

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 30, 2007

1:57 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 128

"An Act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain alcoholic purchases of alcoholic beverages; relating to procedures for local option elections for control of alcoholic beverages; and providing for an effective date."

MOVED CSSB 128(JUD) OUT OF COMMITTEE

SENATE BILL NO. 8

"An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

MOVED CSSB 8((JUD) OUT OF COMMITTEE

SENATE BILL NO. 145

"An Act relating to municipal impoundment and forfeiture."

HEARD AND HELD

SENATE BILL NO. 157

"An Act relating to human trafficking and prostitution."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 128

SHORT TITLE: ALCOHOL LOCAL OPTION PROVISIONS

SPONSOR(s): SENATOR(s) OLSON

03/19/07 (S) READ THE FIRST TIME - REFERRALS
03/19/07 (S) CRA, JUD, FIN
03/27/07 (S) CRA AT 3:30 PM BELTZ 211
03/27/07 (S) Moved CSSB 128(CRA) Out of Committee
03/27/07 (S) MINUTE(CRA)
03/28/07 (S) CRA RPT CS 3DP NEW TITLE
03/28/07 (S) DP: OLSON, THOMAS, KOOKESH
04/23/07 (S) JUD AT 1:30 PM BELTZ 211
04/23/07 (S) Heard & Held
04/23/07 (S) MINUTE(JUD)

BILL: SB 8

SHORT TITLE: MENTAL HEALTH PATIENT RIGHTS: STAFF GENDER
SPONSOR(s): SENATOR(s) DAVIS

01/16/07 (S) PREFILE RELEASED 1/5/07
01/16/07 (S) READ THE FIRST TIME - REFERRALS
01/16/07 (S) HES, JUD, FIN
04/18/07 (S) HES AT 2:00 PM BELTZ 211
04/18/07 (S) Heard & Held
04/18/07 (S) MINUTE(HES)
04/23/07 (S) HES AT 1:30 PM BUTROVICH 205
04/23/07 (S) Moved SB 8 Out of Committee
04/23/07 (S) MINUTE(HES)
04/25/07 (S) HES RPT 4DP 1NR
04/25/07 (S) DP: DAVIS, ELTON, THOMAS, DYSON
04/25/07 (S) NR: COWDERY
04/30/07 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 145

SHORT TITLE: MUNIS IMPOUND/FORFEIT MOTOR VEHICLE
SPONSOR(s): SENATOR(s) MCGUIRE

03/28/07 (S) READ THE FIRST TIME - REFERRALS
03/28/07 (S) CRA, JUD
04/24/07 (S) CRA AT 3:30 PM BELTZ 211
04/24/07 (S) Moved CSSB 145(CRA) Out of Committee
04/24/07 (S) MINUTE(CRA)
04/25/07 (S) CRA RPT CS 4DP NEW TITLE
04/25/07 (S) DP: OLSON, WAGONER, STEVENS, KOOKESH
04/30/07 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

GINNY AUSTERMAN, Staff to Senator Donny Olson
Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Reintroduced SB 128 for the sponsor.

ANNIE CARPENETI, Assistant Attorney General
Department of Law
Juneau, AK

POSITION STATEMENT: Responded to questions related to SB 128.

TOM OBERMEYER, Staff to Senator Bettye Davis
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 8 for the sponsor.

RON ADLER, CEO
Alaska Psychiatric Institute
Division of Behavioral Health
Department of Health and Social Services
Anchorage, AK

POSITION STATEMENT: Responded to questions related to SB 8.

FAITH MEYERS, Mental Health Advocate
Anchorage, AK

POSITION STATEMENT: Stated support for SB 8 as written.

DORRANCE COLLINS, Mental Health Advocate
Anchorage, AK

POSITION STATEMENT: Stated support for SB 8 as written.

JIM GOTTSTEIN, President and CEO
Law Project for Psychiatric Rights
Anchorage, AK

POSITION STATEMENT: Stated support for SB 8.

