

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 12, 2010

1:05 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Hollis French

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 284(FIN)

"An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; prohibiting expenditures and contributions by foreign nationals in state elections; and providing for an effective date."

- MOVED HCS CSSB 284(JUD) OUT OF COMMITTEE

SENATE BILL NO. 244

"An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence."

- MOVED HCS SB 244(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 423

"An Act stating a public policy that allows a person to choose or decline any mode of securing health care services, and

providing for enforcement of that policy by the attorney general."

- MOVED CSHB 423(HSS) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 239(JUD)

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

- MOVED HCS CSSB 239(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 284

SHORT TITLE: CAMPAIGN EXPENDITURES

SPONSOR(S): JUDICIARY

02/19/10	(S)	READ THE FIRST TIME - REFERRALS
02/19/10	(S)	STA, JUD
03/02/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)
03/02/10	(S)	Moved SB 284 Out of Committee
03/02/10	(S)	MINUTE(STA)
03/02/10	(S)	STA RPT 5DP
03/02/10	(S)	DP: MENARD, FRENCH, MEYER, PASKVAN, KOOKESH
03/02/10	(S)	FIN REFERRAL ADDED AFTER JUD
03/08/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/08/10	(S)	Heard & Held
03/08/10	(S)	MINUTE(JUD)
03/12/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/12/10	(S)	Heard & Held
03/12/10	(S)	MINUTE(JUD)
03/15/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/15/10	(S)	Heard & Held
03/15/10	(S)	MINUTE(JUD)
03/17/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/17/10	(S)	Moved CSSB 284(JUD) Out of Committee
03/17/10	(S)	MINUTE(JUD)
03/18/10	(S)	JUD RPT CS 3DP 1AM NEW TITLE
03/18/10	(S)	DP: FRENCH, WIELECHOWSKI, MCGUIRE
03/18/10	(S)	AM: COGHILL
03/23/10	(S)	FIN AT 1:30 PM SENATE FINANCE 532
03/23/10	(S)	Heard & Held
03/23/10	(S)	MINUTE(FIN)
03/29/10	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/29/10	(S)	Moved CSSB 284(FIN) Out of Committee

03/29/10 (S) MINUTE(FIN)
 03/29/10 (S) FIN RPT CS 4DP 1NR NEW TITLE
 03/29/10 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN
 03/29/10 (S) NR: HUGGINS
 04/01/10 (S) TRANSMITTED TO (H)
 04/01/10 (S) VERSION: CSSB 284(FIN)
 04/05/10 (H) READ THE FIRST TIME - REFERRALS
 04/05/10 (H) JUD, FIN
 04/07/10 (H) JUD AT 1:00 PM CAPITOL 120
 04/07/10 (H) Heard & Held
 04/07/10 (H) MINUTE(JUD)
 04/09/10 (H) JUD AT 1:00 PM CAPITOL 120
 04/09/10 (H) Heard & Held
 04/09/10 (H) MINUTE(JUD)
 04/10/10 (H) JUD AT 10:00 AM CAPITOL 120
 04/10/10 (H) Heard & Held
 04/10/10 (H) MINUTE(JUD)
 04/11/10 (H) JUD AT 9:00 AM CAPITOL 120
 04/11/10 (H) Heard & Held
 04/11/10 (H) MINUTE(JUD)
 04/12/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 244

SHORT TITLE: GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES
 SPONSOR(S): STEDMAN

01/29/10 (S) READ THE FIRST TIME - REFERRALS
 01/29/10 (S) STA, JUD
 02/11/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
 02/11/10 (S) Moved SB 244 Out of Committee
 02/11/10 (S) MINUTE(STA)
 02/12/10 (S) STA RPT 4DP
 02/12/10 (S) DP: MENARD, PASKVAN, MEYER, FRENCH
 02/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/24/10 (S) <Bill Hearing Postponed>
 03/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/01/10 (S) Heard & Held
 03/01/10 (S) MINUTE(JUD)
 03/15/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/15/10 (S) Moved SB 244 Out of Committee
 03/15/10 (S) MINUTE(JUD)
 03/16/10 (S) JUD RPT 3DP 2NR
 03/16/10 (S) DP: FRENCH, COGHILL, EGAN
 03/16/10 (S) NR: WIELECHOWSKI, MCGUIRE
 03/18/10 (S) TRANSMITTED TO (H)
 03/18/10 (S) VERSION: SB 244
 03/19/10 (H) READ THE FIRST TIME - REFERRALS

