

**ALASKA STATE LEGISLATURE
ADMINISTRATIVE REGULATION REVIEW COMMITTEE**

April 5, 2008
10:42 a.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Representative Paul Seaton, Vice Chair
Senator Hollis French
Representative Mark Neuman

MEMBERS ABSENT

Senator Gary Wilken
Representative Lindsey Holmes

COMMITTEE CALENDAR

- Report on Effectiveness of HB 33 (Ch 91, SLA 05)
- Regulations regarding driver's license requirement: Social Security Cards
- Regulations and Statutes regarding wild-stock geoducks
- Implementation of SB 145 (Ch 64, SLA 07)
- Alaska Coastal Management Program (ACMP) regulations

PREVIOUS COMMITTEE ACTION

No previous action to record.

WITNESS REGISTER

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced Mark Choate.

MARK CHOATE, Attorney at Law
Juneau, AK

POSITION STATEMENT: Discussed DMV's requirement for a valid social security card for a driver's license 2AAC 90.420d.

WHITNEY BREWSTER, Director
Division of Motor Vehicles
Anchorage, AK

POSITION STATEMENT: Explained DMV's position regarding drivers licensing requirements.

JOE AUSTERMAN, Manager
Office of Economic Development
Anchorage, AK

POSITION STATEMENT: Explained HB 33; supported reauthorization of AS 44.62.218 regulations with some amendments.

WAYNE STEVENS, President CEO
Alaska State Chamber Of Commerce
Anchorage, AK

POSITION STATEMENT: Supported reauthorization of AS 44.62.218 regulations.

PAUL FUHS, Lobbyist
PAC Alaska LLC
Juneau, AK

POSITION STATEMENT: Reported on PAC's proposal for geoduck farming.

JOHN HILSINGER, Director
Division of Commercial Fisheries
Department of Fish and Game
Anchorage, AK

POSITION STATEMENT: Presented Division of Commercial Fisheries, Department of Fish and Game position on wild-stock geoducks.

LANCE NELSON, Attorney at Law
Division of Natural Resources
Anchorage, AK,

POSITION STATEMENT: Presented the findings of a legal review of current regulations affecting the geoduck fishery.

JOHN GLASS, Deputy Commissioner
Department of Public Safety
Anchorage, AK,

POSITION STATEMENT: Opposed the use of APSIN for scofflaw enforcement.

DAN MOORE, Treasurer
The Municipality of Anchorage
Anchorage, AK,

POSITION STATEMENT: Supported the use of APSIN for scofflaw enforcement.

MICK FORNELLI, Senior Administrative Officer
Treasury Division, Finance Department
Municipality of Anchorage

Anchorage, Alaska,

POSITION STATEMENT: Supported the use of APSIN for scofflaw enforcement.

STEVE SMITH, Deputy Chief of Administration

Anchorage Police Department

Anchorage, AK,

POSITION STATEMENT: Supported the use of APSIN for scofflaw enforcement.

JENNIE MORRIS, representing herself

Anchorage, AK,

POSITION STATEMENT: Supported the use of APSIN for scofflaw enforcement.

REPRESENTATIVE REGGIE JOULE

Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Discussed problems with the Department of Natural Resources' implementation of HB 191.

RANDY BATES, Director

Division of Coastal and Ocean Management

Department of Natural Resources

Juneau, AK,

POSITION STATEMENT: Supported a reevaluation of the Alaska Coastal Management Program.

GLENN GRAY

Glenn Gray and Associates

Juneau, AK

POSITION STATEMENT: Testified that DNR's regulations conflict with state statutes and asked that they be amended.

JOHNNY AIKEN, Director

North Slope Planning Department

Barrow, AK

POSITION STATEMENT: Testified that DNR's regulations exceed HB 191 statutory authority.

TERRY CAMRY, Planner

City and Borough of Juneau (CBJ)

Juneau, AK

POSITION STATEMENT: Illustrated the difficulties of working with Department of Natural Resources' regulations.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the joint Administrative Regulation Review Committee meeting to order at [10:42:30 AM](#). Present at the call to order were Representatives Mark Neuman and Paul Seaton, and Senators Hollis French and Lesil McGuire. Representative Lindsey Holmes was excused.

CHAIR MCGUIRE reminded the public that this committee was set up in law to give the legislature the opportunity to review regulations that are promulgated by various departments at the executive level, the Governor's branch of government, to effectuate the laws they make. She explained that legislators go through the committee process, listen to the debate and discussion on a bill and think they know what that bill will do; but they often find the regulations don't seem to incorporate their intent. This committee attempts to reach an understanding about where miscommunication exists between the intent of the bill and the regulations that are put into effect.

Requirement for a Valid Social Security Card for a Drivers License 2AAC 90.420d.

CHAIR MCGUIRE explained that the question is whether or not the Division of Motor Vehicles has the authority to require an applicant for a driver's license to present an actual social security card to validate the social security number.

She commented that they had addressed this in many other committees that year on the subject of "real ID," which is the legislation passed by Congress in 2005 requiring states to begin the process to create federal identification cards. It is a very controversial subject both because of the issue of state sovereignty and because many people believe it encroaches on citizens' privacy rights. This is one part of that debate, the social security number requirement and how to prove it.

[10:46:12 AM](#)

REPRESENTATIVE MAX GRUENBERG, Anchorage, AK, introduced Mark Choate. He said he asked Mr. Choate to be local counsel in a lawsuit involving this; Jim Harrison, another member of the Alaska Bar actually carried that forward.

MARK CHOATE, Attorney at Law, Juneau, AK, explained that the lawsuit challenged DMV's [Department of Motor Vehicles] authority to implement a federal law without legislative approval. Unfortunately, the superior court found that they did not have standing because the plaintiff was not at immediate

risk of losing her license. Had the plaintiff been an undocumented alien, for example, someone who would face the risk of deportation, the court found that they would have had standing and could have gotten to those issues. He continued that they were at the point where they had to decide whether to continue the litigation or not.

MR. CHOATE recalled the year 1962 when JFK was president and national IDs were something that happened in communist states. It would not have been impossible to create a national ID in that time period but now, 45 years later it happened without discussion. He opined that there are better ways for the state to accomplish what it needs to do than implementing or supporting a national identity system which would so negatively affect the right to be independent and not followed by the government.

10:51:37 AM

REPRESENTATIVE GRUENBERG said he just saw the April 4, 2008 memo and wondered if there was another copy.

10:52:00 AM

CHAIR MCGUIRE stated for the record that the memo they were referring to was dated April 4, 2008 to her from Lisa Moritz Kirsch, Legislative Council, discussing the regulation she referred to earlier regarding the requirement that "an applicant must present the applicant's valid social security card for verification of the applicant's social security number or an approved waiver from the United States Social Security Administration or the United States Department of Treasury, Internal Revenue Service," and whether or not it directly conflicts with existing laws with respect to driver's license issuance.

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REPRESENTATIVE GRUENBERG said the regulation is set out in the middle of the first page of the memo; it says applicants have to present a valid social security card or an approved waiver from the Social Security Administration or the Internal Revenue Service. Ms. Kirsch cites, as does the regulation, a general grant of regulatory authority AS 28.05.011 which allows them to include the licensing of drivers of vehicles and procedures for obtaining limited license privilege. He commented that it didn't say they can determine eligibility requirements; those are set out in statute. On the other hand, there is a separate statute that deals with this exact issue and under the rules of statutory construction, a specific statute controls over a

general statute. That is AS 28.15.061(b) subsection 4, which says "an application must ... contain the applicant's social security number" but then there is a caveat, "the requirement of this paragraph only applies to an applicant who has been issued a social security number." It doesn't say a person has to apply for one; and in so far as the regulation appears to require them to apply, that is beyond the grant of authority under this specific statute.

Kirsch's memo goes on to discuss the Real ID Act; it appears that the regulation at the top of page 3, 6 CFR 37.11(e) says applicants must present a Social Security card or, if one is not available, one of the documents on a list that follows. Representative Gruenberg stressed that the states are getting waivers from the requirement of Real ID and there is nothing that shows this regulation is independently binding on the State of Alaska. In addition, Senator Wielechowski introduced a bill that was being heard in the State Affairs Committee, which would prevent the state from spending any money to implement Real ID; and the legislature just passed Senator Coghill's resolution urging Congress to repeal Real ID.

10:57:18 AM

REPRESENTATIVE GRUENBERG read from the top of page 3 of Ms. Kirsch's memo "Although its regulations require a Social Security card, the DMV reported to Mr. Harnett [Eugene Harnett] that it is now accepting these alternative documents to verify Social Security Numbers." He pointed out that does not get around his core argument that the department has no authority to require Social Security Numbers; it only deals with proof of a social security. His argument was with the requirement of Social Security. Even if that were legal, he persisted, they would have to amend the regulation because the regulation itself does not support the DMV's practice. When the former director came before the committee, DMV had implemented these procedures without even having a regulation; so there was no regulation allowing them to do what they did and there is still no statute authorizing them to do what they did. He said that after the committee pointed that out, they implemented the regulation which, as they stated here, was effective in the summer of 2006 after the committee hearing. In Ms. Kirsch's memo, page 2, line 1 under "Discussion," the requirements in the regulation were first added on July 1, 2006.

