

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 15, 2007

8:06 a.m.

MEMBERS PRESENT

Representative Anna Fairclough, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
Representative Nancy Dahlstrom
Representative Mark Neuman
Representative Kurt Olson
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 56

"An Act establishing the Hydrogen Energy Partnership in the Department of Commerce, Community, and Economic Development; requiring the commissioner of commerce, community, and economic development to seek public and private funding for the partnership; providing for the contingent repeal of an effective date; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 101

"An Act relating to uniform traffic laws."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 56

SHORT TITLE: HYDROGEN ENERGY RESEARCH PROGRAM

SPONSOR(S): REPRESENTATIVE(S) CRAWFORD, DOLL

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	CRA, RES, FIN
02/15/07	(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HB 101

SHORT TITLE: UNIFORM TRAFFIC LAWS

SPONSOR(S): REPRESENTATIVE(S) GATTO

01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) CRA
02/15/07 (H) CRA AT 8:00 AM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE HARRY CRAWFORD

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 56.

SARA FISHER-GOAD, Deputy Director

Project Development/Operations

Alaska Energy Authority

Department of Commerce, Community, & Economic Development

Anchorage, Alaska

POSITION STATEMENT: Related that the department has no position on HB 56, but offered a few suggestions.

DAVID LOCKHART, Geothermal Energy Manager

Alaska Energy Authority

Department of Commerce, Community, & Economic Development

(No address provided)

POSITION STATEMENT: During hearing of HB 56, answered questions.

BILL LEIGHTY

Alaska Applied Science, Inc.;

Vice President, Leighty Foundation

Juneau, Alaska

POSITION STATEMENT: During hearing of HB 56, related his knowledge of hydrogen and its use with alternative energy sources.

PAT PITNEY, Associate Vice President

University of Alaska - Fairbanks

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 56.

ONA BRAUSE, Staff

to Representative Harry Crawford

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During hearing of HB 56, answered questions.

REPRESENTATIVE CARL GATTO
Alaska State Legislature,
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 101.

RODNEY DIAL, Lieutenant
Deputy Commander
A Detachment
Department of Public Safety
Ketchikan, Alaska

POSITION STATEMENT: Testified on HB 101.

CODY RICE, Staff
to Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 101, answered questions.

JOHN MCCONNAUGHY, Deputy Anchorage Municipal Attorney
Municipality of Anchorage
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 101, expressed concerns with the current language of [AS 28.35.030(r)].

ACTION NARRATIVE

CO-CHAIR GABRIELLE LEDOUX called the House Community and Regional Affairs Standing Committee meeting to order at [8:06:07 AM](#). Representatives LeDoux, Fairclough, Neuman, and Olson were present at the call to order. Representatives Dahlstrom, Cissna, and Salmon arrived as the meeting was in progress.

HB 56-HYDROGEN ENERGY RESEARCH PROGRAM

[8:06:41 AM](#)

CO-CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 56, "An Act establishing the Hydrogen Energy Partnership in the Department of Commerce, Community, and Economic Development; requiring the commissioner of commerce, community, and economic development to seek public and private

funding for the partnership; providing for the contingent repeal of an effective date; and providing for an effective date."

[8:06:52 AM](#)

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor, reviewed the history of HB 56 as it's the fifth time such legislation has been introduced. In fact, the legislation has passed the House twice. Although Alaska is a leader of energy production, these are fossil fuels that are declining. Therefore, [the state] needs to develop renewable resources and develop a method by which the energy it creates can be stored [and shipped]. This legislation establishes an entity by which grants can be utilized to research the use of hydrogen as a shipping and storage medium. Representative Crawford highlighted that this won't cost the state since it's to be funded by grants. Several years ago Chugach Electric and others came to him, he related, and expressed interest in [alternative energy possibilities] but pointed out the need for an entity to which the grants could go. This legislation was modeled after a similar entity in Hawaii, which is moving ahead with its program.

[8:12:06 AM](#)

REPRESENTATIVE NEUMAN inquired as to the difficulty with passing this legislation.

REPRESENTATIVE CRAWFORD said that he hasn't ever heard any serious opposition. The only change in this legislation from prior years is that the funds will go directly to the Alaska Energy Authority (AEA) in an attempt to make the situation more convenient for AEA.

[8:13:15 AM](#)

CO-CHAIR FAIRCLOUGH pointed out the two money fiscal notes that reflect one-time expenses after which the grant would then take over.