ANDREA SCHMOOK, Chair
Alaska Mental Health Board
Division of Behavioral Health
Department of Health and Social Services
Anchorage, AK

POSITION STATEMENT: Voiced support for SB 8.

PAULA SCAVERA, Special Assistant
Office of the Commissioner
Department of Labor & Workforce Development
Juneau, AK

POSITION STATEMENT: Responded to questions related to SB 145.

LARRY MCKINSTRY, Assistant Attorney General

Department of Law
Anchorage, AK

POSITION STATEMENT: Responded to legal questions related to SB 145.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:57:41 PM](#). Present at the call to order were Senator Therriault, Senator McGuire, and Chair French. Senator Wielechowski arrived shortly thereafter.

SB 128-ALCOHOL LOCAL OPTION PROVISIONS

CHAIR FRENCH announced the consideration of SB 128. He asked Ms. Austerman to refresh members' recollections about the bill.

[1:58:11 PM](#)

GINNY AUSTERMAN, Staff to Senator Donny Olson, recapped that the bill came about at the request of the Rural Justice Commission. It is an integral part of the effort to regulate the sale, distribution, purchase, and shipment of alcoholic beverages into damp local option communities within Alaska. The Alcohol Beverage Control Board (ABC) Board would be required to create and maintain a database of timely information related to written orders for alcohol that is shipped to individuals. The package store licensee or its agent must consult the database prior to filling each order. Immediately after filling the order, the date and the amount of the new order must be add to the database. This will adversely impact bootleggers, she said. The information in the database will be accessible only to package stores and law enforcement. SB 128 also contains a provision to correct an omission in state law so that organized boroughs would be able to transfer borough liquor licenses to communities within that borough.

MS. AUSTERMAN noted a proposed amendment and said the sponsor is happy to accept that amendment. In response to a question, she relayed that Sections 4 and 5 relate to the transfer of liquor licenses.

CHAIR FRENCH asked if anything in those sections requires that the transfers be done at fair market value.

MS. AUSTERMAN replied she's not aware of anything that spells that out.

CHAIR FRENCH asked if the sponsor or the Department of Law would object to adding a provision along those lines.

MS. AUSTERMAN said the sponsor would not object.

[2:00:51 PM](#)

ANNE CARPENETI, Assistant Attorney General, Department of Law, said she would like to check with the head of the ABC Board before adding that provision because Title 4 really doesn't address commercial value of liquor licenses.

CHAIR FRENCH noted that the bill has a finance referral and said that may be the place to take care of that point.

[2:01:26 PM](#)

CHAIR FRENCH offered Amendment 1 as the sponsor.

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSSB 128(CRA)

Page 2, line 22:
Following "**purchaser.**"

Insert:

"Failure by a package store licensee, agent or employee to enter into the database the date and the amount of alcoholic beverages shipped to the purchaser is a class B misdemeanor."

Page 5, following line 30:

Insert:

"*Sec. 11 AS 04.16.180(a) is amended to read:

(a) Except as provided in AS 04.11.015, AS 04.16.025, 04.16.050, 04.16.051, **04.11.150(g)**, 04.16.200-04.16.210, and AS 04.21.065, a person who violates a provision of this title or a regulation adopted by the board is guilty, upon conviction, of a class A misdemeanor. Each violation is a separate offense."

Re-number the following bill sections accordingly.

SENATOR McGUIRE objected for discussion purposes.

CHAIR FRENCH explained that the amendment is the result of discussion during the previous hearing. The bill imposes new duties on liquor store clerks and there was some question about the level of the violation should a clerk not comport with those new duties. Before the hearing Ms. Carpeneti said that unauthorized release of information that will be gathered into the database will be a class A misdemeanor.

MS. CARPENETI said, "The default penalty for Title 8 violations is a class A misdemeanor unless it's specifically excepted and another penalty is provided."

SENATOR McGUIRE offered her interpretation, which is that the class A misdemeanor would apply throughout Section 1 so that anybody who is authorized to have access to the database and uses the information in an unauthorized manor would be subject to that penalty. I want it to be interpreted broadly in terms of preserving the confidentiality of the database, she stated.

