

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 24, 2009

8:09 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Paul Seaton, Vice Chair
Representative Craig Johnson
Representative Peggy Wilson
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

Representative Carl Gatto

COMMITTEE CALENDAR

HOUSE BILL NO. 73

"An Act relating to honorary foreign consul license plates; and providing for an effective date."

- MOVED CSHB 73(STA) OUT OF COMMITTEE

HOUSE BILL NO. 123

"An Act extending the termination date of the Statewide Suicide Prevention Council; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 193

"An Act relating to representation by a legislator or legislative employee of another person in an administrative hearing; relating to charity events under the Legislative Ethics Act; requiring compensation of public members of the Select Committee on Legislative Ethics; exempting certain information from disclosure requirements of the Legislative Ethics Act; relating to the selection of alternate members and the participation of members and alternate members in formal proceedings of the Select Committee on Legislative Ethics and its subcommittees; and defining 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit' for the purposes of the Legislative Ethics Act."

- HEARD AND HELD; ASSIGNED TO SUBCOMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 73

SHORT TITLE: HONORARY CONSUL LICENSE PLATES

SPONSOR(S): REPRESENTATIVE(S) LYNN

01/20/09 (H) PREFILE RELEASED 1/16/09
01/20/09 (H) READ THE FIRST TIME - REFERRALS
01/20/09 (H) STA, FIN
03/12/09 (H) STA AT 8:00 AM CAPITOL 106
03/12/09 (H) <Bill Hearing Canceled>
03/24/09 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 123

SHORT TITLE: EXTEND SUICIDE PREVENTION COUNCIL

SPONSOR(S): REPRESENTATIVE(S) FAIRCLOUGH

02/11/09 (H) READ THE FIRST TIME - REFERRALS
02/11/09 (H) STA, FIN
03/24/09 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 193

SHORT TITLE: LEGISLATIVE ETHICS ACT

SPONSOR(S): REPRESENTATIVE(S) COGHILL

03/18/09 (H) READ THE FIRST TIME - REFERRALS
03/18/09 (H) STA, JUD
03/24/09 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

NANCY MANLY, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 73 on behalf of Representative Lynn, prime sponsor.

SUSIE HILL KOKLICH
Valdez, Alaska

POSITION STATEMENT: Testified on behalf of the Alaska State Firefighter's Association (ASFA) during the hearing on HB 73.

DAVE MILLER, President
Alaska State Firefighter's Association (ASFA)

Sitka, Alaska

POSITION STATEMENT: Testified in support of HB 73.

WHITNEY BREWSTER, Director
Division of Motor Vehicles
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 73.

MICHELLE WESTON, 2nd Vice President
Board of Directors
Alaska Fire Chiefs Association (AFCA)
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the AFCA in support of HB 73.

CRYSTAL KOENEMAN, Staff
Representative Anna Fairclough
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 123 on behalf of Representative Fairclough, prime sponsor.

PAT DAVIDSON, Legislative Auditor
Legislative Audit Division
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 123.

L. DIANE CASTO, Manager
Prevention and Early Intervention Section
Division of Behavioral Health
Department of Health & Social Services
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 123.

RYNNIEVA MOSS, Staff
Representative John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 193 on behalf of Representative Coghill, prime sponsor.

JOYCE ANDERSON, Ethics Committee Administrator
Select Committee on Legislative Ethics ("the Ethics Committee")
Anchorage, Alaska

POSITION STATEMENT: Provided information during the hearing on HB 193.

TERRY L. THURBON, Chief Administrative Law Judge
Office of Administrative Hearings
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Provided comments during the hearing on HB 193.

ACTION NARRATIVE

[8:09:01 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:09 a.m. Representatives Seaton, Johnson, Wilson, Petersen, and Lynn were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

HB 73-HONORARY CONSUL LICENSE PLATES

[8:09:50 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 73, "An Act relating to honorary foreign consul license plates; and providing for an effective date."

[8:09:55 AM](#)

NANCY MANLY, Staff, Representative Bob Lynn, Alaska State Legislature, introduced HB 73 on behalf of Representative Lynn, prime sponsor. She noted that included in the committee packet is a committee substitute (CS) for HB 73, labeled 26-LS0303\E, Luckhaupt, 3/12/09. She explained that Representative Harris had requested the bill include license plates for fire fighters and emergency medical service (EMS) providers. Problems developed regarding the inclusion of the honorary foreign consul, so that part of the bill was deleted. Currently, the aforementioned CS includes only fire fighters and EMS providers.

[8:10:48 AM](#)

REPRESENTATIVE WILSON moved to adopt the proposed committee substitute (CS) for HB 73, labeled 26-LS0303\E, Luckhaupt, 3/12/09, as a work draft.

[8:10:59 AM](#)

REPRESENTATIVE SEATON objected, then removed his objection. There being no further objection, Version E was before the committee.

[8:11:33 AM](#)

SUSIE HILL KOKLICH, testifying on behalf of the Alaska State Firefighter's Association (ASFA), called HB 73 a "feel good" bill that would serve as a thank you to fire fighters and EMS providers. She said this has been done for others in the state and ASFA feels it is time for fire fighters and EMS providers in the state of Alaska to be recognized, especially volunteers who do not get paid for their service.

