

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

April 26, 2005

8:06 a.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Vice Chair  
Representative Jim Elkins  
Representative Bob Lynn  
Representative Jay Ramras  
Representative Berta Gardner  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Paul Seaton, Chair

**COMMITTEE CALENDAR**

HOUSE BILL NO. 194

"An Act prohibiting a public officer from taking official action regarding a matter in which the public officer has a significant financial interest; and defining 'official action' for purposes of the chapter generally referred to as the Executive Branch Ethics Act."

- HEARD AND HELD

HOUSE BILL NO. 248

"An Act relating to the exemption from public inspection of certain records and information of public agencies that are compiled in connection with peace or correctional officers."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 194

SHORT TITLE: EXEC. BRANCH ETHICS: FINANCIAL INTERESTS

SPONSOR(S): REPRESENTATIVE(S) GARA

|          |     |                                 |
|----------|-----|---------------------------------|
| 03/03/05 | (H) | READ THE FIRST TIME - REFERRALS |
| 03/03/05 | (H) | STA, JUD                        |
| 04/26/05 | (H) | STA AT 8:00 AM CAPITOL 106      |

BILL: HB 248

SHORT TITLE: PUBLIC RECORDS & POLICE/CORRECT. OFFICERS  
SPONSOR(s): REPRESENTATIVE(s) HAWKER

04/04/05 (H) READ THE FIRST TIME - REFERRALS  
04/04/05 (H) STA, JUD  
04/26/05 (H) STA AT 8:00 AM CAPITOL 106

**WITNESS REGISTER**

REPRESENTATIVE LES GARA  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Testified as sponsor of HB 194.

MYRL THOMPSON  
Wasilla, Alaska  
POSITION STATEMENT: Testified on behalf of himself during the hearing on HB 194.

REPRESENTATIVE MIKE HAWKER  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 248, as sponsor.

EVERETT ROBBINS  
Anchorage, Alaska  
POSITION STATEMENT: Testified on behalf of the Anchorage Police Department Employees' Association.

JULI LUCKY, Staff  
to Representative Mike Hawker  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Answered a question during the hearing on HB 248, on behalf of Representative Hawker, sponsor.

**ACTION NARRATIVE**

**VICE-CHAIR CARL GATTO** called the House State Affairs Standing Committee meeting to order at 8:06:44 AM. Representatives Elkins, Lynn, Gardner, and Gatto were present at the call to order. Representatives Ramras and Gruenberg arrived as the meeting was in progress.

HB 194-EXEC. BRANCH ETHICS: FINANCIAL INTERESTS

VICE CHAIR GATTO announced that the first order of business was HOUSE BILL NO. 194, "An Act prohibiting a public officer from taking official action regarding a matter in which the public officer has a significant financial interest; and defining 'official action' for purposes of the chapter generally referred to as the Executive Branch Ethics Act."

[8:07:08 AM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, as sponsor of HB 194, stated that the proposed legislation "seeks to close the major loophole that we've been told that we have in our Ethics Act." He reviewed that under current law, executive branch employees cannot act on matters "in which you intend ... or ... know you are going to benefit yourself," with one exception: A person can benefit him/herself if the benefit is what the law calls, "insignificant." He said there have been two legal opinions thus far regarding whether that loophole exists. The one opinion from Bob Bundy - an attorney hired by Governor Frank Murkowski after the dispute involving Attorney General Gregg Renkes - is that \$100,000 in traded stock was insignificant. The other opinion from Tom Daniel - who was hired to represent the personnel board - was issued a few weeks ago to say that that amount was indeed significant.

[8:08:16 AM](#)

REPRESENTATIVE GARA said this is a "gray" issue. He noted that some states define what is significant - in terms of a conflict of interest - as an ownership interest of \$5,000 or more. He said, "That's the bright line that we want to draw." He said he thinks most Alaskans would think \$5,000 is a fair amount. He remarked that many times a legislator will declare a conflict of interest and then be told to vote anyway, and he suggested that may be a subject for a future bill.

