

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

April 27, 2006

8:09 a.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Jay Ramras

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 189(STA)

"An Act relating to issuance of identification cards and to issuance of driver's licenses; and providing for an effective date."

- FAILED TO MOVE OUT OF COMMITTEE

CS FOR SENATE BILL NO. 86(CRA)(efd fld)

"An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals."

- FAILED TO MOVE OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 189

SHORT TITLE: REQUIREMENTS FOR DRIVER'S LICENSE/I.D.

SPONSOR(s): SENATOR(s) HUGGINS

04/27/05	(S)	READ THE FIRST TIME - REFERRALS
04/27/05	(S)	STA, JUD
05/03/05	(S)	STA AT 3:30 PM BELTZ 211
05/03/05	(S)	<Above Bill Hearing Canceled>
02/02/06	(S)	STA AT 3:30 PM BELTZ 211
02/02/06	(S)	Heard & Held
02/02/06	(S)	MINUTE(STA)

02/07/06 (S) STA AT 3:30 PM BELTZ 211  
 02/07/06 (S) -- Rescheduled from 02/02/06 --  
 02/08/06 (S) STA RPT CS 4DP 1NR NEW  
 TITLE  
 02/08/06 (S) DP: THERRIAULT, WAGONER, HUGGINS, DAVIS  
 02/08/06 (S) NR: ELTON  
 02/08/06 (S) FIN REFERRAL ADDED AFTER JUD  
 03/21/06 (S) JUD AT 8:30 AM BUTROVICH 205  
 03/21/06 (S) Moved CSSB 189(STA) Out of Committee  
 03/21/06 (S) MINUTE(JUD)  
 03/22/06 (S) JUD RPT CS(STA) 4DP 1NR  
 03/22/06 (S) DP: SEEKINS, FRENCH, HUGGINS,  
 THERRIAULT  
 03/22/06 (S) NR: GUESS  
 03/27/06 (S) FIN RPT CS(STA) 4DP 1NR  
 03/27/06 (S) DP: WILKEN, GREEN, DYSON, STEDMAN  
 03/27/06 (S) NR: HOFFMAN  
 03/27/06 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 03/27/06 (S) Moved CSSB 189(STA) Out of Committee  
 03/27/06 (S) MINUTE(FIN)  
 04/10/06 (S) TRANSMITTED TO (H)  
 04/10/06 (S) VERSION: CSSB 189(STA)  
 04/11/06 (H) READ THE FIRST TIME - REFERRALS  
 04/11/06 (H) STA, JUD  
 04/12/06 (H) FIN REFERRAL ADDED AFTER JUD  
 04/27/06 (H) STA AT 8:00 AM CAPITOL 106

BILL: SB 86

SHORT TITLE: STATE/MUNI LIABILITY FOR ATTORNEY FEES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/31/05 (S) READ THE FIRST TIME - REFERRALS  
 01/31/05 (S) CRA, JUD  
 02/09/05 (S) CRA AT 1:30 PM BELTZ 211  
 02/09/05 (S) Heard & Held  
 02/09/05 (S) MINUTE(CRA)  
 04/04/05 (S) CRA AT 1:30 PM BELTZ 211  
 04/04/05 (S) Moved CSSB 86(CRA) Out of Committee  
 04/04/05 (S) MINUTE(CRA)  
 04/05/05 (S) CRA RPT CS 2NR 1DP 2DNP SAME  
 TITLE  
 04/05/05 (S) NR: STEVENS G, STEDMAN  
 04/05/05 (S) DP: WAGONER  
 04/05/05 (S) DNP: ELLIS, KOOKESH  
 04/15/05 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/15/05 (S) Heard & Held  
 04/15/05 (S) MINUTE(JUD)

04/18/05 (S) JUD RPT CS(CRA) 3DP 2DNP  
 04/18/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS  
 04/18/05 (S) DNP: FRENCH, GUESS  
 04/18/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 04/18/05 (S) Moved CSSB 86(CRA) Out of Committee  
 04/18/05 (S) MINUTE(JUD)  
 05/06/05 (S) TRANSMITTED TO (H)  
 05/06/05 (S) VERSION: CSSB 86(CRA)(EFD FLD)  
 05/07/05 (H) READ THE FIRST TIME - REFERRALS  
 05/07/05 (H) STA, JUD  
 03/23/06 (H) STA AT 8:00 AM CAPITOL 106  
 03/23/06 (H) Heard & Held  
 03/23/06 (H) MINUTE(STA)  
 04/13/06 (H) STA AT 8:00 AM CAPITOL 106  
 04/13/06 (H) Heard & Held  
 04/13/06 (H) MINUTE(STA)  
 04/27/06 (H) STA AT 8:00 AM CAPITOL 106

**WITNESS REGISTER**

SENATOR CHARLIE HUGGINS  
 Alaska State Legislature  
 Juneau, Alaska  
 POSITION STATEMENT: Presented SB 189 as sponsor.

DUANE BANNOCK, Director  
 Division of Motor Vehicles (DMV)  
 Department of Administration  
 Anchorage, Alaska  
 POSITION STATEMENT: Presented information and answered questions during the hearing on SB 189.

MARGARET STOCK  
 Anchorage, Alaska  
 POSITION STATEMENT: Listed the impacts of SB 189, and clarified the differences between it and the Real ID Act.

KEITH W. BELL  
 Anchorage, Alaska  
 POSITION STATEMENT: Testifying on behalf himself during the hearing on SB 189.

BILL SCANNELL, Communications Director  
 The Identity Project  
 (No address provided)  
 POSITION STATEMENT: Testified and answered questions during the hearing on SB 189.