03/19/10 (H) STA, JUD
04/01/10 (H) STA AT 8:00 AM CAPITOL 106
04/01/10 (H) Scheduled But Not Heard
04/06/10 (H) STA AT 8:00 AM CAPITOL 106
04/06/10 (H) Scheduled But Not Heard
04/08/10 (H) STA AT 8:00 AM CAPITOL 106
04/08/10 (H) Moved HCS SB 244(STA) Out of Committee
04/08/10 (H) MINUTE(STA)
04/09/10 (H) STA RPT HCS(STA) NT 5DP 1DNP 1NR
04/09/10 (H) DP: SEATON, GRUENBERG, P.WILSON,
PETERSEN, LYNN
04/09/10 (H) DNP: GATTO
04/09/10 (H) NR: JOHNSON
04/09/10 (H) JUD AT 1:00 PM CAPITOL 120
04/09/10 (H) <Bill Hearing Canceled>
04/10/10 (H) JUD AT 10:00 AM CAPITOL 120
04/10/10 (H) <Bill Hearing Canceled>
04/12/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 423

SHORT TITLE: POLICY FOR SECURING HEALTH CARE SERVICES
SPONSOR(S): JUDICIARY

03/31/10 (H) READ THE FIRST TIME - REFERRALS
03/31/10 (H) HSS, JUD
04/06/10 (H) HSS AT 3:00 PM CAPITOL 106
04/06/10 (H) Heard & Held
04/06/10 (H) MINUTE(HSS)
04/08/10 (H) HSS AT 3:00 PM CAPITOL 106
04/08/10 (H) Moved CSHB 423(HSS) Out of Committee
04/08/10 (H) MINUTE(HSS)
04/09/10 (H) HSS RPT CS(HSS) NT 3DP 4DNP
04/09/10 (H) DP: T.WILSON, LYNN, KELLER
04/09/10 (H) DNP: HOLMES, SEATON, CISSNA, HERRON
04/09/10 (H) FIN REFERRAL ADDED AFTER JUD
04/12/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 239

SHORT TITLE: IGNITION INTERLOCK DEVICES/DUI/CHEM. TEST
SPONSOR(S): MEYER

01/25/10 (S) READ THE FIRST TIME - REFERRALS
01/25/10 (S) JUD, FIN
02/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/10 (S) <Bill Hearing Postponed>
03/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/10 (S) Scheduled But Not Heard

03/12/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/12/10 (S) Heard & Held
 03/12/10 (S) MINUTE(JUD)
 03/22/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/22/10 (S) Moved CSSB 239(JUD) Out of Committee
 03/22/10 (S) MINUTE(JUD)
 03/23/10 (S) JUD RPT CS 2DP 1NR SAME TITLE
 03/23/10 (S) DP: FRENCH, WIELECHOWSKI
 03/23/10 (S) NR: COGHILL
 03/29/10 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/29/10 (S) Heard & Held
 03/29/10 (S) MINUTE(FIN)
 04/02/10 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/02/10 (S) Moved CSSB 239(JUD) Out of Committee
 04/02/10 (S) MINUTE(FIN)
 04/02/10 (S) FIN RPT CS(JUD) 6DP 1NR
 04/02/10 (S) DP: HOFFMAN, STEDMAN, HUGGINS, THOMAS,
 EGAN, ELLIS
 04/02/10 (S) NR: OLSON
 04/06/10 (S) TRANSMITTED TO (H)
 04/06/10 (S) VERSION: CSSB 239(JUD)
 04/07/10 (H) READ THE FIRST TIME - REFERRALS
 04/07/10 (H) JUD
 04/12/10 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DARWIN PETERSON, Staff
 Senator Bert Stedman
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented SB 244 on behalf of the sponsor, Senator Stedman.

