

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 12, 2008
9:02 a.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator Gary Stevens, Vice Chair
Senator Hollis French
Senator Lyda Green
Senator Con Bunde

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 185

"An Act relating to sex offenders and child kidnappers."
SCHEDULED BUT NOT HEARD

SENATE BILL NO. 201

"An Act relating to the establishment and maintenance of an Internet website providing public finance information; and identifying the information to be available on the Internet website."

MOVED CSSB 201(STA) OUT OF COMMITTEE

SENATE BILL NO. 257

"An Act relating to distribution of the Alaska Administrative Code and Alaska Administrative Register; and providing for an effective date."

MOVED SB 257 OUT OF COMMITTEE

HOUSE BILL NO. 101

"An Act relating to uniform traffic laws."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 201

SHORT TITLE: PUBLIC FINANCE WEBSITE

SPONSOR(S): SENATOR(S) WIELECHOWSKI

01/16/08 (S) PREFILE RELEASED 1/4/08

01/16/08 (S) READ THE FIRST TIME - REFERRALS
01/16/08 (S) STA, FIN
01/31/08 (S) STA AT 9:00 AM BELTZ 211
01/31/08 (S) Heard & Held
01/31/08 (S) MINUTE(STA)
02/12/08 (S) STA AT 9:00 AM BELTZ 211

BILL: SB 257

SHORT TITLE: ADMINISTRATIVE CODE/REGISTER DISTRIBUTION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/30/08 (S) READ THE FIRST TIME - REFERRALS
01/30/08 (S) STA
02/12/08 (S) STA AT 9:00 AM BELTZ 211

BILL: HB 101

SHORT TITLE: UNIFORM TRAFFIC LAWS

SPONSOR(S): REPRESENTATIVE(S) GATTO

01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) CRA
02/15/07 (H) CRA AT 8:00 AM CAPITOL 124
02/15/07 (H) Heard & Held
02/15/07 (H) MINUTE(CRA)
03/15/07 (H) CRA AT 8:00 AM BARNES 124
03/15/07 (H) Moved CSHB 101(CRA) Out of Committee
03/15/07 (H) MINUTE(CRA)
03/16/07 (H) CRA RPT CS(CRA) NT 4DP 1AM
03/16/07 (H) DP: NEUMAN, OLSON, LEDOUX, FAIRCLOUGH
03/16/07 (H) AM: CISSNA
05/10/07 (H) TRANSMITTED TO (S)
05/10/07 (H) VERSION: CSHB 101(CRA)
05/10/07 (S) READ THE FIRST TIME - REFERRALS
05/10/07 (S) STA
01/24/08 (S) STA AT 9:00 AM BELTZ 211
01/24/08 (S) <Bill Hearing Postponed>
02/12/08 (S) STA AT 9:00 AM BELTZ 211

WITNESS REGISTER

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Presented SB 201.

JASON HOOLEY
Office of the Lieutenant Governor

Juneau AK

POSITION STATEMENT: Presented SB 257.

RICK VANDERKOLK, Staff
to Representative Carl Gatto
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Presented HB 101.

RODNEY DIAL, Lieutenant
Division of State Troopers
Department of Public Safety
Juneau AK

POSITION STATEMENT: Spoke in support of HB 101.

GERALD LUCKHAUPT, Legislative Counsel
Legal and Research Services Division
Legislative Affairs Agency
Juneau AK

POSITION STATEMENT: Answered questions regarding HB 101.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the Senate State Affairs Standing Committee meeting to order at [9:02:05 AM](#). Senators McGuire, Stevens, Bunde, and French were present at the call to order. Senator Green arrived later.

SB 201-PUBLIC FINANCE WEBSITE

CHAIR MCGUIRE announced the consideration of SB 201.

SENATOR STEVENS moved to adopt the committee substitute (CS) to SB 201, labeled 25-LS1135\K, as a working document. Hearing no objection, Version K was before the committee.

[9:02:59 AM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, said the CS tries to address a number of concerns that were expressed in this committee last time. There are four changes. The website will be updated monthly rather than quarterly.

CHAIR MCGUIRE asked if it changed the fiscal note.