[8:12:37 AM](#)

REPRESENTATIVE SEATON directed attention to language on page 2, [Section 2, beginning on line 14], which shows three different fees scheduled, and he said he would like to know the reasoning behind the proposed fees.

MS. KOKLICH said she could not respond, because she had no input regarding those fees.

[8:13:50 AM](#)

DAVE MILLER, President, Alaska State Firefighter's Association (ASFA), testified in support of HB 73. He related that he is a member of the Sitka Volunteer Fire Department. He concurred with Ms. Koklich that HB 73 is a great way in which to recognize volunteers. He said it has been shown that "little bits of recognition like this really help in recruitment and retention of volunteers for the future." He reported that the number of people volunteering nationwide is low, and the proposed bill may help the effort to increase volunteer numbers. He suggested that [when special license plates are in place], people can note who is volunteering and perhaps be inspired to do so themselves.

[8:14:54 AM](#)

REPRESENTATIVE WILSON stated for the record that she was a former emergency medical technician (EMT) who worked for an ambulance squad and thus would qualify to receive a special license through HB 73.

CHAIR LYNN said he drove an ambulance in Tucson, Arizona, years ago.

[8:15:38 AM](#)

REPRESENTATIVE JOHNSON directed attention to page 2, line 3, which read:

(A) a fire department in this state and the fire department is recognized as a fire department by the state fire marshal; or

REPRESENTATIVE JOHNSON asked if all volunteer fire departments are recognized by the fire marshal.

MR. MILLER responded that there are approximately 250 recognized fire departments in the state of Alaska, and perhaps 15-20 that are not currently registered. He said "we" are working on getting those departments registered.

REPRESENTATIVE JOHNSON said whether or not a person volunteers for a recognized fire department or an unrecognized one, a firefighter is still putting his/her life on the line. He explained that he does not want people excluded from the bill who are doing the same job, just because the fire marshal has not recognized them.

[8:16:53 AM](#)

REPRESENTATIVE SEATON concurred, but stated his concern that if there is no classification, anyone could say he/she is a volunteer firefighter.

REPRESENTATIVE JOHNSON said he does not know the answer, but wanted to pose the question.

[8:17:25 AM](#)

REPRESENTATIVE WILSON asked the committee to consider changing language in the bill to address the fact that some EMT programs are not affiliated with a fire department, but are recognized.

[8:18:27 AM](#)

WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), Department of Administration, testified in support of HB 73. She said the DMV would like to know how it will be able to

verify an applicant's claim that he/she is a fire fighter or EMS provider.

MR. MILLER said he would be willing to work out a method by which the DMV could make that identification. He suggested forms could be created for the fire fighters' supervisors to sign, for example.

[8:19:45 AM](#)

REPRESENTATIVE JOHNSON asked if any kind of law or statute exists against impersonating a fire fighter.

CHAIR LYNN stated his assumption that such a law would apply to the acquisition of a special license plate for those who have earned a purple heart.

[8:20:24 AM](#)

REPRESENTATIVE GRUENBERG responded that there is a federal law against impersonating the acquisition of a medal, and he said he would look in statute to determine the answer to Representative Johnson's question.

[8:21:02 AM](#)

MS. KOKLICH stated that it is the intent of ASFA that any individual, whether active or retired, wanting a special license would need to get certification from his/her local fire department and take that paperwork to the DMV in order to be issued the plate.

[8:21:26 AM](#)

MS. KOKLICH, in regard to Representative Johnson's previous question, offered her understanding that many of the [fire] departments that are not recognized exist off the road system and do not even have vehicles. She confirmed Mr. Miller's previous remark that work is being done with the small departments to get them registered with the state fire marshal's office.

[8:22:58 AM](#)

REPRESENTATIVE GRUENBERG cited AS 11.46.570, which read as follows:

Sec. 11.46.570. Criminal impersonation in the second degree.

(a) A person commits the crime of criminal impersonation in the second degree if the person

(1) assumes a false identity and does an act in the assumed character with intent to defraud, commit a crime, or obtain a benefit to which the person is not entitled; or

(2) pretends to be a representative of some person or organization and does an act in the pretended capacity with intent to defraud, commit a crime, or obtain a benefit to which the person is not entitled.

(b) Criminal impersonation in the second degree is a class A misdemeanor.

CHAIR LYNN stated his assumption that obtaining a special license would be a benefit.

REPRESENTATIVE GRUENBERG said he believes so. He cited another applicable statute, AS 11.56.827, which read as follows:

Sec. 11.56.827. Impersonating a public servant in the first degree.

(a) A person commits the crime of impersonating a public servant in the first degree if the person violates AS 11.56.830 by pretending to be a peace officer and purports to exercise the authority of a peace officer in relation to another person.

(b) Impersonating a public servant in the first degree is a class C felony.

REPRESENTATIVE GRUENBERG cited a third related statute, AS 11.56.830, which read as follows:

Sec. 11.56.830. Impersonating a public servant in the second degree.

(a) A person commits the crime of impersonating a public servant in the second degree if the person pretends to be a public servant and purports to exercise the authority of a public servant in relation to another person.

(b) It is not a defense to a prosecution under this section that

(1) the office the defendant pretended to hold did not in fact exist; or

(2) the defendant was in fact a public servant different than the one the defendant pretended to be.

(c) This section does not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Impersonating a public servant in the second degree is a class B misdemeanor.

