

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 2, 2012

1:04 p.m.

**MEMBERS PRESENT**

Representative Steve Thompson, Vice Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Lance Pruitt  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Carl Gatto, Chair  
Representative Mike Hawker (alternate)

**OTHER LEGISLATORS PRESENT**

Representative Cathy Engstrom Munoz

**COMMITTEE CALENDAR**

HOUSE BILL NO. 347

"An Act prohibiting the use of municipal funds to support or oppose an initiative proposal to circulate a petition for a ballot initiative, or to influence the outcome of an election concerning a ballot initiative, without approval by municipal voters at an election."

- MOVED CSHB 347(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 347

SHORT TITLE: USE OF MUNICIPAL FUNDS FOR INITIATIVES

SPONSOR(s): REPRESENTATIVE(s) OLSON

02/22/12	(H)	READ THE FIRST TIME - REFERRALS
02/22/12	(H)	STA, JUD
03/22/12	(H)	STA AT 8:00 AM CAPITOL 106
03/22/12	(H)	Moved Out of Committee
03/22/12	(H)	MINUTE(STA)
03/23/12	(H)	STA RPT 3DP 2DNP 1NR
03/23/12	(H)	DP: JOHANSEN, KELLER, LYNN

03/23/12 (H) DNP: PETERSEN, SEATON  
03/23/12 (H) NR: P.WILSON  
04/02/12 (H) JUD AT 1:00 PM CAPITOL 120

#### **WITNESS REGISTER**

ANNA LATHAM, Staff  
Representative Kurt Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 347 on behalf of the sponsor,  
Representative Olson.

KATHIE WASSERMAN, Executive Director  
Alaska Municipal League (AML)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 347.

REPRESENTATIVE KURT OLSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 347.

SHIRLEY MARQUARDT, Mayor  
City of Unalaska;  
President  
Alaska Municipal League (AML)  
Unalaska, Alaska

**POSITION STATEMENT:** Provided comments during discussion of  
HB 347.

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

**POSITION STATEMENT:** As the drafter, responded to questions  
during discussion of HB 347.

#### **ACTION NARRATIVE**

[1:04:46 PM](#)

**VICE CHAIR STEVE THOMPSON** called the House Judiciary Standing  
Committee meeting to order at 1:04 p.m. Representatives  
Thompson, Lynn, Keller, and Pruitt were present at the call to  
order. Representatives Holmes and Gruenberg arrived as the

meeting was in progress. Representative Gatto was excused. Representative Munoz was also in attendance.

**HB 347 - USE OF MUNICIPAL FUNDS FOR INITIATIVES**

[1:05:15 PM](#)

VICE CHAIR THOMPSON announced that the only order of business would be HOUSE BILL NO. 347, "An Act prohibiting the use of municipal funds to support or oppose an initiative proposal to circulate a petition for a ballot initiative, or to influence the outcome of an election concerning a ballot initiative, without approval by municipal voters at an election."

[1:06:15 PM](#)

ANNA LATHAM, Staff, Representative Kurt Olson, Alaska State Legislature, explained on behalf of the sponsor, Representative Olson, that HB 347 would prohibit the use of municipal funds [for ballot initiatives] without voter approval. Currently, municipalities can spend [public] funds to influence the outcome of a ballot initiative, and research indicates that this occurred in 2011, when three municipalities spent [a combined total of \$34,000] in municipal funds to support a ballot initiative. Though voters may be in favor of a particular ballot initiative, they may not necessarily be in favor of municipal funds being allocated to support or oppose it. Under HB 347, she ventured, voters would be made aware of, and be allowed to weigh in on, how their municipality is proposing to allocate public funds to address ballot initiatives. Research also indicates that at least 14 other states prohibit the use of public funds to support or oppose an initiative, and that HB 347 is constitutional in that governmental entities, including municipalities, do not have independent First Amendment rights. House Bill 347 is intended to keep the ballot initiative process fair, and to ensure that the priorities of the municipality are the same as its citizens', she said in conclusion.