ANASTASIA MIRANOVA  
(No address provided)

POSITION STATEMENT: Testified on behalf of herself in  
opposition to SB 189.

CRAIG TILLERY, Deputy Attorney General  
Civil Division, Office of the Attorney General  
Department of Law  
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB  
86.

RANDY RUARO, Assistant Attorney General & Legislative Liaison  
Legislation & Regulations Section  
Civil Division (Juneau)  
Department of Law  
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on SB 86.

#### **ACTION NARRATIVE**

**CHAIR PAUL SEATON** called the House State Affairs Standing  
Committee meeting to order at [8:09:25 AM](#). Representatives  
Gatto, Elkins, Lynn, Gruenberg, and Seaton were present at the  
call to order. Representative Gardner arrived as the meeting  
was in progress.

SB 189-REQUIREMENTS FOR DRIVER'S LICENSE/I.D.

[8:10:03 AM](#)

CHAIR SEATON announced that the first order of business was CS  
FOR SENATE BILL NO. 189(STA), "An Act relating to issuance of  
identification cards and to issuance of driver's licenses; and  
providing for an effective date."

[8:10:07 AM](#)

SENATOR CHARLIE HUGGINS, Alaska State Legislature, presented SB  
189 as sponsor. He said he and Representative Lynn teamed up to  
present legislation based on the federal Real ID Act. He stated  
that the bill is really about knowing who is being issued  
driver's licenses.

[8:14:15 AM](#)

SENATOR HUGGINS said the question is: "What is the role of the driver's license?" Senator Huggins stated his belief that the answer to that question is that a driver's license is meant to allow a person to drive a vehicle. However, he noted that in fact, the role is broader than that; a driver's license is used for a number of purposes, including cashing checks at a bank and boarding airplanes. He relayed that he had a similar experience with his son and daughter as Representative Gatto had with his son, related to difficulty in getting a driver's license. He indicated that [the stringent requirements in getting a license] are okay with him. He talked about the United States being a battleground, with color-coded security alerts showing up on the bottom of television screens. He stated that SB 189 will bring Alaska close to being completely in compliance [with the Real ID Act]. He mentioned his own service in Vietnam and the service of those currently in Iraq, and he said, "I think this is a reasonable thing to do for Alaskans."

[8:17:11 AM](#)

REPRESENTATIVE GATTO reiterated a story [he had told during another House State Affairs Standing Committee meeting], of the steps taken to prove his son's identification for the DMV. He said the basic question is whether "we" trust our government. For example, he said, "If indeed we turn over data to our government, what will they do with it?" He stated that there are a number of government people in Alaska that he would trust with his life, but Alaska is now entering into a "50-state cooperative agreement," which means that the trust must extend throughout the Lower 48. He said there is a question to be considered regarding trust, and he said he personally trusts the government "as a large group."

[8:19:24 AM](#)

CHAIR SEATON said Senator Huggins has hit on key of what the committee has been trying to clarify, which is what the role of the driver's license is. He asked Senator Huggins to state what he projects would be the role of the driver's license in conjunction with the bill.

[8:20:13 AM](#)

SENATOR HUGGINS answered that although the number one function of the driver's license is to validate that a person can legally drive, the bill recognizes that its scope is actually much bigger than that. In response to a question from Chair Seaton,

he said it is his experience that without showing a driver's license number to the bank teller, a person cannot get his/her check cashed. He offered further details. In response to a follow-up question from Chair Seaton, he said perhaps other people use other types of photo identification, but the driver's license is the photo identification that is common to all Alaskans that drive vehicles.

[8:23:21 AM](#)

REPRESENTATIVE GARDNER observed that the sponsor statement says the proposed legislation is "designed to bring Alaska into compliance with the new federal Real ID Act." She highlighted a portion of the fiscal note, which read: "Other costs may be associated with the Real ID Act that will not be noted until later." She asked for an explanation.

[8:23:59 AM](#)

DUANE BANNOCK, Director, Division of Motor Vehicles (DMV), Department of Administration, told the committee that SB 189 addresses a portion of the Real ID Act. He added that he is pleased to report that a majority of the Real ID Act is already in play in Alaska [through the practices of the division]. Regarding the sentence from the fiscal note quoted by Representative Gardner, he explained as follows:

The federal rule-making committee that is determining the minutia of the bill is in play. Those actual rules for implementation have not yet been determined. And quite frankly, that's a good reason to attempt to criticize the Real ID Act, although I don't believe that that criticism is fair to this particular bill.

[8:25:22 AM](#)

REPRESENTATIVE GARDNER asked if there is any reason why the Alaska State Legislature should not wait until all the rules are in place before it attempts to comply [with the Real ID Act].

[8:25:35 AM](#)

MR. BANNOCK explained why he would recommend against waiting, as follows:

There does not appear to be anything in the federal rule-making committee that leads to any gray area as

to the question, "Is legal presence a requirement under the ... Real ID Act?"

... We, in Alaska, do not have, by statute, a legal presence, and legal presence is simply defined as "legally being in America."

MR. BANNOCK said everyone who is in the United States legally is covered by the proposed legislation.

[8:26:47 AM](#)

SENATOR HUGGINS added that the current top concern of citizens is the issue of immigration. He indicated that he thinks people in Anchorage and the Matanuska-Susitna Valley support having parameters related to those visiting the United States and think someone illegally in the United States should not have an Alaska driver's license.

[8:27:43 AM](#)

CHAIR SEATON asked Mr. Bannock to list the current forms of legal identification, explain how that list would change as a result of SB 189, and describe how the DMV will handle any new identification requirements.