[8:11:11 AM](#)

REPRESENTATIVE GARDNER revealed that she owns stock in [General Communication, Inc. (GCI)] and fully expects that at some point a matter relating to GCI will come before the legislature and she will have to vote on it. She said after making a disclosure she would still have to participate. She asked, "What would your bill do if it's passed and somebody has \$5,000 interest in some particular entity?"

[8:11:52 AM](#)

REPRESENTATIVE GARA clarified that there are different acts that regulate the different branches of government. The proposed legislation would just address the executive Ethics Act. He said, "In the executive area you wouldn't vote." He explained, "You should not be on the Oil & Gas Conservation Commission and have an interest in a gas field that you're about to develop, that the ... commission is about to decide upon. You should recuse yourself; you should say, 'Look, I've got a conflict of interest.'" He said a person only violates the law when he/she knows how he/she stands to gain; therefore, mutual funds would not apply, because normally a person doesn't know how a mutual fund is invested.

[8:13:22 AM](#)

REPRESENTATIVE GARA, in response to a question from Representative Gardner, said the phrase "public officer" in the title of the bill does indeed refer only to an officer within the executive branch of government.

[8:14:16 AM](#)

REPRESENTATIVE GARA, in response to a question from Vice Chair Gatto, said it would be important for someone in the executive branch of government to be sensitive to the possibility that he/she may have invested in stock that could benefit from a regulation, for example.

[8:15:20 AM](#)

REPRESENTATIVE LYNN asked Representative Gara if he knows what amounts have been spent on executive investigations.

[8:15:53 AM](#)

REPRESENTATIVE GARA said he doesn't know. He said the governor paid someone in private practice at a rate he guessed would have been approximately \$150 - \$200/hour.

[8:16:33 AM](#)

REPRESENTATIVE LYNN said he may have an amendment related to that subject.

[8:16:44 AM](#)

VICE CHAIR GATTO asked Representative Lynn to hold the amendment.

[8:16:51 AM](#)

REPRESENTATIVE ELKINS asked if an executive could put his/her stocks in a blind trust, where it would be known what the stocks were, but once in the trust the executive would have no management over them.

[8:17:10 AM](#)

REPRESENTATIVE GARA said the first question would apply, which is for the executive branch public officer to ask whether he/she would stand to benefit from that stock. He offered an example whereby a person had a lot of stock in BP that was put into a blind trust. That person happens to be on the negotiating team that is about to hand over the gas pipeline proposal to BP. He/she doesn't know if the BP stock is being traded in the blind trust, but does know it exists, and thus, to be safe, should recuse him/herself or get rid of the blind trust.

[8:20:08 AM](#)

REPRESENTATIVE LYNN suggested that \$5,000 is chicken feed to many and asked if at some point people's hands would be tied so that they couldn't even function.

[8:21:16 AM](#)

REPRESENTATIVE GARA reiterated that the main point would be whether they know that they would be impacted.

REPRESENTATIVE LYNN said it seems difficult to try to get inside someone's head to figure out his/her intent, while using \$5,000 as a marker. He said the amount of money doesn't get to intent.

[8:22:45 AM](#)

REPRESENTATIVE GARA responded, "No, that's just after you find to intent."

[8:23:02 AM](#)

VICE CHAIR GATTO pointed out that if the person didn't make any money, the question would never come up, even if he/she had the intent.

[8:23:22 AM](#)

REPRESENTATIVE GARDNER said she thinks [Vice Chair Gatto] is correct. She referred to [page 1, lines 8-12], which read as follows:

(1) [OFFICER'S] personal or financial interest in the matter and [IS INSIGNIFICANT, OR OF A TYPE THAT IS POSSESSED GENERALLY BY THE PUBLIC OR A LARGE CLASS OF PERSONS TO WHICH THE PUBLIC OFFICER BELONGS; OR (2)] action taken or influence exercised by the public officer would have insignificant or conjectural effect on the matter;

[8:24:00 AM](#)

REPRESENTATIVE GRUENBERG asked if "immediate family member" is defined in law.