REPRESENTATIVE CRAWFORD pointed out that fiscal notes show program receipts rather than general funds. Therefore, the fiscal notes reflect that there isn't a cost to the state. In response to Co-Chair LeDoux, Representative Crawford related his understanding that money for the fiscal notes will come from the grants.

CO-CHAIR LEDOUX inquired as to how one would obtain grants prior to establishing the entity to which the grants would go. She opined that it would seem that there would need to be funds to set up the entity.

REPRESENTATIVE CRAWFORD related that the idea is to build on work that has been done by the University of Alaska. The hope is to obtain a grant from Chugach Electric, although the management of Chugach Electric has changed since the original offer to help. However, without a structure, he said he guaranteed that the research wouldn't happen.

[8:15:56 AM](#)

CO-CHAIR FAIRCLOUGH referred to page 3, line 12, paragraph (45) of HB 56, which says: "provide staff support for the hydrogen energy partnership established under AS 41.98.190, and the University of Alaska shall provide assistance to the commissioner on request." However, the university's fiscal note is zero.

[8:16:49 AM](#)

REPRESENTATIVE NEUMAN inquired as to how the Department of Commerce, Community, & Economic Development (DCCED) feels about HB 56.

REPRESENTATIVE CRAWFORD deferred to DCCED staff on line.

[8:17:36 AM](#)

SARA FISHER-GOAD, Deputy Director, Project Development/Operations, Alaska Energy Authority (AEA), Department of Commerce, Community, & Economic Development, said that at this point DCCED has no position on HB 56. However, the department anticipates that there will be some private sources to start the program in order to provide minimal staff support to pursue federal funding. Ms. Fisher-Goad explained that there are two fiscal notes, one from AEA and one from the Alaska Industrial Development & Export Authority (AIDEA), because AEA doesn't have staff. The program would be an AEA program, and therefore she recommended that the sponsor amend the legislation such that the program is an AS 42.45 versus "a Commerce program." The aforementioned would clarify that it's an AEA initiative rather than a DCCED initiative. With regard to the university's fiscal note, Ms. Fisher-Goad related her understanding that the university won't provide staff support

under Section 3 of the legislation unless funding is received. Only Section 4, which would seek federal and private sources to fund the cost of establishing and operating this partnership, takes effect immediately.

[8:19:31 AM](#)

REPRESENTATIVE CISSNA asked if there is a need for this legislation. She also questioned whether it's problematic for the state to supply inexpensive energy sources to all of Alaska. Furthermore, she questioned whether it's the state's responsibility to be concerned about whether the state has energy sources.

REPRESENTATIVE CRAWFORD related that currently a couple hundred billion dollars is being spent in Iraq, which can be partially attributed to the fact that the Mideast has lots of fossil fuel. Fossil fuel, a finite resource, is on the decline. However, there is renewable energy that isn't finite. There needs to be a way to transport and store this energy. Representative Crawford opined that there is a great need for legislation such as HB 56 in order to head off future problems, although it's not a magic bullet.

[8:23:02 AM](#)

REPRESENTATIVE CISSNA asked if there is any documentation of an unmet need in the state.

REPRESENTATIVE CRAWFORD pointed out that \$180 million was placed in power cost equalization (PCE) last year because the cost of fuel in Western Alaska is so expensive. This legislation offers a way in which cheaper energy could be provided to Western Alaska, statewide, and nationwide. He then turned to the Akutan project where a geothermal plant could be utilized to turn sea water into hydrogen to create energy. He also mentioned the Fire Island wind possibility, but acknowledged the need to have base load power sources and the need for storing wind power. Representative Crawford opined that there is a large need worldwide and Alaska should be a leader in this new technology.

[8:26:29 AM](#)

REPRESENTATIVE OLSON inquired as to whether Representative Crawford sees the greatest demand for the generation of power or transportation.

REPRESENTATIVE CRAWFORD answered that it would be the generation of power at this point as there are problems with the transportation aspect.

REPRESENTATIVE OLSON opined that he can't foresee hydrogen being a factor in Alaska for 50-100 years because of the size of Alaska and its population density. He related his understanding that test stations are being done in Washington, D.C. However, the vehicles are expensive and have a low mileage radius. Therefore, using hydrogen for power generation purposes would be appropriate for Alaska.