[8:25:53 AM](#)

REPRESENTATIVE SEATON clarified for the record that if someone is driving a car with a special license plate, but is not the recipient of said license plate, that person would not be guilty of impersonating a firefighter.

[8:27:07 AM](#)

REPRESENTATIVE JOHNSON clarified his concern relates to the obtaining of a license plate.

REPRESENTATIVE GRUENBERG cited AS 11.81.900(44), which read:

(44) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

MR. MILLER, in response to Representative Gruenberg, surmised that firefighters do not fall under that statute. In response to Chair Lynn, he said a fire fighter can ask people to step away, but cannot arrest them for not doing so.

REPRESENTATIVE GRUENBERG noted that paragraph (44) uses the word "or", and he asked if firefighters maintain public order.

MR. MILLER answered that they do.

[8:29:45 AM](#)

REPRESENTATIVE GRUENBERG directed attention to page 2, lines 3-4, of Version E, which read:

(A) a fire department in this state and the fire department is recognized as a fire department by the state fire marshal; or

REPRESENTATIVE GRUENBERG asked if [military] base fire departments are included in that category.

MR. MILLER answered yes.

REPRESENTATIVE GRUENBERG suggested that firefighters deployed to Iraq should be considered.

REPRESENTATIVE WILSON offered her understanding that there are special license plates for veterans.

REPRESENTATIVE GRUENBERG confirmed that is correct, but said he thinks firefighters stationed on a base should be allowed also to obtain the special license plates for firefighters. He explained that the language which concerns him is "in this state", which he pointed out also occurs on [page 2, line 9].

[8:31:58 AM](#)

MR. MILLER said he thinks [including firefighters stationed overseas] would be fine, as long as the chief of the base department was willing to provide authorization.

REPRESENTATIVE GRUENBERG remarked that having one of these licenses may be beneficial for firefighters, because that would identify them in an emergency situation.

CHAIR LYNN said anyone who is a firefighter in the state would qualify. If someone qualified for a plate, then subsequently moved out of state, the plate would expire in normal course of time. He stated that he sees no need to "drill down this deeply into this."

[8:34:18 AM](#)

MS. BREWSTER explained that to apply for the special license plate, an individual would show the DMV a signed form proving he/she is an active or former firefighter. She said if it is the intent of the legislature to include those firefighters who operate on a military base, then the division would honor that.

[8:35:35 AM](#)

MICHELLE WESTON, 2nd Vice President, Board of Directors, Alaska Fire Chiefs Association (AFCA), testified on behalf of the AFCA in support of HB 73. She characterized the proposed legislation as "doable." She said she thinks the association can work with the DMV and work on certification of individuals. Ms. Weston said she thinks the majority of Alaskan communities have certified volunteer firefighters and emergency medical technicians that "routinely leave their families and jobs day and night to provide service to local communities." Ms. Weston stated, "We join with the other firefighter associations across the state to urge your approval for this."

MS. WESTON noted that in other states, revenue from similar plates has been put back into volunteer firefighter organizations or into the Juvenile Firesetter Intervention program. She said she would like to see that happen.

[8:36:58 AM](#)

REPRESENTATIVE GRUENBERG, in response to Chair Lynn, directed attention to language on page 2, [lines 27-29], which read as follows:

the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature for the purposes provided in AS 14.43.085.

REPRESENTATIVE GRUENBERG highlighted the related points found throughout AS 14.43.085.

[8:38:38 AM](#)

CHAIR LYNN closed public testimony.

[8:39:16 AM](#)

MS. BREWSTER, in response to Representative Seaton, offered her understanding that Version E would allow anyone who wants a commemorative plate to obtain one by paying the \$100 fee, plus the \$35 fee found on [page 2], line 21.

[8:41:14 AM](#)

MS. BREWSTER, in response to Representative Petersen, said the cost to the state for making each special plate is about \$10,

and the remaining fees collected would go into the general fund. She noted that that is spelled out on page 2, lines 21-29.

[8:42:06 AM](#)

MS. BREWSTER, in response to Representative Wilson, offered her understanding that the design of the special plate would be the same whether it was for an active or former fire fighter or EMS provider, or was a commemorative plate.

[8:42:58 AM](#)

REPRESENTATIVE SEATON moved to report CSHB 73, Version 26-LS0303\E, Luckhaupt, 3/12/09, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 73(STA) was reported out of the House State Affairs Standing Committee.

HB 123-EXTEND SUICIDE PREVENTION COUNCIL

[Contains discussion of SB 35]

[8:43:26 AM](#)

CHAIR LYNN announced that the next order of business was HOUSE BILL NO. 123, "An Act extending the termination date of the Statewide Suicide Prevention Council; and providing for an effective date."

[8:43:41 AM](#)

CRYSTAL KOENEMAN, Staff, Representative Anna Fairclough, Alaska State Legislature, presented HB 123 on behalf of Representative Fairclough, prime sponsor. She said the proposed bill asks for an extension of the sunset date from June 30, 2009, to June 30, 2013. In response to Chair Lynn, she offered her understanding that the time frame prior to the 2009 sunset date was four years.

[8:44:49 AM](#)

REPRESENTATIVE SEATON asked if a Legislative Budget and Audit [sunset review] was conducted.

MS. KOENEMAN said she does not know, but could find out.

