

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 5, 2008

9:05 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 268

"An Act relating to damaging a vehicle on public land by starting a fire or causing an explosion."

MOVED HB 268 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 163(JUD)

"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

MOVED SCS CSHB 163(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 359(FIN)

"An Act relating to the term of probation for persons convicted of minor consuming or in possession or control of alcohol or repeat minor consuming or in possession or control of alcohol; and relating to termination of probation for certain persons convicted of minor consuming or in possession or control of alcohol or repeat minor consuming or in possession or control of alcohol."

MOVED CSHB 359(FIN) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 305(RLS) am

"An Act relating to campaign fund raising during a regular or special legislative session; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 50(JUD)

"An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED CSHB 50(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 400

"An Act relating to a person who seeks medical assistance for a person experiencing a drug overdose."

MOVED HB 400 OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 37(JUD)

Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor.

MOVED CSHJR 37(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 268

SHORT TITLE: MOTOR VEHICLE ARSON ON PUBLIC LAND

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/04/08	(H)	PREFILE RELEASED 1/4/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	JUD
02/06/08	(H)	JUD AT 1:00 PM CAPITOL 120
02/06/08	(H)	Moved Out of Committee
02/06/08	(H)	MINUTE(JUD)
02/08/08	(H)	JUD RPT 1DP 4NR 1AM
02/08/08	(H)	DP: RAMRAS
02/08/08	(H)	NR: DOOGAN, COGHILL, DAHLSTROM, SAMUELS
02/08/08	(H)	AM: HOLMES
02/21/08	(H)	TRANSMITTED TO (S)
02/21/08	(H)	VERSION: HB 268
02/25/08	(S)	READ THE FIRST TIME - REFERRALS
02/25/08	(S)	JUD
03/12/08	(S)	JUD AT 1:30 PM BELTZ 211
03/12/08	(S)	Heard & Held
03/12/08	(S)	MINUTE(JUD)
04/05/08	(S)	JUD AT 9:00 AM BUTROVICH 205

BILL: HB 163

SHORT TITLE: PROPERTY FORECLOSURES AND EXECUTIONS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/28/07 (H) READ THE FIRST TIME - REFERRALS
 02/28/07 (H) L&C, JUD
 03/30/07 (H) L&C AT 3:00 PM CAPITOL 17
 03/30/07 (H) -- MEETING CANCELED --
 04/20/07 (H) L&C AT 3:00 PM CAPITOL 17
 04/20/07 (H) Moved CSHB 163(L&C) Out of Committee
 04/20/07 (H) MINUTE(L&C)
 04/23/07 (H) L&C RPT 1DP 4NR
 04/23/07 (H) DP: RAMRAS
 04/23/07 (H) NR: BUCH, LEDOUX, NEUMAN, OLSON
 04/27/07 (H) JUD AT 1:00 PM CAPITOL 120
 04/27/07 (H) Heard & Held
 04/27/07 (H) MINUTE(JUD)
 04/30/07 (H) CORRECTED L&C RPT CS(L&C) NT 1DP 4NR
 04/30/07 (H) DP: RAMRAS
 04/30/07 (H) NR: BUCH, NEUMAN, LEDOUX, OLSON
 04/30/07 (H) JUD AT 1:00 PM CAPITOL 120
 04/30/07 (H) Moved CSHB 163(JUD) Out of Committee
 04/30/07 (H) MINUTE(JUD)
 05/01/07 (H) JUD RPT CS(JUD) NT 3DP 4NR
 05/01/07 (H) DP: GRUENBERG, LYNN, RAMRAS
 05/01/07 (H) NR: COGHILL, DAHLSTROM, SAMUELS, HOLMES
 05/05/07 (H) TRANSMITTED TO (S)
 05/05/07 (H) VERSION: CSHB 163(JUD)
 05/07/07 (S) READ THE FIRST TIME - REFERRALS
 05/07/07 (S) JUD, FIN
 03/05/08 (S) JUD AT 1:30 PM BELTZ 211
 03/05/08 (S) Heard & Held
 03/05/08 (S) MINUTE(JUD)
 03/21/08 (S) JUD AT 1:30 PM BELTZ 211
 03/21/08 (S) -- MEETING CANCELED --
 03/25/08 (S) JUD AT 1:30 PM FAHRENKAMP 203
 03/25/08 (S) Heard & Held
 03/25/08 (S) MINUTE(JUD)
 04/05/08 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: HB 359

SHORT TITLE: PROBATION AND MINOR CONSUMING
 SPONSOR(s): JUDICIARY

02/08/08 (H) READ THE FIRST TIME - REFERRALS
 02/08/08 (H) JUD, FIN
 02/20/08 (H) JUD AT 1:00 PM CAPITOL 120
 02/20/08 (H) Moved CSHB 359(JUD) Out of Committee
 02/20/08 (H) MINUTE(JUD)
 02/21/08 (H) JUD RPT CS(JUD) NT 2DP 3NR
 02/21/08 (H) DP: GRUENBERG, RAMRAS