DAVID JONES, Senior Assistant Attorney General
 Opinions, Appeals, & Ethics
 Civil Division (Anchorage)
 Department of Law (DOL)
 Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 423.

THOMAS REIKER, Staff
 Representative Carl Gatto
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During discussion of HB 423, responded to questions on behalf of Representative Gatto, who presented the bill on behalf of the House Judiciary Standing Committee, sponsor.

SENATOR KEVIN MEYER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 239.

JOSHUA P. FINK, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns regarding SB 239.

DENNIS A. WHEELER, Municipal Attorney
Department of Law
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Expressed a concern regarding SB 239.

JENNIFER MESSICK, Assistant Municipal Attorney
Traffic Safety Resource Prosecutor
Criminal Division
Department of Law
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Suggested a change to SB 239.

CHRISTINE MARASIGAN, Staff
Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of SB 239 on behalf of the sponsor, Senator Meyer.

ACTION NARRATIVE

[1:05:55 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Ramras, Herron, Gatto, Lynn, Holmes, and Dahlstrom were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Senator French was also in attendance.

SB 284 - CAMPAIGN EXPENDITURES

[1:06:08 PM](#)

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 284(FIN), "An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; prohibiting expenditures and contributions by foreign nationals in state elections; and providing for an effective date." [Before the committee was CSSB 284(FIN) as amended on 4/10/10 and 4/11/10.]

REPRESENTATIVE LYNN characterized SB 284 as an important bill affecting all candidates, as well as all Alaskans because they need to know who is funding campaign advertisements; such disclosure will enable voters to make informed choices. He expressed favor with moving the bill from committee.

REPRESENTATIVE HERRON mentioned that he still has concerns about some of the provisions of SB 284.

[1:07:38 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSSB 284(FIN), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 284(JUD) was reported from the House Judiciary Standing Committee.

[REPRESENTATIVE GRUENBERG, arriving later, said he would have signed "do pass" on the committee report for SB 284 had he been present when the motion was made.]

SB 244 - GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES

[1:08:02 PM](#)

CHAIR RAMRAS announced that the next order of business would be SENATE BILL NO. 244, "An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence." [Before the committee was HCS SB 244(STA).]

[1:08:12 PM](#)

DARWIN PETERSON, Staff, Senator Bert Stedman, Alaska State Legislature, on behalf of the sponsor, Senator Stedman, explained that currently, with the exception of the governor and lieutenant governor, all state employees within the administration have a designated duty station assigned by the Office of Management and Budget (OMB). It is up to the legislature, if it so chooses, to designate the governor's duty station in statute, and HCS SB 244(STA) specifies that the governor's duty station - defined in the bill as the location where the governor spends the major portion of time assigned to fulfill the duties of the office - is considered to be the state capital. The bill doesn't contain an effective date clause [and so, if passed, would go into effect 90 days after enactment], and doesn't alter the ability of the governor to maintain his/her own travel schedule in order to fulfill his/her gubernatorial responsibilities.

MR. PETERSON, in response to questions, noted that under HCS SB 244(STA), the duty station would be wherever the state capital is; offered his understanding that the current governor spends the majority of his time in Juneau, since that's where he's provided a residence; and assured the committee that the bill wouldn't alter the governor's ability to travel to and spend time in other parts of the state. He added that according to Legislative Legal and Research Services, the governor could still choose to live elsewhere. Specifying where the official duty station is would merely provide clarity for purposes of calculating and reimbursing the governor for his/her travel expenses.

The committee took an at-ease from 1:12 p.m. to 1:13 p.m.

[Due to technical difficulties with the official recording, all volumes must be set at maximum for the period between 1:13:03 p.m. and 1:15:36 p.m.]