MS. CARPENETI said she interprets the language that way as well.

[2:03:30 PM](#)

SENATOR WIELECHOWSKI joined the meeting.

CHAIR FRENCH thanked Senator McGuire for highlighting that point. He read the amendment and said he believes that in this instance a class B misdemeanor would include a maximum of 90 days and a maximum \$1,000 fine for not entering the data as required by the statute.

[2:04:02 PM](#)

SENATOR McGUIRE removed her objection.

CHAIR FRENCH, finding no further objection, announced that Amendment 1 is adopted.

SENATOR McGUIRE motioned to report CSSB 128, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection CSSB 128(JUD) moves from committee.

At ease [2:05:37 PM](#).

SB 8-MENTAL HEALTH PATIENT RIGHTS: STAFF GENDER

CHAIR FRENCH announced the consideration of SB 8, by Senators Davis, Ellis, and Elton.

2:05:53 PM

TOM OBERMEYER, Staff to Senator Davis, explained that the bill will give mental health hospital patients who are 18 years of age or older the right to request intimate care by a nurse of a specific gender. Many such patients have had traumatic sexual or physical experiences that would be aggravated if they were to receive treatment by a nurse of a specific gender. The supervisor of the facility will be required to post notice of the right in a conspicuous place so the patients will know that they may exercise the right. While the bill recognizes that such requests can not always be fulfilled, any non-compliance to the request must be documented in the patient's file. This will prevent the information from being ignored or lost and will provide a record in case of resulting trauma. Also, the bill will preserve information for inquiry into grievance procedures at mental health facilities under Title 47.

MR. OBERMEYER referred to written testimony from the Disability Law Center of Alaska, which says that the bill would codify an existing constitutional right that is not being acknowledged and protected and that the Alaska constitution clearly recognizes that the right to privacy is important under Article 1, Section 22. Case law indicates that by necessity there will be a relinquishment of privacy when someone is admitted to a mental health facility, but that doesn't mean that all rights to privacy are relinquished. Furthermore, it is noted that the privacy protections provided in SB 8 are already available to people who are incarcerated. Mental health patients are not convicted criminals and their right to privacy may not be abrogated by virtue of their confinement.

MR. OBERMEYER highlighted written testimony from Andrea Schmook, Chair of the Alaska Mental Health Board. She indicates that the board supports the notion that psychiatric patients should have the right to choose the gender of a person who provides intimate care. She notes that although the board was instrumental in convincing Alaska Psychiatric Institute to promote this policy, it believes that an isolated policy is not sufficient to safeguard the rights of all psychiatric patients. Placing this provision in statute will ensure that all mental health patients will be afforded this basic right. Ms. Schmook says that AMHB is sensitive to the issue of creating a financial burden on psychiatric hospitals, but language in the bill provides a method for dealing with this issue. "If the patient can not be

served by someone of the gender they choose, the hospital must simply document that a request was made and that it was not able to be honored." SB 8 has a zero fiscal note, he said.

MR. OBERMEYER relayed that the bill offers a balance between the right of a patient for privacy and choice and the physician's duty to provide responsible care. If the treating psychiatrist determines that the choice the patient made is not in the best interest of the patient's treatment, he or she may override that choice.

[2:12:17 PM](#)

SENATOR MCGUIRE described the provision as important and said she supports the bill. Referring to page 1, line 7, which describes "a patient 18 years of age or older" she asked how minors are treated. "I just wouldn't want to exclude them," she said.

MR. OBERMEYER said he doesn't know, but people on-line probably have the answer.

SENATOR THERRIAULT asked if this would afford mental health patients a higher privacy right than someone who is in a hospital for medical care.

MR. OBERMEYER said yes, but only because these rights can be abrogated in an involuntary commitment. This has been an issue many times, most recently in two Anchorage cases brought by attorney James Gottstein.