[8:28:47 AM](#)

MS. FISHER-GOAD reiterated that AEA is coordinating with the department regarding that this legislation would be an AEA initiative. The AEA would seek private sources in order to provide some support to help solicit additional federal dollars to move forward. She then pointed out that on page 3, paragraph (3), and related that the market evaluation would be for export and sales as well as the feasibility and production. The aforementioned would be reviewed in order to determine how a hydrogen program would fit in Alaska. She then highlighted the Institute of Social and Economic Research's (ISER) report titled "Village Wind Diesel Hydrogen Report."

[8:30:37 AM](#)

REPRESENTATIVE CISSNA related that she has heard an enormous need for energy and local jobs throughout the state. She asked if Ms. Fisher-Goad could identify sources of information regarding how alternative energy such as hydrogen energy could help local communities.

MS. FISHER-GOAD deferred to Mr. Lockhart.

[8:31:56 AM](#)

DAVID LOCKHART, Geothermal Energy Manager, Alaska Energy Authority (AEA), Department of Commerce, Community, & Economic Development, specified that AEA has performed essentially no work analyzing hydrogen as a means of storing energy. However, the sponsor's point as to the importance of being able to store energy produced from alternative energy sources are of interest to AEA. Currently, AEA is analyzing a potential wind energy project in Unalakleet as part of a powerhouse development. That project is reviewing battery and fly-wheel storage.

Furthermore, there is a tremendous resource at Akutan with geothermal possibilities and the use of hydrogen as well as aluminum smelting.

[8:34:17 AM](#)

BILL LEIGHTY, Alaska Applied Science, Inc.; Vice President, Leighty Foundation, related that he has spent most of the last six years co-authoring studies regarding the problem of large-scale stranded renewable energy resources. He then used his demonstrator to illustrate the limitations and opportunities with regard to hydrogen use for Alaska. Mr. Leighty informed the committee that Alaska has abundant resources of the mineral zeolite, which has an affinity for hydrogen. Therefore, powdered zeolite might provide the ability to store a larger quantity of hydrogen at a lower cost and pressure. The aforementioned would be an ideal research project for Alaska if the resources to do so could be attracted. Mr. Leighty said that he didn't know whether the [creation of the Hydrogen Energy Partnership] would necessarily attract funds to the state as there is much competition. He highlighted that hydrogen is a carrier rather than a source of energy. However, once hydrogen is made, something useful can be done with it. Ideally, the hydrogen could be stored at a large enough scale to provide a firm energy source year round. If all the wind energy could be harvested in the Great Plains and firm it on an annual scale, there would be enough energy to run the entire U.S.

MR. LEIGHTY, with regard to the Alaska opportunity, turned the committee's attention to a paper from the World Energy Congress in Sydney in 2004, which advocates building an international renewable hydrogen transmission demonstration facility to demonstrate that hydrogen could be produced from diverse renewable sources, place it in a pipeline, and deliver it to a community. He then related that the Japanese are interested in building a natural gas pipeline with hydrogen-capable pipe and as the gas is depleted, it would be replaced with hydrogen. The aforementioned illustrates the level of international interest in the concept. The question is whether hydrogen can be produced from stranded renewables at a large scale, firm it, and deliver it to market in order to have a firm supply of carbon emission free energy from renewable sources. He opined that it's doable, although much research and development would be required with the culmination of demonstration projects to prove that it can be done and at what cost it can be done. Mr. Leighty pointed out that he has suggested changes to the language of HB 56 to make it more consistent with what hydrogen

is and isn't as hydrogen should never be referred to as an energy source.

REPRESENTATIVE CRAWFORD said that Mr. Leighty's suggested language changes can be made. He mentioned that the drafter of the legislation is in the same situation as most, in that he/she doesn't know the proper terms of this matter. In response to Co-Chair LeDoux, he offered to provide [Mr. Leighty's suggestions] to the committee.