CHAIR MCGUIRE thanked Representative Gruenberg for providing the history of where the legislature has intervened in the past and said that at the end of the meeting she would circulate letters

of action stemming from each issue. She said Whitney Brewster and Kevin Brooks were present to explain DMV's position; but she expected to find that there is a regulation that does not support the current practice. Finally, she felt they might want to issue a letter with a general cautionary note to the governor or to the commissioner to take care in the area of implementation of federal Real ID, given that the legislature either has not spoken yet or, after this legislative session, will have spoken in the form of a prohibition against any federal funds being used to implement that Act.

REPRESENTATIVE GRUENBERG offered, in the interest of complete disclosure, that they received a memo today from James Harrison, the attorney who was primary counsel handling the lawsuit Huntley v State and that memo seems to agree with Ms. Kirsch; but Representative Gruenberg has not had a chance to discuss it with him.

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REPRESENTATIVE SEATON said he is trying to understand the statement that the regulation doesn't support the practice.

CHAIR MCGUIRE said they would be discussing that.

REPRESENTATIVE SEATON asked if the regulation is reported by the statute.

WHITNEY BREWSTER, Director, Division of Motor Vehicles, Anchorage, AK, wanted to make the committee aware that the Division of Motor Vehicles has requested no federal funds to implement the Real ID; they are very aware that the debate is ongoing within the legislature and have not moved forward with implementation in any way. She introduced Karey Hennings, Drivers Licensing Manager and said they would go into the history of social security numbers pertaining to drivers licenses in AK. She continued that the social security number was originally an optional field when obtaining a drivers license or ID card. If the customer provided a number it was taken at face value and entered into the DMV database; that number was then printed on the driver's license or ID card unless the customer requested that it be suppressed. In 1992 all states were ordered to comply with the commercial drivers' licensing program called the Motor Carrier Safety Act, and one of the regulations was a requirement to obtain the social security number and report that to the Commercial Drivers License Information System (CDLIS). The DMV was aware that their system was full of incorrectly reported numbers, fraudulent

numbers and numbers entered into the database in error, so they put a policy in place to verify the social security number when issuing a commercial drivers license. The number could, at that time, be verified using the actual social security card or various forms from the IRS such as a 1099 or W2 form. The way the federal regulation 49 CFR, Part 383.153 actually reads is:

(d)(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

(d)(2) The State must provide the Social Security Number to the CDLIS.

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In 1996, Congress passed The Personal Responsibility and Work Opportunity Reconciliation Act and Alaska adopted the requirements of this act in 1998 under HB 344, which required all driver license applicants to provide their social security number. This was to aid in the collection of child support from errant parents and was due to changes in the welfare requirements. By policy, if someone reported that they did not have a social security number, they could fill out an application after swearing to DMV that they had never applied for, obtained or used a social security number. They also accepted letters from the Social Security Administration if a person was not allowed to obtain a social security number. DMV was aware that they had incorrect numbers in their database and that became a particular issue in 1996 as they prepared to provide the information to Child Support Enforcement. In 2001 HB 110 prohibited DMV from printing the Social Security Number on the driver license or ID card. In 2006 DMV connected with Social Security Number Online Verification (SSOLV) and ran all of their records against it. It reported that 79,611 records were in error, so they began verifying social security numbers to determine if the error was in the DMV database, the name, the date of birth, the social security number, or if it was in the Social Security Administration database. They did not want to send customers to the Social Security Administration when it was a DMV problem; so this procedure was included in their regulations package, which was implemented in July of 2006. She stressed that by requiring the physical card they are more able to capture an accurate number.

CHAIR MCGUIRE interrupted to ask Ms. Brewster to take a question from Senator French.

SENATOR FRENCH asked her to go back and say again what caused the shift in their practices to require the presentation of a physical social security card or proof of a waiver.

MS. BREWSTER asked Senator French to clarify his question.

SENATOR FRENCH said he was asking when DMV decided it was going to begin requiring applicants for a driver's license to show proof of their social security number or proof of a waiver from the Social Security Administration.

MS. BREWSTER said she was not sure exactly when the practice of requiring physical proof was implemented but she would be happy to find out.

REPRESENTATIVE NEUMAN asked if DMV was required to do anything else to assist the state in collecting payments, aside from issuing driver's licenses and aiding in the collection of child support. He commented that it seems outside the boundaries of their normal function.

MS BREWSTER replied that child support has ability to view the DMV records and can suspend [a person's driving license] based on lack of payment. They also work directly with the court system and law enforcement on issues regarding driver licenses and identification, so it is important that they know the person in front of them is who they say they are.

REPRESENTATIVE NEUMAN asked if everything in their records is available to every other department within the state of Alaska.

MS. BREWSTER answered "No" that only Public Safety and Child Support have access.

CHAIR MCGUIRE advised that, under a bill she proposed earlier in the year, they were considering allowing the sex offender registry unit to access those records, so there is a precedent; but they found that the permanent fund records were a better source of information.

MS. BREWSTER added that they work with the Division of Elections to register people to vote as well. She ended by saying that their database should be cleaned up by 2011 when they have completed a full 5 year cycle. After that time, verifying with a card, 1099 or W2 will no longer be necessary.

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SENATOR FRENCH said it sounded as if she said they are about to stop implementing the regulation they are discussing and asked her to clarify.

MS. BREWSTER said they've discussed this issue internally and it appears that once the database is cleaned up, they will have the ability to match future social security numbers against the Social Security Administration's database and they will likely not need to do a physical verification in the future.

CHAIR MCGUIRE asked what they will do if the numbers don't match up in the database.

MS. BREWSTER answered that they would require the individual to go to the Social Security Administration to work out the problem.

SENATOR FRENCH asked what would happen if the person lived in an area where there was no Social Security Administration office.

MS. BREWSTER responded that they have the ability to do it through the mail.

CHAIR MCGUIRE repeated for the record that as of 2011, when an applicant comes in for an Alaska drivers license, DMV will submit the social security number they have provided for a match; if it does not come back with a match, DMV will deny them a driver's license until they rectify the situation.

MS. BREWSTER agreed.

CHAIR MCGUIRE asked how that will work. She set out a hypothetical situation: a person from Toke is in Anchorage and needs a license, but the social security number does not match up in the database and the license is denied. She asked how long it would be before that person could get a license.

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MS. BREWSTER explained that they simply need some sort of correspondence from the social security administration.

CHAIR MCGUIRE said what she recommends is that they repeal the obsolete regulations or redefine them to reflect the current practices.

MS. BREWSTER completely agreed but wanted to make clear for the record that this regulation packet began well before Real ID and

was based on the American Association of Motor Vehicle Administrators' Best Practices, not as a result of Real ID.

REPRESENTATIVE SEATON asked what DMV's current practice and regulations require when a person comes in for a license and does not have a social security number.

MS. BREWSTER said currently DMV would require the individual to seek a waiver from the Social Security Administration and present that to the DMV.

REPRESENTATIVE SEATON asked Ms. Brewster if it was her interpretation that that requirement corresponds with statute 20.15.061 where it says in subparagraph (4) "contains the applicant's social security number; the requirement of this paragraph only applies to an applicant who has been issued a social security number."

MS. BREWSTER answered that she was simply saying that is the current practice, which is based upon requiring the individual to show that they have not been issued a social security number.

REPRESENTATIVE SEATON said that does not seem to be what the statute says. It says if you've been issued a social security card you must provide that; but there is nothing in Alaska statute to require more. He asked if the Department of Law could speak to that.

CHAIR MCGUIRE agreed.

SENATOR FRENCH said it ultimately doesn't matter what prompted the regulation; the issue is whether it is in conflict with the statute. He thought there was a bill sponsored by Senator Huggins that might actually support this regulation and asked Senator MCGUIRE whether they should try to make the regulation comport with statute today and see what happens at the end of legislative session or wait.

CHAIR MCGUIRE said her thought was that she would introduce the conflict to the members recognizing that there are 3 pieces of legislation in process, one of which would rectify this problem. If HB 3 passed it would make their action moot; so she thought they should wait until the end of legislative session and see what comes out of it. If HB 3 has not passed by the end of session, they'll have to discuss re-promulgating regulations that reflect the true statute. The point of the social security number was to assign people an ID to direct them to a benefit

that would occur later in life; but it has been perverted for other uses. The statute is silent on why one might not have a social security number; so even the practices are in conflict.

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CHAIR MCGUIRE ended by saying they will follow the issue and await the end of the legislative session before going forward on that.

MS. BREWSTER thanked the committee and stated for the record that the DMV does not want to overreach its authority or put an obstacle before Alaskans in obtaining a drivers license or ID card; but they do want to be able to verify that individuals are who they claim to be. They would be happy to work with the legislature to resolve these issues.

Reauthorization of AS 44.62.218 Regulations.