[2:14:23 PM](#)

SENATOR THERRIAULT questioned a situation where a male patient requests a female caregiver.

MR. OBERMEYER explained that there could be the situation where a person was abused by a person of the same sex. In that circumstance the patient might feel comfortable receiving intimate care from a person of the opposite sex. "There are unusual circumstances particularly relating to mental health patients that cause additional concern in this regard that you wouldn't find in normal hospital settings," he stated. That's why the bill was drafted in this fashion.

CHAIR FRENCH asked if anything in the bill requires a nurse of either gender to put him or herself in a potentially harmful situation by providing care.

MR. OBERMEYER said he anticipates that the mental health facility would be familiar with a patient's particular problems before acknowledging and accommodating his or her request.

CHAIR FRENCH asked Mr. Adler to give his perspective.

[2:16:39 PM](#)

RON ADLER, CEO, Alaska Psychiatric Institute (API), Division of Behavioral Health, Department of Health and Social Services, explained that generally in the assessment phase of an acute care stay, the treating psychiatrist would become aware of any issues related to intimate care. The bill makes it very clear that if the patient's choice is to his or her detriment in any way, the treating psychiatrist would override the choice with a doctor's order.

CHAIR FRENCH added that in that situation the bill simply requires the doctor to document the decision.

MR. ADLER agreed.

SENATOR THERRIAULT referred to the circumstance of a patient who derives perverse pleasure from receiving intimate care from a particular gender. He asked if that would be detrimental to the patient by feeding that potential perversion.

MR. ADLER said absolutely. He explained that the admissions process includes a screening, which is the beginning of a comprehensive psychiatric evaluation. After the person is admitted to a unit, a nursing assessment usually follows. Within probably 24-hours a nurse practitioner or medical doctor does a medical history and physical, which is followed by an evaluation by both a psychiatrist and a social worker. Any contraindications related to intimate care usually come out in that evaluation period. A psychiatrist would absolutely pick up on that and do what is in the patient's best therapeutic interest, he stated.

[2:19:40 PM](#)

FAITH MEYERS, Mental Health Advocate from Anchorage, stated support for SB 8 as written. She said she has had experience as a patient in mental health care facilities in Alaska, Washington, and Nevada. As an advocate she has spoken with hospital administrators in a number of states including Alaska looking for best practices. Unnecessary trauma is a reality in health care facilities, and gender choice needs to be provided when the patient is reasonably cooperative. The percentage of

women in acute care psychiatric facilities with a sexual abuse past is very high; people can feel re-victimized when treated intimately by a person of a certain gender. Change needs to be made in state statute rather than in individual hospital policy. She cited several letters from people and institutions supporting gender choice in intimate psychiatric care. [Copies may be found in the bill file.]

MS. MEYERS said, "SB 8 only requires psychiatric institutions to make a good faith effort at giving gender choice of staff." She asked the committee to pass the bill.

[2:24:15 PM](#)

DORRANCE COLLINS, Mental Health Advocate from Anchorage, stated support for SB 8 as written. Not providing gender choice in psychiatric in-patient settings can be traumatizing to the patient and add to their illness. Many other states require such a choice in their hospitals and psychiatric treatment facilities. He cited a recent court decision that says that there is a clear unavoidable tension between hospital economics and patient rights. This can manifest itself in patient abuse. The court saw that without regulation this would deny psychiatric patients their rights. The court and the legislature will force psychiatric hospitals to do the right thing, he said. Many psychiatric patients have been sexually or physically abused, and being denied gender choice in intimate care creates trauma all over again. Passing SB 8 will return to the patient a small amount of dignity and control that was lost when entering a psychiatric facility.

MR. COLLINS said "SB 8 only requires psychiatric institutions to make a good faith effort at providing gender choice of staff for intimate care." He asked the committee to pass the bill as written.