[1:10:10 PM](#)

KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), relayed that the AML adamantly opposes HB 347 because it would stifle the municipalities' ability to take part in the initiative process and would substantially increase their costs - in some instances by as much as \$350,000 - by requiring a special election. She offered her hope that should the federal government ever attempt to impose a similar limitation on the

State of Alaska, that Alaska's legislators would oppose it. In conclusion, she characterized HB 347 as a terrible overreach of government, and offered her hope that it would not pass from committee. In response to comments, she said that under current law, before a municipality can spend public funds to address a ballot initiative, the municipality must properly notice and hold two public hearings on the issue; in other words, there is already plenty of opportunity for taxpayers to weigh in on whether a municipality should appropriate public funds for such a purpose, and although HB 347 would provide them with additional opportunity, it would come at great cost. In response to an argument that [without the bill,] a municipality could spend a taxpayer's money on something in direct opposition to the wishes of the taxpayer, she pointed out that it will never be the case that all taxpayers are going to agree with everything their municipality does or supports or spends money on even if they are given additional opportunity to weigh in on the issue.

[1:16:46 PM](#)

REPRESENTATIVE KURT OLSON, Alaska State Legislature, sponsor, explained that the intent of HB 347 is to address the fact that some municipalities - in addressing ballot initiatives - use paid signature gatherers instead of volunteers, and it's the fact that public funds are being used for this purpose that causes him concern. In conclusion, he characterized HB 347 as reasonable in comparison to the laws of some other states.

REPRESENTATIVE GRUENBERG referred to a memorandum in members' packets dated January 19, 2012, from Legislative Legal and Research Services, and pointed out that it says that the U.S. Supreme Court, in addressing a Colorado statute in Meyer v. Grant, has found that initiative petition circulation is core political speech entitled to substantial First Amendment protection and that states may not burden the exercise of the right to petition through the use of the initiative by prohibiting the payment of petition circulators. If the purpose - or a purpose - of HB 347 is to prohibit that type of activity, then there's a good chance, he predicted, that the court would find HB 347 to be unconstitutional. In response to comments, he referred to another memorandum from Legislative Legal and Research Services dated April 2, 2012, and pointed out that although in it the drafter has expressed the legal opinion that HB 347 is constitutional under the free speech clauses of both the U.S. Constitution and the Alaska State Constitution, the drafter has not included [sufficient substantiating citation]

pertaining specifically to the Alaska State Constitution, which the Alaska Supreme Court has held on several occasions as providing greater protections than the U.S. Constitution in terms of free speech and other core rights; it is therefore still unclear whether municipalities, specifically under the Alaska State Constitution, would be found to enjoy a First Amendment right under the circumstances outlined in the bill.

MS. LATHAM explained that in Meyer, the court was addressing the right of an initiative sponsor to use paid signature gatherers, and offered her understanding that a municipality cannot be an initiative sponsor.

REPRESENTATIVE GRUENBERG reiterated his belief that the issue of whether the bill is constitutional has not yet been sufficiently addressed in the context of the Alaska State Constitution's greater protections, under which municipalities, as representatives of the people, may indeed have very significant rights of free speech.

MS. LATHAM pointed out that a memorandum in members' packets from the Department of Law (DOL) dated March 27, 2012, states in part:

Governmental entities - including municipalities - have no independent First Amendment rights. Municipalities are not treated like individual citizens for purposes of constitutional inquiries, and the legislature is allowed to restrict municipal appropriates for speech related activities.

VICE CHAIR THOMPSON noted that that particular memorandum does include [substantiating citations].

REPRESENTATIVE GRUENBERG offered his understanding, though, that none of those citations address Alaska cases or the Alaska State Constitution specifically.

The committee took an at-ease from 1:32 p.m. to 1:33 p.m.