[8:28:02 AM](#)

MR. BANNOCK directed attention to a 3-page handout in the committee packet, regarding identification and proof of date of birth and the primary and secondary documents accepted. He emphasized that Alaska does not issue driver's licenses to anyone who is illegally present in the country. He said little will change if SB 189 is passed into law.

[8:31:30 AM](#)

REPRESENTATIVE GARDNER asked Mr. Bannock if he anticipates that when the regulations [for the Real ID Act] are complete and the state knows the final cost of implementation, there will be a mechanism in place to keep copies of all the documents that the DMV would require to make them available to other states.

[8:31:46 AM](#)

MR. BANNOCK answered that there will be a mechanism in place for the retention of the verification documents that are looked at

by the DMV currently, for example, a birth certificate. However, after retaining the documentation, the DMV does not share it with other states. What is shared with other states, both currently and under the Real ID Act, is the Driver License Compact (DLC). He explained that when a person moves to Alaska and says he/she was licensed in another state, the DMV will verify that information to find out what class of license the person had, and whether that license was current or suspended, for example. In response to a question from Representative Gardner, Mr. Bannock said the DMV currently does not keep copies of people's birth certificates, but it plans to do so by May 2008. However, those copies will not be made available to other states.

[8:34:50 AM](#)

REPRESENTATIVE GATTO asked, "Do all 50 states require a state-certified birth certificate?"

MR. BANNOCK said he would go out on a limb to say no.

REPRESENTATIVE GATTO pointed out that the Alaska DMV will not issue an Alaska driver's license to an Alaska resident without seeing a birth certificate, yet it will issue an Alaska driver's license to someone who has moved to Alaska from another state that does not require a birth certificate. He asked, "Does that diminish the certification value of an Alaska driver's license if there's more than one way to get it?"

[8:36:00 AM](#)

MR. BANNOCK said Representative Gatto is 100 percent correct, and that is what is considered one of the giant loopholes that exist. However, he stated, "Pending regulations will eliminate that option." In response to a remark by Chair Seaton, he emphasized that it is by regulation, not statute, that the DMV currently accepts another state's driver's license.

CHAIR SEATON asked if the division is just developing the regulations.

MR. BANNOCK responded that the division is actually nearing the end of developing the regulations, with a projected implementation date of July 1. He added, "Our hope is that those new regulations will coincide with the implementation of this law."

CHAIR SEATON said, "Then if someone comes from another state, unless that state has adopted the Real ID Act - which none have done to date, I gather - their driver's license will not ... serve for getting an Alaska driver's license."

[8:38:53 AM](#)

MR. BANNOCK answered that he doesn't think that is correct. He clarified, "What we will not be doing is taking any state's driver's license as proof of identity at the DMV; it will be proof that they know how to drive and that they have passed their skills test." In response to a remark by Chair Seaton, he explained that a person who moves to Alaska and applies for a driver's license will need to supply two items off the aforementioned list of primary and secondary identification documents; the person's driver's license will not longer be on the list. In response to a request for clarification from Chair Seaton, he said it will be "next September" when the DMV will no longer accept a driver's license for identification, and he reiterated that the change will be made in regulation, not in statute.

[8:42:35 AM](#)

MR. BANNOCK, in response to a question from Representative Gatto, said a person who arrived from out of state today to apply to the DMV for a driver's license, if qualified, would be issued an Alaska driver's license that would expire on his/her birthday "in the following five years," even if the license the person brought to the DMV was about to expire in three days.

[8:42:57 AM](#)

REPRESENTATIVE GATTO asked if a person with an expired license is allowed to board Alaska Airlines.

[8:43:19 AM](#)

MR. BANNOCK responded that he has asked that exact question of Alaska Airlines staff three times and is not able to offer an answer to Representative Gatto.

[8:43:33 AM](#)

REPRESENTATIVE GARDNER relayed that her husband couldn't use his expired license to get on a flight. She asked Mr. Bannock if a

person who comes to Alaska and is issued an Alaska driver's license has to surrender his/her out-of-state license.

[8:44:04 AM](#)

MR. BANNOCK answered yes. He described the process of getting an Alaska driver's license.

[8:44:34 AM](#)

REPRESENTATIVE GARDNER asked if a person with an out-of-state license, who moves to Alaska and does not get an Alaska driver's license within the 90-day required period, would still be "a licensed driver allowing the terms of their insurance to be in affect."

[8:44:47 AM](#)

MR. BANNOCK said he cannot answer that question. He said the DMV is not set up as an enforcement agency.

[8:45:23 AM](#)

REPRESENTATIVE GARDNER recollected that Mr. Bannock or someone else had testified that in order to have [motor vehicle] insurance, a person must have a valid driver's license.

[8:45:44 AM](#)

MR. BANNOCK stated that he did not testify to that; however he has heard that said before. He said clearly that is an erroneous statement, considering there are company-owned vehicles that get insured, as well as a growing number of people who own vehicles but have a chauffeur drive them.

REPRESENTATIVE GARDNER said she has to believe that if she owns a car and has insurance on her vehicle, allowing someone unlicensed to drive the car would void the insurance coverage.

MR. BANNOCK said he cannot respond to that statement with authority.

[8:46:36 AM](#)

MR. BANNOCK, in response to a question from Representative Gatto regarding the enforcement of the 90-day law, reiterated that he

is not a policeman and can only read the law as saying that the out-of-state license is valid for 90 days.

8:47:25 AM

REPRESENTATIVE GRUENBERG directed attention to the previously mentioned handout from Mr. Bannock relating to the DMV's requirements for identification and proof of date of birth, and he said he notes "the regulation that that is promulgated under is 13 AAC 08.330(b)." He asked Mr. Bannock, "That is your regulatory authority for this standard operating procedure, sir?"