02/21/08 (H) NR: COGHILL, DAHLSTROM, SAMUELS
 03/04/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/04/08 (H) Scheduled But Not Heard
 03/05/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/05/08 (H) Heard & Held
 03/05/08 (H) MINUTE(FIN)
 03/13/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/13/08 (H) Moved CSHB 359(FIN) Out of Committee
 03/13/08 (H) MINUTE(FIN)
 03/17/08 (H) FIN RPT CS(FIN) NT 6DP 2NR
 03/17/08 (H) DP: HAWKER, GARA, CRAWFORD, THOMAS,
 MEYER, CHENAULT
 03/17/08 (H) NR: KELLY, HARRIS
 03/26/08 (H) TRANSMITTED TO (S)
 03/26/08 (H) VERSION: CSHB 359(FIN)
 03/27/08 (S) READ THE FIRST TIME - REFERRALS
 03/27/08 (S) JUD, FIN
 04/02/08 (S) JUD AT 1:30 PM BELTZ 211
 04/02/08 (S) Bills Previously Heard/Scheduled
 04/03/08 (S) JUD AT 8:00 AM BUTROVICH 205
 04/03/08 (S) Heard & Held
 04/03/08 (S) MINUTE(JUD)
 04/05/08 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: HB 305

SHORT TITLE: CAMPAIGN FUND RAISING DURING SESSIONS

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/11/08 (H) PREFILE RELEASED 1/11/08
 01/15/08 (H) READ THE FIRST TIME - REFERRALS
 01/15/08 (H) STA
 01/22/08 (H) STA AT 8:00 AM CAPITOL 106
 01/22/08 (H) Moved CSHB 305(STA) Out of Committee
 01/22/08 (H) MINUTE(STA)
 01/23/08 (H) STA RPT CS(STA) NT 4DP 2NR
 01/23/08 (H) DP: JOHNSON, JOHANSEN, ROSES, LYNN
 01/23/08 (H) NR: COGHILL, DOLL
 02/04/08 (H) RLS AT 4:30 PM CAPITOL 106
 02/04/08 (H) Moved CSHB 305(RLS) Out of Committee
 02/04/08 (H) MINUTE(RLS)
 02/06/08 (H) RLS RPT CS(RLS) NT 5DP 2AM
 02/06/08 (H) DP: FAIRCLOUGH, HARRIS, KERTTULA,
 SAMUELS, COGHILL
 02/06/08 (H) AM: GUTTENBERG, JOHNSON
 02/06/08 (H) RETURNED TO RLS COMMITTEE
 02/19/08 (H) MOVED TO RETURN TO SECOND TO RESCIND
 ACTION

02/19/08 (H) LEDOUX ABSTAIN VOTING FLD Y18 N17 E5
 PER UR 34(B)
 02/20/08 (H) TRANSMITTED TO (S)
 02/20/08 (H) VERSION: CSHB 305(RLS) AM
 02/21/08 (S) READ THE FIRST TIME - REFERRALS
 02/21/08 (S) STA
 02/21/08 (S) JUD REFERRAL ADDED BEFORE STA
 04/05/08 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: HB 50

SHORT TITLE: CHILD PLACEMENT COMPACT

SPONSOR(S): REPRESENTATIVE(S) COGHILL, NEUMAN, WILSON

01/16/07 (H) PREFILE RELEASED 1/5/07
 01/16/07 (H) READ THE FIRST TIME - REFERRALS
 01/16/07 (H) HES, JUD
 02/21/08 (H) HES AT 3:30 PM CAPITOL 106
 02/21/08 (H) Heard & Held
 02/21/08 (H) MINUTE(HES)
 02/28/08 (H) HES AT 3:00 PM CAPITOL 106
 02/28/08 (H) Moved CSHB 50(HES) Out of Committee
 02/28/08 (H) MINUTE(HES)
 02/29/08 (H) HES RPT CS(HES) 6DP 1NR
 02/29/08 (H) DP: CISSNA, FAIRCLOUGH, GARDNER,
 SEATON, ROSES, WILSON
 02/29/08 (H) NR: KELLER
 03/14/08 (H) JUD AT 1:00 PM CAPITOL 120
 03/14/08 (H) Moved CSHB 50(JUD) Out of Committee
 03/14/08 (H) MINUTE(JUD)
 03/17/08 (H) JUD RPT CS(JUD) NT 4DP
 03/17/08 (H) DP: GRUENBERG, COGHILL, DAHLSTROM,
 RAMRAS
 03/17/08 (H) FIN REFERRAL ADDED AFTER JUD
 03/27/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/27/08 (H) Moved CSHB 50(JUD) Out of Committee
 03/27/08 (H) MINUTE(FIN)
 03/28/08 (H) FIN RPT CS(JUD) NT 4DP 3NR
 03/28/08 (H) DP: CRAWFORD, GARA, JOULE, THOMAS
 03/28/08 (H) NR: HAWKER, KELLY, MEYER
 03/31/08 (H) TRANSMITTED TO (S)
 03/31/08 (H) VERSION: CSHB 50(JUD)
 04/01/08 (S) READ THE FIRST TIME - REFERRALS
 04/01/08 (S) JUD, FIN
 04/05/08 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: HB 400