[8:45:38 AM](#)

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, confirmed that the division did conduct a sunset review on the [Statewide Suicide Prevention Council]. As a result of the review, she reported, the division recommends the four-year extension. Statute allows for up to an eight-year extension. She said the [council] is having difficulty appointing people. She related that after its prior review, the division made a recommendation to the governor's office that "they be more timely with their appointments." This year, Ms. Davidson reported, the division encountered the same problems, and is concerned that the qualifications for appointment to the council are too narrow. Thus, the division recommends that the legislature consider broadening the membership requirements for the council. She explained that when the restrictions about who exactly should be on the council get too narrow, the pool of people who are willing to serve is reduced.

MS. DAVIDSON said the division also recommends that the four members of the legislature who are appointed to the council be nonvoting members. She explained the intent is not to take their voice away, but "they're having difficulty meeting their quorum." She stated, "Basically, we look at it and they're running about 51-53 percent attendance at the meeting for this 15-person board, and it's difficult to get your business done when you are fighting that quorum issue."

MS. DAVIDSON, in response to Chair Lynn, offered her understanding that the council meets a couple times a year. She continued:

The statutes surrounding this [council] talk about it as an advisory council to the governor and to the legislature, and it provides a list of areas that ... they should be aware of. And what we found is that the council's actually active in some of those areas. Rather than making a recommendation to the governor [and] the legislature that something be done, the council's actually doing some of those things, which is ... why we recommended extension for the council.

[8:48:47 AM](#)

MS. DAVIDSON, in response to Chair Lynn, said she does not know where the board typically meets.

8:49:01 AM

MS. DAVIDSON, in response to a question from Representative Petersen, confirmed that the audit found that overall appointment and attendance at meetings was running around 54 percent. As of September 30, [2008], there were three vacancies in the 15-member council, and the vacancies had existed for quite awhile. She recommended ways in which the qualifications could be broadened. For example, instead of requiring a secondary school counselor, the requirement could be simply for a counselor, or, if the important feature is secondary school, then perhaps the qualification could include a teacher, as well as a counselor. By broadening the membership, Ms. Davidson reiterated, the result would be a better pool of people.

REPRESENTATIVE PETERSEN proffered another option would be to allow a retired student counselor.

CHAIR LYNN asked if anything is being done to "broaden that out."

MS. DAVIDSON noted that the requirements are in statute, thus the legislature would have to make those changes.

8:51:08 AM

REPRESENTATIVE SEATON said he thinks that along with the issue of the sunset date, the sponsor would probably be "looking at that in conjunction with the committee."

8:51:56 AM

MS. KOENEMAN relayed that the sponsor had originally introduced HB 123 as a companion bill to SB 35, which is sponsored by Senator Davis. She said those involved in crafting SB 35 are considering the optimum composition of the council. She said the sponsor of HB 123 would be willing to consider improving the composition of the council, but would not want to risk a delay that would cause the expiration of the council.

8:53:10 AM

MS. KOENEMAN, in response to Representative Gruenberg, offered her understanding that SB 35 is currently sitting in the Senate Finance Committee.

REPRESENTATIVE GRUENBERG asked Ms. Koeneman if she thinks it would be efficient to "put something in so we can start moving something over here, with the expectation they'll meet up."

MS. KOENEMAN responded that she does not know whether that would help, and she reiterated that the sponsor's main concern is that the council does not sunset.

CHAIR LYNN said he thinks the committee should limit the focus of HB 123 on the termination date, and independently check on [SB 35] to "see what's happening."

REPRESENTATIVE SEATON said statute requires the audit of agencies before their sunset date, so that the legislature can review the audits to discover recommended improvements. If the improvements are not made at that time, he said, there will not be a chance to consider them again until just before the next sunset date. Therefore, if there are provisions in SB 35 which incorporate the Legislative Budget and Audit recommendations, the House should mirror those provisions in its own bill, he opined.

[8:55:30 AM](#)

CHAIR LYNN remarked that Representative Seaton's point is well made. He said he is wondering whether the committee ought to hold HB 123 until it finds out [what the Senate is doing with SB 35].

REPRESENTATIVE SEATON clarified his concern is that if the House were to send legislation over to the Senate that is totally different from SB 35, that would result in time-consuming conflict. He suggested that incorporating the changes recommended in the audit would speed up the process.

[8:56:34 AM](#)

MS. KOENEMAN, in response to Chair Lynn, reiterated that although the sponsor would be willing to incorporate the audit recommendations, her greatest concern is to see that the council is not allowed to sunset. She noted that April 16 is the last day to hear bills. In response to Chair Lynn, she offered her understanding that the recommendations of the audit are incorporated in SB 35.

[8:57:24 AM](#)

MS. DAVIDSON added her understanding that the Statewide Suicide Prevention Council met in February and passed along recommendations to Senator Davis' office, and those recommendations were incorporated into [SB 35].

[8:57:54 AM](#)

REPRESENTATIVE WILSON recommended that the committee create a committee substitute (CS) that mirrors the wording [SB 35], but that it does so as quickly as possible.

[8:58:39 AM](#)

REPRESENTATIVE SEATON said he thinks the committee needs to obtain a copy of the Legislative Budget and Audit Committee's sunset review audit and consider the recommendations directed toward improving the council.

