

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

January 31, 2006

8:04 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 186(JUD)

"An Act relating to the Alaska Executive Branch Ethics Act; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 160

"An Act limiting the use of money of the state and its political subdivisions to affect an election."

- HEARD AND HELD

HOUSE BILL NO. 347

"An Act relating to mandatory motor vehicle insurance, license suspensions, and notices relating to motor vehicles and driver's licenses."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 186

SHORT TITLE: EXECUTIVE BRANCH ETHICS

SPONSOR(S): SENATOR(S) SEEKINS

04/22/05 (S) READ THE FIRST TIME - REFERRALS

04/22/05 (S) STA, JUD
 04/26/05 (S) STA AT 3:30 PM BELTZ 211
 04/26/05 (S) Moved CSSB 186(STA) Out of Committee
 04/26/05 (S) MINUTE(STA)
 04/27/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/27/05 (S) Scheduled But Not Heard
 04/28/05 (S) STA RPT CS 3NR 1DNP
 NEW TITLE
 04/28/05 (S) NR: THERRIAULT, WAGONER, HUGGINS
 04/28/05 (S) DNP: ELTON
 04/28/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/28/05 (S) Scheduled But Not Heard
 04/29/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/29/05 (S) LEGISLATIVE ETHICS/MEETINGS
 04/30/05 (S) JUD AT 9:00 AM BUTROVICH 205
 04/30/05 (S) Scheduled But Not Heard
 05/01/05 (S) JUD AT 4:00 PM BUTROVICH 205
 05/01/05 (S) Moved CSSB 186(JUD) Out of Committee
 05/01/05 (S) MINUTE(JUD)
 05/02/05 (S) JUD RPT CS FORTHCOMING 1DP 1DNP 2NR
 1AM
 05/02/05 (S) DP: SEEKINS
 05/02/05 (S) DNP: FRENCH
 05/02/05 (S) NR: THERRIAULT, HUGGINS
 05/02/05 (S) AM: GUESS
 05/02/05 (S) JUD AT 8:30 AM BUTROVICH 205
 05/02/05 (S) Moved Out of Committee 5/1/05
 05/02/05 (S) MINUTE(JUD)
 05/03/05 (S) JUD CS RECEIVED
 NEW TITLE
 05/04/05 (S) RETURNED TO RLS COMMITTEE
 05/08/05 (S) TRANSMITTED TO (H)
 05/08/05 (S) VERSION: CSSB 186(JUD)
 05/09/05 (H) READ THE FIRST TIME - REFERRALS
 05/09/05 (H) STA, JUD
 01/31/06 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 160

SHORT TITLE: PUBLIC FUNDS & BALLOT PROPS/CANDIDATES
 SPONSOR(s): REPRESENTATIVE(s) STOLTZE

02/18/05 (H) READ THE FIRST TIME - REFERRALS
 02/18/05 (H) CRA, STA
 03/17/05 (H) CRA AT 8:00 AM CAPITOL 124
 03/17/05 (H) Heard & Held
 03/17/05 (H) MINUTE(CRA)
 04/07/05 (H) CRA AT 8:00 AM CAPITOL 124

04/07/05 (H) Moved CSHB 160(CRA) Out of Committee
 04/07/05 (H) MINUTE(CRA)
 04/08/05 (H) CRA RPT CS(CRA) 2DP 3NR
 04/08/05 (H) DP: NEUMAN, THOMAS;
 04/08/05 (H) NR: SALMON, LEDOUX, OLSON
 04/12/05 (H) STA AT 8:00 AM CAPITOL 106
 04/12/05 (H) Scheduled But Not Heard
 04/14/05 (H) STA AT 8:00 AM CAPITOL 106
 04/14/05 (H) Heard & Held
 04/14/05 (H) MINUTE(STA)
 01/31/06 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 347

SHORT TITLE: MOTOR VEHICLE INSURANCE & NOTICE
 SPONSOR(S): REPRESENTATIVE(S) GARA, LYNN

01/09/06 (H) PREFILE RELEASED 1/6/06
 01/09/06 (H) READ THE FIRST TIME - REFERRALS
 01/09/06 (H) STA, JUD
 01/31/06 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

SENATOR RALPH SEEKINS
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Testified as sponsor of SB 186.

MYRL THOMPSON
 Wasilla, Alaska
 POSITION STATEMENT: Testified on behalf of himself during the hearing on SB 186.

REPRESENTATIVE LES GARA
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Offered information regarding blind trusts during the hearing on SB 186; introduced HB 347, as sponsor.

BEN MULLIGAN, Staff
 to Representative Bill Stoltze
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: On behalf of Representative Stoltze, sponsor of HB 160, addressed questions that the committee had presented last year during the introduction of the bill.

BROOKE MILES, Executive Director
Alaska Public Offices Commission (APOC)
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 160.

LARRY WIGET, Director
Government Relations
Anchorage School District
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the district during the hearing on HB 160 in support of allowing school districts to provide the public with nonpartisan information regarding a ballot proposition.

KATHY WASSERMAN
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of AML in opposition to HB 160.

DUANE BANNOCK, Director
Division of Motor Vehicles
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered questions on behalf of the Division of Motor Vehicles during the hearing on HB 347.

TRICIA MOEN
Port Orchard, Washington

POSITION STATEMENT: Testified on behalf of herself during the hearing on HB 347.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House State Affairs Standing Committee meeting to order at [8:04:20 AM](#). Present at the call to order were Representatives Gatto, Elkins, Gardner, and Seaton. Representatives Lynn, Ramras, and Gruenberg arrived as the meeting was in progress.

SB 186-EXECUTIVE BRANCH ETHICS

[Contains brief mention of SB 187.]

[8:05:28 AM](#)

CHAIR SEATON announced that the first order of business was CS FOR SENATE BILL NO. 186(JUD), "An Act relating to the Alaska Executive Branch Ethics Act; and providing for an effective date."

[8:05:31 AM](#)

SENATOR RALPH SEEKINS, Alaska State Legislature, as sponsor of SB 186, said there are two bills addressing the Ethics Act: SB 186 and SB 187. The former addresses the executive branch Ethics Act [while the latter addresses ethics issues surrounding legislators and all legislative employees]. Senator Seekins presented a committee substitute (CS) for SB 186, Version 24-LS0874\X, Wayne, 1/30/06.

[8:07:03 AM](#)

CHAIR SEATON noted that the committee had just received Version X and asked Senator Seekins to compare it to Version S.

[8:07:15 AM](#)

SENATOR SEEKINS reviewed that last year the matter [that brought this issue to light] was in regard to State Attorney General Greg Renkes. The Senate reviewed current statutes and concluded that there was not a measurable violation level or clear bright line beyond which someone in the administration would be in violation of certain portions of the Ethics Act. He said there were other areas of the Ethics Act that were unclear, as well, and he was charged with looking at both the administrative and legislative Ethics Acts and to "go through them so that we didn't have to go through them again."