[1:33:57 PM](#)

SHIRLEY MARQUARDT, Mayor, City of Unalaska; President, Alaska Municipal League (AML), said it seems unreasonable to require municipalities to spend time and money on a special election before they can disseminate critical information about a ballot initiative to their communities, adding that she doesn't

understand the need for HB 347, doesn't see the purported problem it's intended to fix.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HB 347.

[1:39:16 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, labeled 27-LS1396\A.3, Bullard, 4/2/12, which read:

Page 2, line 2, following "election":  
Insert "paid for by the state"

REPRESENTATIVE GRUENBERG explained that Amendment 1 - by amending HB 347's proposed new AS 15.13.145(e) - would address the AML's concern about increased costs by requiring the state to pay for a municipality's special election.

REPRESENTATIVE KELLER objected.

REPRESENTATIVE GRUENBERG proffered that without Amendment 1, HB 347 becomes an unfunded mandate for municipalities.

REPRESENTATIVE HOLMES observed that Amendment 1 contains a drafting error and should instead be amending line 4 of page 2.

REPRESENTATIVE GRUENBERG concurred, and [made a motion to] amend Amendment 1 to that effect. There being no objection, Amendment 1 was so amended.

VICE CHAIR THOMPSON, remarking on the cost of holding a special election, surmised that adoption of Amendment 1, as amended, would result in a change in HB 347's fiscal notes.

REPRESENTATIVE PRUITT argued that nothing in HB 347 requires a municipality to hold a special election; instead the bill merely stipulates that before a municipality can spend public funds to address a ballot initiative, it must obtain voter approval of the proposed expenditure.

REPRESENTATIVE GRUENBERG opined that as currently written, HB 347 could make it extremely difficult for municipalities to address ballot initiatives - even those that could severely impact the municipalities themselves - and pointed out that the question raised is who would pay for the special election necessary to obtain the required voter approval. Without

Amendment 1, the special election costs would be borne by the municipalities themselves rather than the state.

REPRESENTATIVE OLSON agreed, and indicated disapproval of Amendment 1, as amended.

A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of Amendment 1, as amended. Representatives Lynn, Keller, and Thompson voted against it. Therefore, Amendment 1, as amended, failed by a vote of 2-3.

[1:55:01 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 27-LS1396\A.9, Bullard, 4/2/12, which read:

Page 1, line 1:  
Delete "**prohibiting**"  
Insert "**relating to**"

Page 1, line 2, following "**proposal**":  
Insert "**or**"

Page 1, lines 2 - 4:  
Delete "**, or to influence the outcome of an election concerning a ballot initiative, without approval by municipal voters at an election**"

Page 1, line 9:  
Delete "**by municipal voters**"

Page 2, line 1:  
Delete "AS 29.26.110,"  
Insert "AS 29.26.110 or"

Page 2, lines 1 - 3:  
Delete "**, or, subject to (b) of this section, to influence the outcome of an election concerning a ballot initiative**"

Page 2, lines 3 - 4:  
Delete "**use of the funds for that purpose has been approved by municipal voters at an election**"  
Insert "**funds for that purpose have been specifically appropriated for that purpose by a municipal ordinance**"

REPRESENTATIVE KELLER objected.

REPRESENTATIVE GRUENBERG explained that existing AS 15.13.145(b) in part stipulates that a municipality may use [public] funds to influence the outcome of an election concerning a ballot proposition or question if the funds were specifically appropriated for that purpose by a municipal ordinance; and indicated that Amendment 2 would provide a similar stipulation for ballot initiatives in HB 347's proposed new AS 15.13.145(e).

REPRESENTATIVE LYNN also objected.

The committee took an at-ease from 1:58 p.m. to 2:00 p.m.