SHORT TITLE: MITIGATING FACTOR: CARE FOR DRUG OVERDOSE

SPONSOR(s): REPRESENTATIVE(s) KERTTULA

02/19/08 (H) READ THE FIRST TIME - REFERRALS
02/19/08 (H) JUD, FIN
02/25/08 (H) JUD AT 1:00 PM CAPITOL 120
02/25/08 (H) Heard & Held
02/25/08 (H) MINUTE(JUD)
03/12/08 (H) JUD AT 1:00 PM CAPITOL 120
03/12/08 (H) Moved Out of Committee
03/12/08 (H) MINUTE(JUD)
03/13/08 (H) JUD RPT 2DP 4NR
03/13/08 (H) DP: HOLMES, RAMRAS
03/13/08 (H) NR: GRUENBERG, COGHILL, DAHLSTROM,
SAMUELS
03/26/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/26/08 (H) Scheduled But Not Heard
03/27/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/27/08 (H) Moved Out of Committee
03/27/08 (H) MINUTE(FIN)
03/28/08 (H) FIN RPT 5DP 3NR
03/28/08 (H) DP: GARA, CRAWFORD, JOULE, THOMAS,
MEYER
03/28/08 (H) NR: HAWKER, STOLTZE, KELLY
04/02/08 (H) TRANSMITTED TO (S)
04/02/08 (H) VERSION: HB 400
04/03/08 (S) READ THE FIRST TIME - REFERRALS
04/03/08 (S) JUD, FIN
04/05/08 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: HJR 37

SHORT TITLE: CONST AM: SEC. OF STATE REFERENCES

SPONSOR(s): REPRESENTATIVE(s) GRUENBERG

02/19/08 (H) READ THE FIRST TIME - REFERRALS
02/19/08 (H) STA, JUD
03/13/08 (H) STA AT 8:00 AM CAPITOL 106
03/13/08 (H) Scheduled But Not Heard
03/15/08 (H) STA AT 11:00 AM CAPITOL 106
03/15/08 (H) Moved Out of Committee
03/15/08 (H) MINUTE(STA)
03/17/08 (H) STA RPT 4DP 1NR
03/17/08 (H) DP: JOHNSON, GRUENBERG, DOLL, ROSES
03/17/08 (H) NR: COGHILL
03/17/08 (H) FIN REFERRAL ADDED AFTER JUD
03/19/08 (H) JUD AT 1:00 PM CAPITOL 120
03/19/08 (H) Moved CSHJR 37(JUD) Out of Committee
03/19/08 (H) MINUTE(JUD)

03/20/08 (H) JUD RPT CS(JUD) NT 5DP 1NR
03/20/08 (H) DP: GRUENBERG, COGHILL, DAHLSTROM,
LYNN, RAMRAS
03/20/08 (H) NR: SAMUELS
03/27/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/27/08 (H) Moved CSHJR 37(JUD) Out of Committee
03/27/08 (H) MINUTE(FIN)
03/28/08 (H) FIN RPT CS(JUD) NT 4DP 5NR
03/28/08 (H) DP: CRAWFORD, KELLY, THOMAS, MEYER
03/28/08 (H) NR: HAWKER, GARA, STOLTZE, JOULE,
CHENAULT
03/31/08 (H) TRANSMITTED TO (S)
03/31/08 (H) VERSION: CSHJR 37(JUD)
04/01/08 (S) READ THE FIRST TIME - REFERRALS
04/01/08 (S) JUD, FIN
04/05/08 (S) JUD AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

BEN MULLIGAN, Staff

to Representative Bill Stoltze
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 268 on behalf of the sponsor.

KELLY RIEDELLO, Assistant State Fire Marshal
Division of Fire and Life Safety
Department of Public Safety
Anchorage, AK

POSITION STATEMENT: Offered to answer questions on HB 268.

JANE PIERSON, Staff

to Representative Jay Ramras
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 163 on behalf of the sponsor.

EMILY BEATLEY, Staff

to Representative Jay Ramras
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 359 on behalf of the sponsor.

MIKE POWLOWSKI, Staff

to Representative Kevin Meyer
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 305 on behalf of the sponsor.

RYNNIEVA MOSS, Staff
to Representative John Coghill
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 50 on behalf of the sponsor.

MARSHA PICKERING, Social Services Program Coordinator
Office of Children's Services
Department of Health and Social Services (DHSS)
Juneau, AK

POSITION STATEMENT: Answered questions related to HB 50.

JAN RUTHERDALE, Assistant Attorney General
Civil Division
Child Protective Section
Department of Law
Juneau, AK

POSITION STATEMENT: Responded to a question related to HB 50.

AURORA HAUKE, Staff
to Representative Beth Kerttula
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 400 on behalf of the sponsor.

DENEEN TUCK, Staff
to Representative Max Gruenberg
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HJR 37 on behalf of the sponsor.

REPRESENTATIVE MAX GRUENBERG
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Sponsor of HJR 37.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [9:05:10 AM](#). Present at the call to order were Senators French, Therriault, Huggins, and Wielechowski.