[8:24:11 AM](#)

REPRESENTATIVE GARA said other provisions of law refer to family members. He stated his believe that ["family member"] includes: parent, child, or even sibling. He indicated that not knowing that a spouse of sibling owns certain stock is one thing, but "you really don't want to ... transfer your BP stock to your wife or your husband and say that 'now I can go ahead and act on this matter.'"

[8:24:48 AM](#)

REPRESENTATIVE GRUENBERG said he might know that he set up a trust for his child, and that child might benefit from his actions, for example.

[8:26:45 AM](#)

REPRESENTATIVE GARA pointed to the reference of "immediate family member" on page 2, line 3. He talked about the bill being listed in "the negative."

[8:28:41 AM](#)

REPRESENTATIVE GRUENBERG said he's focusing on page 2, line 7, and suggested that Representative Gara consider including a reference to "family member" there.

[8:30:19 AM](#)

REPRESENTATIVE GARA said he doesn't think that's necessary, because the words don't have to be repeated.

[8:30:50 AM](#)

REPRESENTATIVE GRUENBERG indicated that there is a difference between saying "a person" versus "the person"; the former would mean the public officer, but the latter could also include a family member.

[8:31:53 AM](#)

VICE CHAIR GATTO stated his intent to hold the bill in committee.

[8:32:05 AM](#)

REPRESENTATIVE ELKINS recommended that the bill be moved on to the House Judiciary Standing Committee to "fight it out over there."

[8:33:06 AM](#)

REPRESENTATIVE LYNN moved Conceptual Amendment 1, which read as follows [original punctuation provided]:

Any state employee convicted of violating a conflict of interest law, may be liable for reimbursement to the state for the cost of the investigation of the complaint, in addition to any other fines imposed by an administrative or judicial process.

[8:33:59 AM](#)

REPRESENTATIVE GARDNER objected to point out that Conceptual Amendment 1 uses the phrase "state employee" while the language in the bill is "public officer".

[8:34:09 AM](#)

REPRESENTATIVE GARDNER moved an amendment to Conceptual Amendment 1, as follows:

Delete "state employee"

Insert "public officer"

VICE CHAIR GATTO asked if there was any objection to the amendment to Conceptual Amendment 1. There being none, the amendment to Conceptual Amendment 1 was adopted.

[8:34:31 AM](#)

REPRESENTATIVE GRUENBERG stated his support of Conceptual Amendment 1 [as amended]. He asked Representative Gara if the word "convicted" is the appropriate word to use.

[8:34:59 AM](#)

REPRESENTATIVE GARA said he thinks it's a fair not to impose a penalty on the person unless it's clear he/she "did something wrong."

[8:35:44 AM](#)

REPRESENTATIVE GRUENBERG asked if the term "investigation" would also include prosecution.

[8:35:55 AM](#)

REPRESENTATIVE GARA responded, "If I were a judge I would say it did."

[8:36:13 AM](#)

REPRESENTATIVE GRUENBERG asked if "any other fines" would be broad enough. He mentioned civil penalties.

[8:36:31 AM](#)

REPRESENTATIVE GARA stated that a penalty is a fine.

[8:36:39 AM](#)

REPRESENTATIVE GARDNER withdrew her objection [to Conceptual Amendment 1, as amended].

[8:36:49 AM](#)

VICE CHAIR GATTO asked if there was any further objection [to Conceptual Amendment 1, as amended]. There being none, it was so ordered.

8:37:10 AM

REPRESENTATIVE RAMRAS moved Amendment 2, as follows:

Page 2, line 9:  
Delete "\$5,000"  
Insert "\$50,000"

REPRESENTATIVE RAMRAS said he thinks there is "a significant problem with attracting a high-quality talent to the executive branch, as well as other parts of government." He stated that \$5,000 would equal less than 100 shares of many publicly traded companies.