[8:59:28 AM](#)

L. DIANE CASTO, Manager, Prevention and Early Intervention Section, Division of Behavioral Health, Department of Health & Social Services, offered a brief history of the Statewide Suicide Prevention Council. She stated that as of July 1, the council has sat within the Division of Behavioral Health. Prior to that, the council sat in the Office of the Commissioner. The commissioner made the decision to move the council into the Division of Behavioral Health to place it closer to where suicide prevention activities are happening at the state level. Ms. Casto noted that she and one other person are currently staff to the council, in addition to their other activities.

MS. CASTO said the department supports HB 123. It is well-known that suicide is a huge issue for the state, and the department is working diligently towards a drop in the suicide rate, she reported. There are a number of grant programs being run in communities; the \$1.5 Garrett Lee Smith Youth Suicide Prevention Grant - a federal grant - has just been awarded the department. Ms. Casto stated, "We feel that right now things are really starting to pull together, and the council is a huge asset for Alaska, and it provides guidance and direction to the department.

[9:01:31 AM](#)

MS. CASTO said following the audit, the council held a meeting February 4-5, during which it held a discussion related to the

audit and the recommendations therein. She indicated that the council came up with ideas for "tweaking the membership." She offered the following example: "an employee from a secondary school system such as but limited to a teacher, administrator, counselor, nurse, or other school personnel." She said wording very similar to that was incorporated into SB 35. An additional recommended change was to add a public member to the council.

MS. CASTO stated support of the current committee substitute for SB 35. Furthermore, she reported that currently all seats on the council are filled at this time. She stated, "It's the first time in a long time that we've had a full council, so we're very excited about that." Ms. Casto relayed that one additional question that came up after recommendations were made for the committee substitute related to adding the public member, which would give the council an even number of members. She said often an odd number of people is desired in order to break ties; however, she told the committee that the council is not contentious and works well together. A second public member could be added to address the issue; however, Ms. Casto said the council felt that within its existing budget it could absorb the cost of one additional member, but not two. Another option would be to follow Robert's Rules of Order and ensure that the chair does not vote "unless there is a tie or to create a tie."

[9:04:55 AM](#)

CHAIR LYNN asked Ms. Casto what her opinion is regarding the idea to align HB 193 with SB 35.

[9:05:11 AM](#)

MS. CASTO replied, "We support that."

[9:05:23 AM](#)

REPRESENTATIVE SEATON noted, "One of the other issues that was brought up was ... having the legislative members be non-voting." He asked if the council considered that matter.

MS. CASTO replied that the council did consider that matter, and it would like to continue to have four legislative members on the council, but in more of an advisory role. She explained that it is difficult for legislators to come to a two-day meeting; their attendance has been "spotty," she noted. Regarding the prior question regarding how often and where the council meets, Ms. Casto relayed that the council meets

quarterly - once in Juneau during the session, once in Anchorage, and twice in outlying areas.

CHAIR LYNN questioned the potential for conflict of interest when a legislative member of the council hears the same issue before the legislature.

MS. CASTO said she is not sure there would be a conflict, but it would depend upon the issue. She said, "We feel that being in an advisory role gives us that advantage of having ... legislators participate and be active in the conversation in helping make decisions"

[9:07:40 AM](#)

MS. CASTO, in response to a question from Representative Gruenberg, said all council members knew about today's hearing, but she does not think any of them are here.

REPRESENTATIVE GRUENBERG expressed his hope that the next time the issue is revisited, the chair of the council could [be present].

MS. CASTO, in response to a question from Representative Gruenberg, said the Statewide Suicide Prevention Council is not one that is required to get federal funds.

REPRESENTATIVE GRUENBERG asked if the council, in its deliberations, took up any other legislative reform or amendments, or any other issues.

MS. CASTO explained that when the council was moved into the Division of Behavioral Health, there was no opportunity to hire a new coordinator, because decisions needed to be made about funding. When the position was in the Office of the Commissioner, one person served multiple jobs and "did a job share with a number of different councils." Ms. Casto indicated that the idea is to ensure that the council has the opportunity to determine who its staff is.

REPRESENTATIVE GRUENBERG asked, "Has that problem been cured?"

MS. CASTO answered yes.

REPRESENTATIVE GRUENBERG said, "Okay, so, there's nothing else other than the make-up of the council."

MS. CASTO confirmed that is correct.

[9:10:42 AM](#)

REPRESENTATIVE GRUENBERG said having served on a similar body many years ago, he is interested to see how this works and what the legislature should be doing. He said he is glad the [council] will be addressing this issue, and he said he would welcome any further advice from the council itself.

CHAIR LYNN asked Ms. Koeneman if she would "assist in putting this together." He stated his intent not only to not let the council expire, but also to do everything possible "in getting it in one package."

[9:11:44 AM](#)

REPRESENTATIVE SEATON requested that copies of the Legislative Budget & Audit sunset review and the department's recommendations be distributed.

[9:12:01 AM](#)

CHAIR LYNN said he would hold public testimony open.

[HB 123 was held over.]

HB 193-LEGISLATIVE ETHICS ACT

[9:12:17 AM](#)

CHAIR LYNN announced that the last order of business was HOUSE BILL NO. 193, "An Act relating to representation by a legislator or legislative employee of another person in an administrative hearing; relating to charity events under the Legislative Ethics Act; requiring compensation of public members of the Select Committee on Legislative Ethics; exempting certain information from disclosure requirements of the Legislative Ethics Act; relating to the selection of alternate members and the participation of members and alternate members in formal proceedings of the Select Committee on Legislative Ethics and its subcommittees; and defining 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit' for the purposes of the Legislative Ethics Act."