HB 268-MOTOR VEHICLE ARSON ON PUBLIC LAND

CHAIR FRENCH announced the consideration of HB 268. He asked the sponsor's representative if he had additional information on the bill that the committee might need.

9:05:47 AM

BEN MULLIGAN, Staff to Representative Bill Stoltze, sponsor of HB 268, mentioned a letter that was sent to the sponsor related to the permitting system and relayed that a representative from the office of the State Fire Marshal was available to answer questions on that or other points.

9:07:00 AM

KELLY RIEDELLO, Assistant State Fire Marshal, relayed that the state fire marshal previously testified in support of the bill and he is here today to answer questions.

CHAIR FRENCH noted that public testimony was closed after the last hearing, and finding no committee discussion, he asked for a motion.

SENATOR WIELECHOWSKI motioned to report HB 268 and attached zero fiscal note(s) from committee with individual recommendations.

CHAIR FRENCH announced that without objection, HB 268 is moved from the Senate Judiciary Committee.

CSHB 163(JUD)-PROPERTY FORECLOSURES AND EXECUTIONS

9:08:28 AM

CHAIR FRENCH announced the consideration of CSHB 163(JUD) and asked for a motion to adopt Version \T, Senate committee substitute (CS). [The committee discussed, but did not adopt, Version 25-LS0630\N during the meeting on 3/25/08.]

SENATOR HUGGINS moved to adopt Senate CS for CSHB 163, 25-LS0630\T, Bannister, as the working document.

CHAIR FRENCH explained that the CS essentially makes two changes to the bill that passed from the House. First, it drops Section 2, which was the provision that mandated Internet advertizing of foreclosure sales. It's a good idea, but it was unclear whether that would continue if the law mandated it happen somewhere else. The Alaska Journal of Commerce website seems to be working and the mandate might or might not jeopardize that. Noting that the sponsor acquiesced to his view, he asked Ms. Pierson if she had anything to add on that point.

[9:10:09 AM](#)

JANE PIERSON, Staff to Representative Jay Ramras, sponsor of HB 163, responded that the sponsor accepts the change.

CHAIR FRENCH explained that the second change is in Section 4. The phrase "up to two days" was deleted so that a default can be cured at any time before the sale rather than up to two days before the sale because that phrase may upset thousands of current deeds of trust that allow cure up until the moment of sale. With the growing foreclosure crisis homeowners should be given every opportunity to keep their homes from being sold to satisfy a debt.

MS. PIERSON told Chair French she had nothing to add on that point.

CHAIR FRENCH observed that this is one of those bills where both sides can come together and create good new provisions for a dynamic area in the law. Finding no discussion, he asked for a motion.

[9:11:16 AM](#)

SENATOR THERRIault motioned to report SCS CSHB 163(JUD), 25-LS0630\T, and attached fiscal note(s) from committee with individual recommendations.

CHAIR FRENCH announced that without objection the bill is moved from the Senate Judiciary Committee.

CSHB 359(FIN)-PROBATION AND MINOR CONSUMING

CHAIR FRENCH announced the consideration of HB 359. [Before the committee was CSHB 359(FIN).] He recapped that the bill was heard two days ago and held over to consider the changes that had been made.

[9:11:55 AM](#)

EMILY BEATLEY, Staff to Representative Jay Ramras, sponsor of HB 359, thanked the committee for considering the bill.

CHAIR FRENCH observed that the bill is a good idea that's a long time in coming. Young people who drink alcohol when they're underage should be punished, but they should be able to cure themselves of that mistake without too many ramifications. He's heard about the negative affect on military recruitment, getting into college and other steps that young people might want to take. Some are too harsh.

[9:12:46 AM](#)

SENATOR MCGUIRE joined the hearing.

SENATOR WIELECHOWSKI motioned to report HB 359 and attached fiscal note(s) from committee with individual recommendations.

CHAIR FRENCH announced that without objection, CSHB 359(FIN) is moved from the Senate Judiciary Committee.

At ease from [9:13:07 AM](#) to [9:14:40 AM](#).

CSHB 305(RLS) am -CAMPAIGN FUND RAISING DURING SESSIONS

CHAIR FRENCH announced the consideration of HB 305 dealing with campaign finance. [Before the committee was CSHB 305(RLS) am.]

[9:14:57 AM](#)

MIKE POWLOWSKI, Staff to Representative Kevin Meyer, sponsor of HB 305, described Section 3 as the meat of the bill. It extends to other races the prohibition against a legislator raising money for a statewide office during a legislative session. The current version provides a blanket prohibition against raising money: for another candidate for municipal, state, or federal office; to influence a ballot proposition or question; or for a political party. When the legislature is not in session the legislator regains the right to solicit for those activities.

[9:17:16 AM](#)

MR. POWLOWSKI said that subparagraph (A) in Section 3 is a little different in that a legislator can solicit funds for his or her own campaign for office as long as it is within 90 days of that election and not in the location where the session is being held or in the capital city.