8:37:43 AM

REPRESENTATIVE GARA said everyone is focusing on shares; however, the publicly traded Wall Street company is the least important of the possible violations. He said the real focus is on the smaller companies where "a legislative act would have a real bump on that company's value." He offered an example. He said he thinks \$50,000 is a bit "out."

8:40:01 AM

REPRESENTATIVE RAMRAS replied that he does not read any language regarding large versus small companies in the bill. He reiterated that he wants to attract high quality people to the executive branch. He described the amount of \$5,000 as "an ever-shrinking sum of money," and keeping that amount in the bill as "a little bit short-sided."

8:40:58 AM

REPRESENTATIVE GRUENBERG said he tends to agree that \$5,000 is too low, but he said he thinks that \$50,000 is too high. "Public official" can be anybody. He suggested that another figure may be more appropriate.

8:42:00 AM

REPRESENTATIVE GARA said many states use either a \$5,000 or \$10,000 limit. He said, "Frankly, the states are all over the map, which is why Mr. Bundy had a hard time figuring out how to interpret Alaska law, unless we came up with a bright line." He

indicated that he would have not problem if the amount were \$10,000. He explained:

Whether the company is huge or not huge has an impact to the answer on that first question. The first question is: Did you do it knowing it was going to improve your financial position? And if it's a huge company and you're working on small matter ..., nobody can say that you knew that was going to have an impact on your financial position. ... But, if it's a small company, in that your action really involves its only big business deal in the last year, [it's] a whole different question.

[8:43:10 AM](#)

VICE CHAIR GATTO offered an example in which a company with a contract for a huge job may not actually make any money. [Regarding Amendment 2] he said, "I sort of support it, because it's going to be very difficult, without a very significant investigation, to determine that a person has indeed knowingly entered into an agreement to direct legislation so they can make money. And then, the question is, "How much money?"

[8:45:28 AM](#)

REPRESENTATIVE GARDNER objected to Amendment 2.

[8:45:35 AM](#)

REPRESENTATIVE GRUENBERG also objected to Amendment 2.

[8:45:42 AM](#)

REPRESENTATIVE LYNN said he agrees that it's crucial to attract high talent to fill public offices, but he suggested that it may be more crucial to attract people with high ethics. He stated, "No dollar amount can make somebody ethical that's not ethical; nothing we write here can work magic ..., it can only hold people accountable." He said he doesn't know what the magic dollar figure would be. He posited that the committee would have to pick a number that's both reasonable and practical, and he said \$50,000 seems far too high an amount. He said he might agree to \$10,000.

[8:47:06 AM](#)

REPRESENTATIVE ELKINS asked, "How far down in the executive branch does 'public officer' or 'official' go?"

[8:47:18 AM](#)

VICE CHAIR GATTO noted that Representative Elkins' question delves into the entire bill, not just Amendment 2; however, he said he would allow it.

[8:47:37 AM](#)

REPRESENTATIVE GARA answered:

It applies to all executive branch employees, but remember, you're only forbidden from doing things where you know that your action is going to cause you a financial gain.

REPRESENTATIVE GARA said it's only those in the higher level of public office who would have the opportunity to do things that would cause them financial gain. He said Mr. Bundy recommended a \$10,000 limit. He said he knows there was "a lot of controversy over ... his role in this," but he said he thinks Mr. Bundy "deserves all the credit in the world" for working hard on the issue.

REPRESENTATIVE GRUENBERG said he would support the amount of \$10,000.

[8:49:29 AM](#)

REPRESENTATIVE LYNN moved an amendment to Amendment 2, to change "\$50,000" to "\$10,000".

[8:50:36 AM](#)

REPRESENTATIVE RAMRAS [objected] to the amendment to Amendment 2.

[8:50:52 AM](#)

REPRESENTATIVE ELKINS said he thinks the people being targeted are in higher executive public offices; therefore, a higher amount of \$40,000 to \$50,000 is appropriate.