[9:12:29 AM](#)

RYNNIEVA MOSS, Staff, Representative John Coghill, Alaska State Legislature, Introduced HB 193 on behalf of Representative Coghill, prime sponsor. She said the bill addresses issues within ethics law which the Select Committee on Legislative Ethics thinks need to be refined. She suggested giving a sectional analysis for the committee.

[9:13:51 AM](#)

REPRESENTATIVE WILSON moved to adopt the proposed committee substitute (CS), Version 26-LS0656\S, Wayne, 3/23/09, as a work draft.

[9:13:59 AM](#)

REPRESENTATIVE SEATON objected for discussion purposes.

[9:14:08 AM](#)

MS. MOSS noted that definitions are found on page 7 of both the original bill and Version S. One definition that has been changed is that of constituent. The original bill limited the definition of constituent as someone living in a candidate's election district. The definition on page 7, lines 24-25, of Version S, read:

(17) "constituent" means a natural person to whom a legislator owes a duty of representation under the Constitution of the State of Alaska;

MS. MOSS explained that the term constituent is used in ethics laws related to controlling campaign. She said, "By defining constituent this broadly in this section of the law, we're causing other problems."

CHAIR LYNN asked, "You mean in the original bill?"

MS. MOSS answered, "In both bills." She stated, "In our discussions this morning, quite frankly, I think what we're looking at is defining the word 'person'."

[9:15:36 AM](#)

JOYCE ANDERSON, Ethics Committee Administrator, Select Committee on Legislative Ethics ("the Ethics Committee"), cited the definition of "person" in AS 01.10.060, which read as follows:

Sec. 01.10.060. Definitions.

(a) In the laws of the state, unless the context otherwise requires,

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

MS. ANDERSON said the definition of person is "very broad."

[9:16:13 AM](#)

MS. MOSS said [the Ethics Committee] is having problems with AS 24.60.030(a)(2), which read as follows:

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person;

MS. MOSS said "person" should be defined, not "constituent". She mentioned [AS 24.60.030(a)(2)(J)], which states that paragraph (2) does not prohibit:

(J) a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

MS. MOSS continued:

So, if you define constituents broadly, then what you're saying is a legislator could send a newsletter statewide, and it could be within a window period very close to an election. It could be a House member who is running for a Senate seat that sends his newsletter to two House districts, which under current law would be unethical. So, in using the word constituent, ... there could be a lot of unintended consequences.

MR. MOSS recommended either that the definition under (17) [of Version S, text provided previously] be eliminated or that the

definition of "person" in [AS 01.10.060, text provided previously] be reinserted.

[9:18:12 AM](#)

REPRESENTATIVE GRUENBERG suggested one way to address the issue would be to delete the word "natural" from paragraph (17) [text provided previously]. He stated that some people have concerns about legislators sending newsletters outside their districts, but Representative Gruenberg said he does not share that concern. He said he thinks a legislator has a duty to exercise free speech. He posited that people are interested in what legislators do, and he thinks legislators have the responsibility to keep the people in the state informed. He clarified that legislators do not solely represent natural people, but also represent groups of people.

MS. MOSS said 24.60.030(a)(2) addresses the use of public funds and facilities. The word constituent is not used in that subsection, she said. The term used is "another person". She clarified, "So, my concern is, we're defining "constituent", but the problem exists in the word "person".

[9:22:28 AM](#)

REPRESENTATIVE WILSON asked for clarification.

[9:22:49 AM](#)

CHAIR LYNN referred to the words "owes a duty of representation" - in paragraph (17) - and said he does not represent the Shriners or Providence [Hospital], for example.

REPRESENTATIVE WILSON related that although she is not the Representative for those living on Prince of Wales Island, she is the Representative closest in proximity; therefore, she receives calls from people who live on the island, at which point she does not tell them they are not her constituents, but rather helps them if she can. She said she thinks it is important to ensure that it is okay for legislators to do that.

MS. MOSS responded as follows:

I think she brings up a good point, and "constituent" certainly could be defined as a person, as it is here. I just think we need to clarify that a person, in this subsection, is defined as it is in Title I.

[9:24:17 AM](#)

REPRESENTATIVE SEATON remarked that by defining the term constituent broadly, big oil companies would be his constituents, yet under campaign law, contributions from oil companies are not allowed. He said he wants to ensure "what ramifications this goes through," and he recommended looking at where the term constituent is used throughout all ethics legislation and APOC regulations.

[9:25:25 AM](#)

MS. MOSS responded, "This ... actually is a definition in this chapter. That's how it is read in Section 24.60.990, definitions (a); in this chapter these words are defined in this manner."