Section 1 repeals and reenacts AS 15.13.072(d) to provide continuity between the APOC laws and ethics laws. Subsection (d) originally applied the prohibition to both legislators and candidates, but the court determined that it was unconstitutional to apply the prohibition to candidates who were not sitting legislators, so the section was never enforced. In working through the process they decided to repeal and reenact the statute, meet the court order and apply the prohibition only to legislators. The APOC laws are amended to clarify that this applies to not only a legislative race, but also a municipal, state, or federal races.

[9:19:06 AM](#)

CHAIR FRENCH added that Title 15 is the APOC statutes so to contravene the statute is an APOC violation. He asked what the penalty is for that and Mr. Powlowski said he would provide that information later.

MR. POWLOWSKI explained that Section 2 relates to the ethics law and applies only to legislative employees. It does not apply to legislators. The reasoning is that Section 3 places broad prohibitions on legislators and that section wouldn't apply in its entirety to legislative employees since they aren't decision makers.

MR. POWLOWSKI said he hopes there is some conversation about the issue of federal preemption as it relates to the bill. The sponsor recognizes that federal law preempts this bill as it applies to federal office, but he believes that the state has a compelling interest in governing the conduct of its legislators, so a challenge is warranted.

[9:21:11 AM](#)

SENATOR THERRIAULT asked if the issue is that it's questionable that this state law can preempt him from raising money for his or someone else's federal campaign.

MR. POWLOWSKI replied he understands that it would be for a candidate's own campaign for federal office. Candidates for federal office fall under the federal election code, which applies only to a candidacy. "We do believe that the bill's prohibitions on your solicitation of funds in favor of someone for federal office would not fall under the federal election code."

CHAIR FRENCH asked if the federal preemption pertains in Section 3 because the bill states that "on any day when either house of the legislature is in regular or special session, a legislator may not solicit or accept a contribution or a promise or pledge to make a contribution for the legislator's own campaign for public office." The sponsor interprets "public office" to mean local, state, or federal.

MR. POWLOWSKI said that's correct.

[9:22:45 AM](#)

CHAIR FRENCH referred to the legal opinion dated 1/25/08 on the issue of federal preemption that cites a case from Georgia, Tepper v. Miller. In that case the U.S. Court of Appeals

affirmed an injunction against enforcement of a Georgia law prohibiting Georgia General Assembly members from accepting contributions for federal election campaigns while the assembly was in session. The court of appeals held that the statute was preempted by the Federal Election Campaign Act of 1971.

CHAIR FRENCH said that in bald terms "preemption" means that you're pushed out of the way. In this country U.S. federal law is supreme and in this issue it sits on top of anything this state might do, particularly with respect to federal election laws. Basically, the state is powerless to tell the federal government how to run federal elections. The last paragraph of that opinion says: "The express language of the federal election laws preemption provision, the provision's legislative history, and the FEC's interpretation make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted."

CHAIR FRENCH observed that the foregoing doesn't leave much wiggle room and it makes him nervous to set up a statute that invites a challenge and legal proceedings that would require the state to defend the law. Ultimately he said he feels that the district attorney who tries to defend this law will lose.

[9:25:32 AM](#)

MR. POWLOWSKI responded that the sponsor appreciates the issue and did take pause when he received the opinion from legislative legal. The packets also contain a research report pointing to three other states that have a similar provision that either have not been struck down or have not been challenged. When the sponsor saw that, he decided to go forward with that provision.

SENATOR THERRIAULT asked if the similar provision in other states hadn't been struck down or hadn't been challenged.

MR. POWLOWSKI said the Tepper v. Miller challenge in Georgia was overturned and in another state the attorney general decided that the provision would not be enforced. "It's the same way the state currently operates under the way the existing APOC law applies to candidates." The law says one thing and the state court says it won't be enforced. The other three states have similar provisions in law, but a challenge has never been brought so they remain in effect.

CHAIR FRENCH said it's an interesting intersection of what's right, what's legal, and what you can get away with. "It may be

that we can't stop sitting legislators from raising money for federal office while the legislature is in session. It may be that those individuals would think twice about the propriety of doing so since we're all banned from raising money for our own campaigns while we're here doing the state's business. It may be that...the whole welter of laws is beside the point. It may be that total and complete disclosure is really the way to go," he said.

[9:28:40 AM](#)

CHAIR FRENCH asked if subparagraph (B) in Section 3 prohibits a legislator from making a contribution for another candidate

MR. POWLOWSKI replied their understanding of (A), (B), (C), and (D) is that they fall under paragraph (1). That says legislators may not "on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution" so the prohibition applies to solicitation or acceptance of funds and not the ability to make a contribution.

CHAIR FRENCH said he couldn't, for example, raise money for an assembly candidate in Anchorage.

MR. POWLOWSKI agreed and said the fundraising events that take place during the campaign season provide an easy example. Oftentimes you'll see members hosting events to solicit funds for a candidate. That would be prohibited during a legislative session, but a legislator would continue to have the right to appear and endorse the candidate as long as it isn't linked to the solicitation of funds.

CHAIR FRENCH asked about the circumstance of his going to a fundraiser and standing up and asking folks to get their checkbooks out because this guy is worth electing.