[2:27:29 PM](#)

JIM GOTTSTEIN, President and CEO, Law Project for Psychiatric Rights (Psych Rights), said its mission is to launch litigation against forced psychiatric drugging. He said he couldn't add much to what has already been said, but he wants to add his supporting voice. It's a case of basic human dignity to allow gender choice for intimate care. Causing a person to relive a previous trauma is counter-therapeutic. There isn't a good reason for not accommodating a request when possible, he said. He asked members to pass SB 8 from committee.

[2:29:21 PM](#)

ANDREA SCHMOOK, Chair, Alaska Mental Health Board, Division of Behavioral Health, Department of Health and Social Services, voiced support for SB 8. She relayed her personal experience as a mental patient and her previous work experience as the Illinois director of consumer affairs for the division of mental health. Drawing on her experience, she said that mental patients need to have the right to make gender choices for intimate care when they are in an in-patient setting. Flashbacks are detrimental to a patient's mental health and may cause a relapse. I am here to support this bill personally and as chair of the board, she concluded.

MR. OBERMEYER suggested that Mr. Adler might be able to answer Senator McGuire's question about patient age.

SENATOR MCGUIRE referred to page 1, line 7, and asked how minors would be treated as a result of being excluded under this bill.

[2:32:41 PM](#)

MR. ADLER explained that a minor who is admitted to an in-patient unit generally has a parent or guardian who would resolve the issue.

SENATOR MCGUIRE asked if simply referring to "a patient" rather than specifying "a patient 18 years of age or older" would raise age of majority issues.

MR. ADLER said he believes that when this issue came up last year, Northstar Behavioral Health Hospital argued that state statute does not override parental consent. He suggested that the sponsor would need to consult the Department of Law to verify that point.

[2:34:15 PM](#)

SENATOR MCGUIRE asked Mr. Obermeyer to look into that because a minor who is abused by a parent wouldn't really have an advocate in this sort of situation. She said she would be more comfortable not specifying an age.

[2:35:08 PM](#)

CHAIR FRENCH said his thinking is along the same lines. He asked if changing the age to 16, the age of consent in Alaska, would create any problems for API.

MR. ADLER said he would need to research that with the Department of Law.

[2:35:47 PM](#)

CHAIR FRENCH moved Amendment 1.

AMENDMENT 1

Page 1, line 7

Delete "18"

Insert "16"

CHAIR FRENCH, finding no objection, announced that Amendment 1 is adopted.

MR. ADLER stated that his only concern with the bill is that the patient record should not be used to document anything related to a compliance issue. Mr. Gottstein said that the mission of Psych Rights is to reform the mental health care system through litigation and when noncompliance is documented in the patient record, it opens door to potential litigation. He suggested that there should be an alternative such as the unusual occurrence report that API uses.

[2:37:55 PM](#)

CHAIR FRENCH said that sounds reasonable and if he were to offer language to a subsequent committee, it would be given a thorough vetting.

[2:38:24 PM](#)

MR. OBERMEYER said the sponsor statement anticipated this request. It indicates that the information is useful for confirming the good-faith effort to comply with the patient's request as well as for medical purposes. The real issue is the fact that patient records are permanent, he said. In some instances the record will be used for litigation purposes, but it will also be used medically in terms of the patient's outcome.

SENATOR McGUIRE referred to Senator Therriault's question about patient rights and said she respectfully disagrees. Mental patients don't choose that path and it's the state's responsibility to provide protection, she said. Intimate care is a very personal issue and she believes that the recurrence of this bill and the mental health advocates who go out on a limb to testify are responsible for forcing API to change its policies. This is a healthy and important public process focusing on the rights of the mentally ill, she stated.

CHAIR FRENCH, finding no further questions or debate, closed public testimony.

[2:41:36 PM](#)

SENATOR THERRIAULT asked about the penalty for inadequate documentation of a patient's request.

MR. OBERMEYER said there is no penalty. It's a matter of documentation and patient protection comes from the documentation. Documenting the request in the permanent record will encourage facilities to give patients the right to chose gender for intimate care.

SENATOR THERRIAULT asked if improper documentation would establish the potential for a civil claim against the institution.