SENATOR SEEKINS noted that when a complaint is filed, there are confidentiality requirements; however, he indicated that there are no clear lines as to those requirements. He stated that one consideration was if there was to be a confidentiality requirement, it would be reasonable to pattern it after the grand jury process, which is that the matter remains confidential until there is a finding of probable cause. At the point of probable cause, where it's clear to the investigating body that there has been a violation and further formal action should be taken, then everything becomes public.

[8:10:32 AM](#)

SENATOR SEEKINS said other states' systems were observed to see what they do if there is a violation of confidentiality. He said, "If we're going to have a confidentiality requirement, then there should be a penalty for someone who breaks it." He noted that in some states, breaking the confidentiality requirement results in a felony, in others a misdemeanor, and in still others, a civil fine. The proposed legislation would make breaking the confidentiality a civil fine, "regardless of what you may read in various publications," he said. Senator Seekins said the desire was to make this intent more clear. He highlighted the new language [beginning on page 7, line 12, through page 8, line 15, which read as follows:

The attorney general, complainant, subject of the complaint, and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation or proceeding. In a proceeding conducted or an action taken under this chapter,

(1) a person may not disclose the filing of a complaint, its contents, or related matters until after the personnel board makes a finding of probable cause or unless the disclosure is made while the person is

(A) communicating with personnel board members or staff;

(B) seeking advice from an attorney; or

(C) lawfully representing the person or the person's client in defense of a complaint that has been filed and the disclosure is necessary;

(2) personnel board proceedings related to a complaint that has been filed are closed to all persons except board members and staff until after the board makes a finding of probable cause unless

(A) the board permits otherwise after finding that fairness to the subject of the complaint may be advanced by the permission; or

(B) the subject of the complaint waives confidentiality;

(3) the complaint document and each related record are confidential and are not available for public inspection unless

(A) the personnel board makes a finding of probable cause; or

(B) the subject of the complaint waives confidentiality;

(4) under this section, if the subject of a complaint waives confidentiality of a proceeding or a document, the entire proceeding is open to the public, and the entire document is available for public inspection;

(5) the personnel board shall make appropriate efforts to provide notice of the confidentiality requirements of this section;

(6) this section governs confidentiality only for complaints filed under this chapter and does not alter confidentiality or the rights of any person for matters not connected with this chapter;

(7) this subsection does not prevent a person from obtaining directly from a state agency a public record of that agency that has also been made available in connection with an investigation or a formal proceeding under AS 39.52.310-39.52.390.

SENATOR SEEKINS said the new language clarifies that there is a timeframe of confidentiality that must be observed. He said, "This is exactly the same requirement of confidentiality that is required of the personnel board and of the investigators that are hired by the personnel board." The bill would bring the person bringing the complaint into the same requirements of confidentiality required of those doing the investigation. If there is a finding of probable cause, that person is relieved of the "burden of confidentiality." Senator Seekins said it's not uncommon for someone to bring an ethics complaint against another person "simply to get at them." For example, he said two people may be competing for the same job and, by filing an ethics complaint, the one person can put a black mark against the other "for the period of time that it takes to be able to consider who gets the promotion." He offered other examples. He asked the committee to consider what the impression is upon people when they read a charge against someone, even if that charge ends up being dismissed. He offered an example involving Commissioner Joel Gilbertson that he said could have been avoided had a period of confidentiality been observed.

[8:17:40 AM](#)

SENATOR SEEKINS noted that a "wrongful use of complaint" section was added beginning on page 8, [line 26], which read as follows:

Sec.39.52.352. Wrongful use of complaint. (a) The board shall find there has been wrongful use of an executive branch ethics complaint if it determines, after compliance with due process requirements, including a hearing and a majority vote, that the complainant

(1) shall order the employee to stop engaging in any official action related to the violation;

(2) may order divestiture, establishment of a blind trust for a period of time or under conditions determined appropriate, placement of the financial interest into an investment where the employee does not have management control over the financial interest, restitution, or forfeiture; and

(3) may recommend that the employee's agency take disciplinary action, including dismissal.

SENATOR SEEKINS stated the intent of the bill is not to penalize someone who has a complaint. He said he has read some of the most outrageous statements predicting the bill intent, including that a person bringing a complaint will get fined. He said that is "absolute poppycock." He clarified that what the bill says is that if someone were to misuse the statute, he/she would be in violation of the law. He stated, "All we're asking in the bill is that the person bringing in the complaint [forgoes] the 24-hour news cycle until after there's a finding of probable cause." He said there must be some kind of meaningful penalty when the law is abused.

[8:20:51 AM](#)

SENATOR SEEKINS pointed to the penalty on page 9, line 16: "may impose a civil fine of \$5,000 or less for complainants who are not state employees, current public officers or former public officers." He concluded:

This person can go home and talk to their wife, or their husband, or their best friend, but they can't run to the press; they can't knowingly disclose publicly or cause to be made public the fact that there's a complaint or the facts of the complaint. They can still go down on the corner and waive a sign and say the governor, lieutenant governor, the attorney general, or whoever, is a crook and has violated all kinds of ethics laws; [they] just cannot talk about the specifics of the complaint, or that the

complaint has been filed until after there's a finding of probable cause.

[8:22:37 AM](#)

SENATOR SEEKINS, in response to a question from Chair Seaton, reviewed the areas in Version X where new language was added.

[8:26:09 AM](#)

REPRESENTATIVE GARDNER noted that, on page 7, beginning on line [17] of Version S, a provision for intent to file a claim is included that is not included in Version X. The provision in Version S read as follows:

A person may not disclose to any other person the filing of or intention to file a complaint under AS 39.52.310 except to a person assisting in the filing of the complaint.

[8:26:43 AM](#)

SENATOR SEEKINS responded that the intent to file a complaint comes right from Oklahoma law. The original intent of the language was to prevent a person from notifying the press on his/her way to file the complaint so that the press could get a good story. He said the new language in Version X would start the confidentiality requirement at the point of filing the complaint, which he said is a better starting point.

[8:28:36 AM](#)

CHAIR SEATON stated his understanding that Version X "removes the prohibition on the disclosure of intent to file a complaint."

[8:28:45 AM](#)

SENATOR SEEKINS clarified that the new language was on page 7, [beginning on] line 12, and read as follows:

The attorney general, **complainant, subject of the complaint,** and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation **or preceding.**

[8:29:36 AM](#)

REPRESENTATIVE GARDNER offered an example in which she may have concerns about the improper conduct of someone and express an opinion that a complaint should be filed. She asked if she would be in violation of the bill's provisions.

[8:29:56 AM](#)

SENATOR SEEKINS answered no, and he added that she "wouldn't have been under the old either."

[8:30:09 AM](#)

REPRESENTATIVE GATTO offered an example in which someone talks about someone else who may be heading downtown to file a complaint, and he asked if that would be a violation.

