

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

April 3, 2008

9:07 a.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator Gary Stevens, Vice Chair
Senator Hollis French

MEMBERS ABSENT

Senator Lyda Green
Senator Con Bunde

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 228

"An Act relating to and permitting certain uses and occupancies of real property that do not comply with changes made to municipal land use ordinances."

HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 32

Supporting open and free competition within the broadcasting industry.

MOVED HJR 32 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 193(STA)

"An Act relating to the composition of the Alaska Police Standards Council; and providing for an effective date."

MOVED SCS CSHB 193(STA) OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 19(STA)

Encouraging repeal of the Real ID Act of 2005.

MOVED CSHJR 19(STA) OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 38(STA)

Recognizing the State of Israel on the 60th anniversary of its founding.

MOVED CSHJR 38(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 252(STA)

"An Act requiring paid leave from employment for organ and bone marrow donation."

MOVED CSHB 252(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 228

SHORT TITLE: MUNICIPAL LAND USE REGULATION

SPONSOR(S): SENATOR(S) DYSON

01/16/08 (S) READ THE FIRST TIME - REFERRALS
01/16/08 (S) CRA, STA
02/27/08 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/27/08 (S) CRA, STA
03/04/08 (S) CRA AT 3:30 PM BELTZ 211
03/04/08 (S) -- MEETING CANCELED --
03/18/08 (S) CRA AT 3:30 PM BELTZ 211
03/18/08 (S) Moved SSSB 228 Out of Committee
03/18/08 (S) MINUTE(CRA)
03/19/08 (S) CRA RPT 1DP 2NR 2AM
03/19/08 (S) DP: OLSON
03/19/08 (S) NR: STEVENS, KOOKESH
03/19/08 (S) AM: THOMAS, WAGONER
04/01/08 (S) STA AT 9:00 AM BELTZ 211
04/01/08 (S) Scheduled But Not Heard
04/03/08 (S) STA AT 9:00 AM BELTZ 211

BILL: HJR 32

SHORT TITLE: BROADCASTING INDUSTRY

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

02/06/08 (H) READ THE FIRST TIME - REFERRALS
02/06/08 (H) L&C
02/20/08 (H) L&C AT 3:00 PM CAPITOL 17
02/20/08 (H) Moved Out of Committee
02/20/08 (H) MINUTE(L&C)
02/21/08 (H) L&C RPT 3DP 1DNP 3NR
02/21/08 (H) DP: NEUMAN, RAMRAS, GATTO
02/21/08 (H) DNP: BUCH
02/21/08 (H) NR: GARDNER, LEDOUX, OLSON
03/19/08 (H) TRANSMITTED TO (S)
03/19/08 (H) VERSION: HJR 32
03/21/08 (S) READ THE FIRST TIME - REFERRALS
03/21/08 (S) STA
04/03/08 (S) STA AT 9:00 AM BELTZ 211

BILL: HB 193

SHORT TITLE: POLICE STANDARDS COUNCIL MEMBERSHIP

SPONSOR(S): REPRESENTATIVE(S) ROSES

03/12/07 (H) READ THE FIRST TIME - REFERRALS
 03/12/07 (H) STA, FIN
 04/03/07 (H) STA AT 8:00 AM CAPITOL 106
 04/03/07 (H) <Bill Hearing Canceled>
 04/10/07 (H) STA AT 8:00 AM CAPITOL 106
 04/10/07 (H) Moved CSHB 193(STA) Out of Committee
 04/10/07 (H) MINUTE(STA)
 04/11/07 (H) STA RPT CS(STA) 3DP 3NR
 04/11/07 (H) DP: ROSES, GRUENBERG, LYNN
 04/11/07 (H) NR: JOHNSON, JOHANSEN, COGHILL
 02/19/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/19/08 (H) Heard & Held
 02/19/08 (H) MINUTE(FIN)
 02/28/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/28/08 (H) Moved CSHB 193(STA) Out of Committee
 02/28/08 (H) MINUTE(FIN)
 02/29/08 (H) FIN RPT CS(STA) 4DP 1DNP 5NR
 02/29/08 (H) DP: CRAWFORD, JOULE, GARA, NELSON
 02/29/08 (H) DNP: KELLY
 02/29/08 (H) NR: HAWKER, THOMAS, STOLTZE, MEYER,
 CHENAULT
 03/17/08 (H) TRANSMITTED TO (S)
 03/17/08 (H) VERSION: CSHB 193(STA)
 03/18/08 (S) READ THE FIRST TIME - REFERRALS
 03/18/08 (S) STA
 04/03/08 (S) STA AT 9:00 AM BELTZ 211