MR. PETERSON, in response to further questions, offered his understanding that under the bill, if a governor chooses to reside in his/her own home when away from the state capital, he/she could submit an application for reimbursement of meals and incidental expenses at a rate of \$60 per day. In response to another question, he relayed that the sponsor would prefer that the bill specify that the governor's duty station is "Juneau", rather than "the state capital", but isn't going to be voting against concurrence with the change incorporated in HCS SB 244(STA).

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on SB 244.

1:15:58 PM

REPRESENTATIVE LYNN [made a motion to adopt] Amendment 1, labeled 26-LS1322\C.1, Chenoweth, 4/1/10, which read:

Page 1, lines 1 - 3:

Delete all material and insert:

"An Act providing that, during the term of office, the duty station of the governor and of the lieutenant governor is the state capital, and prohibiting payment of certain travel allowances to those officers for use of the personal residences of the governor and lieutenant governor."

Page 1, line 8:

Delete "to the governor"

Page 2, lines 1 - 10:

Delete all material and insert:

*** Sec. 2.** AS 39.20.060 is amended by adding a new subsection to read:

"(b) For purposes of calculation and payment of travel allowances due the governor during the governor's term of office and the lieutenant governor during the lieutenant governor's term of office,

(1) notwithstanding the residence of each of these public officers in another location, the governor's duty station, defined as the location where the governor spends the major portion of time assigned to fulfill the duties of the office, and the lieutenant governor's duty station, defined as the location where the lieutenant governor spends the major portion of time assigned to fulfill the duties of the office, is considered to be the state capital; and

(2) the governor is not entitled to, and may not claim as a travel allowance, a lodging allowance, when staying in the governor's personal residence while in travel status away from the governor's designated duty station, and the lieutenant governor is not entitled to, and may not claim as a travel allowance, a lodging allowance, when staying in the lieutenant governor's personal residence while in

travel status away from the lieutenant governor's designated duty station."

Page 2, line 16, following "governor":

Insert "and the lieutenant governor"

CHAIR RAMRAS objected for the purpose of discussion.

REPRESENTATIVE LYNN explained that Amendment 1 would specify that the state capital is also the duty station of the lieutenant governor. He offered his understanding that there has been some discussion regarding providing a residence in Juneau for the lieutenant governor.

REPRESENTATIVE LYNN then withdrew Amendment 1.

1:17:12 PM

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 2, to replace the words, "the state capital", on page 1, line 2, with the word, "Juneau".

REPRESENTATIVE GATTO objected.

CHAIR RAMRAS expressed an interest in returning the bill to its original form, which specifies "Juneau" as the duty station.

The committee took an at-ease from 1:17 p.m. to 1:18 p.m.

CHAIR RAMRAS, mentioning a [potential] conflict of interest, disclosed that he is running for statewide office.

REPRESENTATIVE GRUENBERG objected, thus requiring Chair Ramras to vote.

A roll call vote was taken. Representatives Holmes, Dahlstrom, Herron, and Ramras voted in favor of Conceptual Amendment 2. Representatives Gatto, Lynn, and Gruenberg voted against it. Therefore, Conceptual Amendment 2 was adopted by a vote of 4-3.

CHAIR RAMRAS explained that Conceptual Amendment 2 would also effect a similar change to the language on page 2, [lines 6-7].

1:20:31 PM

REPRESENTATIVE DAHLSTROM moved to report HCS SB 244(STA), as amended, out of committee with individual recommendations and

the accompanying fiscal notes. There being no objection, HCS SB 244(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:21 p.m. to 1:23 p.m.

HB 423 - POLICY FOR SECURING HEALTH CARE SERVICES

[1:23:19 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 423, "An Act stating a public policy that allows a person to choose or decline any mode of securing health care services, and providing for enforcement of that policy by the attorney general." [Before the committee was CSHB 423(HSS).]

CHAIR RAMRAS noted that members' packets include a memorandum from Legislative Legal and Research Services dated April 9, 2010, that addresses constitutional issues raised by HB 423.