MR. OBERMEYER said it would be a matter of evidence that an attorney could look into that might otherwise be unavailable.

SENATOR McGUIRE motioned to report CSSB 8 as amended from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection CSSB 8(JUD) moves from committee.

At ease at [2:43:56 PM](#).

CSSB 145(CRA)-MUNIS IMPOUND/FORFEIT MOTOR VEHICLE

[2:44:58 PM](#)

CHAIR FRENCH announced the consideration of SB 145. [Before the committee was CSSB 145(CRA.)

SENATOR McGUIRE, sponsor of SB 145, explained that the bill would implement an option for municipalities to set up procedures to impound and forfeit vehicles of individuals who have amassed \$1,000 or more in delinquent traffic fines. She said the Municipality of Anchorage brought the idea forward, because 1,017 of its individuals have a total of over \$7.57 million in unpaid traffic fines. One person in the community has 43 different citations totaling almost \$10,000 and another has 70 traffic citations totaling nearly \$8,000. She said that this law is meant to target the habitual, repeat offenders who blatantly disregard public safety and refuse to pay their

citation fines. Many refuse to pay the fines because they know the municipality has no recourse.

The Anchorage Assembly unanimously passed an ordinance on this same issue making it a misdemeanor for anyone to drive if they have at least 3 unpaid traffic tickets. SB 145 does not do that; it is simply a tool that municipalities may use and it has no fiscal impact to the state. Individuals stopped by a police officer under these circumstances would lose their vehicle for 30 days. To get it back, the individual would have to pay \$390 in administration fees plus towing and storage fees. This is meant to be a deterrent and a reminder to encourage people to pay their traffic fines in a timely manner.

[2:48:35 PM](#)

SENATOR McGUIRE referred to a proposed amendment to allow the department of labor to help a municipal attorney track down individuals who have civil or criminal fines or penalties. Currently the municipality has had difficulty getting that cooperation, she said. The idea is for the municipality and the department to have a written agreement specifying: the purpose of the information; a description of the information provided; the procedure for transmitting, securing, using or disposing of the information; and the method of reimbursement of the cost for providing the information.

SENATOR McGUIRE opined that this will be a useful tool because people who amass these fines might skip around in terms of employment and might be difficult to track down. The department of labor is most likely to have that information, and this is an effort to ask it to cooperate and help the municipality locate those individuals. The bill does two things; one is mandatory and the other is optional, she said.

[2:50:13 PM](#)

SENATOR THERRIAULT calculated the average per person amount of the unpaid traffic fines and expressed amazement. He asked if the municipality has any information about the value of the vehicles that these individuals are driving.

SENATOR McGUIRE replied the point of the bill isn't value-for-value; the idea is to get people's attention by taking their vehicle.

SENATOR THERRIAULT asked if he has to think about lending his car to his neighbor if he/she one of the individuals who has amassed large traffic fines.

SENATOR McGUIRE said yes; hopefully people will become more careful about lending their vehicle. We're trying to set up a situation where it's a deterrent, but clearly the local governing authority will have to establish a procedure of notice before taking someone's vehicle, she said.

[2:53:26 PM](#)

SENATOR WIELECHOWSKI, referring to subsection (r) in bill section 1, asked if this applies only to municipalities and not other legally designated forms of government.

SENATOR McGUIRE replied this bill only applies to municipalities as defined by statute.

SENATOR WIELECHOWSKI asked if the department of labor supports this provision.

CHAIR FRENCH said representatives from the Department of Labor & Workforce Development, the Office of the Attorney General, and the Municipality of Anchorage have signed up to testify.

[2:54:18 PM](#)

PAULA SCAVERA, Special Assistant, Office of the Commissioner, Department of Labor & Workforce Development (DOLWD), said some of the questions are more applicable to Larry McKinstry, the attorney who represents the department of this issue. She is available to answer questions.

[2:55:00 PM](#)

SENATOR WIELECHOWSKI asked if the fiscal note applies to the new subsection (r).