MR. LEIGHTY continued by informing the committee that the primary challenge with exporting hydrogen is that it has very low energy density by volume as it's only one-third the volume of natural gas. Therefore, larger pipelines or much higher pressure tanks must be used to move it around. However, he pointed out that once hydrogen is made, other useful chemicals can be made, particularly liquid chemicals. Liquid chemicals, such as ammonia, NH_3 , can be transported economically over very large distances through either pipelines or bulk carriers. Furthermore, the internal combustion energy can be run on ammonia. Alaska, he opined, could become a major exporter of ammonia for agricultural fuel, transportation fuel, and electricity generation if there was a way of making hydrogen from renewable energy sources and then synthesizing it into ammonia. At this point, almost all the world's ammonia is made from natural gas. Mr. Leighty highlighted that the major oil and gas companies are interested in hydrogen. In fact, Shell has a hydrogen unit and BP has BP Alternative Energy, for which hydrogen is a major part of its activity. Moreover, refineries are large consumers of hydrogen as they deal with the increasingly "sour grades" of crude and for desulfurizing gasoline and diesel. Mr. Leighty suggested that the large oil and gas companies might be the sources of funding for research and development projects.

[8:46:55 AM](#)

REPRESENTATIVE NEUMAN inquired as to how a partnership with private industry can [perform this research] better than private industry, with its money, alone.

MR. LEIGHTY opined that the goal is to pay attention to the possibilities and opportunities in Alaska sooner.

[8:48:02 AM](#)

REPRESENTATIVE CISSNA commented that she has heard discussions relating that Alaska is losing a lot [of ground on the research front] in terms of the money and attention research attracts. Therefore, she inquired as to the possibilities if the University of Alaska becomes a leader in attracting research funds to the state.

MR. LEIGHTY echoed his earlier comment that there's a lot of competition for the few federal dollars that are available for this. Therefore, the focus should be on Alaska's unique qualities, such as its island communities where hydrogen could be stored at an annual scale or Alaska's stranded renewable resources that could possibly be converted to something that could be economically exported.

REPRESENTATIVE CISSNA inquired as to whether university officials have been contacted regarding this legislation.

REPRESENTATIVE CRAWFORD recalled when he first started this effort when he talked with the university. This [legislation proposes] a model that has worked time and again on various projects and brings private entities together to partner with other entities. Representative Crawford opined, "If we want to move ahead and have the kind of future that we all envision ... with jobs and a vibrant economy, then we're going to have to do some things differently and this is one way to help to shape the future that we want to see."

[8:52:27 AM](#)

MR. LEIGHTY mentioned that he has a DVD with several of his conference presentations and lectures that he could share with the committee.

[8:53:15 AM](#)

PAT PITNEY, Associate Vice President, University of Alaska - Fairbanks (UAF), characterized [UAF's] commitment to energy research as a growing priority in its overall competitive research effort. This is an area in which the state has significant strength in terms of resources. This partnership provides the opportunity to create the dialogue and place Alaska in a more competitive position for energy research that exists or which will add value to the state in the future in terms of lower energy [costs] and additional export capacity. Therefore, the university is in favor of this partnership agreement, which compliments the overall competitive research budget increment

from the Board of Regents. Ms. Pitney opined that as a state, alternative energy sources are critical to a successful future and one must remember that such takes years to develop and perfect.

[8:55:43 AM](#)

REPRESENTATIVE CISSNA asked if there are any examples in which focus on such research has benefited the university and the state.

MS. PITNEY informed the committee of a fuel cell research project in which small transportation devices are looked at for energy. She offered to provide the committee with further examples of research focusing on energy. She highlighted that the U.S. and its current leadership are talking about alternative energy sources, which is a growing field for federal and private research. Therefore, positioning the state to have an infrastructure and dialogue with regard to the opportunities and the ways in which the state could incent private industry to look to Alaska is important.

[8:57:57 AM](#)

CO-CHAIR FAIRCLOUGH turned attention to the university's zero fiscal note.

MS. PITNEY explained that the fiscal note relates to getting the partnership started. As projects start that would require resources, there would be the need to request funding. She highlighted that energy is one of the university's competitive research priorities, and therefore it's stated as one of the areas for increase in the university's budget request.

CO-CHAIR FAIRCLOUGH then referred to page 3, line 12, which relates that DCCED shall provide support staff for this proposed partnership. Co-Chair Fairclough related that she is generally supportive of moving HB 56. However, she expressed concerned that a fiscal note is missing because someone will have to "provide staff" to start the grant process. Therefore, she asked if the sponsor is assuring the committee that the private sector will step forward and there won't be any burden on DCCED or should a fiscal note be requested.

REPRESENTATIVE CRAWFORD said he can't provide any solid guarantee. However, he reiterated that when he started this effort Chugach Electric said it would support this to get it

started, but the management has since changed. He expressed hope that this proposed partnership could be made to work because without some sort of entity for grants to be deposited, the research won't happen. This legislation provides a framework, he said.