[8:51:18 AM](#)

[A roll call vote was begun; however, there was an interruption to request clarification mid-way, which voided the roll call.]

A roll call vote was taken. Representatives Gruenberg, Gatto, Lynn, and Gardner voted in favor of the amendment to Amendment 2. Representatives Elkins and Ramras voted against it. Therefore, the amendment to Amendment 2 passed by a vote of 4-2.

[8:53:09 AM](#)

REPRESENTATIVE RAMRAS withdrew Amendment 2 [as amended].

[8:53:52 AM](#)

REPRESENTATIVE RAMRAS moved Amendment 3, as follows:

Page 2, line 9:  
Delete "\$5,000"  
Insert "\$40,000"

[8:54:05 AM](#)

REPRESENTATIVE GRUENBERG objected.

A roll call vote was taken. Representatives Elkins and Ramras voted in favor of Amendment 3. Representatives Gatto, Lynn, Gardner, and Gruenberg voted against it. Therefore, Amendment 3 failed by a vote of 2-4.

[8:55:15 AM](#)

REPRESENTATIVE GRUENBERG said sometimes several managed funds may aggregate to a little more than \$10,000, particularly with inflation. He suggested \$15,000.

[8:56:01 AM](#)

REPRESENTATIVE GARA reiterated that he doesn't think the managed fund has a bearing on the bill.

[8:56:19 AM](#)

REPRESENTATIVE GRUENBERG clarified that he is not talking about a mutual fund, but rather a managed account which may include 30-40 stocks. He said an individual stock may well be worth more than \$10,000.

[8:56:38 AM](#)

VICE CHAIR GATTO proffered:

I think what he's referring to is: Let's say he hires me to manage all of his assets. And he has this asset, and I'm just trying to make him a good dollar. It could be my decision that says, "I know this guy's going to be able to vote on something and ... he owns a compelling share." That's different than a mutual fund where nobody knows who he is.

[8:57:01 AM](#)

REPRESENTATIVE GRUENBERG responded, "That's exactly my concern."

[8:57:25 AM](#)

REPRESENTATIVE GARA responded:

I don't know how to say this any more clearly. ... If ... he's managing a portfolio of very largely traded companies, you're not going to violate that first prong of the law. The first prong of the law is: Is what you're doing in your public capacity going to make you money on that stock? I can't imagine that there's anything that is going to make you money on a publicly traded large, large, large company when you make a decision like that. And so, that's why, in the history of the Ethics Act, when people have probably owned \$5,000- or \$10,000-worth of a stock, nobody's ever prosecuted them for it. It's the distinction between that and a smaller company where the thing you're working on is their big deal for the year. That's a big difference.

[8:58:26 AM](#)

REPRESENTATIVE GRUENBERG moved Amendment 4, as follows:

Page 2, line 9:  
Delete "\$5,000"  
Insert "\$10,000"

The committee took an at-ease from [8:59:37 AM](#) to [9:00:59 AM](#).

[9:01:42 AM](#)

REPRESENTATIVE GRUENBERG restated Amendment 4.

[9:02:03 AM](#)

REPRESENTATIVE RAMRAS objected to Amendment 4.

REPRESENTATIVE RAMRAS moved an amendment to Amendment 4, to change "\$10,000" to "\$35,000".

VICE CHAIR GATTO objected to the amendment to Amendment 4.

A roll call vote was taken. Representatives Elkins and Ramras voted in favor of the amendment to Amendment 4. Representatives Lynn, Gardner, Gruenberg, and Gatto voted against it. Therefore, the amendment to Amendment 4 failed by a vote of 2-4.

[9:03:37 AM](#)

REPRESENTATIVE RAMRAS maintained his objection to Amendment 4. He said that if \$10,000 is too low now, ten years from now, with inflation, it really will be too low. He reiterated his previous comments regarding attracting high quality talent.