8:48:01 AM

MR. BANNOCK answered yes, currently it is.

REPRESENTATIVE GRUENBERG offered his understanding that a procedure in an administrative agency must follow the regulation - it can't go beyond the regulation.

MR. BANNOCK responded that he believes Representative Gruenberg is correct.

8:48:42 AM

REPRESENTATIVE GRUENBERG provided to the committee [a five-page handout in the committee packet showing 13 AAC 08.330] and directed attention to subsection (b) on the first page of the handout. He stated:

It looks to me like your standard operating procedure requires only certain birth certificates of the United States or [Canada], and ... you have to have identification from only those countries. But it doesn't look like the regulation limits birth certificates or anything else - primary identification documents - only to those countries. By narrowing it only to those countries, aren't you going beyond the scope of your regulatory, sir?

8:49:37 AM

MR. BANNOCK said that after the review he has done over the last couple of weeks, he thinks Representative Gruenberg's point could be argued. Conversely, in defense of the division, Mr. Bannock pointed further down the page to [paragraph (4)], which

lists "other evidence of comparable validity." For example, Mr. Bannock said the division does not have the ability to compare the validity of a Japanese birth certificate. He said he thinks Representative Gruenberg's point is that without certain authority, the division must honor a Japanese birth certificate. He emphasized that this is the first time that point has been challenged in the three years that he has held the position of director.

[8:51:10 AM](#)

REPRESENTATIVE GRUENBERG stated for the record that his questions to Mr. Bannock today and in the past have been designed to ensure that Mr. Bannock and the Division of Motor Vehicles are on firm legal footing. He said the legislature has a duty to make certain that its state government is protected legally. He added, "That's the spirit in which I'm asking my questions."

[8:51:56 AM](#)

MR. BANNOCK directed attention to a one-page handout answering questions asked by the House State Affairs Standing Committee during its meeting on 4/4/06 [added to the bill packet subsequent to the meeting]. Paraphrasing from the handout, he stated, "If the committee concurs with Representative Gruenberg's opinion [that] the DMV today does not have the authority to deny an application for a driver's license to an illegal alien, then I believe that underscores the point and purpose of this pending legislation."

[8:52:17 AM](#)

REPRESENTATIVE GRUENBERG responded that that is exactly his point, that "this legislation would, without doubt, make this standard operating procedure legal."

[8:52:39 AM](#)

CHAIR SEATON noted that the aforementioned [paragraph (4)] lists identification card, social security card, credit card, life insurance policy, and "any other evidence of comparable validity," as acceptable forms of identification. He stated, "It appears there has been some narrowing beyond law of the allowable documents, but that's not where we're at today."

[8:53:23 AM](#)

MR. BANNOCK stated, "... Any document that is a birth certificate, that uses the word, 'certified,' will be accepted at the Division of Motor Vehicles." He explained that would include a certified birth certificate from a hospital, as well as one from the Department of Health [& Social Services].

[8:54:08 AM](#)

REPRESENTATIVE LYNN asked Mr. Bannock if he agrees that it is a privilege, not a right, to have a driver's license.

[8:54:32 AM](#)

MR. BANNOCK confirmed that the word "privilege" is used in statute.

[8:54:45 AM](#)

REPRESENTATIVE GATTO said:

What would happen if a perfectly legitimate, certified American went in to get his driver's license, because he needed it for ID and couldn't pass his driver's test? He would not have, then, the ID that we are trying to essentially say, "This is ... your ID now."

[8:55:16 AM](#)

MR. BANNOCK replied that that is a good point, and a it is a point that SB 189 addresses. He continued:

Keep in mind this bill in front of you is for two documents that the DMV sells: one is an identification card, and one is a driver's license. So, while some of the debate has issued on, "Should a driver's license be required to be done when we cash a check or get on an airplane," just take that and throw it in the trash if you want to. And the other half of the bill speaks to an identification card, which it's only goal in life is to prove your identity. Often times, people in Alaska lose their driving privileges, and they physically have their driver's license taken away from them - for all kinds of reasons. Then, often times, that same customer will come to the division to buy an identification card, just so that they don't have those particular issues.

MR. BANNOCK, in response to a question from Representative Gatto, confirmed that a person who loses his/her driver's license has to surrender it, and anyone who has a driver's license can also get an identification card.

8:57:05 AM

SENATOR HUGGINS said teachers today wear photo identification while on school grounds. He said everyone present knows what happened at Pearl Harbor, and that was exceeded only by [the terrorist attacks of September 11, 2001]. Senator Huggins said there are people who want to do harm to the United States and Alaskan legislators can contribute in guarding against that. He said his intent is not to tread on the liberties of good, upstanding Americans. He noted that taking shoes off for security at the airports has become an expectation. He concluded, "There are some expectations that are new to us in our country, and I just ask you to think about that today when you gain the opportunity to finally consider this bill."

8:59:00 AM

MARGARET STOCK stated that although she is an Associate Professor of Law at West Point, New York, and a Lieutenant Colonel of the Military Police in the United States Army Reserve, she is testifying on behalf of herself - an Alaskan - and none of her opinions are those of any government agency. She said she has reviewed SB 189, and it is not in compliance with the Real ID Act of 2005 and, as written, is facially unconstitutional under the Equal Protection Clause of the U.S. Constitution, as well as under the Alaska State Constitution. She revealed that her expertise in making those statements comes from having acted as attorney in a class action lawsuit filed against the State of Alaska Department of Revenue. She said she was awarded approximately \$100,000 in attorney's fees for a similar type of statute that was invalid under Equal Protection grounds.