BILL: HJR 19

SHORT TITLE: OPPOSE FEDERAL ID REQUIREMENTS
 SPONSOR(S): REPRESENTATIVE(S) COGHILL

04/13/07 (H) READ THE FIRST TIME - REFERRALS
 04/13/07 (H) STA
 03/13/08 (H) STA RPT CS(STA) NT 4DP
 03/13/08 (H) DP: JOHNSON, GRUENBERG, DOLL, ROSES
 03/13/08 (H) STA AT 8:00 AM CAPITOL 106
 03/13/08 (H) Moved CSHJR 19(STA) Out of Committee
 03/13/08 (H) MINUTE(STA)
 03/25/08 (H) TRANSMITTED TO (S)
 03/25/08 (H) VERSION: CSHJR 19(STA)
 03/26/08 (S) READ THE FIRST TIME - REFERRALS
 03/26/08 (S) STA
 04/03/08 (S) STA AT 9:00 AM BELTZ 211

BILL: HJR 38

SHORT TITLE: ISRAEL 60TH ANNIVERSARY

SPONSOR(S): STATE AFFAIRS

03/11/08 (H) READ THE FIRST TIME - REFERRALS
03/11/08 (H) STA
03/13/08 (H) STA RPT CS(STA) 4DP
03/13/08 (H) DP: JOHNSON, GRUENBERG, DOLL, ROSES
03/13/08 (H) STA AT 8:00 AM CAPITOL 106
03/13/08 (H) Moved CSHJR 38(STA) Out of Committee
03/13/08 (H) MINUTE(STA)
03/18/08 (H) TRANSMITTED TO (S)
03/18/08 (H) VERSION: CSHJR 38(STA)
03/19/08 (S) READ THE FIRST TIME - REFERRALS
03/19/08 (S) STA
04/03/08 (S) STA AT 9:00 AM BELTZ 211

BILL: HB 252

SHORT TITLE: LEAVE FOR ORGAN/BONE MARROW DONATIONS

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

05/03/07 (H) READ THE FIRST TIME - REFERRALS
05/03/07 (H) HES, STA
05/08/07 (H) HES AT 3:00 PM CAPITOL 106
05/08/07 (H) Moved CSHB 252(HES) Out of Committee
05/08/07 (H) MINUTE(HES)
05/10/07 (H) HES RPT CS(HES) 4DP 2NR 1AM
05/10/07 (H) DP: ROSES, GARDNER, CISSNA, WILSON
05/10/07 (H) NR: SEATON, FAIRCLOUGH
05/10/07 (H) AM: NEUMAN
05/12/07 (H) STA AT 9:00 AM CAPITOL 106
05/12/07 (H) Moved CSHB 252(STA) Out of Committee
05/12/07 (H) MINUTE(STA)
05/13/07 (H) STA RPT CS(STA) 5DP 1NR
05/13/07 (H) DP: DOLL, GRUENBERG, JOHANSEN, ROSES,
LYNN
05/13/07 (H) NR: COGHILL
05/14/07 (H) TRANSMITTED TO (S)
05/14/07 (H) VERSION: CSHB 252(STA)
05/15/07 (S) READ THE FIRST TIME - REFERRALS
05/15/07 (S) HES, STA, FIN
02/06/08 (S) HES AT 1:30 PM BUTROVICH 205
02/06/08 (S) Moved CSHB 252(STA) Out of Committee
02/06/08 (S) MINUTE(HES)
02/08/08 (S) HES RPT 3DP 1NR
02/08/08 (S) DP: DAVIS, ELTON, THOMAS
02/08/08 (S) NR: DYSON
04/03/08 (S) STA AT 9:00 AM BELTZ 211

WITNESS REGISTER

SENATOR FRED DYSON
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Presented SB 228.

BERNARDO HERNANDEZ, Director
Community Planning Department
Fairbanks North Star Borough (FNSB)
Fairbanks AK
POSITION STATEMENT: Spoke in opposition to SB 228.

EILEEN PROBASCO, Planning Chief
Matanuska-Susitna Borough
Palmer AK
POSITION STATEMENT: Spoke in opposition to SB 228.

LAUREN KRUER, Planner
Matanuska-Susitna Borough
Palmer AK
POSITION STATEMENT: Spoke in opposition to SB 228.

LARRY ALBERT, Attorney
Anchorage AK
POSITION STATEMENT: Answered questions on SB 228.

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Presented HJR 32.

REPRESENTATIVE BOB ROSES
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Presented HB 193.

TERRY VRABEC, Executive Director
Alaska Police Standards Council
Anchorage AK
POSITION STATEMENT: Spoke in support of HB 193.

CHUCK KOPP
Kenai Police Department
Kenai AK
POSITION STATEMENT: Spoke in support of HB 193.

DAN HOFFMAN, Chief
Fairbanks Police
Fairbanks AK
POSITION STATEMENT: Spoke in support of HB 193.

CRYSTAL KOENEMAN, Staff
to Representative Roses
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Answered questions on HB 193.