MR. POWLOWSKI replied that would be over the line. In governing conduct for this section, the point is to not attend the fundraiser in favor of that candidate. When it applies to candidates it's a little different than ballot measures but the principle is similar. Legislators could appear in commercials supporting the policy of an initiative, but they could not appear in a commercial asking to raise money for the initiative because that is a solicitation for funds. It's separating the act of soliciting money versus the act of supporting the policy.

[9:31:34 AM](#)

SENATOR MCGUIRE expressed the view that this is an important policy when you think about the principle behind why legislators can't raise money while in Juneau. At heart it's so there isn't an appearance that legislators are being influenced in their deliberations. It could be carried a step further with poor motive. "I think putting it into law is a great approach," she said.

MR. POWLOWSKI added that legislators used to be prohibited from raising money for legislative, municipal and statewide office and HB 305 initially tried to take the law back to what it was before. The problem was extending that prohibition to federal law.

[9:33:52 AM](#)

SENATOR WIELECHOWSKI said he doesn't disagree with the philosophy, but he questions whether it's any better to get a \$1,000 check the day before the session versus getting it the day the session starts.

MR. POWLOWSKI replied we felt that when members put on hold their role as a citizen to take up the people's business is the defining line for saying that this is a time not to be soliciting funds.

SENATOR WIELECHOWSKI asked if this would also apply to governor candidates, lieutenant governor candidates and perhaps municipal candidates.

MR. POWLOWSKI said the provision is in the Legislative Ethics Act and it applies only to the conduct of legislators. That was the sponsor's focus.

SENATOR WIELECHOWSKI asked if he would object to amending the bill to include the Executive Branch Ethics Act.

MR. POWLOWSKI replied he doesn't know the sponsor's position, but when that was discussed in previous committees his position was that the executive branch should deal with that.

[9:36:53 AM](#)

SENATOR THERRIAULT said Mr. Pawlowski made the point that legislators shift roles from being a citizen to being a legislator when the session starts, and if you wanted to go beyond that you'd have to make the prohibition year around and that would be a complete loss of a constitutional right. As

currently drafted, the line is very bright and distinct, he stated.

CHAIR FRENCH observed that the further you get from the core activity you're trying to prevent, the more you'll get into legal trouble. He can't see any court upholding a ban on the ability to raise money for good causes during a legislative session, even if you have a bad motive for doing so.

[9:39:08 AM](#)

SENATOR McGUIRE said she believes the distinction is that you're in a political context asking for money as opposed to speaking on behalf of a good cause.

CHAIR FRENCH said that's the exact tension because there is nothing more protected than political speech. It's at the heart of the First Amendment. The First Amendment isn't about asking for money for the Red Cross or an advertisement for selling soap; it's about a person's right to stand up and state their political principles with as much vigor and enthusiasm as they like.

MR. POWLOWSKI relayed that the next subsection, AS 24.60.030(e), speaks to that very conduct. It talks about a legislator not trading his or her vote and it speaks to donating or not donating to a cause favored by the legislator. Extending it to cover things like the Red Cross was discussed but those individuals are not policy makers; that is a legislator role. As long as you limit it to things that are political in nature, you're within reasonable bounds, he said. We haven't heard significant constitutional questions on the issue of free speech. The legal memorandums say that the constitutional questions are related to the federal election issues rather than free speech.

SENATOR McGUIRE added that the courts have said that reasonable restrictions are allowed because it's the compelling state interest.

[9:42:21 AM](#)

CHAIR FRENCH agreed, and then set HB 305 aside for further consideration.

CSHB 50(JUD) -CHILD PLACEMENT COMPACT

CHAIR FRENCH announced the consideration of HB 50. [Before the committee was CSHB 50(JUD).]

[9:42:56 AM](#)

RYNNIEVA MOSS, Staff to Representative John Coghill, sponsor of HB 50, explained that the sponsor became interested in the issue of interstate child placement after he learned about the delays in placing children with relatives living outside the state. The delays result in children being placed in foster homes for up to a year. The existing interstate compact for the placement children (ICPC) was created in 1959, and Alaska adopted it in 1976. This 40-year-old statute doesn't reflect modern technology, doesn't have accountability, and doesn't work.

[9:44:35 AM](#)

MS. MOSS relayed that when the sponsor read: "The compact and its rules shall supersede state law, rules or regulations to the extent of any conflict therewith" he decided to carry the bill through to ensure that changes are made to sustain state sovereignty. As currently written the bill eliminates that language. It has provisions to place a child with relatives after a basic assessment with a full home study to follow thereafter.

MS. MOSS said the sponsor feels that the bill places accountability appropriately and, contrary to the fiscal note, believes that it will save money. It takes the state out of the act of supervising placement where it shouldn't. "This language has been worked on for several years, Representative Coghill has been supervising his part for a year, and we feel the way the language is now, it's a good bill and it's going to mean that children are being placed with relatives and friends versus the homes of strangers," she said.