[9:05:36 AM](#)

REPRESENTATIVE LYNN reiterated that he agrees there is a need to attract and retain talented [public officers], but said, "Talent needs to include ... ethics."

[9:05:52 AM](#)

REPRESENTATIVE GARDNER concurred [with Representative Lynn]. She emphasized the importance of discouraging participation out of self-interest, and encouraging participation for the public good.

[9:06:12 AM](#)

VICE CHAIR GATTO stressed the importance of counting public perception, which currently may be that "we might be ... straying a little bit beyond the bar."

[9:06:31 AM](#)

REPRESENTATIVE LYNN stated his support of [Amendment 4].

[9:06:56 AM](#)

A roll call vote was taken. Representatives Lynn, Gardner, Gruenberg, and Gatto voted in favor of Amendment 4. Representatives Ramras and Elkins voted against it. Therefore, Amendment 4 passed by a vote of 4-2.

[9:08:04 AM](#)

REPRESENTATIVE GARA made it clear that he would have preferred that the amount had stayed at \$5,000; however, since it did not, he recommended deleting the language following "5,000" on lines 9 and 10.

[9:09:24 AM](#)

VICE CHAIR GATTO moved Amendment 5, as follows:

Page 2, line 9:

Between "\$5,000" and "."

Delete "or one percent of the total value of the business, whichever is less"

[9:10:09 AM](#)

REPRESENTATIVE RAMRAS objected to Amendment 5 and the bill in general, using the expression that "it stinks."

[9:10:25 AM](#)

REPRESENTATIVE GRUENBERG, as a point of order, asked Representative Ramras to rephrase his opinion.

[9:10:51 AM](#)

REPRESENTATIVE RAMRAS substituted the word "stinks" to opine that the bill is, although well-intentioned, "poorly constructed, ... narrow, and short-sighted."

[9:11:17 AM](#)

REPRESENTATIVE LYNN said he thinks any committee member has an obligation to speak freely. He said, "If we think something stinks - rightly or wrongly - I think we ought to be able to say it. Last I heard, we still have the First Amendment."

VICE CHAIR GATTO indicated that that is true; however, any individual is able to respond to a statement. He said he thinks Representative Gruenberg's comment was just as appropriate. He redirected the committee's focus to Amendment 5.

[9:11:31 AM](#)

REPRESENTATIVE RAMRAS withdrew his objection to Amendment 5.

VICE CHAIR GATTO asked if there was any further objection to Amendment 5. There being none, Amendment 5 was adopted.

[9:12:26 AM](#)

MYRL THOMPSON, testifying on behalf of himself, shared the advise of his father to the committee: "If you're ever in a position of power, and something comes up that you're going to make a decision on, and it benefits you, the thing to do is to recuse yourself. Or, if you can't recuse yourself, vote against ... your benefit." He said this bill should be "a no-brainer," especially considering "what we've been through." He spoke of former Attorney General Gregg Renkes. He indicated that he witnessed Mr. Renkes pushing for something that would directly benefit himself, which Mr. Thompson said was wrong. He said the general public has a huge distrust in the public process, and "this is just a simple way of addressing that." He stated that there's no equating the amount of money somebody makes with getting good people into positions. He echoed Representative Lynn's comments about focusing on getting ethical people to work. He said, "You guys need to get the trust of the public back behind you."

[9:14:26 AM](#)

VICE CHAIR GATTO said he thinks the use of the phrase "you guys" is disrespectful.

[9:14:41 AM](#)

MR. THOMPSON said he meant no disrespect. He continued with his testimony. He revealed that in the area where he lives, a poll was conducted and 87 percent of the people polled said ethics are needed. He said it's because of "the Renkes issue." He concluded, "This is just a cut and dry problem."

[9:15:42 AM](#)

REPRESENTATIVE RAMRAS said he shares Mr. Thompson's point of view that the attorney general's behavior was reprehensible. Notwithstanding that, he spoke of assigning "a specific incremental value." He asked, "Do you really think that that's a viable mechanism for ascertaining ethics in government, or does it become an impediment to exclude certain people that have been successful in the private sector from ... going into the public arena?"