RYNNIEVA MOSS, Staff
to Representative Coghill
Alaska State Legislature
Juneau AK
POSITION STATEMENT: Presented HJR 19.

GREGORY HOLLAUS
Fairbanks AK
POSITION STATEMENT: Spoke about the Nenana Ice Classic.

JOHN BRADING
Fairbanks AK
POSITION STATEMENT: Spoke in favor of HJR 19.

FRANK TOURNEY
Fairbanks AK
POSITION STATEMENT: Spoke in favor of HJR 19.

BRENT RICHIE
Fairbanks AK
POSITION STATEMENT: Spoke in favor of HJR 19.

SCHAEFER COX
Fairbanks AK
POSITION STATEMENT: Spoke in favor of HJR 19.

PATRICK DALTON
Delta Junction AK
POSITION STATEMENT: Spoke in favor of HJR 19.

KEVIN BROOKS, Deputy Commissioner
Department of Administration
Juneau AK
POSITION STATEMENT: Spoke in favor of HJR 19.

WHITNEY BREWSTER, Director

Division of Motor Vehicles
Department of Administration (DOA)
Anchorage AK

POSITION STATEMENT: Answered questions regarding HJR 19.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Presented HJR 38.

REPRESENTATIVE GABRIELLE LEDOUX
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Presented HB 252.

BRUCE ZALNERAITIS, Chief Executive Officer
Life Alaska Donor Services
Anchorage AK

POSITION STATEMENT: Spoke in support of HB 252.

BERNADETTE ANTON
National Marrow Donor Program
Minneapolis MN

POSITION STATEMENT: Answered questions about HB 252.

SONYA HYMER
Staff to Representative LeDoux
Alaska State Legislature
Juneau AK

POSITION STATEMENT: Commented on HB 252.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the Senate State Affairs Standing Committee meeting to order at [9:07:40AM](#). Senators Green, Stevens, and McGuire were present at the call to order.

SB 228-MUNICIPAL LAND USE REGULATION

[9:08:23 AM](#)

CHAIR LESIL MCGUIRE announced SB 228 to be up for consideration.

SENATOR FRED DYSON, sponsor of SB 228, said this measure protects real property. Many people live in communities that are increasingly urbanized and land zoning and regulations follow. Cities invariably come up with new land-use designations, and they can end up trampling on property owners' rights. Under SB 228, if residents move in around a property owner and change the

law, whatever was permitted before can be continued unless it is a nuisance.

He spoke to people about the definition of nuisance. "The term of art in law, which I think you'll see here, nuisance, as recognized under common law is all the protection we need." An expert would explain that "your property rights never extend to [you] being a nuisance to your neighbors." The neighborhood is protected under common law nuisance laws. He provided quotes about the importance of preserving property rights saying:

And this bill particularly carves out senior citizens and the disabled to say that if planners move in around them with new regulations they have at least ten years before they have to come into conformity.

Uses allowed before will continue until the land transfers. In his community neighbors have built subdivisions where a person can't park a truck with a logo on the door or leave snow machines in the yard. "You can't even put a sign, including a campaign sign, in your yard, which I think has, maybe, some first amendment rights problems."

[9:12:36 AM](#)

CHAIR MCGUIRE said there is a whole body of common law in this area. She asked what situation sparked this need to deviate from that recognized common law, and if it was a constituent.

SENATOR DYSON replied that it involves several of them. Home businesses are grandfathered in, but they are only allowed at the present level of intensity. Many businesses need to change and grow, so the bill will allow a business to continue unless it is a nuisance or the land transfers. He has people that have a Conex container for storing their animal feed, "and as soon as the city finishes its land use regulations, Conexes will be gone. They'll be gone like Quonset huts are." SB 228 will allow these storage units to remain, and it will allow them to be put up after the regulation changes. A citizen may have planned on doing that before regulations changed, "and the huge lifestyle thing that was the basis of their buying that land - in that area it's often horses - and that would be precluded by a new regulation that wasn't in place when you bought the property."

[9:15:17 AM](#)

CHAIR MCGUIRE said there could be additional market value to a property with a bill like this. Some people in her district want

to park RVs and boats and want to have more than two pets, but they can't. It's interesting.

SENATOR DYSON said that view is a purist one, because he has said that previous property rights don't transfer with a land transfer. The new owner will be subject to the new regulations.

SENATOR FRENCH said if a person owns property and the city prohibits Conexes, she or he can still put one on the property. "It's the transfer that triggers the new rule."