[8:30:44 AM](#)

SENATOR SEEKINS said no. He reiterated that the confidentiality requirement begins at the point of filing a complaint. In response to a question from Chair Seaton, he said that means that if someone says they are going to file and then they don't, that person would not have violated the provision.

REPRESENTATIVE GRUENBERG questioned that there might be a circumstance where a person would want to announce that he/she has been exonerated, but could not do so because the board had not made a finding of probable cause.

SENATOR SEEKINS explained that the minute that person wants to make the complaint public, the entire record becomes public.

[8:32:56 AM](#)

REPRESENTATIVE GRUENBERG suggested that a complainant, after hearing that there was no finding of probable cause, may want to make that public, but could not. He questioned if the complainant could do so with the permission of the board.

[8:33:51 AM](#)

SENATOR SEEKINS responded that that is a good point. He said he had not thought about that particular scenario. He said he would take a look at that to see if that issue is covered in other statutes.

8:35:47 AM

REPRESENTATIVE LYNN moved to adopt the committee substitute (CS) for SB 186, Version 24-LS0874\X, Wayne, 1/30/06, as a work draft.

8:36:15 AM

REPRESENTATIVE GATTO objected. He said he has not had time to see if the changes are instrumental. He said he trusts Senator Seekins to let the committee know if there have been any changes of substance.

8:37:27 AM

CHAIR SEATON explained that the committee has been talking about Version X and he wants to make sure it is on the table as an item for discussion before too much longer. He told Representative Gatto that it would be possible to revert back to Version S at a later date.

8:37:37 AM

REPRESENTATIVE GATTO said, "With that in mind I remove my objection."

CHAIR SEATON announced that there being no further objection, Version X was before the committee.

8:37:48 AM

REPRESENTATIVE GRUENBERG directed attention to page 2, line 4, and asked the sponsor if he would be amenable to adding "or stock options" after the word "stock".

SENATOR SEEKINS said he would have no problem with the addition of that language.

8:39:28 AM

REPRESENTATIVE GRUENBERG noted that the judiciary branch of government has its own Special Ethics for the Council on Judicial Conduct and the Legislature has the Select Committee on Legislative Ethics; however, the executive branch does not have a specific ethics board. He asked Senator Seekins what he would think about establishing an independent executive ethics board

that is set up similarly to the legislative ethics board and with similar functions.

[8:39:49 AM](#)

SENATOR SEEKINS said he has no objection to that idea; however, he said he would have to give it careful consideration, because it would take time to work out.

[8:41:10 AM](#)

REPRESENTATIVE GRUENBERG directed attention to page 9, line 3, which read as follows:

(3) knowingly and intentionally made a disclosure prohibited by AS 39.52.340.

REPRESENTATIVE GRUENBERG stated his belief that in Title 11, as a matter of law, the term "intentionally" requires knowledge also.

[8:41:58 AM](#)

SENATOR SEEKINS said he thinks Representative Gruenberg is right, but the language was drafted that way by Legislative Legal and Research Services to make it clear for the novice.

[8:42:58 AM](#)

REPRESENTATIVE GARDNER offered an example in which one person faced the up to \$5,000 fine to disclose the other person's egregiousness. The other person turns out to be guilty and although he/she could end up with any of the following - reprimand, demotion, suspension, and a possible financial penalty - only ends up with a reprimand. Representative Gardner asked, "Does that seem like a reasonable balance?"

[8:43:46 AM](#)

SENATOR SEEKINS opined that if a person intentionally misuses the law, then there should be a penalty.

[8:44:11 AM](#)

CHAIR SEATON interpreted that what Representative Gardner was saying was that the person who correctly identified an ethics

violation could be in greater jeopardy by revealing that there was a conflict, even though it was proven correct in the end.

[8:45:13 AM](#)

SENATOR SEEKINS said the court would have the discretion of how much of a penalty, if any, to impose. He said there should be a penalty for someone who misuses the law "if they don't care."

[8:46:19 AM](#)

CHAIR SEATON said he thinks the question is whether it was a misuse of the law if someone was found guilty.

[8:46:32 AM](#)

SENATOR SEEKINS answered that it is a misuse if the person violated the procedure of the law.

[8:46:43 AM](#)

REPRESENTATIVE RAMRAS, regarding Representative Gardner's previous example, said, "It doesn't feel like the rights of that member of the executive branch would be protected even if it were discovered ... later that this executive branch employee did violate the law." He said he is more interested in protecting the rights of that individual.

[8:48:14 AM](#)

SENATOR SEEKINS said there are 15,000 state employees, all of whom are subject to this Ethics Act. He stated, "We're just trying to protect that period of time, to allow the investigators to find out whether there's any basis in fact to the charge. ... And then once ... there's probable cause we want them prosecuted; we don't want anybody skating by." He said Representative Ramras is correct about the issue of protection.

[8:49:49 AM](#)

CHAIR SEATON asked, "If you had \$40,000 of ... stock in your company and you put that in a blind trust, would you know that that stock was in there?"

[8:50:50 AM](#)

SENATOR SEEKINS answered that he absolutely would.

[8:50:57 AM](#)

CHAIR SEATON [referred to language beginning on page 1, line 12], regarding blind trusts. He said, "It would no longer be ... considered a conflict of interest if you rule on things that would affect the value that's in that blind trust." He suggested that if the function of the blind trust is that the trustee does not know what is in it, then perhaps language should be added requiring a trustor of a blind trust to divest and reinvest the money.

[8:52:17 AM](#)

SENATOR SEEKINS responded that that might subject the person who owns the stock to huge income tax penalties. He offered an example. He continued:

I think what we've done is we've said, "You can put it in a mechanism where you have no control; where the trustee, in effect, can sell it whenever they want to, can reinvest it however they want to, with just the reasonable man requirement." Then I think what we do is we put that person out of control of those holdings. Now, that's an option, but it has to be a public option - I mean, everyone now knows that ... that investment is there, that it is being managed by someone other than the state employee, and it gives them an opportunity to still have ... an investment portfolio, but one over which they have no control.

SENATOR SEEKINS said if he owned that type of stock he would simply not get involved with something that could have anything to do with his stock. He stated his understanding that the person with the blind trust receives a quarterly report and that would be the extent of his/her involvement.

[8:54:32 AM](#)

CHAIR SEATON indicated that the trustee knows the amount of the deposit and, because of the quarterly reports, the investments in the trust are really not blind at all, especially if the account is a managed one. He stated, "It seems like the structure of what we've done is we've said that no matter what you have in there, it's now regarded as a nonconflict, even

though you know what's there, ... simply because you can't sell it or buy it. But it could affect the worth of it."