[9:25:47 AM](#)

MS. ANDERSON proffered that there are two sections in ethics statute that use the word "constituent". One is the statute to which Ms. Moss referred, 24.60.030(a)(2)(j), which states that a legislator or legislative employee may not "use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person". Listed under that which paragraph (2) does not prohibit is subparagraph (J), which read as follows:

(J) a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee;

MS. ANDERSON said the other instance where "constituent" appears in ethics statute is in AS 24.60.030(e), which states that a legislator "may not directly, or by authorizing another to act on the legislator's behalf":

(2) state or imply that the legislator will perform or refrain from performing a lawful

constituent service as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value;

[9:27:48 AM](#)

MS. MOSS moved on to the next definition on page 7, lines 26-28, of Version S, which read as follows:

(18) "constituent service" means assistance, including representation other than legal representation and advice other than legal advice, that is provided by a legislator or a legislator's staff to a constituent;

MS. MOSS explained that the language in the original bill version stipulated that the constituent would be "a constituent of the legislator", but that the words "of the legislator" were deleted in the crafting of Version S. She said, "As long as it is a legislative purpose, it doesn't matter where the constituent lives."

[9:28:59 AM](#)

REPRESENTATIVE SEATON interpreted the definitions of "constituent" and "constituent service" - especially if the word "natural" were to be removed - to mean that anybody who wants a legislator to work on an issue is that legislator's constituent.

MS. MOSS responded that that is the intent of the bill sponsor.

REPRESENTATIVE SEATON questioned if that would mean any person - not limited to those in Alaska.

MS. MOSS answered, "Yes, as long as ... the benefit to that person or corporation is no greater than the benefit of anyone in that same class."

REPRESENTATIVE SEATON indicated that the changes pointed out and discussed thus far would make the language very broad.

[9:32:05 AM](#)

REPRESENTATIVE GRUENBERG said he thinks it is important that legislators are allowed to exercise their responsibilities, as long as it's done honestly.

[9:33:16 AM](#)

MS. MOSS talked about legislative purpose and the role of the Ethics Committee to determine whether or not "you've gone too far."

[9:33:51 AM](#)

MS. ANDERSON said when she speaks to legislative offices about constituent service, she tells them that they are the people who help constituents through a process - not to do the process for them. She indicated that the language discussed thus far would allow legislators to "work on some of those other issues," while still putting constraints on legislative office, based on other parts of the ethics code.

[9:35:01 AM](#)

REPRESENTATIVE GRUENBERG said he likes the language of paragraph (17) on page 7, without the word "natural". He talked about California law, the Constitution of the United States, and a term called "long-arm statute." He said the aforementioned language would allow legislators to represent folks "to the extent permitted under the state constitution." He opined that that is a great idea, because it preserves the separation of powers and allows legislators to do their work.

MS. MOSS continued to the next definition, the term "legislative purpose", which appears on page 7, lines 29-30, in Version S, and read as follows:

(19) "legislative purpose" means a goal of a legislative action or a constituent service;

MS. MOSS noted that the original bill specifies that the constituent service would be one "that is a primary goal or, when measured against other goals of the legislative action or constituent service, is a substantial goal". She said the bill sponsor feels that the language in Version S is enough.

MS. MOSS said the definition of "private benefit" has been changed in Version S to read as follows:

(21) "private benefit" means a financial benefit to a person as a result of a legislative, administrative, or political action of which financial benefit to that person in particular is a substantial goal and that is greater than the financial benefit of the legislative, administrative, or political action to a substantial class of persons to which the person belongs by law, choice, legal entitlement, legal privilege, profession, occupation, industry, or region.

MS. MOSS explained that this language follows the premise that the benefit "does not exceed the same benefit that would be applied to any other person in that class." Constituent services, she said, usually take place when something wrong has happened within an agency that has cost the constituent a right or entitlement, and it is the legislator's duty to attempt to correct that wrong. She offered examples. Ms. Moss mentioned House Bill 53 - the Family Rights Act - which she said was brought about as a result of issues brought to legislators regarding Child In Need of Aid laws that needed to be fixed. She concluded, "If we're taking what goes wrong with government and making it right through legislation, then what we're doing with that constituent definitely has a legislative purpose."

[9:39:27 AM](#)

MS. ANDERSON expressed concern about the word "financial" in the definition of "private benefit". She explained that there is already a single definition for the following: "anything of value"; "benefit"; and "thing of value". She continued as follows:

That talks about whether it's tangible or intangible, and it also says "that could reasonably be considered to be a material advantage or material worth, use, or service to the person to whom it is conferred." And the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for.

MS. ANDERSON clarified that she is concerned there could be a conflict between the definition that is being proposed for "private benefit" and the definition that already exists for "benefit". She suggested that the word "financial" be removed [from page 2, lines 2, 3, and 4], because then the language

"private benefit" would be a further qualification based on the established meaning of "benefit."

MS. MOSS said the sponsor would have no problem with that recommendation.

[9:41:40 AM](#)

REPRESENTATIVE SEATON interpreted the combined language of (18) and (19) to mean "the goal of a constituent or corporation that has any interest in the state of Alaska." He added, "I mean we might as well throw the whole thing out, because we're saying that you can basically do anything for anybody, and not only what you do, but as long as it accomplishes their goal."

[9:43:05 AM](#)

MS. MOSS responded that that is not the intent at all. She reiterated that the benefit for one cannot be more than for any person in that class. She said this does not mean that a legislator can solicit a contract for a person or corporation; it means if something goes array with state government that results in personal loss - that is a legislative purpose.