9:17:22 AM

BERNARDO HERNANDEZ, Director, Community Planning Department, Fairbanks North Star Borough (FNSB), spoke in opposition to SB 228. He understands the sponsor's desire to weigh public health and safety and individual property rights. "We're always somewhere in between these two opposites." Planning and zoning is an intensely local effort. Each community has different visions and goals. Land use and sentiments are dynamic. The FNSB has home occupation and grandfather rights ordinances, and it has had zoning since 1949, "and we seem to be doing pretty well at it." Since land use is so local, the community, through the public process, should make its decisions. The public process is a big deal in the FNSB. All of the ordinances are very well scrutinized because there is always someone who is affected. Everybody would agree that a school needs doors to escape and sprinkler systems. All these public sentiments and the individual rights are important. "We're weighing that constantly." This should be left to the local public. SB 228 steps outside of that. It is the state trying to impact the local zoning. In FNSB a person can have grandfather rights up to 50 years, as long as the use isn't discontinued for 12 months.

9:20:39 AM

SENATOR STEVENS asked if there is anything in this bill that can't already be done.

MR. HERNANDEZ said in Fairbanks it doesn't matter who the person is; decisions are made solely on land use. "We want to stay away from who or what a person is." The FNSB can do any of these things that are in the bill. "Our ordinance works just fine."

EILEEN PROBASCO, Planning Chief, Matanuska-Susitna Borough, said she agrees with Mr. Hernandez and opposes SB 228. There is an existing non-conforming use section in the Mat-Su Valley code that allows a use to continue indefinitely, not just ten years. "We have a concern about the authority of this being governed by

the state as opposed to the local government because in many cases it is more effective and easily changed on a local level." There is a lot of participation when code amendments come forward. This bill is contrary to a long-standing public policy, which is articulated by an Alaska Supreme Court decision in 2002. The determination was that non-conforming uses are to be restricted and terminated as quickly as possible because those uses frustrate a local government's implementation of consistent and logical land-use planning. The bill is redundant because of the local nonconforming statutes. Local control was transferred to the local entities from the state.

[9:24:50 AM](#)

SENATOR FRENCH asked the name of the Supreme Court case.

MS. PROBASCO said Cizek v. Concerned Citizens of Eagle River Valley.

[9:25:45 AM](#)

LAUREN KRUER, Planner, Matanuska-Susitna Borough, said applying SB 228 will create complications. Variances are used at the local level, and that is the other half of grandfathering. The variance is for the loophole circumstances. There is nothing like that at the state level. How would the state deal with it? It is better handled at the local level. As a planner, land-use is about use, and it is a tool to create healthy, growing communities. A background like a veteran or senior is a slippery slope. Special interest groups have advocates for laws dealing with safety and equality, "but to put something like that in a land use, you take what kind of keeps land use on an even keel where we deal about the use of the building and not so much about the background of the individual owner." There could then be rules for single mothers or ethnic groups. "Where does it stop?" Planning is about use, not about the person.

[9:28:17 AM](#)

LARRY ALBERT, Attorney, Anchorage, said Senator Dyson asked him to testify; he had no prior familiarity with SB 228 or the issues associated with it. But he has a background in land use, private property, and related constitutional issues. He recollects that the Cizek case was a dispute over a landing strip that was platted as part of a subdivision, but the legality of the use of it was questioned. The issue of how SB 228 relates to non-conforming use in local land use ordinances can be dealt with in two different ways. There may be present uses and ownership of a property under rules enacted today, but tomorrow the local government may enact new regulations. The

question is how the existing uses should be protected - if at all. The purpose of this bill is to protect existing uses of land. He agrees with the witnesses of looking at individual issues and properties. A non-conforming use or variance provision generally requires a permitting process, but SB 228 would be an automatic protection. In the absence of SB 228, if land-use regulations change, an affected property owner would have to apply and be subjected to the terms allowed.

[9:32:42 AM](#)

SENATOR DYSON asked him to explain "the protections that are against public nuisance that are inherent in this bill, and what the language about common law is, and what remedies neighbors and communities would have against a continuing use of land that was arguably a nuisance to the neighbor or community."

MR. ALBERT said a nuisance recognized under common law has a well-established meaning. The restatement of torts by the American law institute, which periodically publishes reference treatises that restates the common law -- law made by torts instead of by legislatures. It has a restatement of the law of torts, and the most recent edition is 1977. Included is a chapter on private and public nuisance, and anyone can look at the restatement and see a compilation of authorities, rules and court decisions on what constitutes a nuisance and what balancing factors a court will consider in decreeing the presence or absence of a nuisance. There is published precedence on nuisance in Alaska. The terms are well-established in law. The term common law nuisance also has a well-established meaning in takings litigation. In the late 19th century the United States Supreme Court has recognized that property rights do not protect nuisances under the Fifth Amendment, and that principle has been continuous. In 1992 a case called Lucas v. South Carolina Coastal Council discussed common law nuisance as not a protected property right.

[9:36:10 AM](#)

SENATOR DYSON said loud aircraft at the air strip was scaring and waking up neighbors. He asked how the neighbors could have prohibited that nuisance if SB 228 had been in place.