CO-CHAIR FAIRCLOUGH reiterated her belief that support staff will be needed during the grant writing process. If the intent is for that to be provided and funded by the private sector, she said she would sign the report "Do Pass" with that on the record. However, if this is going to be an issue for the university, then there is the need to understand and acknowledge that some contribution is required upfront.

REPRESENTATIVE CRAWFORD recalled that over the last four years he has tried hard to make this happen.

MS. PITNEY interjected her opinion that the place this partnership should reside is AEA or DCCED, rather than the university which would provide the expertise in research.

[9:05:00 AM](#)

CO-CHAIR FAIRCLOUGH inquired as to whether the legislation introduced on this matter in past years has had a fiscal note for support staff.

[9:05:37 AM](#)

ONA BRAUSE, Staff to Representative Harry Crawford, Alaska State Legislature, answered that the fiscal notes for previous legislation regarding this proposed partnership were zero as well. She then pointed out that the fiscal analysis from AEA outlines that the fiscal note is for a development specialist to come in with money from the AEA receipts to establish the creation of the group. The university has a zero fiscal note because any money put out through the university program will be done through grants the [partnership] acquires once it's organized and it applies for the grants or the private money. Therefore, the university isn't required to provide staff if the funds aren't acquired.

[9:06:49 AM](#)

CO-CHAIR LEDOUX opined that in order to start this partnership, there has to be real money.

REPRESENTATIVE CRAWFORD noted his agreement. Again, he reminded the committee that at one time Chugach Electric had been interested in this, but perhaps another entity will have to be sought [for startup funds]. He then reiterated that without a structure and entity for the grants or funds to reside, the research won't go forward. He highlighted that if grants aren't obtained, then the provisions are repealed.

[9:08:15 AM](#)

REPRESENTATIVE CRAWFORD, in response to Representative Cissna, said that entities such as Chugach Electric aren't going to offer grants if there isn't a structure in place to receive the grants.

REPRESENTATIVE CISSNA surmised then that the partnership is merely a placeholder.

[9:10:05 AM](#)

CO-CHAIR LEDOUX, upon determining there were no further questions for the sponsor or anyone else who wished to testify, closed public testimony.

[9:10:39 AM](#)

REPRESENTATIVE SALMON inquired as to the size of facility that would generate 500 kilowatts (kW) of power by a demonstrator of the type Mr. Leighty presented.

MR. LEIGHTY explained that in order to generate 500 kW of electric energy, at least 500 kW of wind power must be available, for example. He acknowledged that the wind power is only available part of the time and a wind generator operates at about a 40 percent capacity factor. Therefore, about four times of 500 kW of wind generation would be necessary and the electrolyzer that converts the electric energy to hydrogen at 500 kW is about the size of a Volkswagen Bug. The associated equipment is about two more Volkswagen Bugs. The capital cost is about \$500 per kW. If the goal is to make an island village system work with a reliable firm source of energy year round, the hydrogen has to be stored. He then pointed out that to covert the hydrogen into electric energy, the internal combustion engine runs fine on hydrogen. The full-scale components of these do exist, although there isn't mass production of them, he stated.

[9:14:43 AM](#)

CO-CHAIR LEDOUX announced that HB 56 would be held over.

HB 101-UNIFORM TRAFFIC LAWS

[9:15:14 AM](#)

CO-CHAIR LEDOUX announced that the final order of business would be HOUSE BILL NO. 101, "An Act relating to uniform traffic laws."

The committee took an at-ease from 9:15 a.m. to 9:22 a.m.

[9:22:11 AM](#)

REPRESENTATIVE CARL GATTO, Alaska State Legislature, sponsor, explained that ignition interlock law was a way to get drunk drivers from getting in the car. However, the Municipality of Anchorage (MOA) doesn't want to enforce it and thus HB 101 would address that by inserting language "or enforce" to AS 28.01.010(a). This change would specify that the uniform traffic laws apply statewide and municipalities don't have the right to exempt themselves from the uniform traffic laws. He then referred to the October 30, 2006, memorandum from Legislative Legal and Research Services, which relates: "The legislature has provided the traffic laws of the state shall be uniform throughout the state and shall apply within all municipalities of the state." Therefore, municipalities aren't allowed to not enforce the uniform traffic laws.