MS. STOCK said she teaches national security law and is quite familiar with the unfortunate events of [the terrorist attacks of September 11, 2001]. She stated that there is a myth circulating that somehow the terrorist acts of 9/11 could have been prevented if only "people were tougher with driver's licenses." She said that is not the case at all and, in fact, bills such as SB 189 and the Real ID Act would have done

absolutely nothing to stop terrorists from boarding airplanes. She explained:

How can they do that? Well, terrorists aren't always foreigners, for one thing. Terrorists aren't always illegal, for another thing. And even if you were illegal in the United States today, and you didn't have a driver's license, you can still get on an airplane with a passport from a foreign country. And that will still be allowed under the Real ID Act when it goes into effect, and when states begin complying with it, that will still be the case.

MS. STOCK said she thinks people fail to appreciate what a value it is to law enforcement to have as many people licensed as possible. She said it may sound radical to members of the committee, but it is her personal view that an attempt should be made to license everybody and put them in the database, because after [the terrorist attacks of September 11, 2001], one of the key investigative resources available to figure out where the terrorists had been, who they had talked to, and where they lived was the fact that they had driver's licenses. She continued:

Why is this the case? Well, there is no federal national database that tracks Americans, or anybody in the United States, really, unless they voluntarily report to Homeland Security. In the case of the terrorists, the American Association of Motor Vehicle Administrators has admitted that the driver's license database was key to the post 9/11 investigation, because it provided information on what states the terrorists had been in, it gave biometrics, photos, addresses, and all that sort of thing. What will happen with a bill like this, is it will reduce the number of people who are in that law enforcement ..., driver's license database, which collectively [is] the biggest law enforcement database in the country, and make it harder to prosecute people, believe it or not. And it's going to make it very difficult after the fact to figure out where people have been.

[9:02:27 AM](#)

MS. STOCK stated that the proposed legislation will have a big effect on lawful residents of the U.S.

9:03:22 AM

REPRESENTATIVE GARDNER said she would like Ms. Stock to expound further on the constitutional issues of SB 189.

9:04:22 AM

CHAIR SEATON asked that Ms. Stock focus mainly on the Alaska State Constitution.

9:04:35 AM

MS. STOCK said she thinks what she says will apply to both the U.S. Constitution and the Alaska State Constitution, the only big difference being "the test that's applied to see whether equal protection is violated." She directed attention to [page 1, Section 1, subsection (h), of] SB 189, which read as follows:

(h) The department may not issue an identification card under (a) of this section to a person who has not presented to the department valid documentary evidence that the person is a citizen of the United States, a national of the United States, a legal permanent resident of the United States, or a conditional resident alien of the United States

MS. STOCK said the problem with that language is that it leaves out a huge category of Alaskans who are legally present in Alaska and are protected under the Equal Protection Clause, and are supposed to be treated equivalently to lawful, permanent residents, conditional residents, citizens, and nationals. She said this category includes "asylees" and refugees, persons who have been admitted indefinitely to the United States because they have been persecuted or have a well-founded fear of persecution in their home country. Eventually these people will become lawful permanent residents and citizens, and under Equal Protection principles they're supposed to be treated similarly. The Real ID Act, Ms. Stock said, treats them similarly, but [SB 189] discriminates against them by only giving them a one-year, temporary license. She added, "And I'm sure they're going to sue, because it's a pretty easy case."

9:06:12 AM

REPRESENTATIVE LYNN asked, "If somebody here is ... permitted to be here as a refugee, would that not be legal presence, as entertained by this bill?"

9:06:34 AM

MS. STOCK explained the problem is that in subsection (h), it states that an identification card cannot be issued under [AS 18.65.310(a)] to anyone who is not a citizen, national, legal permanent resident, or conditional resident alien of the United States. Subsection (a) read as follows:

(a) Upon payment of a \$15 fee, the department shall issue a card identical to the motor vehicle operator's license provided for in AS 28.15.111, except that the card shall be of a different color and shall state in bold type letters across the face of it that it is for identification purposes only.

MS. STOCK said refugees and asylees are "not going to fall under that"; therefore, the only card available to them, would be that described [in Section 1, subsection (i), beginning on page 1, line 10, through page 2, line 2], which read as follows:

(i) Notwithstanding (h) of this section, the department may issue an identification card to a person who presents in person valid, documentary evidence of the person's legal status and presence in the United States. The identification card authorized under this subsection is valid only during the period of the time of the person's authorized stay in the United States and must clearly indicate that expiration date. If the period of authorized stay is indefinite, the expiration date for the identification card is one year from the date of issue.

MS. STOCK pointed out that for refugees and asylees, their stay is indefinite; therefore, the expiration date of one year treats them differently than the citizens, nationals, legal permanent residents, and conditional resident aliens. She said the result will be that the refugees and asylees will complain that there is a violation of the Equal Protection Act. Federal and state law is crystal clear on the subject, she said, and those who bring a complaint to court will win their cases.

REPRESENTATIVE LYNN responded, "Well, it's not crystal clear to me."

MS. STOCK stated, "Real ID clearly treats them the same as those other categories of people - it doesn't require them to have shorter licenses - because the lawyers in Congress know that you can't do that because it's unconstitutional."

[9:07:38 AM](#)

REPRESENTATIVE GRUENBERG asked what the cost of implementing SB 189 would be.

[9:07:57 AM](#)

MS. STOCK said the cost is difficult to figure out. She explained that, contrary to [Mr. Bannock's] testimony that the DMV is almost in compliance with the Real ID Act, if the committee were to look at the language of the Act, it would find that the DMV is not even close to being in compliance. She continued:

To get into compliance with [the] Real ID [Act], we're talking about probably millions of dollars. ... This is an issue that has been debated on the national level by numerous states, by the American Association of Motor Vehicles, [and] National Governors. Everybody's upset about this bill, [because the] Real ID Act is essentially ... a huge, unfunded federal mandate.