MR. ALBERT said he is not familiar with the facts, but under SB 228, his reading is that the neighbors could go to court. There is a private and public nuisance as part of common law. Private persons can bring an action against a nuisance as to their private interests and property. For a public nuisance, private parties and local governments have standing to bring an action

declaring an activity to be a public nuisance. If the aircraft activity were dangerous, that gets pretty close to being a nuisance. He suspects that there are preemption issues with the Federal Aviation Administration's authority on location and operation of an airstrip.

[9:39:05 AM](#)

SENATOR DYSON said a witness talked about the appropriateness of leaving all land-use decisions at the local level, and he is sympathetic to that. But the reason for SB 228 "is that for our founding fathers the protection of private property rights was a huge issue." He quoted [James] Madison: "Government is an institute to protect property; this being the end of government. That alone is a just government, which impartially secures to every man that which is his own. It is not a just government nor is property secure under it where arbitrary restrictions, exemptions, and monopolies deny to part of the citizens the free use of their own land facilities." The protection of private property is a huge issue. Americans are committed to life, liberty, and happiness, but the original wording of that list included private property. It is appropriate for the state to say that the protection of private property trumps local planning and zoning "as long as that property is owned that person there, and that the zoning restrictions can only be applied on the transfer of the land." The folks who homesteaded can do what they have been doing and the government should protect them against well-meaning incursions.

[9:41:15 AM](#)

MR. ALBERT said he has effectively stated the constitutional principle that is derived from James Madison. The issue is the role of the state versus local government in protecting private property rights. Governments have the responsibility to protect the public health, safety and welfare. At the same time, their welfare is in their private property among other attributes. It is appropriate for Alaska to declare that one element of the general welfare is protecting existing uses of land against prospective changes in regulation resulting in the diminution of land value. The role of local governments to be sensitive to their constituents remains, albeit subject to this protection of existing uses. Local governments could try to fashion their provisions on nonconforming use to be consistent with SB 228.

[9:43:09 AM](#)

CHAIR MCGUIRE set SB 228 aside. There is significant local concern, but she likes the principle.

HJR 32-BROADCASTING INDUSTRY

CHAIR MCGUIRE announced consideration of HJR 32.

[9:43:55 AM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, said HJR 32 is an expression of support for free competition of the airways. Talk radio is a free marketplace of ideas - a phenomenon that came about in the late 1980s after the repeal of the Fairness Doctrine. The doctrine required a station to give equal time to opposite points of view. In a competitive free market, it didn't work. Talk radio frequently discusses new sewers and non-controversial issues. It is acknowledged that this format saved AM radio from oblivion. Craig Johnson referred to it as a dinosaur that doesn't fit in the business model of competitiveness. "The reason this resolution is before you is there are efforts in Congress to express support and to repeal it from different factions." He said Senator Durbin said it will be repealed. There are resolutions too. HJR 32 doesn't address and specific legislation. It purposely didn't address the type of content because there is a lot of biased information. He has only addressed the principle of open and free competition of ideas -- liberal or conservative. That is not relevant, but it becomes part of the larger debate. He has been on the good and bad side of talk radio. It is probably the last unfiltered form. Some folks view it as the most important level of political and social discourse and some see it as entertainment. It is popular with constituents.

[9:47:46 AM](#)

SENATOR FRENCH asked about the clause on how regulations have caused the broadcasting industry to avoid important issues.

REPRESENTATIVE STOLTZE said, "It is just reality prior to the suspension of the Fairness Doctrine ... you didn't have the type of political and social discourse radio programming." A programmer is not going to run an uneconomic two-hour program.

SENATOR FRENCH surmised that the Fairness Doctrine required programmers to air a counterpoint that listeners weren't interested in, so they would just avoid it in the first place.

[9:49:19 AM](#)

REPRESENTATIVE STOLTZE said that is the essence of the Fairness Doctrine.

SENATOR FRENCH said it strikes him that the radio waves are not limitless. Once the spectrum is awarded, he asked if that owner of a broadcast license has to provide both sides or just use it however they want.

REPRESENTATIVE STOLTZE said that had more relevance when radio had more impact, like President Roosevelt's fireside chats. He only gave 12, but it seemed like he did it every week because of how they were viewed. It was a more powerful medium then.

SENATOR STEVENS asked if he is opposed to the Fairness Doctrine.

REPRESENTATIVE STOLTZE said he is opposed to reinstating it because it is antiquated and doesn't really apply to the radio market that has burgeoned in its absence.

[9:52:13 AM](#)

SENATOR FRENCH read from Wikipedia: "The Fairness Doctrine was a United States FCC regulation requiring broadcast licensees to present controversial issues of public importance in a manner deemed by the FCC to be honest, equitable, and balanced. The doctrine has since been withdrawn by the FCC and certain aspects of the doctrine have been questioned by the courts."

REPRESENTATIVE STOLTZE said there was a Supreme Court case on the enforceability of the doctrine.