[11:26:33 AM](#)

"An Act relating to required notification of the Department of Commerce, Community, and Economic Development, economic effect statements, and regulatory flexibility analyses regarding the adoption of regulations that may govern the conduct of small businesses; relating to a private cause of action, regulation invalidation, and judicial review related to required notification, economic effect statements, and regulatory flexibility analyses for the adoption of regulations that may govern the conduct of small businesses; and providing for an effective date."

CHAIR MCGUIRE announced consideration of HB 33, a bill by Representative Kevin Meyers that passed in 2005. She asked the committee members to go to the discussion of the program report on regulations effecting small businesses. She noted that Mike Palowski from Representative Meyer's office was on hand to observe in case something comes out of the meeting that might require a change to the regulations.

CHAIR MCGUIRE continued that the goal of HB 33 was to require agencies to write an economic effect statement and a flexibility analysis statement for all regulations effecting small businesses. The intent was to reduce costs and impacts on small businesses by early identification through those reports of the impact regulations would have. She pointed out that this is a 3 year pilot program and is due to sunset in January of 2009, so they need to review it to see how it is working.

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JOE AUSTERMAN, Manager, Office of Economic Development explained that HB 33 established a 3 year pilot program to reduce the cost impact of regulations on small businesses. Essentially, Section 218 directs the Departments of Commerce, Community and Economic Development; Environmental Conservation; Health and Social Services; and Labor and Workforce Development to notify the small business regulation coordinator in the Department of Commerce that an agency intends to adopt a proposed regulation or has received a petition to adopt a proposed regulation. They are also required to prepare a small business economic effects statement and a regulatory flexibility analysis in relationship to small business. He said the program establishes a mechanism that assures proposed regulation changes address the concerns and needs of small businesses and entrepreneurs in the state of Alaska.

11:30:19 AM

He said that, like many of the development specialists in the Office of Economic Development, this Small Business Regulation Coordinator has essentially evolved into an advocate for small business and has become a single point of contact for the small business community with the State of Alaska regarding their concerns about regulatory impacts. The program is increasing the department's ability to deliver consistently good customer service with tangible results to the public.

MR. AUSTERMAN continued that the program is evolving into a single point-of-entry business resource for entrepreneurs, small business owners, community business providers and other state agencies as well as outside callers and is helping to establish the department as a player and a leader in small business service in the State of Alaska. Not only is it a conduit to small business, but it provides an outreach point for other small business advocacy groups such as State Chambers, Community Chambers and Alaska Municipal League. It also helps the Alaska Regional Development (ARDOR) Programs to navigate the government landscape with regard to regulations and how they impact their businesses in rural Alaska. He wanted to emphasize that the Small Business Regulation Coordinator has extensive contacts with rural Alaskans, especially through the ARDOR leaders.

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He continued that the program is increasing the department's capacity to address regulatory issues. The person who sits in this capacity essentially becomes an in-house expert for Commerce in evaluating and addressing regulatory impacts, not just for small business but for other issues. She works closely

with some of the fisheries development specialists and minerals development specialists. The program has also increased inter-agency collaboration and is increasing the quality of the program's customer service to small business and entrepreneurs. In order to better serve callers and walk-ins, the department, in collaboration with the Department of Economic Development, launched the small business assistance center, a website with over 150 direct resource links. The important thing to consider is that all government actions have some sort of economic impact; this program serves as a conduit in addressing the concerns of these impacts. He stated that the primary program challenge they have identified is that, while this person works closely with the 4 agencies in considering the concerns of regulatory change, there are no teeth to encourage regulatory amendments or changes that would assure small businesses have minimal impacts from regulatory change.

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MR. AUSTERMAN said they feel Section 44.62.218 is increasing the state's capacity to foster a healthy small business environment by becoming a source of information, resources and training, referrals and materials on regulation and regulatory issues to Alaska entrepreneurs and small business owners. The program is also increasing the state's visibility among small business development organizations state wide and increasing the state's collaborative partnerships with federal state and non-government agencies seeking to diminish the cost and intrusion of regulations on small business in Alaska and the nation.

He stated that the department strongly supports the reauthorization of Alaska Statute 44.62.218 regulations affecting small business with some amendments.

- The program should continue under the auspice of the Office of Economic Development and continue to serve as a contact point for small businesses faced with regulatory issues.
- The program should be reformed so that it can act in closer harmony with the 4 denominated agencies in addressing the concerns of small business as they draft their regulations, rather than focusing on vetting regulations already issued.
- There is also a recommended change in the definition of small business from one that employs 100 or less employees, to one that has 50 or less employee; but in practice, any business with concerns about regulations in the State of Alaska has access to the Small Business Coordinator and all perceived impacts with regard to businesses of any size are taken seriously.

- Redefine the program's role by amending 44.33.202 Duty to the Department.
- Incorporate the program into the Department of Commerce Community and Economic Development; statute and place it within the department as part of its small business outreach program with a mandate to assist in creating a small business climate in which small businesses can thrive within our state. The revised program would establish a procedure for handling a small business minor or unintentional regulatory violation, reviewing complaints and addressing them in an informal person-to-person setting before they can escalate to the ombudsman or judicial level.
- Refine the mission of the program; grant the program the authority to report to the 4 agencies when their regulations are the source of complaints from small businesses; empower the program to receive follow-up on and seek information for person-to-person resolutions to complaints from small businesses and to address regulatory practices that result in barriers, unreasonable delays or detriments to startup, development, or operation of small businesses.

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REPRESENTATIVE NEUMAN asked Mr. Austerman if "this person" he kept referring to is Jennifer Abbot, who prepared the report that was distributed to members.

MR. AUSTERMAN said that is correct and noted that at about the time this program report was due, she had accepted a higher range job and was on her way out. A lot of intuition with regard to the program was lost when she left; but he is still in contact with her and is trying to garner as much of her knowledge as he can.

REPRESENTATIVE NEUMAN noted that in "An informal survey of the regulators of the 4 agencies in the community businesses provided in the state," 75 percent of the regulators who responded to this program want it to sunset; but 100 percent of the community business people want it to be reauthorized. He asked Mr. Austerman if he knows why the agencies want it to sunset.

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MR. AUSTERMAN answered that his initial response is that it creates what is probably perceived by other agencies as an unnecessary level of paper work; but the Department of Commerce,

which actually has to respond to this regulation as often as anybody, is in support of the re-authorization. He did not think the paperwork was overwhelming and opined that they might be able to develop a more professional relationship with the other 3 agencies, which would encourage their participation with the program.

REPRESENTATIVE NEUMAN asked if Mr. Austerman was trying to change the program to address the issues that are causing resistance in the other 3 agencies.

MR. AUSTERMAN replied that was certainly their intent; they don't want to be part of anybody's perceived headache. He said he would like to get buy in from the other agencies.

REPRESENTATIVE NEUMAN asked Mr. Austerman how many contacts he's had from small businesses since the beginning of the year, or during the 2 ½ months of his tenure.

MR. AUSTERMAN answered that the program coordinator left in January and a lot of their contacts come from the small business regulations website so he didn't have that information on hand but could certainly get it for him.

REPRESENTATIVE NEUMAN said he was trying to judge how much the program is used within the department.

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CHAIR MCGUIRE said she thinks it is an excellent tool and would like to see it reauthorized, but is not sure why 75 percent of the regulators see it as a burden and resist doing a thorough analysis. She thinks they might be able to make the program more functional and said she would work with Mr. Austerman to improve it.

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MR. AUSTERMAN said he does not know what relationship the former coordinator had with the other departments but hopes that much can be resolved through good professional relationship building.

REPRESENTATIVE SEATON commented that recommendation #1 is to change the focus of the program from vetting regulations to actually working with the drafting of the regulations and he is not quite sure how that works when one agency is working in drafting for another.

Recommendation #3 sounds as if it would create an informal hearing officer. He asked if Mr. Austerman could expand those recommendations to include how he perceives that they would actually work.

SENATOR FRENCH complimented Mr. Austerman's work on behalf of small business owners.

WAYNE STEVENS, President CEO, Alaska Chamber Of Commerce, supports reauthorization of the Regulatory Reform Act and looks forward to working with Mr. Austerman and members of the legislature to make this Act the success they believe it can and will be.

CHAIR MCGUIRE introduced Paul Fuhs to report on his proposal for geoduck farming, a topic they have been discussing for 8 years.

Wild-Stock Geoducks

[11:53:15 AM](#)

PAUL FUHS, Lobbyist, PAC Alaska LLC, Juneau, AK, said PAC Alaska is an Alaska geoduck farming operation{ that has been battling for about 8 years to resolve issues surrounding their fishery. In House Fisheries they proposed moving the whole issue out of Fish and Game and into the agricultural section of the Department of Natural Resources (DNR); they backed away from that position however, and started good faith negotiations in another attempt to work it out. Representative Seaton suggested putting their position in writing, so they presented a formal proposal to the department but it was not accepted. The department came up with something else that PAC Alaska doesn't think is going to work. The bottom line is that this has been litigated a lot.