... If your impression is that the cost estimates that DMV is giving you are going to get you into compliance with [the] Real ID [Act], that's not the case, ... and you're going to have to spend lots and lots of money. I think the State of Virginia had an estimate of \$63 million per year ... to comply with [the] Real ID [Act]. ... This is one of the reasons that a lot of the states are getting upset and anxious about attempting to comply with it, because they're not getting any money from the federal government ... to do it.

[9:09:19 AM](#)

REPRESENTATIVE GRUENBERG asked Ms. Stock to list some specifics costs.

[9:09:27 AM](#)

MS. STOCK articulated the following:

I have the Real ID [Act] in front of me - it finally passed. And just for reference, this is part of [An act making Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes.] ... It started off as House Resolution 1268. It did not get a whole lot of debate or markup, which is one of the reasons why it's controversial, because there wasn't an opportunity to point out many of the flaws in it. It was passed because everybody wanted to vote for tsunami relief and it was stuck in a large, Department of Defense bill. It actually even contains [typographical errors] in it, in the spellings and things like that, because it wasn't bedded very well.

But just to give you an example [of] the minimum document requirements, the bill requires that the following things appear on a driver's license: the person's full legal name, ... date of birth, ... gender, ... driver's license or identification card number, a digital photograph of the person, [and] the person's address of principle residence. Now, I'll pause there, because there's more. But in Alaska, very few people out in the Bush have their address or ... principle residence on their driver's license. The DMV doesn't put that on there; they put their mailing address. So, that's just one point that we're not in compliance with. There may be federal regulations coming out that will change that - we'll have to see - but that issue was one of the controversial ones, because battered women, for example, have to put their principle residence now on the driver's license, under [the] Real ID [Act].

[9:11:28 AM](#)

CHAIR SEATON said he does not want the discussion to move beyond the scope of SB 189 in addressing the Real ID Act.

[9:11:34 AM](#)

REPRESENTATIVE GRUENBERG explained that the committee has spent some time discussing the accuracy of the fiscal note, and Ms. Stock's testimony addresses the inaccuracy of it.

9:11:50 AM

CHAIR SEATON stated, "I want to come back to the fiscal note and what it attaches to this bill, and not other provisions that are not included in this bill."

9:12:21 AM

REPRESENTATIVE GRUENBERG asked Ms. Stock if SB 189 would create any security risks or vulnerabilities.

9:12:33 AM

MS. STOCK answered, "In fact, any of these bills, as enacted, potentially have security issues, and [the] Real ID Act also has security issues." She recollected that [Representative Gatto] had previously spoken about the issue of trusting the government. She stated that she works for the government and generally trusts it. She said she also knows that there have been huge security vulnerabilities within federal and state governments because of access to data. She said imposing an increasing number of requirements related to driver's licenses and, thus, collecting more data and information from people, results in the creation of security vulnerability. She continued:

[The] Real ID [Act] is going to require that state DMV employees get security clearances. That's another point ... [illustrating] why this bill's not in compliance with [the Act]. ... State DMVs have actually been a big source of security threat, because they have documents they possess that are about people, and if you can get a hold of those documents, you can commit identity theft. The DMV in Alaska has had a problem in the past with this - with identity theft occurring - because DMV did not properly handle documents. And continuing to build on the idea of collecting documents and properly securing them does create potential security threat.

9:14:09 AM

KEITH W. BELL, testifying on behalf himself, told the committee that he is an attorney in Anchorage who has limited his practice to immigration law since 1980. He said he is also a former chair of the Washington State Chapter of the American

Immigration Lawyers Association. He revealed that he represents a number of clients in Alaska who would love to drive, and whose presence in Alaska is lawful, but who are not citizens, permanent residents, or even refugees. He clarified that he is speaking of people in the state with nonimmigrant visas - usually in employment-authorized or student categories. In response to a question from Chair Seaton, he explained that these groups of people have visas with certain letters of the alphabet on them related to certain visa categories. He offered details regarding the various categories. He said that because the bill is painted with a such a broad brush, the people in those categories would not be able to drive. Mr. Bell opined that it is beyond the expertise of a clerk in the DMV office to determine whether or not a person's lawful status is properly documented, and the state has no business getting involved in deciding, at that level, whether a person's federal immigration status is valid or not.

[9:20:53 AM](#)

BILL SCANNELL, Communications Director, The Identity Project, said the Identity Project is a 501(3)(c), nonprofit group devoted to issues of identity, identification cards, and "what this means to us as Americans as we make our way through society." He talked about his experience in Berlin, during the Cold War, where there were guards at towers asking to see people's [identification] papers. He stated, "I think the last thing that we want to build in our own country is a 'papers please' society." Mr. Scannell, regarding SB 189, said the bill's supporters try to paint it as some sort of immigration measure, when it really is a move for a national ID card. He said the implementation of not only the Real ID Act, but the small portion that is SB 189, will be expensive. He said he has not seen a single [cost-related] number out of the DMV, but other states' numbers are available. In California, the head of the Department of Motor Vehicles testified that the cost would be half a billion dollars just to "get the ball rolling," with an expense of several hundred million dollars a year for the following years. Mr. Scannell offered further examples. He relayed that the implementation of the Real ID Act will be difficult for Alaskans, because the DMV will be making the determination of whether or not people in the state are [legally present].

[9:25:47 AM](#)

MR. SCANNELL, in response to a remark from Representative Lynn, said the DMV will be "collecting citizenship documents from honest people and determining whether they can, in fact, have this Real ID card."