SENATOR WIELECHOWSKI said he was told there would be no difference. The data is already on the computer. He agreed with

the committee's concern that \$10,000 was too high of a number for the minimum amount posted, so it was changed to \$1,000. The CS adds a section dealing with aggregated confidential information, so no one person will be named -- just a total.

[9:05:33 AM](#)

SENATOR WIELECHOWSKI said the next change refers to individual payments to state employees. The CS added the word "individual" to allow the aggregate totals to be made public without naming individual payments. The governor has decided to have a governance council to review what is in the database. He said he supports that. The reporting is not necessary because of this council. The legislature can request reports from the council. Regarding state employees, the state does not have the ability to list that information, so it is left out for now, but it can be revisited by the governance council.

[9:07:35 AM](#)

SENATOR BUNDE said he noted that the administration is already doing something similar.

SENATOR WIELECHOWSKI said SB 201 will put the public website in law. The governor can change things unless this bill is passed. Also, it gives the legislature a role in the debate for adding or removing items from the website.

[9:09:00 AM](#)

SENATOR BUNDE noted a review, but wondered about a sunset so that the legislature will automatically review it at that time.

SENATOR WIELECHOWSKI said he hadn't thought of a sunset.

SENATOR STEVENS said if this is good for the state, perhaps the school districts and municipalities should do it.

SENATOR WIELECHOWSKI said he looked into that, and it is a good idea, but fiscally it will be very expensive.

[9:10:12 AM](#)

SENATOR FRENCH moved the committee substitute (CS) to SB 201, labeled 25-LS1135\K from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 201 (STA) passed from committee.

The committee took an at-ease from [9:11:17 AM](#) until [9:11:34 AM](#).

SB 257-ADMINISTRATIVE CODE/REGISTER DISTRIBUTION

[9:11:52 AM](#)

CHAIR MCGUIRE announced the consideration of SB 257.

JASON HOOLEY, Office of Lieutenant Governor, said his office distributes paper copies of the Alaska Administrative Code and its quarterly supplements to all 158 local government units in Alaska, and over the last few years there has been feedback that the municipalities do not want the paper copies. The bill simply allows the municipalities to opt out. The office spends over \$22,000 per year distributing copies. The state may pursue a contract amendment to save the state some money at a future time.

[9:13:42 AM](#)

SENATOR STEVENS moved SB 257 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 257 moved out of committee.

HB 101-UNIFORM TRAFFIC LAWS

CHAIR MCGUIRE announced the consideration of HB 101. [Before the committee was CSHB 101(CRA).]

[9:15:10 AM](#)

RICK VANDERKOLK, Staff to Representative Carl Gatto, said the ignition interlock law was enacted in 2004 to prevent drunk drivers from repeat offenses. The technology is getting sophisticated. Rolling tests are done as the offender breathes into the breathalyzer in order to continue driving. Representative Gatto learned that one municipality had difficulty enforcing the law. HB 101 was drafted to clear up confusion for municipalities. The first provision in the current version of the bill is that municipalities may not enact or enforce an ordinance inconsistent with Alaska's Uniform Traffic Law Act. The second provision clarifies sentencing procedures in cases where interlocks are required.

[9:17:24 AM](#)

RODNEY DIAL, Lieutenant, Department of Public Safety, said his department supports this bill. It will help ensure that the ignition interlocks are used when appropriate and thus will keep our roads safer.

SENATOR BUNDE spoke of a young fellow he was just speaking with who had a checkered past and was trying to straighten his life

out. The man was strongly supportive of the interlock system that will allow him to drive to work.

9:19:17 AM

MR. VANDERKOLK said there is letter from Mayor Mark Begich, "and it's a response, after several attempts to get a response from the municipality. They provided two suggestions and we've incorporated those in the latest version." Version K was provided to Anchorage in March of 2007 for further comments, and he has not heard back. He assumes Anchorage is fine with it.

SENATOR FRENCH said the letter from the mayor referenced two statutory fixes, but Senator French doesn't see them and would like an explanation.

SENATOR BUNDE asked if state law is preeminent over city law.

SENATOR FRENCH said to the extent that there is a conflict.

9:21:46 AM

CHAIR MCGUIRE said the best example is in the closure of bars. The state laws allow bars to close at 5 a.m., she noted, and so there is always a little bit of conflict.