REPRESENTATIVE GATTO presented HB 423 on behalf of the sponsor, the House Judiciary Standing Committee. He said HB 423 would specify in statute that the State of Alaska has a policy that a person has the right to choose or decline any mode of obtaining health care services, and, if passed, would be known in uncodified law as the Alaska Health Freedom Act. He indicated that HB 423 was introduced in response to the recent passage of federal healthcare reform legislation - the Patient Protection and Affordable Care Act (PPACA). He ventured that if the PPACA does get challenged, the court might decide that those states that already have a specific policy in place - such as would occur with the passage of HB 423 - need not follow federal law. In response to a question, he indicated that a prior version of the bill directed the attorney general to take certain actions, but that language is no longer contained in the bill because it is already the job of the attorney general to look after the State's legal rights.

[1:29:05 PM](#)

DAVID JONES, Senior Assistant Attorney General, Opinions, Appeals, & Ethics, Civil Division (Anchorage), Department of Law (DOL), in response to questions, relayed that he is unable to say with certainty whether passage of HB 423 would either help or hinder any forthcoming action the attorney general might choose to take regarding the federal PPACA.

CHAIR RAMRAS expressed favor with HB 423, opining that it reflects the offense taken by some over passage of the federal PPACA.

REPRESENTATIVE GATTO, in response to comments and a question, acknowledged that CSHB 423(HSS) is now simply making a policy statement that will have no value if the U.S. Supreme Court should eventually rule that the PPACA is constitutional.

REPRESENTATIVE GRUENBERG asked why the DOL has submitted an indeterminate fiscal note for HB 423.

MR. JONES said it's because the DOL doesn't know what impact the bill would have on the DOL's fiscal operations.

[1:41:57 PM](#)

THOMAS REIKER, Staff, Representative Carl Gatto, Alaska State Legislature, on behalf of Representative Gatto, added that he and Representative Gatto, too, had concerns with the DOL's analysis of the bill's potential fiscal impact, considering that analysis to be unclear, and so the DOL has agreed to submit a revised fiscal note for the bill's next committee of referral - the House Finance Committee.

REPRESENTATIVE GATTO went on to explain that because all State of Alaska employees are required to have health insurance and because sometimes the courts can order a person to purchase health insurance, CSHB 423(HSS) now contains language which specifies that the policy outlined in the bill doesn't apply to health care services provided or required by the state, a political subdivision of the state, or a court of the state.

MR. REIKER indicated that a forthcoming amendment would further clarify that exemption.

[1:47:29 PM](#)

REPRESENTATIVE GATTO made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 1, line 9:
Delete "and may choose or"

Page 1, line 13:
Delete "provided or"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GATTO, in response to a question, indicated that Amendment 1 is a technical amendment, and that he is seeking to simplify the language currently in CSHB 423(HSS).

REPRESENTATIVE GRUENBERG indicated disfavor with Amendment 1.

REPRESENTATIVE GATTO observed that with the adoption of Amendment 1's proposed change to page 1, line 9, the language of the bill would then in part read: "a person has the right to decline any mode of obtaining health care services".

MR. REIKER, in response to comments, said the concern is that the federal PPACA might take away a person's right to decline health insurance he/she doesn't want. He then explained that with regard to Amendment 1's proposed change to page 1, line 13, the concern with the current language of the bill is that it might be used to force the State of Alaska to provide health care services to someone who would otherwise be ineligible for those services.

REPRESENTATIVE HOLMES offered her understanding, however, that Amendment 1's proposed change to page 1, line 13, would be deleting language that was suggested by the DOL, and that without that language, the exemption outlined in the bill wouldn't function as desired.

REPRESENTATIVE GRUENBERG suggested that Amendment 1 be divided such that its proposed change to page 1, line 9, be considered Amendment 1a, and its proposed change to page 1, line 13, be considered Amendment 1b.

REPRESENTATIVE GATTO instead withdrew Amendment 1.