[9:26:02 AM](#)

REPRESENTATIVE LYNN stated, "We're not debating the Real ID Act, we're debating SB 189."

[9:26:17 AM](#)

MR. SCANNELL concluded that, as of yet, there have been no final standards issued from "Homeland Security" as to what will be required to be fully compliant with the Real ID Act. He said the Act was passed under "very unusual circumstance through Congress," and he wonders if the cart has been put before the horse. He stated that Alaskans have a constitutional right to privacy, and the idea of putting "all of this data" on a national network that any DMV employee, anywhere in the country can access scares him. He added, "And I think it should scare all of us."

[9:27:00 AM](#)

REPRESENTATIVE GATTO said the right to privacy has been interpreted rather broadly, and he offered his understanding that that right is not expressed in the United States Constitution.

[9:27:24 AM](#)

MR. SCANNELL replied that the right to privacy has been interpreted through the Fourth Amendment of the U.S. Constitution, by former U.S. Supreme Court Justice Louis D. Brandeis, but he emphasized that in the Alaska State Constitution it is clearly expressed.

[9:27:39 AM](#)

REPRESENTATIVE GATTO talked about "bad guys," and asked if it would make sense to track them, or is there an issue that says leaving them alone is better than knowing who they are.

[9:28:31 AM](#)

MR. SCANNELL, in response to a question from Representative Gatto, said he doesn't think any of this legislation applies to illegal immigrants. The people that are going to have documents issued to them are people that are legally here; therefore, he said he believes "we are talking about punishing honest people." He relayed that he has heard the head of the DMV in California tell a Senator there that nothing the DMV can do will help staunch the flow of illegal immigrants to the state, because [the] Real ID [Act] only applies to citizens and people who are legally in the state. Bad people will steal identities and create documents to serve their purposes, he said.

[9:29:32 AM](#)

REPRESENTATIVE GATTO suggested that if the state tags honest people, it would, by a process of elimination, figure out who the dishonest people are.

MR. SCANNELL responded that he did not serve over four years in the U.S. Army in order for the nation to have a national ID card, which he is against having. He said others may be for having a national ID card, but if one is to be considered, let it be done through "proper national debate."

[9:30:42 AM](#)

ANASTASIA MIRANOVA testified on behalf of herself in opposition to SB 189. She told the committee that she is a foreign exchange student from Russia who graduated in 2004, from UAA, with a double bachelor degree in Mathematics and Computer Science. She said she has done research under a grant from the National Institute of Health, and this summer, she will intern as a research scientist for ConocoPhillips Alaska, Inc.

MS. MIRANOVA stated that she is critical of many aspects of the United States' immigration procedures, but she asked the committee not to interpret her criticism as a lack of gratitude for the opportunity she has been afforded. She continued:

I originally came under a Rotary exchange program. I was lucky to get here, especially because the U.S. Consulate approves only half of Russian student applicants. My visa wasn't issued for the full length of my degree program. It has now expired, and I'm allowed to stay, as long as I'm in school with a current I-20 enrollment document. Since I arrived, I've had eight of these forms. I have never violated

an immigration law, yet I am photographed and fingerprinted, along with every other foreign student, whenever I enter this country. My student status, and even my class schedule, are tracked very closely in the federal computer system ... Any time [that] I do not comply with my status, I am reported to the [Immigration and Naturalization Service (INS)] as being out of status.

Have you ever been fingerprinted at any border? If you've ... been arrested, I understand the need for security, but these measures seem plenty sufficient to me - you don't need to add any more. Because of U.S. visa regulations, I can only travel within North America in my current status. I haven't been able to see my mother in three years. She lives alone on \$100 a month. If I go home, there is only a 50 percent chance that I will be issued another visa to return to complete my degree here. I miss my mom more than you can imagine, but I can't take the chance that I would not be able to complete my Ph.D. if I go visit her. It can be a large sacrifice to study here.

MS. MIRANOVA addressed the subject of driver's licenses as follows:

I spent the first two years here without an Alaska ID or a driver's license, because I did not need them for any reason. I opened a bank account with my passport, before I had a social security number. I flew domestically in the U.S. with my passport many times. I have never had a problem. The only reason I did get a driver's license was because ... that was the only way to get reasonable insurance prices on my car. My Russian driver's license doesn't expire until the year 2063. The Alaska DMV wouldn't let me take the driver's test the first time, because my car wasn't insured. It was nearly impossible to find insurance without having a U.S. license. It was a catch-22 situation. I eventually found some very expensive insurance that insured my car with my Russian driver's license. I drove here for several months with that, but it got so expensive, that I went in again to try to obtain an Alaska license. I was successful that time.

Now, under this new law, I have had eight I-20 student enrollments forms issued to me since I arrived in this country. There is no way I would have been able to return to the DMV eight times to return my license. The shortest I-20 form that I was issued was valid for 37 days. I hope you realize how ridiculous and a waste of everyone's time and money it is to make me renew my license twice, every five weeks. Honestly, I would have not obtained an Alaska license in the first place if I knew that I would have to deal with this. Many of my fellow students would feel the same way. ... This level of bureaucracy reminds me of Russia very much.

[9:36:33 AM](#)

REPRESENTATIVE LYNN asked if it is possible for someone to go to Russia and legally obtain a Russia driver's license, without being legally present there.

MS. MIRANOVA answered, yes. She said there are many ways of going about that.

[9:37:03 AM](#)

REPRESENTATIVE GATTO said he thinks the federal government would want to know more about a person from another country studying math, than about someone picking corn. He asked Ms. Miranova, "So, would you agree or disagree that because you have come here and done things that are national security issues, you should be tracked more closely than someone who comes here to be a farm worker?"