[9:16:33 AM](#)

MR. THOMPSON said he doesn't really care how much stock somebody may own; all he/she has to do is "recuse yourself from the process if something you own is going to benefit you, with your being in charge of it."

[9:16:51 AM](#)

REPRESENTATIVE RAMRAS said recusal is not the gist of the bill. He said the bill would put up a threshold that says, "If you have accumulated this much value, you can't participate." He said it's discrimination. He said he finds it an offensive way to deal with the ethics issue.

[9:18:09 AM](#)

MR. THOMPSON said he takes exception to the practice on the House floor where a Representative recuses him/herself and is then made to vote anyway. He said he thinks that needs to be changed. He said, "The matter over on the administration side is that they're not recusing [themselves], and therefore this limit needs to be set. I mean, it's the public trust."

[9:18:44 AM](#)

VICE CHAIR GATTO said the activities on the House floor may be a subject for a different bill.

[9:18:54 AM](#)

REPRESENTATIVE GRUENBERG stated his appreciation for the care and interest Mr. Thompson has taken in the legislature this year.

VICE CHAIR GATTO ascertained that there was no one else to testify.

9:19:34 AM

REPRESENTATIVE LYNN stated his support in holding the bill. He stated for the record: "We worry about a budget deficit, and we also need to be worrying about a trust deficit." He offered further details.

9:20:23 AM

VICE CHAIR GATTO [announced that HB 194 was heard and held].

HB 248-PUBLIC RECORDS & POLICE/CORRECT. OFFICERS

VICE CHAIR GATTO announced that the last order of business was HOUSE BILL NO. 248, "An Act relating to the exemption from public inspection of certain records and information of public agencies that are compiled in connection with peace or correctional officers."

9:21:30 AM

REPRESENTATIVE GARDNER moved to adopt the committee substitute (CS) for HB 248, Version 24-LS0768\Y, Bannister, 4/11/05, as a work draft. There being no objection, Version Y was before the committee.

9:22:01 AM

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, presented HB 248, as sponsor. He explained the purpose of the bill by paraphrasing a portion of the sponsor statement, which read:

House Bill 248 will protect law enforcement officers from being targeted for frivolous lawsuits. Currently, a person can request a copy of a peace officer's Internal Affairs (IA) files through the Freedom of Information Act.

REPRESENTATIVE HAWKER directed attention to page 1, [beginning on] line 6 of Version Y, which read:

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

REPRESENTATIVE HAWKER noted there are a list of exceptions following that sentence, and the sixth exception read:

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

REPRESENTATIVE HAWKER pointed out that after the sixth exception, there is a list "which puts a moderator on the blanket exemption for law enforcement restrictions." Version Y would add a moderator with [subparagraph (H)], which read as follows:

**(H) would disclose the contents of an internal investigation or proceeding of a public agency, except to the extent a court orders otherwise;**

[9:25:22 AM](#)

REPRESENTATIVE HAWKER stated that the change to the language would not in any way impede the right of citizens to charge individual officers if they have truly been mistreated. He said, "If there is an issue, an officer of the court ... can review the internal records and determine if they are relevant and appropriate."

[9:26:35 AM](#)

REPRESENTATIVE RAMRAS expressed his appreciation to Representative Hawker for bringing forward the bill. He said he would like to hear about the pressure that law enforcement officers find themselves under "from the less savory characters that attack them and some of the defense attorney's that go after them."

[9:27:09 AM](#)

REPRESENTATIVE HAWKERS deferred to a police officer whose testimony is forthcoming.

[9:27:45 AM](#)

REPRESENTATIVE GRUENBERG stated, "There's a body of law that's growing up under the Legislative Ethics Act, and I'm wondering if this will overturn any of that body of law."