8:55:30 AM

SENATOR SEEKINS answered, "It could, and it could be gone tomorrow." He explained, "This is a common option to avoid conflicts of interest in many states." He continued:

If the governor were to assign you, as the attorney general, to handle a particular project, and your holdings were in an investment mechanism over which you had no control, then I think it would be incumbent upon you to go to your advisor on ethics and say, "Does this accomplish -- keep me out of conflict with the law?" And there'll be a determination made at that point There is the small possibility that you could still have a conflict that you might know about

8:56:52 AM

CHAIR SEATON indicated that he finds the proposed language regarding blind trusts to be at odds with the language on page 2, lines 3-4, restricting a public officer from owning more than one percent of business-related stock, with a value of less than \$10,000. He said the public officer could have \$100,000 in a blind trust as long as someone else has "the sales ability on it."

8:57:26 AM

SENATOR SEEKINS said that the person with the blind trust doesn't know until he/she gets the quarterly report what is or isn't in the trust.

CHAIR SEATON pointed out that in a managed account a person can check his/her account by looking online.

SENATOR SEEKINS said he is trying to find "bookends."

8:58:10 AM

CHAIR SEATON responded that he is trying to find "whether the bookends have one end off."

8:58:22 AM

SENATOR SEEKINS reiterated that the language regarding the blind trust is common.

8:58:38 AM

REPRESENTATIVE GARDNER observed:

Section 18 actually addresses post investigation - it's after a violation has been determined. So, if, as a body, we wanted to eliminate blind trusts as one way of reducing potential conflict of interest, this isn't the place to do it. This is a remedy.

8:59:10 AM

SENATOR SEEKINS replied, "Yeah, as part of the remedy they could force you to put it in ... a nonmanaged account."

8:59:14 AM

CHAIR SEATON asked what the requirement is related to timing and publishing a finding of probable cause.

8:59:32 AM

SENATOR SEEKINS said there is a time frame for the personnel board, and he could find out what it is. In response to a follow-up question from Chair Seaton, he said he doesn't recall whether a finding of probable cause has to be immediately published, but he offered his understanding that "it's in close proximity to that timeframe that it ... becomes public."

9:00:02 AM

CHAIR SEATON said the committee needs that information, because if there is a situation wherein the complainant doesn't immediately know that the probable cause has been found, he/she is still having to remain confidential.

SENATOR SEEKINS, in response to another question from Chair Seaton, said in both Ethics Acts a person cannot knowingly file a false statement, but "it's to the best of your knowledge," he recalled. A complaint on the Ethics Act has to lay out the particulars of the complaint, he said, and has to be signed and "sworn."

[9:02:25 AM](#)

SENATOR SEEKINS, in response to Chair Seaton, confirmed that the fine that is up to \$5,000 is a civil one. He reemphasized that the fine could be zero or any amount up to \$5,000, a point which he indicated that the press continues to ignore. He added, "It is not a \$5,000 fine for going home and telling your wife that you filed a complaint."

[9:03:08 AM](#)

REPRESENTATIVE GARDNER recalled that Senator Seekins had previously stated that a person can disclose to friends, but cannot disclose publicly. She said she is unclear as to when a private disclosure becomes public. For example, if she were to have a group of neighbors over for a barbeque and talk about a disclosure, would that be public?

[9:04:24 AM](#)

CHAIR SEATON suggested that the sponsor could answer that question when he returns to testify on another day.

[9:04:35 AM](#)

REPRESENTATIVE GRUENBERG said Senator Seekins tried to draw a distinction between a public and nonpublic disclosure. He directed attention to page 8, line 21, which states that a person who discloses confidential information is subject to a fine. He said, "It doesn't draw the distinction that you did."

SENATOR SEEKINS said the intent is "public disclosure or cause to be made public," thus he said he would talk to the bill drafter.

REPRESENTATIVE GRUENBERG stated that he is not aware of anything in law that draws a distinction like Senator Seekins is making between something that's "public" and something that's not. He said generally "a disclosure is a disclosure."

SENATOR SEEKINS proffered, "I would not say that the judge is going to fine you for telling your wife ..., but I would advise you not to have everybody over for a barbeque and tell them."

[9:05:56 AM](#)

REPRESENTATIVE GRUENBERG directed attention to Section 16. He mentioned an Alaska Supreme Court case, Baker v. the City of Fairbanks, which ruled that a person is entitled to a jury trial if he/she is charged with a crime that either results in imprisonment, substantial fine, or the loss of a license. He said he realizes "this is not a criminal case," but the person would be subject to a substantial fine. He said the supreme court case was grounded on the Alaska State Constitution "and I'm not sure that it would draw the distinction between civil and criminal in this matter." He offered his understanding that the House Judiciary Standing Committee is considering certain amendments to the Human Rights Act. He mentioned a case in Hawaii. He said:

The question is here whether the person would be entitled to a jury trial on these issues for wrongful disclosure. Secondly, the question is whether they would be entitled to go before a judge, not just as you state on page 9, lines 18-19, to enforce the determination of the board, but for the actual determination itself. ... And third, what is the standard of proof? Because it's not set here what the standard of proof is. And it's a constitutional question, as well as a policy question I'm raising, whether - if you're talking about a ... substantial civil fine - there is a right to approve beyond a preponderance of the evidence. I don't know that there is, but I certainly think it's an important issue.

[9:09:08 AM](#)

SENATOR SEEKINS said a \$5,000 fine would still be within the confines of small claims court. He referred to the language on [page 9], lines 18-19, which read as follows:

(d) The attorney general may enforce (c)(3) of this section by filing an appropriate civil action on the request of the board.

SENATOR SEEKINS said the personnel board is the initiator by saying [to the Office of the Attorney General], "This person broke the confidentiality requirements, and we would like you to enforce the confidentiality penalty against them." He said at that point it is not a frivolous action; the personnel board would have had to see the egregiousness of the case.

[9:09:59 AM](#)

REPRESENTATIVE GRUENBERG said the question then arises whether the person who would be found to have violated the Ethics Act by wrongful disclosure would have a similar right to seek a judicial review of that decision. Representative Gruenberg said he assumes that would happen.

[9:10:29 AM](#)

SENATOR SEEKINS concurred.

[9:10:34 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the use of the word "shall" on page 8, line 26. He suggested using the word "may" instead. He said he doesn't think the board can be directed to make a determination; it has the discretion not to do so.

[9:11:45 AM](#)

MYRL THOMPSON, testifying on behalf of himself, told the committee that he sat through all the Senate's hearings on both [SB 186 and SB 187] last year. He remarked that Senator Seekins was blaming the press, but the press was writing about "what was actually said at the time." Mr. Thompson said when he testified last year he opined that the bill was not addressing "the true problems," was against the First Amendment, and was an insult to Alaskans. He stated, "Pretty much those things are still true today." He revealed that there was a recent poll taken this week in his area of the state that asked, "Should there be any penalty whatsoever on a person that puts out a complaint against an official in the government?" He reported that 96 percent of those polled answered no. He said [SB 186] does not address that; it seems to be protecting the person who has the complaint filed against him/her, more than it does the public's interest and the public's good. In response to a request from Representative Gruenberg, Mr. Thompson said he would produce a copy of the poll. [The copy has since been added to the committee packet.]