[9:27:27 AM](#)

CO-CHAIR FAIRCLOUGH opined that MOA is relating in the aforementioned memorandum that the court has upheld its need not to comply. Therefore, she questioned whether this proposed language change really makes it clear to the court system that the municipality needs to comply. She related her guess that perhaps the municipality believes it has a liability if it complied with this traffic law. She noted her agreement that it's irrelevant whether the municipality wants to comply or not.

REPRESENTATIVE GATTO opined that he would think MOA would be worried about not enforcing this law based on the thought that the municipality could be sued by a person who was injured by a drunk driver driving with a previous driving under the influence

conviction and should have been required to have an interlock device.

CO-CHAIR FAIRCLOUGH asked if there is any documentation from the court case or the opinion relating why the language was determined to be such that MOA doesn't have to comply with this law.

REPRESENTATIVE GATTO deferred to Mr. Luckhaupt, Legislative Legal and Research Services.

[9:30:34 AM](#)

REPRESENTATIVE DAHLSTROM inquired as to whether anyone from MOA or the Anchorage Police Department is available to discuss the situation.

[9:32:29 AM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Department of Public Safety (DPS), said that he isn't privy to why Anchorage [law enforcement] isn't willing to enforce this law. However, Lieutenant Dial said that DPS understands the intent of this legislation and supports passage as a means to ensure consistency in the application of traffic law throughout the state. Lieutenant Dial related that DPS does see a problem with regard to local municipalities interpreting laws in a manner inconsistent with the intent of the original law. He opined that he could only speculate that MOA viewed the original law as an unfunded mandate and decided to opt-out of its enforcement.

[9:33:30 AM](#)

REPRESENTATIVE DAHLSTROM mentioned that she didn't have a fiscal note, and therefore she called upon the sponsor to comment.

REPRESENTATIVE GATTO deferred to his staff.

[9:34:15 AM](#)

CODY RICE, Staff to Representative Carl Gatto, Alaska State Legislature, informed the committee that MOA's deputy attorney, John McConaughy, believes that the law was onerous and confusing and that MOA could choose not to adopt municipal code, and therefore not enforce these specific provisions. However, that's not the case as the organized and unorganized areas of

the state have to have traffic code that's consistent with state law. This legislation proposes a simple language change to make the aforementioned extremely clear.

[9:36:14 AM](#)

CO-CHAIR FAIRCLOUGH said she still wasn't clear why MOA isn't enforcing the law. Co-Chair Fairclough related her agreement that MOA should enforce the law, but she said she wasn't sure how two words will change the situation. She opined that it would be most relevant to contact MOA regarding what it feels is inconsistent in the message of the legislature through this law. She then expressed concern that no representatives from MOA are available today to discuss the situation.

[9:37:27 AM](#)

REPRESENTATIVE GATTO informed the committee that he has surmised that the difficulties of having a vendor of these ignition interlock devices in Southcentral has complicated MOA's ability, as a condition of sentencing, to order the installation of an ignition interlock device. The situation becomes more complicated for areas outside of the area where the vendor/technician is located.

MR. RICE said that there is at least one vendor in the state and two to three others who are permitted, but aren't operating because of the low volume. The low volume is attributable to the fact that the largest community in the state is choosing not to enforce the current law.

[9:40:43 AM](#)

CO-CHAIR LEDOUX opined that currently, with no law change required, MOA is required to enforce this traffic law. Therefore, she questioned why the language change in HB 101 will change the situation. She emphasized the need to do something that will actually solve the problem.

MR. RICE related his belief that the proposed language in HB 101 makes it clearer. Furthermore, HB 101 makes it clear that choosing not to adopt municipal code consistent with new state law and maintaining the old law isn't consistent with statute. With respect to MOA's position, Mr. Rice said that in conversations with Mr. McConnaughy he understands that MOA feels that the language of the original law isn't how it would've preferred the language be drafted. Therefore, MOA made a

conscious decision not to enact municipal code consistent with state law.

[9:43:08 AM](#)

REPRESENTATIVE CISSNA questioned whether the cost of each of these ignition interlock devices could be viewed as an unfunded mandate.

MR. RICE pointed out that the cost of the devices is borne by the offender. The cost, he related, averages approximately \$3 per day. In cases of need, the cost can be deducted from the fines assessed by the court.