MR. SCAVERA said yes. The first two years will come from the general fund because there won't be receipts, but the bill is written such that any costs will be paid for by the municipality.

SENATOR WIELECHOWSKI asked if there are any legal hurdles to overcome to provide this information to a municipal government.

MS. SCAVERA, referring to a proposed amendment, said the department has worked with the sponsor to accommodate new federal regulations related to trading information. She deferred to Mr. McKinstry for further explanation.

[2:56:21 PM](#)

SENATOR WIELECHOWSKI asked if the department of labor provides information to other non-state agencies or organizations.

MS. SCAVERA explained that by federal and state law the department is required to provide information to certain entities. Child support is one example.

[2:57:04 PM](#)

CHAIR FRENCH asked Mr. McKinstry to respond to the legal question.

LARRY MCKINSTRY, Assistant Attorney General, Department of Law, explained that disclosure of this type of information is governed by both state statute and federal regulation. In general, wage and unemployment information is confidential and is held by the department solely for the administration of the unemployment insurance benefit program. There are a number of exceptions, but anything that the state gives up pursuant to the state statute must also comply with the federal regulations. "It's a somewhat complex problem of trying to figure out whether or not a specific request or a specific type of information falls within one of those written exceptions," he said.

SENATOR WIELECHOWSKI referenced Chapter 20 of the Alaska Employment Security Act and said the first sentence defines the purpose, which is to promote employment security. He questioned whether adding the provision does in fact do that.

MR. MCKINSTRY expressed uncertainty about the thrust of the question. He explained that the statute would typically hold this type of information confidential unless it's used for unemployment purposes. This provision would create a new exception for the collection of fines and any civil judgments. The provision broadens the scope of the purpose for using the information, he added.

SENATOR WIELECHOWSKI, referring to subsection (r), asked what kind of information the department would provide to the municipal attorney.

MR. MCKINSTRY said specifically the information would include the name and address of the employee as well as the identifying information of the employer. That would make it easier for the municipality to locate the person who has the outstanding tickets or judgment.

SENATOR WIELECHOWSKI asked if just the name and address of the employee would be included.

MR. MCKINSTRY said that's his understanding.

SENATOR WIELECHOWSKI asked how quickly the information would have to be provided and if the state might be liable to a municipality if it failed to provide the information.

MR. MCKINSTRY said he understands that the requests would be ongoing and that the information would be exchanged through a database that's set up by the municipality and the state. With regard to liability exposure, there will have to be a written agreement between the entities that complies with all the restrictions that come with the federal regulation. "That should in fact protect the state from any potential liabilities," he said. If the information is denied the municipality would need to litigate, but once the database is established the exchange of information will be quite straightforward.

[3:03:16 PM](#)

SENATOR WIELECHOWSKI noted that paragraph (4) on page 2, says that within the agreement there must be a "method of reimbursement for the cost of providing the information." Presumably the fiscal note should be zero, he said.

MR. MCKINSTRY said his understanding is that there will be significant up-front costs to set up the database exchange, but after that the long-term costs should be covered. Federal regulations make it very clear that it's a state cost if the information is provided for purposes other than unemployment, he said.

SENATOR WIELECHOWSKI asked if he's saying that the state would be fully reimbursed for the general fund expenditures through FY 2013.

MR. MCKINSTRY said his understanding is that those costs are for accounting, staffing to maintain the database, and to ensure that the information exchange occurs when it should.

MS. SCAVERA added that the fiscal note is designed to use general funds the first two years and after that statutory designated receipts will be used. Federal dollars can not be used.

[3:06:11 PM](#)

SENATOR THERRIAULT asked why it's not possible to start out using statutory designated program receipts.

MS. SCAVERA said the work has to be started before entering into an agreement with the municipalities. Doing the disclosures will require two fulltime positions and one for about one month per year. More municipalities will want to come on board over time and each will require a separate memorandum of agreement, she said.

CHAIR FRENCH held SB 145 in committee.

The meeting was adjourned at [3:08:14 PM](#).