[9:15:11 AM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, said he has been researching the issue of blind trusts. He offered information he obtained from a stockbroker as follows:

Normally in a blind trust, the stockbroker accepts your stocks - the stocks that you transfer to him or her - and keeps them. ... So, if ... you're negotiating a deal with the Pebble Mine, and you own a ton of stock in the company that is going to benefit from the Pebble Mine if that project goes ahead, you transfer let's say ... your \$200,000-worth of stock in the Pebble Mine to the stock broker. You probably tell him, "Hey, I'm working on this deal." The stockbroker holds the stock, because [in] the normal cases they hold the stock that you transfer to them. They may make some trades over time, but they won't just sell the stock that they own. And then you're going to sit there knowing I'm negotiating a deal on the Pebble Mine and I'm making money. So, the blind trust provision completely guts the ethics law; it lets you work on a matter that you intend to use for financial benefit and says it's ethical.

REPRESENTATIVE GARA said he would attempt to get something in writing from someone in the stockbroker industry. He said the committee's questions have been right on point.

[9:16:52 AM](#)

REPRESENTATIVE GATTO asked Representative Gara if he believes a person who has those stocks perhaps should divest him/herself, take the profit, pay the tax, and just say, "If I'm going to be involved like this, maybe that's the only resolution to it."

[9:17:08 AM](#)

REPRESENTATIVE GARA answered, "Not really." He clarified that a person doesn't violate the ethics law unless that person intended to pad his/her pocket. He said, "I think you just don't work on the issue." Using the example of the Pebble Mine again, he said the other option would be to get rid of the stock. He concluded, "You can't have it both ways; you have to do one or the other. The preference really is just don't work on the deal, which is what should have happened on the Renkes case, in my opinion."

CHAIR SEATON suggested that in that case, if Mr. Renkes hadn't been negotiating the deal, there wouldn't have been any problem with him owning and having that amount of stock anyway."

REPRESENTATIVE GARA replied, "Sure."

[9:18:23 AM](#)

REPRESENTATIVE GARA, in response to a question from Representative Gruenberg, said, "There is currently no exemption in the executive ethics law that allows you to work on a matter to benefit yourself as long as you put your money in a blind trust. That's just in the bill."

[9:18:40 AM](#)

CHAIR SEATON closed public testimony. He announced that SB 186 was heard and held.

HB 160-PUBLIC FUNDS & BALLOT PROPS/CANDIDATES

[9:19:19 AM](#)

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 160, "An Act limiting the use of money of the state and its political subdivisions to affect an election."

CHAIR SEATON noted for the record that Representative Bill Stoltze, sponsor of HB 160, had been waiting to testify but had to leave for another meeting.

[9:19:24 AM](#)

BEN MULLIGAN, Staff to Representative Bill Stoltze, Alaska State Legislature, testifying on behalf of Representative Stoltze, sponsor of HB 160, said he would address questions the committee had last year when the bill was introduced.

[9:20:31 AM](#)

REPRESENTATIVE GATTO moved to adopt the committee substitute (CS) for HB 160, Version 24-LS0586\X, Kurtz, 1/30/06, as a work draft. There being no objection, Version X was before the committee.

[9:21:02 AM](#)

MR. MULLIGAN explained that Version X incorporated an amendment adopted by the committee last year. In response to a request from Chair Seaton, he explained that Version X specifies "**state election**" in the title. It would allow local school boards to

advocate for local municipal bond propositions. Version X also added new language to Section 3, which read as follows:

***Sec. 3.** AS 15.13.145(c) is amended to read:

(c) Money held by

(1) the division of elections or a municipal election official [AN ENTITY IDENTIFIED IN (a)(1)-(3) OF THIS SECTION] may be used

(A) [(1)] to disseminate information about the time and place of an election and to hold an election; **or**

(B) [(2)] to provide the public with **the information described in AS 15.58.020;**

(2) a municipality, school district, regional educational attendance area, or another political subdivision of the state may be used to provide the public with nonpartisan information about a ballot proposition or question other than a state ballot proposition or question or about all the candidates seeking election to a particular [PUBLIC] office.

[9:22:31 AM](#)

CHAIR SEATON said, "As I read this, if it's a state bond or state anything, then they wouldn't be able to provide that information, is that correct? But a local ballot proposition they could?"

[9:23:12 AM](#)

MR. MULLIGAN answered that's correct.

[9:23:42 AM](#)

MR. MULLIGAN, in response to a question from Representative Gatto, said [a school district] could advertise for a local ballot proposition on a state bond, because it would be a local proposition to accept or not accept it.

[9:24:08 AM](#)

REPRESENTATIVE GARDNER offered an example of a ballot issue that dealt with municipal revenue sharing and said the Matanuska-Susitna Borough was "intensely interested in seeing that pass." She asked if under this proposal the borough would be prohibited from lobbying for that.

[9:24:40 AM](#)

MR. MULLIGAN answered that's correct.

[9:24:45 AM](#)

REPRESENTATIVE GATTO said, "Since the bonds haven't been passed, the money they're using to advocate for these bonds comes from some other source." He questioned whether there are legal and illegal sources and if there is some way to identify if there is an illegal source.

[9:25:01 AM](#)

MR. MULLIGAN said money in a municipality's general fund could be used to advocate. He said currently most state and federal monies are earmarked for a specific purpose.

[9:25:44 AM](#)

CHAIR SEATON noted that government obligation (GO) bonds can only be used for capital projects.

[9:25:53 AM](#)

REPRESENTATIVE RAMRAS offered an example in which a city could spend a half million dollars to influence a statewide vote to fail. If the proponents of that ballot measure didn't have the means of raising money, then - as Representative Ramras said is often the case - one side would be empowered and well-financed while the other side would not be able to get its message out. He offered his understanding that the proposed legislation would "prohibit that kind of influence from a governmental agency."

[9:26:56 AM](#)

MR. MULLIGAN confirmed that is correct.

[9:27:03 AM](#)

REPRESENTATIVE GRUENBERG said the last time the bill was before the committee he had expressed concern about issues of constitutionality. He said he has since received a legal opinion from Kathryn Kurtz of Legislative Legal and Research Services, which is included as a memorandum in the committee

packet. He read portions of the letter, and he stated that his concerns are now alleviated.

REPRESENTATIVE GRUENBERG asked, "This does prohibit ... the use of any money held by the municipality, whether it's state money or any other money, right?"

[9:29:29 AM](#)

MR. MULLIGAN answered that's correct.