[9:47:06 AM](#)

MARSHA PICKERING, Social Services Program Director, Office of Children's Services, Department of Health and Social Services (DHSS), said she is the deputy compact administrator. She explained that the new compact will provide uniformity and accountability to the processes. The old ICPC does not have any accountability or enforcement of reciprocity to ensure that each state is not charged for the services provided by another state. Most importantly, the new compact will ensure safe and timely placements so that home studies can be done within 60 days instead of up to a year. She highlighted that the new ICPC has been endorsed by the executive committees of the National Council of State Human Services, the National Association of Public Child Welfare Administrators, the National Association of

Administrators of ICPC, and the American Academy of Adoption Attorneys.

MS. PICKERING continued to explain that the executive committee of the administrators of the ICPC negotiated with the American Academy of Adoption Attorneys to revise the flawed first draft of the new compact. As currently written the new ICPC provides for administrative rulemaking and accountability, supervision services and accountability as well as the opportunity to purchase home studies from private agencies in the event that a state is slow in providing the service. It also provides two types of placement evaluations, one is the home study and the second is an assessment. The latter is an abbreviated version so the child gets to grandma's house in less time. An advisory committee made up of the executive branch, judiciary branch, and the legislative branch will provide oversight and advice to her office and its equivalent in other states.

[9:52:24 AM](#)

SENATOR THERRIAULT noted that the fiscal note says that even if this is placed in statute it won't become effective until 34 other states also adopt the compact.

MS. PICKERING said that's correct. She expects it will take about two years to get 35 states signed on and another year for the new ICPC to develop rules and regulations for doing business.

CHAIR FRENCH observed that you have to have a critical mass of participants in order to have a true interstate compact.

SENATOR WIELECHOWSKI asked how many children this will impact in the average year.

MS. PICKERING replied that on any given day she has about 380 open home study or placement requests, but she doesn't have data on the number of children her office affects during the year.

CHAIR FRENCH asked if one central group is behind this idea.

MS. PICKERING said the American Public Human Services Association took the lead and put together a drafting and development team comprised of several stakeholders, attorneys, judges, and state child-welfare directors. Several different work-groups provided recommendations.

CHAIR FRENCH asked if this has been circulated within the Alaska legal community, specifically the family law section of the bar association.

MS. PICKERING said she isn't sure.

MS. MOSS said she, too, isn't sure, but family law and adoption lawyers have been involved in amending the original bill.

[9:55:28 AM](#)

CHAIR FRENCH asked how much variance each state has when enacting the compact.

MS. PICKERING replied the state can add statutes to enforce the way it does business, but each state has to enact the body of the compact verbatim, otherwise it isn't a compact.

MS. MOSS added that some sections of the bill dealing with court rules to implement the other provisions are amendable.

SENATOR HUGGINS asked the cost of a home study versus a home assessment and the value of one compared to the other.

MS. PICKERING estimated that referring a home study request to a contractor costs between \$800 and \$1,200. Those take from 4-6 months because the criminal background fingerprint checks take a long time. Under the new compact, the child can be placed while awaiting the results of the criminal fingerprint check, if good state background checks are available.

SENATOR HUGGINS commented that his life experience says that 90 percent on time is better than 100 percent late, and this appeals to that sentiment and it works. "You have my support," he said.

[9:57:52 AM](#)

SENATOR McGUIRE asked if this draft was circulated to the court appointed special advocates for abused children and the family law bar.

MS. PICKERING explained that the Alaska OCS workgroup had representatives from the American Academy of Adoption Attorneys and several other areas at the table. Each member of the workgroup was urged bring recommendations and concerns from the group they represented. "So we can hope that it made the rounds, but I'm not exactly sure," she said.

SENATOR McGUIRE asked if there is a record of the recommendations and concerns and were they incorporated or not.

MS. MOSS replied she doesn't know how many responded to the inquiries that OCS made, but she knows that legislative offices were contacted and that's how she came to attend the meetings. "I think there was plenty of public notice for participation, but Marsha would probably have any documents that involve public comment," she added.

SENATOR McGUIRE asked if the compact makes specific and substantive changes to Alaska law. For example, some states, like Alaska, have chosen to have open adoptions and some have chosen to have closed adoptions. In the past she's looked at a hybrid because a lot of kids aren't placed because of that policy.

MS. MOSS deferred to Ms. Rutherfordale.

JAN RUTHERDALE, Assistant Attorney General, Civil Division, Child Protective Section, Department of Law, said the compact makes no substantive changes to Alaska law.

[10:02:11 AM](#)

CHAIR FRENCH pointed out that the bill next has to pass the finance committee hurdle. He added that he takes some solace in the fact that the compact has to be authorized by 35 states before becoming law. Finding no one who wanted to testify on behalf of HB 50, he closed public testimony.

SENATOR McGUIRE motioned to report CSHB 50 and attached fiscal note(s) from committee with individual recommendations.

[10:03:20 AM](#)

CHAIR FRENCH announced that without objection, CSHB 50(JUD) is moved from the Senate Judiciary Committee.

HB 400-MITIGATING FACTOR: CARE FOR DRUG OVERDOSE

CHAIR FRENCH announced the consideration of HB 400.