9:22:12 AM

GERALD LUCKHAUPT, Legislative Council, Division of Legal and Research Services, said he tried to incorporate Mayor Begich's recommendations in Section 2 with the court determination.

SENATOR FRENCH said the bill envisions that at sentencing the judge will determine by a preponderance of the evidence whether the person's chemical test was either 0.16 or 0.24 percent alcohol, and then impose the interlock period accordingly. What happens if the judge lets that go by and there is no finding? Will the municipal prosecutors protest?

MR. LUCKHAUPT said the prosecutors and court must comply. If the court fails to, the sentence will be illegal. Anchorage's failure to comply with this law raises those questions, and the Department of Law doesn't want to go in and start filing old writs of mandamus or prohibition, which don't really exist anymore. Something "in the nature of that" still does exist. This became an easier way to address the issue of Anchorage failing to comply with the state law. Under state law it has to [comply]. It is reflected in the earlier letters, where Mr. McConnaughey [Municipality of Anchorage] said he was aware of

this law but he didn't like it and he never presented it to the Anchorage assembly. This is a way to address that.

9:26:00 AM

SENATOR FRENCH asked if there might still be a loophole for the judge in the sentencing procedure. The double jeopardy clause bars resentencing. There is no "shall" or command to a judge. The defendant could say the judge didn't make the finding. The court should be required to determine if the defendant was above or below the stated alcohol levels.

9:27:05 AM

CHAIR MCGUIRE said she agrees.

MR. LUCKHAUPT said, "In our Title 28 sections we don't use 'the court shall make various determinations.' We just say if this is found, then this has to happen." It is assumed that the court will do the right thing and obey the law. He said he could come up with language saying "the court may not proceed with sentencing until the court makes this determination." He hasn't chosen to do it in Title 28. "I defaulted in the normal method ... assuming the court would comply."

CHAIR MCGUIRE said, "When you look at the letter from the mayor's office, I recognize that putting the language that folks recommend into statute doesn't always work." Page 1, under the title, the language does say "shall, shall, shall." It is clear, and the basis is the alcohol level. If it reaches that level, the court shall impose the ignition interlock. Senator French is saying that by adding "the court determining by a preponderance of the evidence", which is fairly low, a person can wiggle out of that "shall" part. Looking at municipality recommendations, which is ironic because they are the people who are not complying, they seem to give the "shall".

9:29:26 AM

MR. LUCKHAUPT said they have chosen to take out a portion of the whole law and rewrite in a disjointed manner to express their opinion. "What they have written is not something that will be sufficient to adequately address that. So, it's going to be a bit more complicated. I can't just ... create that two sentences and still address the entire issue in the whole range of things that can occur." He said he rewrote it in a method that has been done before in Title 28. "I can rewrite it as a mandatory ... if that is what the committee wants. I can rewrite it to put in 'shalls', but it won't look exactly like they've written that."

CHAIR MCGUIRE asked what it will look like. "Would it simply say 'at sentencing, the court shall'?"

MR. LUCKHAUPT said it will have to refer to whether a person is convicted under (a) of this section and say "the court shall make a determination". He said he can work with the two alternatives for blood alcohol levels.

[9:31:08 AM](#)

CHAIR MCGUIRE said if Anchorage is not complying, "we want to be as strong as we can in the language."

SENATOR FRENCH concurred. A little wordsmithing can make it nice and tight.

SENATOR GREEN said it looks like it is backward. She asked what the person is being accused of. Is the alcohol level the crime?

SENATOR FRENCH said the crime is being over 0.08 [blood alcohol concentration (BAC)]. All DWI defendants who have been convicted of being over 0.08 will come before the judge for sentencing. The judge will then have to determine how high their BAC was. This is for sentencing, not for making charges.

CHAIR MCGUIRE said some jurisdictions consider any impairment.

[9:32:50 AM](#)

MR. LUCKHAUPT said under Alaska law, an impaired driver can be less than 0.08 [BAC].

SENATOR GREEN asked if someone can be impaired with no alcohol.

MR. LUCKHAUPT said people can be impaired due to other things.

[9:33:46 AM](#)

CHAIR MCGUIRE said she will set HB 101 aside so the changes can be made.

There being no further business to come before the committee, Chair McGuire adjourned the meeting at [9:34:23 AM](#).