[9:29:37 AM](#)

REPRESENTATIVE GRUENBERG directed attention to language on page 2, lines 7-8, which read as follows:

(c) Money held by
(1) the division of elections or a
municipal election official

REPRESENTATIVE GRUENBERG stated that he is not certain if the money is technically held by the Division of Elections or held by a municipal election official. He said, "I think the money is technically held in the treasury." He said if that's the case, then HB 160 would not achieve its desired effect. He recommended having legal counsel check on that.

[9:30:46 AM](#)

MR. MULLIGAN said he would have that question addressed.

[9:30:55 AM](#)

CHAIR SEATON directed attention to page 1, on which he noted there is a list of those entities that cannot use money to influence ["the outcome of the election of a candidate to a state or municipal office or the outcome of an election concerning a state ballot proposition"]. He then directed attention to Section 2, which read as follows:

***Sec.2.** AS 15.13.145(b) is amended to read:

(b) Money held by an entity identified in (a)(3) [(a)(1)-(3)] of this section may be used to influence the outcome of a municipal [AN] election concerning a ballot proposition or question, but only if the funds have been specifically appropriated for

that purpose by [A STATE LAW OR] a municipal ordinance.

CHAIR SEATON said, "So, normally you can't unless you specifically have an ordinance -- by ordinance, not any other action."

[9:32:08 AM](#)

MR. MULLIGAN responded, "They can use the money to distribute nonpartisan information or those designated in Section 3, not to influence the outcome. So, ... if you designate that money to be used to distribute information about ... a given ... municipal ballot proposition at the time, they can designate that money and use that for that purpose."

CHAIR SEATON added, "To influence the election."

[9:33:44 AM](#)

MR. MULLIGAN, in response to a question from Representative Gruenberg, noted that Ms. Kurtz said if a future legislature wants to permit state entities to use state funds to influence the outcome of elections concerning ballot propositions, it can amend the law.

[9:34:04 AM](#)

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), told the committee that the commission takes a neutral position on the bill.

[9:36:02 AM](#)

CHAIR SEATON, in response to a question from Ms. Miles, specified that certain language she had expressed concern about is deleted from Version X.

[9:36:18 AM](#)

LARRY WIGET, Director, Government Relations, Anchorage School District, testified on behalf of the district in support of allowing school districts to provide the public with nonpartisan information regarding a ballot proposition. He said the district would also appreciate having the same ability to provide the public with nonpartisan ballot proposition information for state ballots, particularly in regard to GO

bonds or other statewide bonds that would directly impact the school district, in terms of school construction and maintenance.

MR. WIGET said at the local level, under the current municipal ethics law, the district is not allowed to advocate yeah or nay for bond propositions, but may only provide its public with information. He said the district would appreciate having the ability to provide the voters of the community with information on statewide ballot propositions that impact the Anchorage School District.

[9:37:58 AM](#)

MR. WIGET, in response to a question from Representative Gruenberg, clarified that he would like the language "**other than a state ballot proposition or question**" removed from [page 2], lines 16-17. He further clarified that on the local level, all the information that the district sends out through its "dissemination process" is approved by local bond council to ensure a high level of neutrality in order not to influence a level of outcome. He said, "Our basic goal is to provide information from which our voters can make an educated guess." He indicated that the community makes up its own mind, based on the information.

[9:38:51 AM](#)

CHAIR SEATON asked Mr. Wiget if he understands that Section 2 on page 2 would "allow for advocacy for a position on a municipal bond ballot proposition if the assembly would specifically pass a municipal ordinance allowing for that."

[9:39:16 AM](#)

MR. WIGET said he does.

[9:39:26 AM](#)

REPRESENTATIVE GRUENBERG referred again to lines 16 and 17, and clarified that Mr. Wiget would like the school district to be able to advocate on a state ballot proposition. He observed that Section 2 only applies to municipal elections.

[9:39:59 AM](#)

REPRESENTATIVE GARDNER asked Mr. Wiget if he is proposing that school districts be taken out "of the effect of this bill" in order that the school district could lobby for issues that are statewide issues that affect school districts.

9:40:19 AM

MR. WIGET responded that the issue is not to lobby for a position, but to be able to provide information from which the voters can make a decision to vote yeah or nay.

9:40:43 AM

REPRESENTATIVE GRUENBERG observed that the language on page 2, line 14, includes not just school districts, but also municipalities, regional educational attendance areas, and political subdivisions of the state. He indicated that he would like to know how those other entities felt about the language.

9:41:17 AM

KATHY WASSERMAN, Alaska Municipal League (AML), testified as follows:

The Alaska Municipal League is opposed to HB 160. The first and most important reason is that it attempts to remove local control.

There have been and will continue to be many issues that this state faces that impact different communities in many different ways.

We would defend local governments' right to inform residents, in as fair a manner as possible, what the ramifications of state election results might entail for their community.

Many times, local assemblies and councils take a stand - through resolutions, proclamations, and so forth - on state issues which may then find their way back to the state voting booth. To say "nothing," as this bill mentions, does not reflect nonpartisanship; it reflects irresponsibility. A good manager of a business or a city owes [his/her] employees and the constituents as much information as possible to make an informed decision.

Most small communities have no other organization within their community to pass that information on. The local government and the schools are sometimes the only places to go to get your questions answered. In larger communities, the local government does not have to be the only organization giving any information, but why would the government be the only organization prohibited from giving that information?

Local government is made up of local people, elected by their neighbors. Why would the state wish to silence those elected officials from informing their constituents on impacts to their area?

One example that comes to mind is a couple of years ago we had a state vote that dealt with the gas line. Would that have kept the Fairbanks North Star Borough, the City of Valdez, and the North Slope [Borough] from speaking to the issue? In that case, we probably could have heard input from the oil producers and the environmentalist - not that there's anything wrong with that, but that is only a section of the whole story. So, I would ask that you not pass this bill.

[MS. WASSERMAN'S written testimony is included in the committee packet.]

[9:43:57 AM](#)

REPRESENTATIVE RAMRAS stated his understanding that Ms. Wasserman testified that local bodies pass resolutions and represent local constituencies. He said:

This bill doesn't prevent local bodies from doing that, it just prevents them from then leveraging a resolution into a local municipality spending money to represent an opinion. Earned media isn't prohibited by this bill. Am I misunderstanding what local municipalities, assemblies, and whatnot are allowed to do?

[9:44:31 AM](#)

MS. WASSERMAN stated her understanding that there is no differential between how that money is spent. She queried, "If a stipend is given to assembly or council members, if a city manager is indeed paid for his time and he researches a state

issue in order to give information across, where does it stop where money is spent? It doesn't necessarily just speak to media."

[9:45:09 AM](#)

REPRESENTATIVE RAMRAS asked Ms. Wasserman if she feels that the bill would prohibit local municipalities from passing resolutions to take a position for or against a bond issue or a matter that comes before the state.

[9:45:19 AM](#)

MS. WASSERMAN replied that she feels the bill does not give the municipality the ability to speak on behalf of state issues - a resolution being a small part of that.

