been the target of numerous

punitive ballot initiatives pushed by anti-business and environmental interest groups unable to accomplish their goals through the legislative process.

[10:33:29 AM](#)

MR. BRUNE pointed out that legislators are required to disclose how they raise and spend money and questioned why those who are attempting to change state law through the initiative process shouldn't be subject to that same standard. He further questioned why they shouldn't also be required to disclose the source of their funding during the signature-gathering phase of the initiative process. Such openness and transparency will bring to light the agendas of initiative sponsors, he stated.

HB 36 will require public and legislative hearings for initiatives and that's a good idea. The process that legislators go through to pass laws is very thorough. Unintended consequences of a piece of legislation are usually vetted through committee hearings, public testimony, and floor debates that a bill requires.

MR. BRUNE stated agreement with Senator French with respect to the use of "intends" as it applies to a group in Section 3 and the use of webcams during the public hearing process. He said Senator Coghill made a good point about holding hearings as opposed to reviews and that the bill should clarify who assigns the hearings. Finally, he said he doesn't object to Mr. Thoma's suggestion that those who oppose an initiative should also be required to disclose. More disclosure is better for Alaska and results in a more candid process, he concluded.

[10:35:13 AM](#)

HOLLY HILL, Executive Director, Alaska Public Offices Commission (APOC), stated that APOC has taken no position on HB 36.

CHAIR FRENCH asked what HB 36 adds that will ensure that Alaskan voters will know who is spending money to advance or oppose ballot initiatives.

MS. HILL answered with an example. Under current law, if a bunch of people get together purely for the purpose of raising signatures and then cease to exist at the time that the ballot is certified, they aren't a group under the law so APOC has nothing to do with them. "The definition of a group is two or more people formed for the purpose of influencing a ballot proposition," she said.

CHAIR FRENCH observed that current law pertains only to the election phase and not the signature-gathering phase.

MS. HILL said that's correct except that if expenditures are made by a group that is formed for the purpose of influencing an election, those expenditures are reported after the certification. She understands that HB 36 captures the timeframe from the first application with the Division of Elections up until the lieutenant governor certifies the bill.

[10:38:01 AM](#)

CHAIR FRENCH asked if during that signature-gathering phase you could have TV ads running that advocate for or against the underlying initiative in the guise of trying to gather signatures or not to sign the initiative petition.

MS. HILL said yes; money that's spent encouraging citizens to sign a ballot initiative petition isn't an issue for APOC.

CHAIR FRENCH expressed surprise that it's not a reportable expense.

MS. HILL added that money spent to influence the election is reportable.

CHAIR FRENCH clarified that money spent during the election phase is reportable.

MS. HILL agreed. She added that HB 36 amends the meaning of "ballot proposition" to include an initiative proposal application. She noted that Mr. Thoma said that AS 15.13.050 says you must register before expending money to influence a ballot proposition. Under this legislation, the term "ballot proposition" now includes the application.

[10:40:10 AM](#)

SENATOR WIELECHOWSKI asked if someone who wants to spend money on a TV campaign to influence a piece of legislation before the Legislature would have to file with APOC.

MS. HILL clarified that that is part of the legislative process; it isn't an election. She explained that if three individuals filed with the Division of Elections to sponsor an initiative and then disappeared and if a separate bunch of people got together purely to gather signatures with the intent to disappear the moment it was certified, APOC would have

absolutely nothing to do with that under current law. HB 36 would change that.

SENATOR WIELECHOWSKI commented that this seems to create two separate classes. It puts requirements on people who file an initiative or referendum whereas people who want to influence the Legislature don't have to report.

[10:42:44 AM](#)

MS. HILL reiterated that under the current campaign disclosure rules, expenditures are not reportable until the election phase of the initiative process.

SENATOR WIELECHOWSKI offered the view that money spent to influence legislation should be treated the same way as money spent to influence an election.

CHAIR FRENCH asked Mr. Dosik if he would like to add to Ms. Hill's testimony.

THOMAS DOSIK, Assistant Attorney General, Civil Division, Labor and State Affairs Section, Department of Law (DOL), related that APOC exists to enforce laws on campaign finance and lobbying. If there isn't an active campaign or if the activity doesn't qualify as lobbying, then APOC doesn't regulate the activity. If, for example, somebody wanted to buy TV ads to influence HB 36, APOC wouldn't have jurisdiction or concern about that. The caveat is that existing groups such as political parties or other groups that maintain a long-term existence do have to regularly report all their contributions and expenditures.

[10:45:30 AM](#)

CHAIR FRENCH cited the subsistence wars and recalled full-page ads singling out individual legislators and encouraging voters to tell their legislator to let the subsistence measure go forward. He observed that Senator Wielechowski makes an interesting point because that activity is separate and not part of any reporting scheme.

MR. DOSIK confirmed that that's correct.

SENATOR COGHILL questioned whether the "intends to make" language in Section 3 should be replaced with the phrase "intends to support."

CHAIR FRENCH acknowledged the suggestion and held HB 36 in committee.

There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee hearing at 10:46 a.m.