At first people went after sites that had a lot of geoducks on them, but the Supreme Court said they couldn't do that because it was a common property resource and they could take only insignificant amounts off the site.

CHAIR MCGUIRE interrupted to ask him to describe geoducks to the public.

MR. FUHS said geoducks are 3 foot long clams that are harvested using water jets to dig them out of the sand; they are marketed primarily in Asia.

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SENATOR FRENCH said he read that the largest geoduck ever harvested was 7.5 pounds; he asked Mr. Fuhs to define the nature of the dispute for the public.

MR. FUHS said that if they pick a good habitat [for farming] it will have some geoducks on it. They are broadcast spawners; they lay their eggs, the current moves them around and they land where they will thrive. So if they pick an area with geoducks on it, the common property section of constitution says those are reserved for common property use. There is a limited entry fishery with about 108 dive permits; most are not from Alaska, but the Superior Court said they can't use a site with amounts [of geoducks] on it that would be significant to a commercial fishery. The battle has been how to handle the wild stocks that are on these sites.

PAC Alaska appealed and the Supreme Court ruled that, although they wouldn't overturn the lower court's ruling [that they can farm sites with insignificant amounts of geoducks], PAC Alaska did not have the statutory authority to make do that. So the legislature passed AS 16.40.100(e), which they feel contains the solution to this. Mr. Fuhs read from the statute.

(e) Upon the expiration or termination of a permit issued under this section, a person who holds a permit for an aquatic farming site where wild stocks of shellfish indigenous to the site are cultured shall, as a condition of the permit, restore the wild stock of shellfish, as consistent with sustained yield management of the wild stock,

[11:58:22 AM](#)

That means the legislature anticipated there would be some wild geoducks on the site and farmed stock would be cultivated along with the wild stock that is there. Because it is a common property resource, when they leave the site, they have to go back and plant every single animal that they found when they came to the site so it is in the same condition as it was when they found it. He said that PAC agreed to replant the higher of the number of animals they actually took off the site, or the number the department thought was there when they did their initial assessment. The department can verify that they have replanted because they have to obtain a permit to buy the replacements from the hatchery and a permit to transport them. In addition, PAC is offering to use a video camera with time stamps to video the operation and give it to the department when they have completed the restoration. Another question is how long should the clams be cultured in order to be considered a

cultivated product, so people will know they are farming them and not just taking all the wild geoducks off; they propose a period of 5 years, which is about the amount of time it would take for planted geoducks to be mature.

12:00:06 PM

MR. FUHS said the department reserves the right to keep records on the site and they don't object to that. The issue is that it can be difficult to determine the age of a geoduck. The department's proposal says that they have to remove every geoduck from their site within the first 5 years and there is no way to remove them all; they can't even see them all. The department's response to their proposal was that after 5 years [of age] they can continue to take an additional 5 percent of whatever they harvested along with that. But there is no way they can tell the age of a geoduck before it is dug up because only the siphon shows; and once it has been dug up, the process required to determine age completely ruins the value of the geoduck. They have to take the shell, grind it down, do acid etching on it, do an acetate peel and put it under a microscope to determine how many growth rings there are. He said they think a better way to do it is to cultivate for 5 years, then restore the site completely. The department can tell that replacements are from the farm because, in order to harvest any geoduck they have to harvest a sample and send it to the Anchorage laboratory of the Department of Environmental Conservation (DEC) where it is tested for PSP. If the test is good, they can harvest for 72 hours before re-testing. Consequently, farmers have to notify the state well in advance that they are going to harvest.

12:03:21 PM

CHAIR MCGUIRE assured Mr. Fuhs that they would continue to follow the issue. The original law on the books made clear that the State of Alaska would like to have aquaculture, not in the area of fin fish but in the area of shell fish; and there seems to be a pattern of activity in the Department of Fish and Game that goes against that policy.

REPRESENTATIVE NEUMAN referred to Mr. Fuhs' discussion of a 5 year re-cultivating program and said he assumes that is to address any concerns about survival rate, to assure the viability of the stock on that specific location.

MR. FUHS confirmed that is correct. He said it is a combination of predator netting, because sea otters dig them up or starfish feed off them, and removing debris. One of the biggest factors

in the growth of a geoduck is the availability of food, so they must remove rocks or logs that restrict the flow of water.

REPRESENTATIVE NEUMAN asked Mr. Hilsinger if the root of the problem was concern by the department that cross-spawning with farmed stocks might weaken the viability of wild stocks.

[12:07:17 PM](#)

MR. FUHS said he doesn't think that's the issue in this case because geoducks from a specific area are taken to the hatchery, hatched, then brought back and planted in that site. The rub was that a bill was put forward by Representative Seaton, which said they have good habitat in Kachemak Bay and it looks like geoducks would grow there so why not take them to Kachemak Bay.

In PAC Alaska's case, the state put the hatchery in Seward and they would rather be spending their money buying seed from them than in lawsuits. Due to the lawsuits the hatchery has been on the verge of bankruptcy for years because the business they expected from the geoduck industry hasn't happened. Due to the unresolved legal issues, this industry is completely stalled.

[12:08:57 PM](#)

REPRESENTATIVE NEUMAN agreed that this should be a viable industry in this state and if there are problems within the department, he'd like to see what they can do about it.

[12:09:03 PM](#)

REPRESENTATIVE SEATON wanted to correct a statement about the bill Mr. Fuhs referred to. He said that bill would not apply to Kachemak Bay, which is a critical habitat area that has a prohibition on bottom culture. What that bill would have done is to give an economic base and an alternate source of income to small communities in Prince William Sound, Kodiak, and out west where they have good habitat but no culture of geoducks.

He said the whole thing revolved around a significant amount of geoducks; if there was an application for a farm site and the amount was over 2,000 lbs per acre, then the Department of Fish and Game would have a commercial fishery there; the commercial fishery was supposed to go in and take out all the clams they could economically find so there would be less than 2,000 lbs. That would bring the amount down to an insignificant common property stock of clams on the area that was under a lease with DNR. He asked if Mr. Fuhs could explain, with that criteria (an insignificant population of clams for a commercial fishery) what is the parameter that goes forward on the "insignificant amount"

of geoducks, because what seems to be tying everyone in knots is what the farmer is going to do with that insignificant amount [of wild stock] so he can farm. He asked if that is correct.

12:11:05 PM

MR. FUHS agreed. He explained that the department felt these sites were being selected just because people wanted to go get a lot of wild geoducks. At one point they said they were not sure of their survey methods so they were going to open a commercial fishery on all of those sites and tell the fisherman to completely deplete them, not to do sustained yield. They did that on about 18 sites and not one site was found to have significant amounts of geoducks on it; so he didn't think there was much chance for abuse to occur. He said that the department now has more detailed survey methods, so the plan in the future is to make absolutely sure before the permit goes in that there are insignificant amounts of geoducks on the site.

REPRESENTATIVE SEATON said, regardless of that, if they have a leased farm site with the determination that it has an insignificant amount of common property stock left, the department requires the farmer to repopulate the site upon completion to at least the number of clams previously on the site. He was confused about the requirement of 5 years and the harvest and everything and asked if Mr. Fuhs would explain it to him.

12:13:13 PM

MR. FUHS agreed with Representative Seaton that it makes no sense at all. The department was attempting to ensure that farmers don't take a significant amount [of wild stock] by forcing them to clear the site and it isn't practical. He said the dive fishery needs to have a certain density to make a dive operation worthwhile. It isn't worth it to go pick up one every 10 feet; that's why they are considered insignificant to the commercial fishery. They could actually lose money harvesting wild stocks to clear a site and it's not necessary; whatever wild stock is there can stay and they can plant right next to them.

REPRESENTATIVE SEATON wanted to make sure that what they were talking about is the handling of that insignificant amount.

MR. FUHS replied said that is correct and what they are suggesting is that they merely follow the statute passed by the legislature in section (e) that says while you've got wild stocks there that are cultured (subject to farming techniques

that are specified by the department) the farmer can have access to those and they have to replace them 100 percent so that the public's resource is replaced at the end.

12:15:12 PM

JOHN HILSINGER, Director, Division of Commercial Fisheries, Department of Fish and Game, Anchorage, AK, said he understood that this is a very complex issue. He first wanted to highlight some of the things the department has done to ease the burden on the shellfish farmers and make it easier for them to operate. One of the first issues that came up, which Representative Neuman referred to, was the native geoduck versus hatchery geoduck issue; the department initially looked at larval drift zones or defining the areas within which people could move geoducks in order to protect the wild stocks. Their initial recommendation was to have several zones within Southeast Alaska. In negotiations with the aquatic farm industry, they compromised and made all of Southeast Alaska a single larval drift zone for the purposes of obtaining geoduck stats; so there is more flexibility for the farmers on where those stats come from.