[10:04:36 AM](#)

AURORA HAUKE, Staff to Representative Beth Kerttula, sponsor of HB 400, reported that each year about 85 Alaskans die from drug overdoses, which is well above the national average. A recent interview of drug users in New York indicated that over half had witnessed a drug overdose, and that more than 30 percent of the

witnessed overdoses went without a call for help. The most commonly cited reason for non-reporting was fear of police response. HB 400 encourages people to call 911 by creating a mitigating factor for drug charges when a person is a witness and is seeking medical assistance for another person who is experiencing a drug overdose.

MS. HAUKE noted the written testimony from Angela Hall who lost her daughter to a drug overdose. The adults who participated in the illegal drug use and witnessed the overdose didn't call 911. It was only when her children came home that a call for help was made. It was too late for her, but it's not too late for others, she said.

[10:05:43 AM](#)

CHAIR FRENCH directed attention to page 3, line 19, and said he assumes that AS 11.71 refers only to drug offenses so the mitigating factor would only relate to the drug charge. If someone makes a call for help about a drug overdose that occurs during or as a result of an assault, murder, rape, or robbery there would be no mitigation in sentencing on those other charges.

MS. HAUKE said that's correct.

CHAIR FRENCH asked her to describe how a mitigater works.

MS. HAUKE relayed that AS 12.55.155(a) sets out how a mitigating factor works and the court determines whether there is a mitigating factor on two levels. If the low-end of the presumptive range is 0-4 years, the judge can reduce the sentence to zero, and if the low-end of the presumptive range is over 4 years, the judge may decide to reduce the sentence by half.

CHAIR FRENCH summarized that this bill grants the judge the opportunity to reduce a sentence to one half the presumptive sentence.

MS. HAUKE said that's correct, and the judge may decide there's a mitigating factor and decide not to reduce the sentence as well.

CHAIR FRENCH added that the judge may decide that the defendant doesn't get the effect of the mitigater because of other bad behavior that occurred during the course of the incident.

[10:08:16 AM](#)

SENATOR THERRIAULT asked if the mitigater would apply to just the person who possesses the drug or to the drug pusher as well.

CHAIR FRENCH said his understanding is it would apply to any drug offense.

MS. HAUKE agreed; the statute governing misconduct involving a controlled substance makes it difficult to separate possession and distribution as the severity of the drug increases.

SENATOR McGUIRE added that the severity of the drug is higher so the sentence that would be mitigated would be higher. She agreed that the judge has the discretion to look at the totality of the circumstances and decide not to consider the mitigater. But the stronger message is that you want people to take the step to help save a person's life, she said.

CHAIR FRENCH said you can imagine an array of circumstances where everyone would think that someone did the right thing and deserves a break. There are also a lot of circumstances where you'd say tough luck. The authority is appropriately turned over to the judge to make the decision because he or she has all the facts and testimony right there. "And we hope we're putting good judges on the bench and that they all come to good decisions," he said.

CHAIR FRENCH found no further testimony and asked for a motion.

[10:10:44 AM](#)

SENATOR McGUIRE motioned to report HB 400 and attached fiscal note(s) from committee with individual recommendations.

CHAIR FRENCH announced that without objection, HB 400 is moved from the Senate Judiciary Committee.

CSHJR 37(JUD)-CONST AM: SEC. OF STATE REFERENCES

CHAIR FRENCH announced the consideration of CSHJR 37(JUD).

[10:11:34 AM](#)

DENEEN TUCK, Staff to Representative Max Gruenberg, sponsor of HJR 37, explained that in 1970, the voters of Alaska approved amendments to the state constitution to change the name of "secretary of state" to "lieutenant governor". At that time, the drafting attorneys caught all but two of the references to secretary of state, and HJR 37 corrects those omissions. The

attached \$1,500 fiscal note is to cover the first-time publication of the corrected references.

[10:12:36 AM](#)

CHAIR FRENCH recapped that Sections 1 and 2 each replace one reference to "secretary of state" with "lieutenant governor," and Section 3 says the constitutional amendments will be placed before the voters of the state because the legislature can't change the constitution without voter approval.

MS. TUCK agreed.

CHAIR FRENCH asked how the word "secretary of state" got into the state constitution in the first place.

REPRESENTATIVE MAX GRUENBERG, sponsor of HJR 37, explained that in the past all states used the term "secretary of state" to identify the second highest office in the state. In the last 30-40 years all but two states changed the second highest office to "lieutenant governor." Now some states have a secretary of state, but that person isn't the second in line after the governor.

CHAIR FRENCH noted the bill history provided in the packet.

REPRESENTATIVE GRUENBERG credited former Representative Anderson with introducing the legislation in the 24th legislature.

[10:15:15 AM](#)

CHAIR FRENCH found no one who wished to testify on behalf of HJR 37, and closed public testimony. Finding no further discussion, he asked the will of the committee.

SENATOR McGUIRE motioned to report CSHJR 37 and attached fiscal note(s) from committee with individual recommendations.

CHAIR FRENCH announced that without objection CSHJR 39(JUD) is moved from the Senate Judiciary Committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [10:15:50 AM](#).