[1:51:56 PM](#)

REPRESENTATIVE GATTO made a motion to adopt Amendment 2, which read [original punctuation provided]:

Page 1, line 8, after (a), insert:

Pursuant to the Ninth and Tenth Amendments of the U.S. Constitution,

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG pointed out that although Amendment 2 has some merit, it might be too specific and thereby unnecessarily limit the situations under which the policy outlined in the bill would apply.

REPRESENTATIVE GATTO acknowledged that point, and withdrew Amendment 2.

[1:53:58 PM](#)

REPRESENTATIVE HOLMES referred to the aforementioned memorandum from Legislative Legal and Research Services, and noted that it says in part [original punctuation, although with some formatting changes, provided]:

to the extent that the recently signed Patient Protection and Affordable Care Act ... specifically regulates state insurance by requiring everyone to obtain health care insurance, the federal law would likely be found to preempt state law on the subject. ... if a power is delegated to Congress by the Constitution, the Tenth Amendment does not protect the states from the exercise of that federal power. The federal Constitution gives Congress the power to control commerce. In light of the ruling in U.S. v. South-Eastern Underwriters Assn., *supra*, that the business of insurance is part of interstate commerce, it is reasonable to conclude that the power to regulate commerce and thus regulate insurance has been delegated to the United States Congress by the Constitution. Therefore, it seems unlikely that a court would hold that the Tenth Amendment would prevent the federal government from implementing a bill specifically regulating insurance.

REPRESENTATIVE HOLMES said she reads that language to mean that the bill isn't going to accomplish its stated goal. She explained that her main concern is that no one really understands what effects the bill will have, either on any future actions the DOL might decide to take with regard to the federal PPACA, or on the Department of Health and Social Services (DHSS) and the DOL, or on other federal programs.

CHAIR RAMRAS said he shares Representative Gatto's concerns about the PPACA, and opined that passage of HB 423 would be good for Alaskans.

REPRESENTATIVE GATTO, after reading excerpts from something pertaining to the PPACA, opined that it would be beneficial for Alaska to have - via passage of HB 423 - a specific policy on the issue of health care services already in place, but again acknowledged that the bill would be rendered meaningless if the U. S. Supreme Court should eventually rule that the PPACA is constitutional.

REPRESENTATIVE HERRON pointed out, though, that the bill makes no reference to the federal PPACA, and opined that the committee should instead focus solely on the constitutionality of the proposed state policy regarding obtaining health care services.

REPRESENTATIVE GRUENBERG added that he would be more comfortable with the bill if it weren't being used as a political tool against as-yet unfinished federal legislation, a tool that's going to draw the state into litigation. Expressing some disfavor with the title of HB 423, he acknowledged that as a generic statement, the language in the bill is fairly benign. He asked whether there was any way around using the bill as a means of drawing the state into a political battle.

REPRESENTATIVE GATTO acknowledged that if the federal PPACA hadn't passed, HB 423 would "almost be laughable." The bill is about people's rights, he remarked, both the right to do something and the right to not have to do something.

REPRESENTATIVE GRUENBERG said that the policy statement encompassed in the bill has its own merits, and he likes the idea behind it.

[2:07:03 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSHB 423(HSS) out of committee with individual recommendations and the accompanying indeterminate fiscal note.

REPRESENTATIVE HOLMES objected.

A roll call vote was taken. Representatives Lynn, Dahlstrom, Herron, Gatto, and Ramras voted in favor of reporting the bill from committee. Representatives Gruenberg and Holmes voted against it. Therefore, CSHB 423(HSS) was reported out of the House Judiciary Standing Committee by a vote of 5-2.

The committee took an at-ease from 2:08 p.m. to 2:10 p.m.

SB 239 - IGNITION INTERLOCK DEVICES/DUI/CHEM. TEST

2:10:21 PM

CHAIR RAMRAS announced that the final order of business would be CS FOR SENATE BILL NO. 239(JUD), "An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

2:10:42 PM

REPRESENTATIVE DAHLSTROM moved to adopt the proposed House committee substitute (HCS) for CSSB 239(JUD), Version 26-LS1210\C, Luckhaupt, 4/7/10, as the work draft. There being no objection, Version C was before the committee.