MR. HILSINGER continued that the department does a survey before a lease site is issued, the purpose of which is to determine whether or not there is an insignificant amount of geoducks. An insignificant amount is considered to be less than 2,000 lbs per acre or less than 12,000 lbs for a 6 acre site. Those surveys are fairly expensive and the cost (up to \$5,000) falls to the farmer; so they altered their survey techniques in order to reduce the cost. The down side to that is that the survey is not as precise as it could be and it's more difficult to precisely determine the number of geoducks on the site; but it's a much cheaper way of determining that it's "insignificant." As for the security deposit, the statute requires that the farmer plant seed in order to replace the geoducks that are harvested. This was conceived of as a bond requirement, which was a difficult thing for the farmers to deal with. In working with the farmers, the department came up with the idea of a security deposit in the form of a certificate of deposit that would cover the cost of the seed. The department also reduced that cost by approximately half in order to make it an easier qualification to meet.

He thought one of the things that have stymied development of this industry has been the conflict between the farmers and the dive fisheries. One of the things that happened in the 2005 lease was that the dive association opposed or appealed all of

the lease applications, tying them up in the appeal process. As a result, the department has determined to meet in Ketchikan on April 15th with farmers and dive fisherman and try to identify some zones within which everyone can agree these lease sites can go forward. They hope the divers and the department can agree that there is likely to be less than a significant amount of geoducks on the sites and the farmers can identify areas that are close to existing sites so they can benefit from the economies of scale.

12:20:35 PM

CHAIR MCGUIRE interrupted to tell Mr. Hilsinger that they were running behind and ask him to wrap up.

MR. HILSINGER summarized by saying that the department has a responsibility to ensure that they document the harvest of wild geoducks and to understand how many are harvested so they can ensure a similar number are replanted and available after the farm site. That is why they ask that the clams be harvested within 5 years; that gives the farmer adequate time to harvest them on a rotational basis. He insisted that they are sensitive to the farmers' concern that they can't harvest all of the geoducks; so they proposed the idea of a "de minimis" amount that could be harvested after the end of the 5 years. He admitted that the farmers' response indicates it is not a workable solution; so they are willing to consider others. But they do want to maintain the ability to identify fairly precisely the number of wild geoducks that are harvested off a site both as it pertains to sustainability of the resource and as it pertains to the necessity of replanting them. They are willing to continue the discussion and he thought that some of those discussions would go on at their April 15th meeting in Ketchikan.

12:22:58 PM

CHAIR MCGUIRE said she looks forward to hearing from Mr. Hilsinger after those meetings and would forward his comments on to the committee to see if additional regulatory changes are needed.

12:23:31 PM

LANCE NELSON, Attorney at Law, Division of Natural Resources, Anchorage, AK, said they reviewed the current regulations and don't see any inconsistencies between the current regulations and the statutory authority that has been discussed here. They think there is a rational basis for what the department decided. The department does have the authority and discretion to choose

other options that have a rational basis and they are continuing to work with them on those possibilities.

Implementation of SB 145

12:24:09 PM

CHAIR MCGUIRE announced discussion of the Alaska Public Safety Information Network (APSIN) and the implementation of HB 145 [SB 145].

JOHN GLASS, Deputy Commissioner, Department of Public Safety, Anchorage, AK, said he believes the issue is whether or not the "scofflaw," the law that was passed by the Municipality of Anchorage, and the impoundment or the abatement of motor vehicles should be entered into APSIN.

CHAIR MCGUIRE said that is correct; when they passed the bill for the municipality of Anchorage, the idea was that they had numerous scofflaws in communities who owed extraordinary fines and they had no way to get at them. She said the concern that has come back to the committee is that they haven't been able to access APSIN and her review of the regs in Title 13 indicates that the latitude is there to allow that. She wanted to hear his position about it and stated that the goal is to figure out how to get access to APSIN for the municipality.

MR. GLASS explained that APSIN is a criminal justice information network; it is not a finder of people for collection of civil dues and they have resisted putting civil information into APSIN for that reason. In addition, the scofflaw is strictly a local issue within the Municipality of Anchorage; therefore they believe the Municipality of Anchorage has the ability and should in fact implement it within their own system. He said he spoke with the Chief of Police in Anchorage who agrees with his assessment. According to information that he received, Mr. Glass said the scofflaw affected 42 people in the Municipality of Anchorage who have fines in excess of \$1,000. They do have the ability within their records management system or "AMAST" system in Tiburon to flag people with special information and he thinks that is where it should be.

12:29:09 PM

CHAIR MCGUIRE pointed out that the law was not intended to apply only to Anchorage, but to any community in the state that might wish to do this. She asked Mr. Glass if he believed that each of the communities that chose to enforce the scofflaw should be required to create its own database.

MR. GLASS reiterated that Anchorage is the only one doing it. He said he spoke to a project manager with Tiburon (the company that provides the database software used by the municipality) and was told it wasn't "that big a problem" for them to do it.

CHAIR MCGUIRE insisted that he had not answered the question. She reiterated, because the law is a state law, if another community chose to enforce their scofflaw would it be his position; the administration's position; the Governor's position; that those communities would be required to create their own individual databases as opposed to simply allowing access to the APSIN.

MR. GLASS answered "Yes that is my position."

12:30:10 PM

DAN MOORE, Treasurer, The Municipality of Anchorage, Anchorage, AK, thanked Senator MCGUIRE, the legislature and Governor Palin for their support of this important targeted public safety legislation. He said the treasury department has for several years been part of a task force, which involves the police department, DMV, the prosecutor's office and the court system to look at better ways to enforce court-ordered fines. He said they act as both an agent of the court and an agent of the police department.

MR. MOORE explained that once SB 145 was signed into law, the municipal attorney's office in Anchorage took hold of the program and drafted a local adoption ordinance as provided for in the new state law. Anchorage was the first community to do this. The local ordinance was unanimously approved by the Assembly on December 11, 2007 and the new local legislation called for the abatement or impound of any vehicle being operated by a known scofflaw. The ordinance explicitly stated that scofflaws are a known, serious threat to the public safety and have a high likelihood, at some point in time, of causing a serious or even fatal vehicle accident. Since launching the new program in December of 2007, the municipal attorney's office has been the managing department for all scofflaw impound cases, as they are for all other cases involving vehicle impounds.

He said that the scofflaw program is functioning, but in a very limited capacity due to the municipality's inability to use APSIN as the public safety tool of choice to track down known scofflaws. As for the Tiburon system, he said they are fully aware of what it can do and have worked with a task force to

evaluate it. It was determined without question that Tiburon was highly inefficient compared to APSIN and even to a paper-based system. It would hold up the officer on the street dramatically when time is of the essence.

MR. MOORE said the Department of Public Safety told them in November of 2007 that they only wanted APSIN used for criminal matters; but they found that the Administrative Code allows APSIN to be used for locating persons of interest, and not just persons who have outstanding warrants. On the APSIN website [<http://www.dps.state.ak.us/Statewide/apsin/whatisapsin.aspx>] it is described as "a central repository for ... wanted persons," not just criminal persons. It also points out that APSIN ties directly into DMV records and says that "APSIN services, however, are designed to serve the federal, state and local law enforcement communities by providing a data repository and timely law enforcement information to the officer 'on the street'."

He stressed that this is clearly far superior to the current paper-based, hit-and-miss system of identifying scofflaws; by using APSIN they would clearly be able to identify many more scofflaws than they can now. He asserted that there are over 1300 scofflaws, not 42, in Anchorage and they are impounding at a rate of 1 to 2 vehicles per week. At this rate they will likely impound only 75 vehicles for all of 2008, which represents only 6 percent of the scofflaw population in Anchorage. By using APSIN however, they could easily expect to double, triple or even quadruple the number of impounds that occur. He asked how any of them in good conscience could say it is acceptable from a public safety standpoint to choose not to use APSIN and to thereby miss the opportunity to impound many more scofflaw vehicles per year. To give the committee members a perspective, he said that Anchorage area now impounds over 2500 vehicles per year with the DUI program alone. He asked again how any of them could say they are truly doing their best to protect the public from serious harm when they choose not to use APSIN and thereby allow countless scofflaws to continue driving the streets, putting innocent, law-abiding drivers at high risk of becoming a future victim of a serious or even fatal vehicle accident.

MR. MOORE ended by asking the committee's support in strongly asserting that APSIN is a wholly appropriate public safety tool to identify scofflaws.

[12:36:16 PM](#)

CHAIR MCGUIRE said one of her primary reason for introducing the bill was that there evidence indicates individuals who continue to scoff the law ratchet up and become some of the more dangerous folks on the streets; this bill is an attempt to get their attention. So yes, impounding brings in revenues to help cover some of those costs, but it is really that nothing else seems to be working. While it is not a criminal provision, clearly it was intended as a deterrent as well. She pointed out that the definition on the State of Alaska's "What is APSIN" website includes "serves the Alaska law enforcement community by acting as a central repository for Alaska criminal histories, wanted persons, stolen items, missing persons, protective orders, person and address information, and others" and goes on to talk about driving records.

Title 13 of the Administrative Code, 13 AAC.68.112 Location Information, reads:

(a) An agency that wishes to locate a person for a purpose other than in connection with a warrant under 13 AAC [68.105](#) or an order under 13 AAC [68.110](#) may report to the repository information about the person.