SENATOR STEVENS moved to report HJR 32 from committee with individual recommendations and attached fiscal note(s). There being no objection, HJR 32 moved from committee.

At ease at [9:54:05 AM](#).

HB 193-POLICE STANDARDS COUNCIL MEMBERSHIP

CHAIR MCGUIRE announced the consideration of HB 193. [Before the committee was CSHB 193(STA).]

[9:55:09 AM](#)

REPRESENTATIVE BOB ROSES, Alaska State Legislature, said the original version took an 11-member board and removed a police chief and a commissioner and put in two line officers. He later discovered concern about those bumped off the board and was asked to expand the board to 13 members so no one would be removed. But the board would still have the ability to address his original concern of equability. The Police Standards Council is the only board that can suspend a license that doesn't have

peer representation. That was the only intent for the bill. By adding two line officers and making it a 13-member board, the bill gained more support. The additional line officers will have to have five years of experience, be covered under the standards council, and would have to be police, probation, parole, municipal correction, or state correction officers.

9:57:36 AM

CHAIR MCGUIRE asked about an amendment stating that it will be one police officer and the other would be a probation, parole, or corrections officer.

REPRESENTATIVE ROSES said he will not object to it.

SENATOR FRENCH said he sees a letter of support from the Police Standards Council. Good job.

CHAIR MCGUIRE said this is the way to work a bill.

9:59:29 AM

TERRY VRABEC, Executive Director, Alaska Police Standards Council, said there has been good work on HB 193. He has spoken with the president of the Alaska Association of Chiefs of Police and numerous others who support the new version of the bill.

CHUCK KOPP, Kenai Police Department, said he is a past chair of the council. The composition of the council has been fair and balanced. There has never been opposition to an officer on the council. One has served as the public member for many years and did a great job. The opposition was only in inserting the labor component and speculating that the governor would consider officers nominated by labor organizations. "We didn't want that to become a tool for labor management disputes." He now supports the bill because the labor language has been removed.

10:02:04 AM

DAN HOFFMAN, Chief, Fairbanks Police, said he is the chair of the Alaska Police Standards Council. The council fully supports the bill in its current form. The council has never been opposed to having rank and file membership; it just didn't want a forum for labor disputes.

SENATOR STEVENS said with the addition of two members, the fiscal note should have changed.

SENATOR FRENCH moved to adopt the Senate committee substitute (CS) to HB 193, labeled 25-LS0712\E, as the working document. Hearing no objections Version E was before the committee.

[10:03:58 AM](#)

CRYSTAL KOENEMAN, Staff to Representative Roses, said adding two members to the council will demand another fiscal note.

SENATOR FRENCH asked the cost to run the Police Standards Council.

MR. VRABEC said it is listed as a \$10,000 increment. There are two to three meetings per year and travel costs are the only cost for the two new members. The budget derives out of surcharges, and it will not cause the council a hardship to incur that money for travel costs.

CHAIR MCGUIRE offered conceptual Amendment 1 as follows:

Page 1, Line 13

After "and"

Insert "one serves as a police officer, and one serves as"

CHAIR MCGUIRE said the two will represent roughly 50:50. She didn't want two police officers or two parole officers without representation of the other.

SENATOR FRENCH suggested it should say: "one of whom" in both instances.

CHAIR MCGUIRE said it is conceptual so the drafters will work it. The intent is to get one police officer and one in the other category. Hearing no objection, Amendment 1 carried.

[10:07:08 AM](#)

SENATOR FRENCH moved to report the Senate CS to CSHB 193, as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, SCS CSHB 193(STA) passed out of committee.

HJR 19-OPPOSE FEDERAL ID REQUIREMENTS

[10:08:12 AM](#)

CHAIR MCGUIRE announced HJR 19 to be up for consideration. [Before the committee was CSHJR 19(STA).]

RYNNIEVA MOSS, Staff to Representative Coghill, said the resolution started out being over two pages, but it was cut down to focus on the Tenth Amendment. States have been regulating driver's licenses for well over 100 years. Real I.D. infringes on this right. The thing that bothers Senator Coghill the most is that the federal government will not punish the state for not complying, but will punish the individual at customs or getting on flights. It hurts Alaska and Hawaii more than other state. The resolution tells the federal government that the Real I.D. won't create more secure boundaries, it won't increase the safety of Alaska citizens, and individuals shouldn't be punished for a position the state may take. The Real I.D. Act was put in an appropriations bill and few people who voted on it know what's in it.

[10:10:01 AM](#)

CHAIR MCGUIRE said this committee is relatively familiar with Real I.D.

GREGORY HOLLAUS, Fairbanks, spoke of Nenana ice tickets and feels he is owed money.