[9:38:00 AM](#)

MS. MIRANOVA answered that if the research involved is at a national security level, international students would not be allowed to participate.

The committee took an at-ease from [9:40:26 AM](#) to [9:40:31 AM](#).

[9:40:50 AM](#)

REPRESENTATIVE LYNN stated that he cannot believe the testimony he has heard in opposition to SB 189. He continued:

What ever happened to common sense ...? How in the world can anyone in the U.S. or Alaska have any legal privileges on driving or anything else if you're not here with a legal presence? Every once in awhile we get a bill before us that makes imminent common sense, and I think this bill is one of those. And I think it's certainly supported by the great majority of our constituents all over the state of Alaska.

[9:41:40 AM](#)

REPRESENTATIVE LYNN moved to report [CSSB 189(STA)] out of committee with individual recommendations and the accompanying fiscal notes.

[9:42:18 AM](#)

REPRESENTATIVE GRUENBERG objected.

CHAIR SEATON stated for the record that there is other written testimony in the committee packet.

[9:42:57 AM](#)

A roll call vote was taken. Representatives Gatto and Lynn voted in favor of moving [CSSB 189(STA)] out of committee. Representatives Gruenberg and Seaton voted against it. Therefore, [CSSB 189(STA)] failed to move out of committee by a vote of 2-2.

The committee took an at-ease from [9:43:42 AM](#) to [9:49:15 AM](#).

SB 86-STATE/MUNI LIABILITY FOR ATTORNEY FEES

[9:49:17 AM](#)

CHAIR SEATON announced that the last order of business was CS FOR SENATE BILL NO. 86(CRA)(efd fld), "An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals."

[9:49:53 AM](#)

REPRESENTATIVE GRUENBERG directed attention to a memorandum dated April 26, 2006, from Dennis Bailey to Representative Les Gara, the first paragraph of which read as follows:

You asked for an opinion whether a two-thirds vote is required for passage of CSSB 86(CRA). The short answer is yes. The bill modifies Civil Rule 82, which provides for court-awarded attorney fees. Article IV, sec. 15, Constitution of the State of Alaska requires a two-thirds vote by the members in each house to change a court rule. Accordingly, there should be a section and court rule change notice in the title of the modification of Civil Rule 82.

[9:51:12 AM](#)

CRAIG TILLERY, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law, at the behest of Representative Gruenberg, read the first paragraph out loud.

[9:51:46 AM](#)

REPRESENTATIVE GRUENBERG asked, assuming that that legal opinion is correct, what the cost would be to the state of defending such a lawsuit, including "the potential exposure for the other side's attorney fees."

[9:52:19 AM](#)

MR. TILLERY responded that he would have to go back and look at that. Notwithstanding that, he said based on the litigation in House Bill 145, "it would be some relatively small fraction of that." He said he couldn't offer an estimate on the spot.

[9:52:45 AM](#)

REPRESENTATIVE GRUENBERG said he would like to have an answer to that in writing from Mr. Tillery. Furthermore, he said he would also like in writing what the state's cost to date are for a case relating to the Native village of Nunapitchuk.

MR. TILLERY, in response to a question from Chair Seaton, said the Department of Law holds a view contrary to the one expressed in the aforementioned memorandum. He stated, "This was actually written in response to the superior court's decision. We have looked at this and feel fairly confident a two-thirds vote is not required in order for the legislature to assert sovereign immunity."

[9:54:53 AM](#)

REPRESENTATIVE GRUENBERG asked Mr. Tillery, "Does this ... legislation also involve the award of costs under Rule 79, or are you conceding that they would still be entitled to their costs and, as I recall, be immunized from an award of attorney costs in case the state prevailed under [Rule] 79?"

[9:55:28 AM](#)

MR. TILLERY replied, "This bill only deals with attorney fees."

[9:57:00 AM](#)

RANDY RUARO, Assistant Attorney General & Legislative Liaison, Legislation & Regulations Section, Civil Division (Juneau), Department of Law, in response to a question from Chair Seaton, said he thinks that attorneys do have an obligation to zealously represent their clients. However, he said, they also have an obligation not to needlessly drive up the expense of litigation by "throwing in a kitchen sink worth of claims ... in the hopes that one will stick." He said it's a matter of balance.

[9:57:42 AM](#)

CHAIR SEATON clarified that he wants confirmation that the department is not saying that "for someone to only win on two sections of the suit really meant that they had lost the suit," but that "some of the theories of action they might prevail on ... could be the substance of the suit, even if it's ... a minority of the number of theories."

[9:58:19 AM](#)

MR. RUARO responded, "That's part of the problem of allowing the courts to handle the issue on a case-by-case basis; it's very hard to predict what you actually do have to do to be considered a prevailing public interest litigant." He said case law seems to be constantly evolving. He added, "I guess we would argue why it would be a better function under Article 2, Section 21 of the constitution for the legislature to ... decide it."

[9:59:05 AM](#)

REPRESENTATIVE GRUENBERG prefaced his subsequent motion with the statement that he plans to vote against the bill.

REPRESENTATIVE GRUENBERG moved to report CSSB 86(CRA)(efd fld) out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR SEATON [objected].

[9:59:47 AM](#)

A roll call vote was taken. Representative Lynn voted in favor of moving CSSB 86(CRA)(efd fld) out of committee. Representatives Gruenberg, Gatto, and Seaton voted against it. Therefore, CSSB 86(CRA)(efd fld) failed to move out of the House State Affairs Standing Committee by a vote of 1-3.

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [9:59:54 AM](#).