REPRESENTATIVE GATTO explained that as a condition of sentencing the offender is fined \$2,000 with \$300 relieved to be utilized to obtain the ignition interlock device. Therefore, there would be no additional cost for obtaining the device.

[9:44:41 AM](#)

REPRESENTATIVE NEUMAN expressed difficulty with the state telling communities what to do regardless of the communities' thoughts or situation. He further expressed concern with regard to smaller municipalities who can't afford to enforce this law and asked if his understanding that some smaller municipalities can opt-out of this law is correct.

MR. RICE clarified that the uniform traffic law is to be implemented statewide. However, he acknowledged under state law that in communities "with traffic volumes of less than 499 cars a day for individuals who have had not had six points or more removed from their license within the last five years" can be exempted from insurance requirements. Therefore, although there are variances across the state, they are consistent with state law. This legislation, HB 101, attempts to reach compliance and consistency, he said.

[9:49:38 AM](#)

JOHN MCCONNAUGHY, Deputy Anchorage Municipal Attorney, Municipality of Anchorage, confirmed that MOA isn't requiring an ignition interlock device when there is a violation of the municipal ordinance. The current law has been interpreted by Anchorage judges to specifically require a violation of state law AS 28.35.030(r).

CO-CHAIR LEDOUX asked if those are written decisions by the state court.

MR. MCCONNAUGHY said he didn't know.

CO-CHAIR LEDOUX then asked if MOA would enforce the state law if HB 101 passes or would MOA argue that it still wouldn't be required to enforce it because people are being charged under a municipal ordinance.

MR. MCCONNAUGHY said that municipal ordinances are already required by law to be consistent with state law. He deferred to the courts regarding whether they would consider the particular language of the statute as something that would be required to be incorporated into a municipal ordinance and further how the law would have to be enforced. Mr. McConnaughy clarified that the municipality isn't opposed to the use of ignition interlock devices or unwilling to require them.

[9:53:40 AM](#)

CO-CHAIR LEDOUX questioned what it will take for MOA to start requiring the use of ignition interlock devices.

MR. MCCONNAUGHY opined that there are some difficulties with the current language of [AS 28.35.030(r)] that would likely create legal problems for MOA or any other entity enforcing it. In further response to Co-Chair LeDoux, the provision's language: "if it's to be determined by the trier of fact" is troubling because normally "the trier of fact" refers to the jury. Therefore, the provisions assume that the jury will make a determination that the breath test result was at least .16 percent or more or .24 percent or more. However, that's problematic because the breath test submitted to a jury isn't upon which the jury actually rules. Rather, the jury makes a determination as to whether an individual is under the influence of an intoxicating beverage. There are a couple of different definitions of "under the influence," which are found in subsections (a)(1) and (2) of [AS 28.35.030]. Those are considered to be theories of intoxication. Under case law, the jury doesn't have to reach the result and conclude beyond a reasonable a doubt that the result is over .16 or .24; but rather that under one of the two theories that the defendant is intoxicated. Furthermore, the jury doesn't have to come to a unanimous decision on that particular determination. Mr. McConnaughy summarized that the statute seems inconsistent with the way the law works.

[9:58:01 AM](#)

MR. MCCONNAUGHY, in response to Co-Chair LeDoux, agreed to provide written remarks on this matter. He then related his belief that [the ignition interlock device requirement] be imposed as a requirement when someone receives his/her license back by the Division of Motor Vehicles.

[9:59:08 AM](#)

MR. RICE maintained that the issue at hand is the refusal of MOA to address existing statute. He then related that the sponsor would be happy to work on making the statutes more amenable to MOA. In the meantime, however, the problem of who has the authority to choose when to enforce and not to enforce state law [must be addressed].

[9:59:45 AM](#)

REPRESENTATIVE OLSON related his understanding that HB 101 has been introduced for one month and MOA hasn't provided comment on the legislation.

MR. RICE replied yes, adding his recollection that when the original ignition interlock legislation was passed, MOA didn't provide comments either.

[10:00:09 AM](#)

CO-CHAIR FAIRCLOUGH asked if the sponsor would join herself and Co-Chair LeDoux to generate a letter to the Anchorage Assembly that the administration of Anchorage is choosing not to enforce state law.

REPRESENTATIVE GATTO agreed to do so.

[HB 101 was held over.]

[10:00:28 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [10:00:38 AM](#).