JOHN BRADING, Fairbanks, said it is disheartening to see the loss of liberty if Real I.D. is implemented and he can see the web it has spun. Instead of iron bars, the code readers will send out an invisible wave surrounding his body and imprisoning people in electronic cells. Real I.D. is an instrument to intimidate law-abiding citizens designed to maneuver the people into servitude leading to bondage. He supports HJR 19.

[10:14:41 AM](#)

FRANK TOURNEY, Fairbanks, said he supports HJR 19 and thanks Representative Coghill and Senator Wielechowski. Interior city councils and the borough assembly passed resolutions opposing the Real I.D. Act. He asked the committee to explore whether HB 3 could be implemented into HJR 19 and SB 202 without civil liberty infringement. He always supports the military, but all elected official are sworn to protect liberties and freedoms. It is your hands.

BRENT RICHIE, Fairbanks, said he supports HJR 19. Real I.D. is an overreaction by the federal government. The nation's security is the responsibility of the military and civilian police. He agrees with the Tenth Amendment argument. The constitution does not give federal power to trump the states' right to issue their own I.D. or driver's licenses. Fiscally it is wrong for the federal government to demand this without providing money. He

read a speech by a representative from the Cato Institute who said that the Department of Homeland Security numbers indicate this would cost at least \$17 billion. But the estimate of the benefit is only \$2.24 billion to \$13.1 billion. The Real I.D. Act will cost more than the security benefit.

10:19:01 AM

SCHAEFER COX, Fairbanks, said he supports SJR 19 , and asked for an amendment to clarify a presupposition of the constitution and objective moral law. The constitution states that it is the highest law of the land. If that's the case, there is objective moral law, which is the recognition of what already is. On the other hand, arbitrary sociological law is the whim of whoever is dominant at the moment and line 15 appears to validate that. He proposed line 15 be amended to say the legislature "can" wage war on terrorism rather than "should" wage war on terrorism. "It reads 'can' if we have objective moral law and it reads 'should' if we have arbitrary sociological law." He said, "I am proud of you all for being the champion of what once was in America."

10:21:08 AM

PATRICK DALTON, Delta Junction, said Real I.D. was on the back of an Iraq funding bill and received no deliberation in the U.S. Senate. Proponents of the Real I.D. said it is not a national I.D. and in a sense it is not. It is global not national. It trashes the right Alaska to privacy, the Fourth Amendment that guarantees no unreasonable searches and seizures without a warrant. It allows every American to be searched without probable cause. The Real I.D. Act also violates religious freedom for many people who literally believe the Bible. Christians are forbidden to submit to a numbering system for the hands and foreheads so this alienates that sector of Christians in America. The light of day is revealing the Real I.D. Act as it really is -- a hallmark of an authoritarian society. In Alaska there is a groundswell of public opposition; two measures were passed at the Republican convention and will be posted as part of the Alaskan Republican Party as of May, 14.

10:24:33 AM

KEVIN BROOKS, Deputy Commissioner, Department of Administration (DOA), said that DOA supports HJR 19. It's a state's right issue to implement and maintain rules governing issuance of driver's licenses. The federal government shouldn't impose unfunded mandates. There are many things that make good business sense for the department to do and it tries to strike a balance.

SENATOR STEVENS said the National Organization of Legislators and the National Council of State Legislatures have both opposed forcing states to pay but have not taken a strong position on what's been heard today. He asked if he thinks that real I.D. would have stopped the 911 terrorists.

MR. BROOKS said his understanding is that the perpetrators held legal U.S. identification that was attained illegally. People who are intent on doing something like that will find a way to do it. Some of the things that can be done, fall in the category of what makes good business sense. That includes using digital photos and training staff to detect fraudulent documents. Whether the actions could have been prevented is speculative. The good business practices that have come about since 911 don't make Alaska altogether compliant with the Real I.D. Act, but they are prudent things the state should do. "But they ought to be our choice to do those." He noted that HB 3, the legal presence bill, helps to tighten things, but doesn't address RF chips or other things that are readable without the individual's knowledge. Again he said it's the job of DMV to strike the balance of things that are a good idea to do without submitting to funded or unfunded mandates.

[10:28:41 AM](#)

CHAIR MCGUIRE said he and Ms Brewster have been patient on this issue and mindful of the committee's concern about the protection of state rights. There's the overarching goal of protecting the country against terrorism yet national I.D. is onerous and begins to encroach on citizen freedoms and the state rights.

WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), clarified that the Department of Homeland Security is estimating that the cost to implement Real I.D. will be \$3.9 billion. With respect to the issue of a requiring a radio frequency chip, the final rule requires a 2d bar code.

[10:31:04 AM](#)

SENATOR STEVENS moved to report HJR 19 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHJR 19(STA) moved from committee.

HJR 38-ISRAEL 60TH ANNIVERSARY

CHAIR MCGUIRE announced the consideration of HJR 38. [Before the committee was CSHJR 38(STA).]