2:11:15 PM

[REPRESENTATIVE GRUENBERG referred to a bill that was heard earlier in the meeting - SB 284 - and said he would have signed "do pass" on the committee report had he been present during that portion of the meeting.]

2:12:20 PM

SENATOR KEVIN MEYER, Alaska State Legislature, sponsor, indicated that the existing sentencing laws pertaining to the use of ignition interlock devices - which, when installed in a person's vehicle, prevent him/her from starting the vehicle when he/she has been consuming alcohol - contain some loopholes, and that SB 239 is intended to remedy those loopholes. For example, in 2009, although 3,513 court orders were issued mandating the installation of ignition interlock devices, only about 1,250 ignition interlock devices were actually installed. This is of concern because the laws pertaining to the use of ignition interlock devices are intended to help address the problem of people driving under the influence (DUI).

SENATOR MEYER explained that SB 239 would [change the minimum] time period for which an ignition interlock would be required to be installed, with the time period increasing for each repeat offense; would stipulate that an ignition interlock device could be ordered regardless of whether the offender receives probation and regardless of how long any probation period might be; [and would prevent the court from suspending the requirement for an ignition interlock device].

REPRESENTATIVE GATTO mentioned that in the past, both he and Representative Gruenberg have introduced legislation pertaining to ignition interlock devices, and offered his understanding that in other states, requiring ignition interlock devices has been successful [at keeping drunk drivers off the road].

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JOSHUA P. FINK, Attorney at Law, noting that everyone has benefited from the sponsor's work on combating drunk driving in Alaska, said he supports the intent of SB 239 but is concerned that it could result in a few unintended consequences. Currently, a person could be required to install an ignition interlock device only if he/she receives probation, whereas the bill removes that limitation; and some judges have ruled that they have the authority to suspend the requirement for an ignition interlock device under certain circumstances, whereas the bill precludes judges from having that discretion.

MR. FINK indicated that a problem arises with regard to the latter point because there are a significant number of [DUI] cases that don't involve alcohol, for example, such as in situations where the person is under the influence of prescription drugs or marijuana or some other substance, and so it doesn't make sense to require such a person to install an ignition interlock device, since such devices only measure for alcohol consumption. And a problem arises with regard to the former point because there are DUI cases that don't involve automobiles but instead involve other types of motorized vehicles such as snow machines, all-terrain vehicles (ATVs), [watercraft, and aircraft], and because probation isn't generally imposed in such cases, the installation of an ignition interlock device currently isn't required; the same is true for DUI cases involving people, often minors or military members, who don't own the vehicle they were driving when they were stopped for DUI.

MR. FINK surmised that a solution to the aforementioned problems would be to amend the bill such that judges would be given discretion, under certain circumstances, with regard to ordering the installation of ignition interlock devices, or to amend the bill such that it would only apply in situations involving alcohol.

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DENNIS A. WHEELER, Municipal Attorney, Department of Law, Municipality of Anchorage (MOA), offered his belief that SB 239 has the potential for punishing those who have made a misstep but are still working to comply with the laws regarding ignition interlock devices, more than it would punish those who aren't making any effort to comply with such laws.

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JENNIFER MESSICK, Assistant Municipal Attorney, Traffic Safety Resource Prosecutor, Criminal Division, Department of Law, Municipality of Anchorage (MOA), offered her understanding that the new language in [subparagraphs (C) and (D)] of proposed AS 28.15.291(b) would only apply after a person regains the privilege to drive following a [driver's license] revocation. What is currently happening, however, is that some DUI offenders aren't taking the legal steps to regain their driver's license but are instead simply just driving again - without a license and without an ignition interlock device. Because of this, under the bill as currently written, only those DUI offenders who go through the legal process of re-obtaining their driver's license after a revocation would be subject to the punishment outlined in proposed AS 28.15.291(b). This is thereby creating an incentive for DUI offenders to not get relicensed following a driver's license revocation.