[2:03:56 PM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), as the drafter, in response to comments and questions, relayed that the aforementioned existing AS 15.13.145(b) already stipulates that any [municipal] funds used to influence the outcome of an election concerning a ballot initiative must be appropriated by municipal ordinance, because the phrase, "ballot proposition or question" as used in that statute includes ballot initiatives. If Amendment 2 is adopted, HB 347 would then provide a similar stipulation for funds used to support or oppose an initiative proposal, and for funds used to circulate a petition for an initiative. Without Amendment 2, funds used to influence the outcome of an election concerning a ballot initiative would first have to be appropriated by municipal ordinance and then be approved by municipal voters at an election, and funds used either to support or oppose an initiative proposal, or to circulate a petition for an initiative, would only need to be approved by the voters.

REPRESENTATIVE OLSON expressed disfavor with Amendment 2.

REPRESENTATIVE KELLER expressed a preference for retaining the bill as written.

A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of Amendment 2. Representatives Thompson, Lynn, and Keller voted against it. Therefore, Amendment 2 failed by a vote of 2-3.

The committee took an at-ease from 2:09 p.m. to 2:16 p.m.

[2:16:13 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, labeled 27-LS1396\A.4, Bullard, 4/2/12, which read:

Page 2, line 4, following "election.":

Insert "However, if the municipality fails to have the use of funds for that purpose approved by municipal voters, or if the result of the election to have the use of funds approved by municipal voters is not certified before the date of the election at which the initiative will be on the ballot, the results of the election on the initiative may not be invalidated on the basis of failure of the municipality to comply with this subsection."

REPRESENTATIVE KELLER objected.

REPRESENTATIVE GRUENBERG explained that Amendment 3 would add language to the end of HB 347's proposed new AS 15.13.145(e) stipulating [that a lack of timely voter approval for the use of municipal funds] won't invalidate the election results on the ballot initiative itself. He offered his belief that adoption of Amendment 3 would preclude any argument that the election results on a ballot initiative must be invalidated because the provisions of proposed new subsection (e) weren't complied with.

REPRESENTATIVE KELLER questioned what the penalty would be for violating the bill.

REPRESENTATIVE HOLMES, in response to comments, offered her understanding that under Amendment 3, the failure of a municipality to comply with the provisions of the bill won't invalidate a ballot initiative's election results.

REPRESENTATIVE GRUENBERG offered his understanding that the bill applies to municipal ballot initiatives as well as to statewide ballot initiatives.

REPRESENTATIVE OLSON shared his belief that Amendment 3 isn't needed.

REPRESENTATIVE PRUITT opined that noncompliance with the bill should result in the election results on a ballot initiative being invalidated, and expressed disfavor with Amendment 3.

VICE CHAIR THOMPSON expressed concern that the election results on a ballot initiative could be invalidated if using public funds to provide the public with nonpartisan information about a ballot proposition or question - as allowed under existing AS 15.13.145(c)(2) - is misconstrued as using public funds to influence the outcome of an election concerning a ballot initiative.

REPRESENTATIVE GRUENBERG, in response to a question, relayed that in offering Amendment 3, he was attempting to eliminate the possibility that noncompliance with the bill would invalidate a ballot initiative's election results.

A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of Amendment 3. Representatives Pruitt, Thompson, Lynn, and Keller voted against it. Therefore, Amendment 3 failed by a vote of 2-4.

[2:27:14 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 4, labeled 27-LS1396\A.6, Bullard, 4/2/12, which read:

Page 1, line 4, following "**election**":

Insert "**; and relating to the liability of municipal officials**"

Page 1, line 12:

Delete "a new subsection"

Insert "new subsections"

Page 2, following line 4:

Insert a new subsection to read:

"(f) A municipal official may not be held liable for the failure of a municipality to comply with (e) of this section."

VICE CHAIR THOMPSON noted that there was objection to the motion.

REPRESENTATIVE GRUENBERG explained that Amendment 4 would clarify that municipal officials cannot be held liable for the failure of a municipality to comply with the provisions of the bill's proposed new AS 15.13.145(e).