[10:32:13 AM](#)

REPRESENTATIVE BOB LINN, Alaska State Legislature, presented HJR 38. He relayed that he grew up in Los Angeles and when he was 12 he saw some people run out of their apartment and start dancing and shouting in the streets. His grandparents told him that the happy people were Jewish families celebrating the birth of a new nation call Israel. He didn't have a clue at that age what any of it meant, but now he knows more. He knows that the birthday of the sovereign independent state of Israel is May 14, 1948. That was 60 years ago. It was a miracle and that is what the resolution is all about. There are 11 "Whereas" lines that trace the history of Israel back some 3,000 years. Israel is a bastion of democracy with free speech, free religion, free press, free elections and the rule of law in an area of the world where that's rare. For sixty years the U.S. and Israel have shared a unique relationship and this resolution honors that special relationship. That tiny nation is surrounded by nations that would destroy it if they could. It is a nation of warriors with a military that is the envy of other nations worldwide. The friendship between the U.S. and Israel is an example of what national friendship and respect ought to be.

[10:34:55 AM](#)

SENATOR STEVENS moved to report CS for HJR 38 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHJR 38(STA) moved from committee.

HB 252-LEAVE FOR ORGAN/BONE MARROW DONATIONS

CHAIR MCGUIRE announced the consideration of HB 252. [Before the committee was CSHB 252(STA).]

[10:36:12 AM](#)

REPRESENTATIVE GABRIELLE LEDOUX, Alaska State Legislature, said HB 252 requires paid leave from state employment for organ and bone marrow donations. The employer is not required to provide more than 80 hours of leave and it may not be less than 40 hours unless the employee asks for less. Fewer than 100 people in Alaska are waiting for a bone marrow transplant. Matching is rare; about 1 match in 100,000 people is typical. 30 states have already passed this kind of law.

SENATOR STEVENS asked what the requirements are to make such a donation and how much time it takes.

[10:39:05 AM](#)

BRUCE ZALNERAITIS, Chief Executive Officer, Life Alaska Donor Services, Anchorage, spoke in support of HB 252. He explained that a donor for a kidney transplant first is evaluated medically. Next they donate blood for matching, typing and compatibility. The process may take up to 3 months but doesn't require time away from work. The surgery to donate the kidney takes a few hours, the hospital recovery period is about a week, and more recovery time may be required at home. On average two weeks is more than enough time for most people to recover.

BERNADETTE ANTON, National Marrow Donor Program, Minneapolis, MN, said for bone marrow donations the initial screening is done over the phone. After that blood samples are drawn and a physical examination is done. That takes up to a day from work depending on location and travel times. The donation can happen in two different ways. One is giving peripheral blood stem cells. For that the donor receives four days of injections and then the donation is made. The injections can make a person ill and they may not feel like going to work. Peripheral blood stem cell donation could take from 2 to 5 days for the actual donation so the 40 hours is reasonable. The other method is marrow collection. That surgical procedure takes a day in the operating room and from 1 to 5 days recovery at home. Most marrow donors aren't away from work for more than a week. If a person does heavy labor they might need more time. The 80 hours for marrow donation is very generous and probably wouldn't all be used unless the donor had unusual complications.

[10:43:04 AM](#)

SENATOR STEVENS it is good to encourage people to become donors. He summarized that leave time for evaluation and other preliminary work wouldn't be necessary but there would be some recovery time after the actual kidney donation and bone marrow collection.

SONYA HYMER, Staff to Representative LeDoux, said the current version of the bill would permit paid administrative leave for the screening process.

[10:44:10 AM](#)

SENATOR STEVENS asked for an explanation of the screening process.

MS. HYMER said there would be some testing to determine compatibility. She deferred more technical details to the experts.

MS. ANTON said when bone marrow donors are recruited onto the registry the initial screening is done. That time wouldn't fall under this bill in her view. Once the person is a potential match for a recipient, they would be called for additional testing at a physician's office, a lab or a donor center. It would not take a whole day unless excessive travel time was required. Her reading is that time would fall under the bill. Before she neglected to mention that a donor giving marrow might have to give a natalogist unit of blood prior to the donation and that could take a portion of a day depending on where the donor had to go. Then there is the actual donation procedure that she described.

[10:45:46 AM](#)

SENATOR STEVENS said this sounds like it could be painful or life-threatening and isn't something people would do to get time off from work.

MS. ANTON agreed; donors are really dedicated and want to help another individual have a better life.

SENATOR FRENCH pointed out the series of zero fiscal notes indicating that there will be an extremely small number of people who will take advantage of this.

SENATOR FRENCH moved to report CSHB 252(STA) from committee with individual recommendations and attached zero fiscal note(s). There being no objection, the bill moved from committee.

There being no further business to come before the committee, Chair McGuire adjourned the meeting at [10:47:24 AM](#).