Finally, 13 AAC 68.160, which governs waiver requirements (so it was clearly anticipated when the regs were promulgated and adopted that there would be waivers) reads:

"The department will, in its discretion, waive a requirement described under 13 AAC [68.100](#) - 13 AAC [68.120](#) or 13 AAC [68.130](#) - 13 AAC [68.155](#) or extend a waiver for up to one year...."

She said they would continue to work on this. She had planned to take final testimony but they were "under the gun" for time.

SENATOR FRENCH said he sure hopes they can get this worked out. "If I were king we would spend millions on integrating databases; it's a recurrent problem across all areas of law and law enforcement and this is one good example." He asked Mr. Moore what is wrong with using his Tiburon system.

MR. MOORE referred the question to Mick Fornelli.

[12:40:12 PM](#)

MICK FORNELLI, Senior Administrative Officer, Treasury Division, Finance Department, Municipality of Anchorage, Anchorage, Alaska, said that Tiburon focuses on violators resident in the

Anchorage area. When they look at scofflaw violators, they are looking at violators who come from numerous communities throughout the Anchorage bowl; while they are all in or driving through the Anchorage area, they may not be in the Tiburon system. APSIN allows access to those individuals who flagrantly violate the law; Tiburon does not provide that flexibility as he understands it.

He added that 1,334 individuals are currently on the scofflaw list. They represent 14,997 citations issued on moving violations, which is an average of 11.25 per person. If these individuals are caught arbitrarily 10 percent of the time, that means these numbers only reflect that 10 percent; they don't represent the 90 percent of the time they are not caught. Even if they were caught 50 percent of the time, that means a person showing an average of 11.25 citations has actually had closer to 22-23 citations over a period of 5 to 7 years! He highlighted 2 individuals who are on the scofflaw list and who had collected only 2 citations each. When he researched them in the Alaska court system he found that 1 of these individuals has 27 additional violations: 14 of them criminal and 13 moving violations from 2005 to 2007. The other individual has 19 additional citations: 13 criminal and 6 moving violations, all of which occurred in 2007. These scofflaw violators are an absolute public menace! He argued that if this is not an issue that should be looked at from a public safety perspective, he someone needs to explain to him what the problem is.

[12:42:57 PM](#)

MR. Fornelli continued that they have done 13 impounds under the scofflaw in 2008. Two of them were retrieved by the registered owners of the vehicle, who had lent their cars; 4 of them were retrieved by the scofflaw violator; 6 are still impounded. As Dan mentioned earlier in his testimony, utilizing APSIN with DUI's, they are doing an average of 50 [impounds] per week while the municipality has done only 13 since implementation of the law. He felt they could do a lot more.

Mr. Fornelli spent 12 hours riding along with Anchorage Police Department (APD) personnel on January 21, 2008, about 3 weeks after implementation of the law and said, with all due respect to the officers, who do a wonderful job in the field, they were somewhat clueless at that time as to what the scofflaw was. As a result of their dialog it became much clearer however, and by the end of that day they had actually impounded a person under the scofflaw. The officers wondered why they could not use APSIN, which they indicated would be the best data source for

them. He emphasized that the scofflaw takes away violators' vehicles and makes it harder for them to borrow one. Obviously and most critically, the focus of this law is to enhance public safety, to reduce the risk for safe drivers, to enforce compliance with law and to provide law enforcement with a needed tool. It is much easier to see a flag in APSIN showing that this is a person of interest than it is to thumb through 9 or 10 pages of written documentation, whether it's on paper or in on a computer. With APSIN they could simply enter the person's name one time and get the information they need.

In closing he strongly encouraged the committee to allow access to APSIN to assist officers in removing these individuals from the public streets.

12:45:15 PM

SENATOR FRENCH asked Mr. Fornelli if he can reconcile the enormous difference between Mr. Glass' testimony that there are only 42 people who might get caught up by this law and his, that there are over 1,300.

MR. FORNELLI responded that he does not know how to answer that question. He has a list, which he provided to Senator French's office, showing the names of 1334 individual scofflaws. He said he does not know where Mr. Glass got his information, so he can't point to the discrepancy.

SENATOR FRENCH asked what system or process was used to generate that list.

MR. FORNELLI replied that it is an extract of moving violations taken from the Municipality of Anchorage database, which is called the Delinquent Criminals Fines and Fees Database (DCF) and is the storehouse of all of the defaulted, unpaid criminal fines and fees generated by the court. This is the same list the officers would have in paper form or have downloaded to their computers.

SENATOR FRENCH asked why they can't use the DCF.

MR. FORNELLI answered that it is an accounts receivable collection tool and lists individuals based on dollar amount owed and citation numbers; it was not designed for criminal support of the police department and does not provide them the information they need. He also questioned how many databases the officer in the field should have to check when he pulls someone over.

SENATOR FRENCH asked if they actually refer to APSIN or if they call dispatch and have them do the query. His point was that if this is really a safety issue, perhaps DCF could be provided live to the officers.

[12:48:51 PM](#)

MR. FORNELLI said that is basically what they have now; they have a paper copy similar to what was distributed to the committee, which is updated daily.

CHAIR MCGUIRE thanked Mr. Fornelli for his testimony and commented that her bill addressed only moving violations and was geared toward getting those people off the street. She asked Mr. Glass where he got his number of 42 scofflaw violators.

MR. GLASS explained that number was provided to him by someone working in the APSIN system and said he stands corrected based on the information provided by Mr. Fornelli. He pointed out however, that if those 1300 persons were issued traffic citations in the Municipality of Anchorage, the names were entered into the Tiburon system and a flag could be added to that system notifying the officers that an individual is one of the scofflaws.

CHAIR MCGUIRE asked what they would do about the individual from Palmer who is not in Tiburon.

MR. GLASS replied that if they were issued a citation by the Municipality of Anchorage they would in fact be in Tiburon.

CHAIR MCGUIRE persisted, what if the citation was issued in Palmer?

MR. GLASS asked her if this law extended to scofflaws outside the Municipality of Anchorage.

[12:52:28 PM](#)

CHAIR MCGUIRE corrected that the point of the bill, SB 145 and the companion House bill, went beyond recovery of fines. The point of the impound and forfeiture is to get at the folks who have repeated moving violations. So it isn't really a revenue raising device, it's a way to get their attention and to get those people off the street.

MR. GLASS asked again if this law applies to scofflaws outside the Municipality.

CHAIR MCGUIRE referred the question to Dan Moore.

MR. MOORE said they are looking at citations that are generally issued within the Municipality of Anchorage. The violators can be living somewhere else but the citations are issued by the Anchorage Police Department.

MR. GLASS insisted that information is recorded into the RMS [Records Management System] every time they issue a citation or have contact with an individual who has been entered into the Anchorage Police's RMS.

MR. MOORE interjected that he completely agrees with her statement that the focus is not on fines or money collected and the City of Anchorage has budgeted zero dollars coming from this new program so they have no expectation of money. This is an enforcement program designed to associate a more severe consequence to a very specific group of people, to get them off the road. Mayor Begich recently issued a letter to Representative Gardner expressing his strong support for the use of APSIN; so from the city's policy standpoint APSIN is the clear and most efficient choice.

CHAIR MCGUIRE suggested that Mr. Moore advise the Mayor to send a copy of that letter to the Senate sponsor of the bill.

[12:55:45 PM](#)

STEVE SMITH, Deputy Chief of Administration, Anchorage Police Department, Anchorage, AK, said he wants to share what, in fact, is the alternative to the use of APSIN for enforcement of the scofflaw bill. They have implemented a work-around although as Mr. Moore pointed out, it may not be as efficient as the use of APSIN would be. The daily upload of the scofflaw list from the DCF database is a PDF file, which is sent via email to all of their commanders, one of whom has been tasked to forward it to all the sworn officers daily. So every day all sworn officers get an 8-9 page PDF of that document via email. There is one live feed of the system at the utility station, what they call channel 2 of the dispatch center, so if an officer stops an individual in the field and that person is on the scofflaw list, they have another tool to get the individual off the street but it does mean going through the 8-9 page list.

Since the advent of APSIN, officers in the field use it almost exclusively and don't have to resort to channel 2 as they did before the mobile data computers went into the cars. The

procedure is that the officers have the daily updated database listing in the car; but they are required to check in with dispatch before they can impound, just in case the person has paid his or her fines since the list was published.