[9:45:36 AM](#)

CHAIR SEATON asked Ms. Wasserman to clarify if she is saying the bill would allow [a municipality] to pass a resolution, but it could not advertise the resolution or state the city's position in the event of an election.

[9:45:48 AM](#)

MS. WASSERMAN answered, "Unless there's something in this bill that I don't see, I don't think you could pass a resolution, I don't think you could take a stand, you can just simply advertise the time and the place of the election. I'm just very concerned that local government ... would not have the right to make their wishes known or to inform, more than anything."

[9:46:15 AM](#)

REPRESENTATIVE RAMRAS said the bill doesn't seem to restrict the freedom of speech of a municipality taking a position, but it does restrict that municipality from spending discretionary funds to advertise the position that it takes.

[9:46:44 AM](#)

MS. WASSERMAN responded that she doesn't see anything in the bill that speaks to advertising; she interprets the bill as addressing "money spent," which she said is of concern to her.

[9:47:01 AM](#)

REPRESENTATIVE GARDNER, regarding money spent, stated her understanding that Ms. Wasserman testified that a paid employee of the municipality who spends money researching a state proposition would be in violation of the proposed law in HB 160.

[9:47:23 AM](#)

MS. WASSERMAN confirmed that is a concern.

[9:47:35 AM](#)

REPRESENTATIVE GRUENBERG told Ms. Wasserman that Mr. Wiget, during his testimony, had said the removal of the phrase, "**other than a state ballot proposition or question**" from page 2, lines 16-17, would be helpful for the school districts. He asked Ms. Wasserman if she would support an amendment deleting that phrase.

[9:48:11 AM](#)

MS. WASSERMAN answered in the affirmative.

[9:49:13 AM](#)

CHAIR SEATON directed attention to Section 2 [text provided previously], and interpreted Ms. Wasserman's concern related to that section as follows:

You're saying that it could be interpreted that the time, effort, and energy to pass a resolution - that is expenditure of funds, and if that is related to an election question or question that is going to be on a ballot, then that might be prohibited, because it would be expending money, even to pass a resolution, unless you first pass an ordinance granting specific authority to spend money that would be necessary to generate the resolution, because this specifies "by ordinance."

[9:51:15 AM](#)

MS. WASSERMAN confirmed that she is concerned about that issue. She explained that some boroughs include remote areas, and if travel by an official was necessary to inform people of an upcoming vote, that would be prohibited.

9:51:25 AM

MR. MULLIGAN mentioned "legislation in administrative code" and read as follows:

In the absence of a specific appropriation, an officer or an employee of an entity who is identified in statute may use money held by that entity to communicate about a ballot proposition or question if the communication is made in the usual and customary performance of the officer or employee's duties.

MR. MULLIGAN interpreted that language to mean that [an officer or employee] can research and report to the council, because doing so is his job.

CHAIR SEATON requested language be drafted regarding this issue. He asked Mr. Mulligan to coordinate with Ms. Miles.

9:53:31 AM

CHAIR SEATON announced that HB 160 was heard and held.

HB 347-MOTOR VEHICLE INSURANCE & NOTICE

9:53:59 AM

CHAIR SEATON announced that the last order of business was HOUSE BILL NO. 347, "An Act relating to mandatory motor vehicle insurance, license suspensions, and notices relating to motor vehicles and driver's licenses."

9:54:01 AM

REPRESENTATIVE LES GARA, Alaska State Legislature, introduced HB 347, as sponsor. He said it would close a loophole in the law that has caused a number of drivers to be charged for driving without auto insurance when, in fact, they had insurance. He explained that the driver charged, even after showing proof of insurance, must submit paperwork to the Division of Motor Vehicles (DMV). In at least one case, the DMV did not receive the paperwork and sent the request for it to a noncurrent address. Under current law, a driver can lose his/her license for driving without insurance and can be criminally charged for driving when his/her license is subsequently suspended. The proposed bill would allow a person who really had insurance at the time his/her license was suspended for not having it to use

that fact as a defense to a driving without insurance charge. Furthermore, the bill would give the DMV the authority to send the notices that keep getting lost in the mail to the most current address, rather than the one on the driver's license.

[9:56:41 AM](#)

CHAIR SEATON moved to adopt Amendment [1, labeled 24-LS1372\G.2, Luckhaupt, 1/27/06], which read as follows:

Page 1, line 1, following "**suspensions**,":

Insert "**penalties for operating a motor vehicle while license is canceled, suspended, revoked, or limited, mandatory impoundments of vehicles used in certain offenses**,"

Page 1, following line 6:

Insert a new bill section to read:

"* **Sec. 2.** AS 28.15.291(b) is amended to read:

(b) Upon conviction under (a) of this section, the court

(1) shall impose a minimum sentence of imprisonment

(A) if the person has not been previously convicted, of not less than 10 days with 10 days suspended, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(B) if the person has been previously convicted, of not less than 10 days;

(C) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(1), or if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, of not less than 20 days with 10 days suspended, and a fine of not less than \$500, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(D) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(2), (3), or (4) or if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, of not less than 30 days and a fine of not less than \$1,000;

(2) may impose additional conditions of probation;

(3) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in (1) of this subsection;

(B) suspend imposition of sentence;

(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license or a limited license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges; and

(5) may order that the motor vehicle that was used in commission of the offense be forfeited under AS 28.35.036 and shall order that the motor vehicle used in the commission of the offense be forfeited under AS 28.35.036 if the person has been previously convicted under this section."

Renumber the following bill sections accordingly.

Page 2, following line 9:

Insert new bill sections to read:

"* **Sec. 5.** AS 28.35.036(b) is amended to read:

(b) Before forfeiture of a motor vehicle, aircraft, or watercraft, the court shall schedule a hearing on the matter and shall notify the state and the convicted person of the time and place set for the hearing. Except for a motor vehicle, aircraft, or watercraft that is required to be forfeited under AS 28.15.291, AS 28.35.030, or 28.35.032, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines, by a preponderance of the evidence, that the forfeiture of the motor vehicle, aircraft, or watercraft will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under [AS 28.15.291(b),] AS 28.35.030 [,] or 28.35.032;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under [AS 28.15.291(b),] AS 28.35.030 [,] or 28.35.032; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

* **Sec. 6.** AS 28.40 is amended by adding a new section to read:

Sec. 28.40.080. Impoundment of motor vehicle when arrested for certain offenses. On the arrest of a person for a violation of AS 28.15.291, AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032, the motor vehicle used in the commission of the offense shall be impounded. If the motor vehicle is not forfeited, the motor vehicle shall be held for six months, unless the person is acquitted of the offense. The cost of towing and storage of the vehicle is a lien on the vehicle. If another person claims an ownership or security interest in the motor vehicle and establishes that the interest predated the offense and was acquired by the other person in good faith, the vehicle may be released to that other person if the person pays the accrued cost of towing and storage of the vehicle."