REPRESENTATIVE GRUENBERG then mentioned that perhaps Amendment 4 could be amended such that its protection from liability would also apply to municipalities themselves.

REPRESENTATIVE OLSON said he didn't see a problem with Amendment 4, and acknowledged that it would probably clean up the bill.

VICE CHAIR THOMPSON, in response to comments, noted that members' packets contain a letter from the City of Homer in opposition to HB 347.

REPRESENTATIVE OLSON, in response to a question, expressed a preference for Amendment 4 as currently written.

VICE CHAIR THOMPSON, observing that members had questions about Amendment 4 for the drafter to address, relayed that Amendment 4 would be set aside.

[2:36:23 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 5, a hand-altered version of an amendment labeled 27-LS1396\A.8, Bullard, 4/2/12, which, after alteration, read:

Page 1, line 4, following "**election**":  
Insert "**; relating to the reporting of certain expenditures to influence the outcome of an election**"

REPRESENTATIVE KELLER objected.

REPRESENTATIVE GRUENBERG explained that Conceptual Amendment 5 would ensure that the title of HB 347 reflects the bill's proposed changes to AS 15.13.145.

REPRESENTATIVE HOLMES said she didn't see a problem with Conceptual Amendment 5, surmising that it would just clean up the title.

REPRESENTATIVE KELLER made a motion to amend Conceptual Amendment 5 such that the words, "**to influence the outcome of an election**" would no longer be added to the title. There being no objection, Conceptual Amendment 5 was so amended.

MR. BULLARD, in response to comments and questions, indicated that the language that would be added to the title via Conceptual Amendment 5, as amended, accurately reflects the

bill's proposed changes to AS 15.13.145, and that he didn't see any legal problems with it.

REPRESENTATIVE KELLER removed his objection.

VICE CHAIR THOMPSON announced that Conceptual Amendment 5, as amended, was adopted.

[2:43:14 PM](#)

VICE CHAIR THOMPSON turned the committee's attention back to Amendment 4.

MR. BULLARD, to address members' questions, explained that although AS 09.65.070 already provides immunity to municipal officials with regard to certain discretionary duties, official duties, it's difficult to say how that statute would be interpreted by the court in the context of a municipal official who spends municipal funds out of compliance with the bill's requirements.

REPRESENTATIVE GRUENBERG said he didn't want any such noncompliance by a municipality to result in a municipal official being subject to civil or criminal penalties.

REPRESENTATIVE KELLER said he opposes Amendment 4, surmising that it would remove any responsibility to comply with the bill.

VICE CHAIR THOMPSON offered his belief that Amendment 4 would defeat the purpose of HB 347.

MR. BULLARD, in response to another question, relayed that a violation of AS 15.13 would be a class A misdemeanor.

REPRESENTATIVE GRUENBERG withdrew Amendment 4.

[2:47:29 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 6, labeled 27-LS1396\A.5, Bullard, 4/2/12, which read:

Page 1, line 4, following "**election**":  
Insert "**; and providing for an effective date**"

Page 2, following line 4:  
Insert a new bill section to read:  
"**\* Sec. 3.** This Act takes effect August 29, 2012."

REPRESENTATIVE KELLER objected.

REPRESENTATIVE GRUENBERG explained that under Amendment 6, the effective date of the bill would be the day after the upcoming primary election, and surmised that municipalities could have difficulty complying with the proposed new law any time sooner than that.

REPRESENTATIVE OLSON agreed.

REPRESENTATIVE KELLER removed his objection.

VICE CHAIR THOMPSON, after ascertaining that there were no further objections, announced that Amendment 6 was adopted.

The committee took an at-ease from 2:49 p.m. to 2:50 p.m.

[2:50:52 PM](#)

REPRESENTATIVE KELLER moved to report HB 347, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 347(JUD) was reported from the House Judiciary Standing Committee.

[2:51:23 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:51 p.m.