[12:59:30 PM](#)

JENNIE MORRIS, representing herself, Anchorage, AK, said that on May 11, 2006 she was hit by one of those scofflaws while sitting at a red light and it changed her life. She is always in physical pain, but is lucky to be alive because he hit her going 50-55 mph. She said she went to the Assembly 3 times and to Governor Palin's office once and on December 11, 2006, thought that something was finally going to be done [to get scofflaws off the streets]. The law was implemented on December 28, 2006 before the New Year holiday. On January 2nd of this year she was hit again and when she mentioned to the investigating officer that the kid who hit her was not on the scofflaw list, he didn't seem to know anything about it. She said it seems to her that the people who owe all of these fines don't care about their lives or the lives of others and if they are not stopped, they will continue to kill and hurt people. She has spoken with Deputy Chief Plummer at APD [Anchorage Police Department] and was told that the list Steve Smith was talking about is only given to officers once a week. She sketched a quick scenario: If Officer Smith is going out on the streets Sunday and stops Joe Blow, he doesn't see him on the list because he won't get the new list until Monday. Then on Monday he sees Joe Blow's name on the list and finds out Joe Blow killed someone Sunday night because he didn't have access to that list. It is absolutely ridiculous that the officers cannot have access to these names at their fingertips. In the description of APSIN, the last paragraph starts out, "There are some limited non-criminal justice uses...." The Department of Public Safety is saying that the officers cannot use APSIN because the scofflaws are not criminals and there are no warrants; she thinks that needs to be changed. She asked them to please let the officers use APSIN; it is the only efficient tool the APB has.

CHAIR MCGUIRE thanked Ms. Morris for her testimony and said they would continue to work on this.

CHAIR MCGUIRE called a 5 minute at ease at [1:03:44 PM](#).

ACMP Regulations

[1:13:22 PM](#)

CHAIR MCGUIRE called the Administrative Regulation Review Committee back to order and announced consideration of the

Alaska Coastal Management Program that was put in place as a result of HB 191, which passed in 2003.

REPRESENTATIVE REGGIE JOULE, Kotzebue, AK, expressed appreciation for the committee's willingness to schedule a hearing on this issue on such short notice. He said that as representative of the North Slope Borough, the Northwest Arctic Borough and Shishmaref, which are all coastline communities throughout the northern part of the state, he gets to hear about things when they are not working and he has heard a lot over the past couple of years about their frustration since the adoption of HB 191.

Most if not all of the coastal communities were in opposition to HB 191; but they have tried to adapt to the law. There is so much concern about the coastal zone issue that it led to his introducing a companion bill to Senator Olson's, HB 243 relating to the Coastal Management Program and establishing a Coastal Policy Board. He assured the committee that he understands the politics in the building and the issue they are dealing with and he is under no illusion that the bill he introduced is going to pass, despite his efforts. As they look forward to developing the state's resources, it is the partnerships with the people who will be impacted by that development that determine what the attitudes toward it will be; in this case, things have become very confrontational. He said he hopes, as a result of this hearing, this committee can continue to track the progress of these regulations so that when upcoming legislation is introduced, they will have a better understanding of where they need to go with it.

He said the level of frustration he is seeing is due in part to a perception that the process is moving, "dam the torpedoes, full speed ahead" and the people are just not part of the process. That is why he introduced the bill.

[1:19:35 PM](#)

CHAIR MCGUIRE thanked him and noted that the committee members' packets contain a letter to her from Representative Joule and Senator Olson summarizing their concern that the regulations adopted are more stringent than what was intended under HB 191 and that those regulations have had an extraordinary impact on the communities.

REPRESENTATIVE JOULE agreed and said, given the area of the state that he represents, they are supportive of development with a caveat; they need to preserve the renewable resources

after development is done. He reminded the committee that he's worked on the energy council and has advocated for things like the opening of ANWR, so it is not as if he's anti-development; but to have a sense of cooperation between the entities that are going to govern this development and the people who are going to feel the on-the-ground impact of it is very important. There needs to be inclusiveness as they develop policies and regulations that will allow these things to move forward.

[1:21:46 PM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management, Department of Natural Resources, Juneau, AK, said he is here to answer any questions they might have.

REPRESENTATIVE SEATON said it was reported that in the Senate hearing on the bill, the department admitted the regulations in place were more stringent than anticipated under the statute. He asked if Mr. Bates could explain that to him and tell him which regulations he has identified that have been implemented in a manner that is more stringent than anticipated by the statute.

MR. BATES said his testimony during the SB 161 hearings was that "the ACMP regulations were more stringent than was originally intended under HB 191." It was not that they determined the regs conflicted with the statute, but rather that the regulations themselves turned out to be more stringent than what was originally contemplated under HB 191. By that, he meant that when Marty Rutherford, the consultant at the time, and Pat Galvin, a former director of the Division of Governmental Coordination, were testifying, their statements were regarding certain opportunities for districts to write enforceable policies; and they proposed certain enforceable policies that they felt the districts could write in the future. The regulations as they were promulgated became more stringent as they implemented the statutes and therefore, what they believed when they testified under HB 191 as far as districts being able to write policies, was not the case when they put the regulations in place.

REPRESENTATIVE SEATON asked if he was saying that HB 191 as enacted required a more stringent interpretation, or that the department decided to write more stringent regulations.

MR. BATES answered that it was a combination of both. Certainly they recognized what the intent was, to streamline coastal management and eliminate duplication of authorities and what district policies can and cannot write as it relates to state or

federal law. Based on what they believed the intent of the legislation was and what the administration wanted to accomplish with coastal management, the regulations were promulgated in this way.

SENATOR FRENCH asked what the solution is if they are more stringent than what was intended.

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MR. BATES admitted that there are challenges and insisted that they want a coastal program that is a good fit so they're unified on all fronts. He said they'll hear the term "legs to a stool" and they recognize that the coastal districts are 1 leg; the applicants or the industry are another leg; and the state agencies are the third leg. To make sure the stool fits, everybody has to have a seat at the table. Recognizing that they've got problems with the coastal program and that they want to find out what they can do to fix it, DNR and the administration have supported a reevaluation of the coastal program. He said there should be a letter in the members' packets that lays out....

CHAIR MCGUIRE said they do have the letter dated February 22, 2008 by Mr. Bates to ACMP participants discussing the need for the department to revisit and reevaluate the program.

MR. BATES told Senator French that letter addresses his question in a nutshell. They intend to reevaluate the program; open a public comment period; solicit input on a package of statutes that they believe would be responsive to the issues and challenges they've heard; and ultimately promulgate regulations (about a year and a half from now) to make positive changes to the coastal program. They recognize there are ongoing challenges and will certainly bring back a package in January of next year that reflects the ACMP and all of its participants' needs.

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REPRESENTATIVE SEATON said that, regarding the goal of streamlining and minimizing duplication, his understanding is that what they've actually done is multiply duplication for a number of the coastal zone districts. They have implemented these enforceable policies in their planning and zoning Title 29 power and therefore the way it's being implemented is confounding the stated purpose. He asked if that is correct and whether a developer now has to go through not only a consistency review, but also in many areas an independent permitting process

for the same things that used to be under enforceable policies through a local PNZ process.

MR. BATES answered that, using Representative Seaton's district as an example, when the Kenai Peninsula Borough recognized that the majority of the enforceable policies in their existing plan from 2003 were not going to be approvable under state law, they incorporated them into, or left them in, their own code and ordinance. Their coastal plan has been revised and adopted and they are looking forward to getting it in place; but their former enforceable policies are part of their code. That was their choice. He admitted that in the Northwest Arctic Borough where only 1 in 50 of the policies they proposed was approved, a comparison of the number of approvable policies versus what was in their former plan is quite shocking. The same is true of Kenai. Many of the issues that were the subject of their enforceable policies are already addressed by other state or federal law, meaning the Corps of Engineers has jurisdiction and some of the enforceable policies that the Kenai Peninsula Borough had were the subject of the operational law of the Corps, or the Coast Guard, or the Office of Habitat Management Permitting. Again, one of the tenets of the reform under HB 191 was to eliminate that duplication so a coastal district wouldn't be adopting or addressing the very same operational law as a state or federal agency. That duplication created a challenge or conflict regarding who controlled the law. The Kenai Peninsula Borough chose to leave the existing 2003 plan in their law and that is their decision.

REPRESENTATIVE SEATON said the testimony yesterday was that the 99 or so enforceable policies that were in place before, are all incorporated in Juneau's PNZ code; they had testimony from the North Slope Borough that they have a problem as well. What he said he is trying to figure out is if these overly stringent interpretations used by the department have resulted in more permits being required.

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MR. BATES replied that from the state's perspective no more permits are needed; that is a question better directed to the municipalities. If the policies relate specifically to the subject that a state or federal agency is already addressing, then that issue may already be addressed during the consistency review; therefore while the municipality may choose to take that up, it may already be resolved.

[1:34:18 PM](#)

SENATOR FRENCH asked if Mr. Bates would agree to a checkup sometime in September, October, November maybe, on how they are doing with developing the regs so they won't end up at the next session without a bill.

MR. BATES answered they would be more than happy to provide an update. The reevaluation in terms of the governor is a transparent effort; they intend to copy the legislature on the letters, invite them to the meetings and invite them to participate and submit comments.

CHAIR MCGUIRE said this issue needs a lot more work.

[1:35:58 PM](#)

GLENN GRAY, Glenn Gray and Associates, Juneau, AK, said he has worked for 15 years with the Alaska Coastal Management Program, first with the office of the Governor, Division of Governmental Coordination and, for the past 5 years, with 7 Alaska Coastal Districts to help them develop their coastal plans. He said his testimony would address three matters: how the Coastal Management plan works; how the regulations conflict with the statutes; how the regulations have been implemented.