CHAIR SEATON explained that [Amendment 1] addresses the license suspension portion of the bill by increasing the penalties for driving with a suspended or revoked license and requiring mandatory impoundment of a vehicle if the driver operating it has a suspended or revoked license. Upon second offense, he added, [Amendment 1] would require forfeiture of the vehicle. He stated his intention is to "just get this on the table."

[9:58:00 AM](#)

REPRESENTATIVE GRUENBERG objected to [Amendment 1].

[9:58:14 AM](#)

CHAIR SEATON opened public testimony.

[9:58:23 AM](#)

DUANE BANNOCK, Director, Division of Motor Vehicles, Department of Administration, thanked Representative Gara for taking the time to hear the concerns of the division. He said there are instances when the division knows the person has a new address but is required to send the information [to the address on the

person's driver's license]. He stated that [HB 347] would help the division get the pertinent information directly to the person.

10:00:00 AM

CHAIR SEATON asked Mr. Bannock if he is satisfied with the bill as introduced.

10:00:09 AM

MR. BANNOCK said he is not familiar with [Amendment 1]. He said he spoke yesterday with the sponsor about some technical issues in [the original bill], and he said he doesn't know if those issues have been addressed.

CHAIR SEATON said they have not been addressed. He asked Mr. Bannock if he is comfortable with the intent and structure of the bill.

MR. BANNOCK answered in the affirmative.

10:00:46 AM

REPRESENTATIVE GRUENBERG said he would like Mr. Bannock to remain available to answer the committee's questions, and he asked that Mr. Bannock and Representative Gara give any technical amendments to the committee.

10:01:13 AM

TRICIA MOEN, testifying on behalf of herself, told the committee that she was pulled over by an Alaska State Trooper last summer for speeding. She gave the officer her license and proof of insurance and was informed that her license had formerly been suspended because she didn't have a special kind of insurance required of "high-risk" drivers. The trooper handed her a summons to appear in court on criminal charges. Her companions were instructed to drive, because her license, technically, was suspended. Ms. Mullen explained that she had been in an accident nine months prior to this event, at which time she gave the officer her [proof of] insurance and was given a "yellow piece of paper to fill out." She said she sent the paperwork in to the [DMV] by facsimile, didn't get a response, and "figured everything was good and ... was over with." She added, "I guess it wasn't. They suspended my license." Ms. Mullen reported that the issue was resolved without her having to appear in

court, and her license has been restored to her. However, she said, "It was a pain, to say the least."

[10:03:21 AM](#)

CHAIR SEATON, after ascertaining that there was no one else to testify, closed public testimony.

[10:03:45 AM](#)

REPRESENTATIVE GARA, in response to a question from Chair Seaton, said Mr. Bannock had voiced concerns about the issue of the most current address, which is the reason for the language [on page 2, beginning on line 2 through line 9], which read as follows:

The department shall provide this notice to the address that appears to be the most current from among the following:

(1) the address the department has for the person;

(2) the address shown on the citation or police report of the accident; and

(3) the address provided to the Department of Revenue in an application for a permanent fund dividend.

REPRESENTATIVE GARA surmised that the address given at the scene of the accident is probably the most current. He said he would leave it up to the committee whether to leave in the language regarding the permanent fund dividend source.

[10:05:35 AM](#)

CHAIR SEATON asked Mr. Bannock to forward his recommendation in writing.

[10:06:44 AM](#)

MR. BANNOCK, in response to a question from Representative Gatto, said he finds the use of the phrase "appear to be" troubling, as it relates to determining the most current address. He said, arguably, the police report would be the most accurate, current, and best available address source, because it would have been done at the scene of the accident. He stated his belief that the ability to use that document is key.

10:08:08 AM

MR. BANNOCK, in response to Chair Seaton, specified that he would like the word "citation" to be removed. He explained that when DMV gets a traffic ticket, for example, it does not receive any of the address data pertaining to the citation, whereas it definitely receives address information on Alaska motor vehicle collision reports.

10:08:45 AM

CHAIR SEATON pinpointed that Mr. Bannock is proposing something like, "the address shown on the Alaska motor vehicle collision report" and, if that address is unavailable, to use the address "that the department has for the person."

MR. BANNOCK responded, "That's very, very, very close sir, yes, sir, thank you." In response to Chair Seaton, he said he would send any technical suggestions for such an amendment to the committee.

10:09:14 AM

REPRESENTATIVE GRUENBERG directed attention to Section 1 of the bill, which read as follows:

***Section 1.** AS 28.05.071 is amended by adding a new subsection to read:

(b) A person convicted of a violation of (a) of this section is guilty of an infraction.

REPRESENTATIVE GRUENBERG noted that AS 28.05.071 read as follows:

Sec. 28.05.071. Change of name or address.

A person who has applied for or been issued a certificate, registration, title, license, permit, or other form under this title, and who changes the person's name or moves from the address shown on the records or forms of the Department of Administration or the Department of Public Safety, shall notify the appropriate department in writing of the change in name or address within 30 days.

REPRESENTATIVE GRUENBERG stated that since there is currently no penalty set forth in AS 28.05.071, "you go back to the general

provisions in Title 28, which are found in AS 28.40.050." He noted that AS 28.40.050(a) read:

(a) It is a misdemeanor for a person to violate a provision of this title unless the violation is by this title or other law declared to be a felony or an infraction.

REPRESENTATIVE GRUENBERG said [Section 1] lowers the penalty from a misdemeanor to an infraction. Regarding what the punishment for an infraction would be, he said that doesn't seem to be written. He directed attention to AS 28.40.050(c), which read:

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed \$300.

REPRESENTATIVE GRUENBERG asked, "Do we need to say something in Title 28 as to what the punishment for this particular new infraction's going to be, or do you go back to Title 12 for that?"

[10:11:41 AM](#)

REPRESENTATIVE GARA said unless Mr. Bannock has a better suggestion he concurs with Representative Gruenberg, and he suggested that the language "with a fine not to exceed \$300" should be added to [Section 1, page 1, line 6].

[10:12:25 AM](#)

CHAIR SEATON suggested that language be offered at the next bill hearing.

CHAIR SEATON, regarding [Amendment 1], told committee members they should be aware that Sections 2-5 of the amendment address the forfeiture of a vehicle "on second offense," and Section 6 deals with impoundment. He also pointed out that the citations in Section 6 relate to statutes on driving under the influence. He said if the committee wishes to have the impoundment apply to both the suspension of a license and driving under the influence, then "we can leave those references in."

[10:13:39 AM](#)

REPRESENTATIVE GRUENBERG said a lot of people in his district have problems with getting cars impounded "from very small infractions." He indicated this is hard when a person is poor.

[HB 347 was heard and held. Amendment 1, later labeled Amendment 7 at the 2/14/06 House State Affairs Standing Committee meeting, was left pending.]

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [10:13:58 AM](#).