[9:28:50 AM](#)

REPRESENTATIVE HAWKER said he doesn't know, but he suggested that the question would be: "To what degree would ethics information be compiled for law enforcement, rather than ... legislative compliance?"

[9:29:29 AM](#)

REPRESENTATIVE GRUENBERG stated for the record that he does not think that "this amendment" is intended to apply to the Legislative Ethics Act.

[9:30:43 AM](#)

REPRESENTATIVE HAWKER, in response to a question from Vice Chair Gatto, said [HB 248] "would not apply to those of us running for public office," but he said he believes there is similar legislation surfacing that would address that issue.

[9:31:17 AM](#)

REPRESENTATIVE GARDNER asked what the mechanism would be by which somebody would find out if a member of the public had a legitimate concern.

[9:31:48 AM](#)

REPRESENTATIVE HAWKER responded, "We're carving out, specifically, the exception in this statute that these internal investigations and (indisc. - overlapping voices) agency proceedings are protecting, except to the extent that a court orders otherwise."

[9:32:27 AM](#)

REPRESENTATIVE GRUENBERG said he doesn't see a definition of "law enforcement purposes" in AS 40.25.100-220. He said he would like to work with Representative Hawker to determine if a definition is necessary.

[9:33:50 AM](#)

REPRESENTATIVE HAWKER said he would argue that the House State Affairs Standing Committee role is to get to a public interest finding, and the House Judiciary Standing Committee can "craft the best language in the legal context."

[9:35:19 AM](#)

REPRESENTATIVE GRUENBERG, in response to a question from Vice Chair Gatto regarding the language on page 2, line 5, explained that "production of document" is a term of art in law, and the method of discovery is called, "a motion to produce."

[9:36:11 AM](#)

REPRESENTATIVE HAWKER, in response to a question from Vice Chair Gatto, said he is not prepared to address paragraphs in the bill other than paragraph (6); they are only listed as existing statute in order to propose the amendment to the bill.

[9:38:05 AM](#)

EVERETT ROBBINS, testifying on behalf of the Anchorage Police Department Employees' Association, noted that he is a police officer in Anchorage, Alaska. He said [Version Y] would prevent opportunists from getting into police records to figure out "whether or not there's a lawsuit there." He noted that a traffic officer, over the course of a year, will probably generate a number of complaints, most of which are going to be unsubstantiated. However, there will be a trail of written documentation of those complaints that someone could follow. He said, "We're not trying to prevent those files from ever being opened." He added that if a person thinks he/she has been wrongly arrested or detained and sues the police department, a judge can look at the records "in camera" to "see if those records are pertinent to move over to trial basis." He concluded, "We don't want to take away anybody's rights."

[9:42:03 AM](#)

JULI LUCKY, Staff to Representative Mike Hawker, Alaska State Legislature, on behalf of Representative Hawker, sponsor, explained that "in camera" means in [the judge's] chambers.

[9:43:52 AM](#)

MR. ROBBINS, in response to a question from Representative Gardner, offered his understanding that there are three conclusions possible: sustained, "unsustained," or unfounded. In response to a follow-up question from Representative Gardner, he said an "unsustained" complaint is one that is dropped, while an unfounded complaint is one that is baseless or false. He reviewed the process by which a judge would make a decision in camera.

[9:46:17 AM](#)

REPRESENTATIVE GARDNER said, "So, essentially what you're trying to do is avoid fishing expeditions which might result in a suit."

[9:46:28 AM](#)

MR. ROBINS answered in the affirmative.

[9:46:54 AM](#)

VICE CHAIR GATTO closed public testimony.

REPRESENTATIVE LYNN stated, "We have an obligation to do what we can to protect the officers who try to protect us."

REPRESENTATIVE GARDNER stated that she is glad to see that there is recourse for those individuals who may truly be wronged and have grounds for a lawsuit.

[9:47:09 AM](#)

[HB 248 was heard and held.]

**ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [9:47:19 AM](#).