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The essence of ACMP is simple. Development projects undergo a review for consistency with the enforceable policies of the coastal districts and with the statewide standards of the coastal program. The legislature created the program in 1978 because it furthered state's rights, especially with the outer continental shelf reviews. It gives the state a meaningful seat at the table with the federal agencies and no federal permit or federal action on its own can be finalized until the state finds the project consistent with the coastal management program; so it's very important. He added that the program covers urban areas like Anchorage as well as the rural areas throughout the state that are in the coastal zone. The legislature reformed the program in 2003 when it passed HB 191 and although it made some major changes, the legislative record is really clear that the coastal districts would retain the ability to establish enforceable policies.

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DNR recently testified that its regulations go beyond the intent of HB 191; but in Mr. Gray's opinion they exceed the statute in 3 major areas:

- 1) The regulations severely restrict the subjects that an enforceable policy may address.

- 2) The regulations amend the statewide standards to narrow the subjects that may be addressed during a state coordinated consistency review. For example, the mining standard was completely removed from the statewide standards and although districts are told they can have individual policies that address mining, to his knowledge not one that has been proposed has been approved.
- 3) The regulations limit the scope of the consistency reviews themselves.

MR. GRAY said he does not believe any of these restrictions are supported by the ACMP statutes, even the revisions in 2003. He pointed out that he had provided an attachment with his written testimony, which addresses each of the specific regulations and he offered to answer questions about it.

The coastal districts and the Alaska Municipal League expressed some concern that there might be some arbitrary denial of some of the policies of the districts and the legislature responded to that by changing the legislation to say that the DNR "shall approve" the plans if they are consistent with both the statutory provisions and the district plan criteria "adopted" by DNR. He opined that the word "adopted" is really important because things are generally adopted through the regulations. Even though the regulations make it appear that the coastal districts may establish meaningful policies, DNR has disapproved hundreds of proposed policies. For some subjects the agency has not approved any policies at all; for others, like subsistence or habitat only 2 or 3 policies have been approved for all of the coastal districts; and in his opinion, the vast majority of policies that have been approved are not very meaningful. He felt it might be of interest to note that the list of sample policies that would be approvable, which was given to the legislature in 2003 disappeared from the ACMP website. When he asked about it he was told that they no longer apply. A new list of approvable sample policies was put out but these did not do much to protect coastal resources or uses. The findings in HB 191 clearly state that the purpose of the legislation is to avoid regulatory confusion and the regulations have done just the opposite by introducing uncertainty and a lack of predictability. Coastal districts may not be able to answer specific questions because they are busy doing their other jobs; it is so confusing right now that there are very few people who have some sense of what these regulations really mean. The guidance given by DNR was often confusing and much of it was given verbally without any written backup; when the districts

asked for clarification they were treated with intimidation and even threats.

1:41:14 PM

In closing, he was encouraged by the Palin administration's emphasis on transparency. DNR testified earlier this year that the regulations are more stringent; he believes that means that they conflict with the statutes. If district policy is more stringent than the ACMP regulations it's not allowed. He sees no reason why these regulations cannot be amended right now; they know what the problems are and how to fix them.

1:42:02 PM

REPRESENTATIVE SEATON asked Mr. Gray if it is his opinion that the bill before House Resources on coastal zone management would resolve these conflicts.

MR. GRAY replied that he did not think it would bring the program back to the way it was originally, as many coastal districts would prefer; but he believed it would resolve the major issues and result in something workable that would be agreeable to most coastal districts.

CHAIR MCGUIRE cautioned the body that she was trying to avoid discussion about legislation that was being considered in other committees.

REPRESENTATIVE SEATON explained that he was trying to determine whether the regulations in conflict here would still be in conflict if the program was changed by that bill.

MR. GRAY commented that if that bill passed, there would need to be new regulations; but he believed the bill would fix any conflicts in the current regulations.

1:43:48 PM

JOHNNY AIKEN, Director, North Slope Planning Department, thanked the committee for hearing their concerns. He said that, as Randy Bates of DNR testified earlier this year in the Senate Community and Regional Affairs Committee, the Alaska Coastal Management Program regulations are more stringent than what was intended in HB 191. In other words, these regulations do not comply with the Alaska Coast Management Program statutes; and a regulation that is not consistent with state statutes is not valid.

The review of the North Slope Borough's plan under these regulations was very frustrating; the rules kept changing and it

was very difficult to keep up with the different interpretations of the regulations. The North Slope Borough made a special effort to make sure that their proposed enforceable policies and designated areas met all of the approval criteria adopted by DNR. They put together a team from the wildlife, law and planning departments as well as the Alaska Eskimo Whaling Commission to review the regulations and ensure that they complied with them. They believe many of the reasons for denial of the policies and designated areas are inconsistent with both HB 191 and DNR regulations. Certain regulations in all 3 chapters of the Coastal Management Program regulations go beyond the intent of the statutes. For example, 11 AAC 114.270 limits the types of policies that a district can write even though there are no such prohibitions in the statute. Although DNR assured the legislature in 2003 that districts would be able to have policies on subsistence and other coastal uses and resources, DNR denied all of the North Slope Borough's proposed policies on subsistence and its entire important habitat designation. The statewide standards in 11 AAC 112 also go beyond the statutes because they eliminate consideration of effects on some of their most important coastal resources. For example, the revision to the half dead standards eliminates consideration of effects to fish and marine mammals in off shore areas; now they can only discuss the effects of projects on human uses. He stressed that it doesn't make sense that they can no longer talk about the effects of a project on the habitat itself for whales, marine mammals and fish.

DIRECTOR AIKEN said the North Slope Borough believes the limitations in chapter 11 AAC 110 on the scope of review also fail to follow state law. The scope of review sometimes eliminates important parts of projects from project consistency reviews. For example, during a review of a multi-year OCS exploration project last year, they were told that they could not inspect siting surveys; in addition, the applicant was not required to disclose how many wells would be drilled and the specific locations of the drill sites.

He ended his testimony by saying that the Alaska Coastal Management Program regulations are very difficult to understand. The changing interpretation of those regulations by DNR made it even more difficult to understand why most of our proposed policies were denied. He thanked the committee again and specifically thanked Representative Joule and Senator Olson for bringing the issue to the committee.

[1:49:41 PM](#)

TERRY CAMRY, Planner, City and Borough of Juneau (CBJ), Juneau, AK, said she has been with the city since 2000 so she is familiar with all of the stages this program has gone through. She said their top issues with the program are restoring DEC's [Department of Environmental Conservation] role and allowing districts to write policies that effect air and water quality. They want to eliminate the excessively restrictive requirements that say a district can't write a policy if a state or federal agency has authority over it. And they would like to see elimination of the restrictive designated area requirements.

She provided an example of the interpretation of these regulations and what it means in a practical sense. They went to mediation over the Juneau wetlands management plan, which is a major component of their coastal plan. They were told in the original legislative review of HB 191 that they could retain this plan; later that was repeatedly denied. The wetland management plan has very detailed management policies that are based on formally categorized high value and low value wetlands. It was designed to promote development on low value wetlands and allow development on high value wetlands with certain restrictions. The plan was first accepted into the ACMP in 1992 and was based on a decade of scientific research. She read a partial list of reasons why DNR denied their wetland plan:

- The state standard uses the terms "avoid," "minimize" and "mitigate," therefore the state has authority over those terms and therefore local policies can't use those terms.
- The state standard addresses wetlands, therefore local policies can't address wetlands.
- The Corps of Engineers addresses wetlands; therefore local policies can't address wetlands.
- DEC has authority over water quality issues; therefore wetland policies can't address water quality issues.
- All important habitats must have a direct connection to coastal water; therefore the district must prove this connection to have local policies.

At a later stage DNR told them that their policies were approved but their mapped designated areas were not and therefore their policies didn't apply. Later still, DNR told them that the state standard on wetlands wasn't the problem for them because the state standard addresses only salt water wetlands; the problem instead was with the Corps of Engineers.

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MS. CAMRY continued that through the process of review and mediation, they addressed each one of these issues systematically with varying levels of acceptance from DNR. Ultimately they received final approval of the Juneau Wetlands Management Plan by making some minor changes to their wetland maps, making some minor changes to the wording of their policies and by obtaining a letter from the Corps of Engineers explaining in significant detail how the Corps' policies differ from theirs. This process took 2 years, and this absurd pattern is not unique to Juneau. So clearly there is a long list of problems here. They don't blame DNR staff or Mr. Bates; they blame badly written regulations from the Murkowski administration, which are subject to a wide range of interpretations and cut out the district role over and over again.

CHAIR MCGUIRE asked Ms. Camry if she would be willing to submit a written copy of her testimony.

MS. CAMRY said she would do that on Monday.

There being no further business to come before the committee, Chair MCGUIRE adjourned the meeting at [1:54:12 PM](#).