MS. MESSICK, to address the perceived problem, suggested deleting the words, "after the person regains the privilege" from proposed AS 28.35.030(b)(1)(A), and inserting instead the words, "anytime a person drives or operates a motor vehicle and for a period of six months after they regain the privilege to drive". In response to comments, she reiterated her concern that as currently written, SB 239 provides DUI offenders with an incentive to not comply with the laws regarding the reinstatement of their privilege to drive. Instead, she opined, the bill should be written in such a way that those DUI offenders who do attempt to comply with those laws are rewarded - particularly given that such compliance can be expensive - or at least not punished as much as those DUI offenders who make no attempt to comply.

CHAIR RAMRAS surmised, then, that the concern revolves around the issue of parity for DUI offenders.

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CHRISTINE MARASIGAN, Staff, Senator Kevin Meyer, Alaska State Legislature, on behalf of Senator Meyer, sponsor, explained that the language on page 2, lines 18-20 and 26-28, of Version C would address the MOA's concern by adding those who are in violation of an ignition interlock device requirement to the list of those who would be subject to mandatory sentencing, fines, and community work service under AS 28.15.291(b). This would ensure that those who do comply with the laws regarding license revocation and ignition interlock devices are rewarded a little bit more than those who don't.

REPRESENTATIVE GRUENBERG expressed an interest in adding those who are convicted of criminally negligent homicide as the result of drinking and driving but who aren't charged with DUI, to the list of offenders the bill would apply to.

SENATOR MEYER acknowledged that he hadn't yet focused on such offenders.

MS. MARASIGAN, on the issue of adding others to the list of offenders the bill would apply to, mentioned that New Mexico had to create a fund to pay for ignition interlock devices, whereas SB 239, in contrast, would allow a DUI offender to apply the cost of an ignition interlock device towards the fines imposed. She surmised that to add other, more serious crimes to the bill would be moving away from the realm of fines provided for in the DUI statutes.

SENATOR MEYER indicated that he was amenable to researching Representative Gruenberg's suggestion further, but would prefer to address such people via other legislation.

MS. MARASIGAN, on the issue raised by Mr. Fink regarding DUI offenses that don't involve alcohol, acknowledged that such is a problem, and suggested that one way to address it would be to alter the proposed language on page 4, line 28-29, and page 6, lines 6-7, such that it would only preclude a judge from suspending the requirement for an ignition interlock device in DUI cases involving alcohol. With regard to the issue of DUI cases that don't involve automobiles, she offered her understanding that although the technology exists to put ignition interlock devices on other types of motorized vehicles, the statutory definition regarding what constitutes a motor vehicle would have to be revisited.

REPRESENTATIVE HOLMES expressed an interest in addressing the issue of DUI cases that don't involve alcohol, surmising that to

require the installation of an ignition interlock device in such cases serves no purpose.

The committee took an at-ease from 2:43 p.m. to 2:45 p.m.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on SB 239.

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REPRESENTATIVE HOLMES made a motion to adopt Conceptual Amendment 1, to add the words "for alcohol-related offenses" to page 4, line 29, and to page 6, line 7, after the word "device".

CHAIR RAMRAS objected for the purpose of discussion.

REPRESENTATIVE HOLMES explained that under Conceptual Amendment 1, the court would be precluded from suspending the requirement for an ignition interlock device only in those DUI cases that involve alcohol.

CHAIR RAMRAS removed his objection, and, after ascertaining that there were no further objections, announced that Conceptual Amendment 1 was adopted.

SENATOR MEYER indicated approval of Conceptual Amendment 1.

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REPRESENTATIVE DAHLSTROM moved to report the proposed House committee substitute (HCS) for CSSB 239(JUD), Version 26-LS1210\C, Luckhaupt, 4/7/10, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 239(JUD) was reported from the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:48 p.m.