REPRESENTATIVE SEATON said he understands the intent but is just looking at the wording. He clarified that: the proposed language under paragraph (19) defines "legislative purpose" as the goal of constituent service; the proposed language under paragraph (18) defines "constituent service" as including representation provided by the legislature or legislative staff to a constituent; and "constituent" has been defined as anyone who has any interest in anything to do with the state of Alaska. He added, "And it's their goal - not the actual service provided." He said he interprets that to mean the goal of any constituent.

[9:44:39 AM](#)

MS. MOSS replied that the goal of any one constituent is not the goal of a class of people. She said she thinks what Representative Seaton is describing is an independent goal of a person versus the goal that could be shared by a class of people.

[9:45:02 AM](#)

MS. ANDERSON concurred with Representative Seaton's remark that "it's a goal of constituent service." She suggested that the proposed language could be changed to: "legislative purpose means a goal of legislative action or providing constituent service," because constituent service is not really a goal, but something to be provided.

[9:45:44 AM](#)

REPRESENTATIVE SEATON said he thinks the wording needs to be clarified.

MS. ANDERSON concurred.

[9:46:07 AM](#)

MS. MOSS cited the definition of legislative action, which read as follows:

a conduct related to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction.

[9:47:12 AM](#)

REPRESENTATIVE WILSON asked for clarification of Ms. Anderson's latest recommendation.

MS. ANDERSON said she recommends changing the language in paragraph (19), on page 7, lines 29-30 [text provided previously], to read as follows:

(19) "legislative purpose" means a goal of a legislative action or providing constituent service;

MS. ANDERSON said she agrees with Representative Seaton that instead of saying legislative purpose is a goal of a constituent service, the language should convey that legislative action is a goal of legislative action or constituent service, which would clarify that legislative purpose includes constituent service, which has not occurred in statute before.

MS. MOSS said that makes sense.

The committee took an at-ease from [9:48:13 AM](#) to [9:50:19 AM](#).

[9:50:24 AM](#)

REPRESENTATIVE GRUENBERG recommended that a subcommittee be formed to address HB 193.

CHAIR LYNN concurred.

[9:51:05 AM](#)

CHAIR LYNN appointed Vice Chair Seaton, Representative Gruenberg, and Representative Johnson to a subcommittee.

[9:52:23 AM](#)

MS. MOSS returned to the sectional analysis of HB 193. She directed attention to Section 1 of Version S, [which would amend AS 24.60.030(i)]. Ms. Moss reviewed that once a constituent has filed an official appeal and has asked for an administrative hearing, the legislator and legislative staff back away from the issue. The proposed change to that rule would be "unless the legislator or legislative employee is representing another person in the case for compensation and subject to AS 24.60.100".

[9:53:22 AM](#)

REPRESENTATIVE GRUENBERG remarked that it is possible that somebody could be providing representation, for example, for an accountant. He told Ms. Moss he thinks the language is great.

[9:54:03 AM](#)

MS. MOSS moved on to Section 2 of Version S, [which would amend AS 24.60.080(a)]. Ms. Moss noted that Section 2 addresses gifts. She said the proposed change would be in regard to charitable events and tickets. She indicated that [the Ethics Committee] would like to allow the gift of a ticket for a charitable event, but with a limit on that gift of \$250.

MS. MOSS addressed Section 3 of Version S, [which would amend AS 24.60.080(c)]. She said the proposed change is on page 5, [lines 3-5], and would allow a legislator or legislative employee to accept a ticket to a charity event worth over \$250 from a person who is not a lobbyist, an immediate family member of a lobbyist, or acting on behalf of lobbyist. Section 4, she explained would [amend AS 24.60.080(d)] to require the

legislator or legislative employee who receives the ticket to the charity event worth over \$250 to disclose the receipt of that gift.

MS. MOSS said Section 5 would [amend AS 24.60.105] by adding language that would clarify that if a disclosure is against any law - federal or state - then that disclosure would not have to happen.

MS. ANDERSON offered an example.

[9:55:44 AM](#)

REPRESENTATIVE GRUENBERG said he strongly supports that language, because it would protect the right to privacy for people involved in family law.

[9:56:03 AM](#)

MS. MOSS, in response to a question from Representative Wilson regarding the proposed change in Section 3, clarified that any ticket received to a charity event that was valued under \$250 would not have to be reported.

MS. MOSS continued to Section 6, which she said would [amend AS 24.60.130(f)] by implementing a \$150 a day compensation for public members of the Select Committee on Legislative Ethics while they are in meetings.

MS. ANDERSON, in response to a question from Representative Seaton, regarding Section 5, explained that a person refraining from making a disclosure because doing so would violate the United State Constitution, the Constitution of the State of Alaska, or other state or federal law, would give the Ethics Committee, in writing, the reason he/she will not make the disclosure. The committee would "look for the law" to determine that the issue is confidential by some other statute.

REPRESENTATIVE SEATON asked Ms. Anderson to provide the House State Affairs Standing Committee with list of known confidentialities, such as real estate disclosures, so that the committee knows the parameters.

[9:58:29 AM](#)

REPRESENTATIVE JOHNSON offered his understanding that the Constitution of the State of Alaska guarantees everyone the

right to privacy; therefore, he asked if that would mean a person could choose to hold private anything he/she wished.

MS. MOSS said she would have to ask Legislative Legal and Research Services for the answer to that question, but said her intuition is that the answer is no. She said information that is by law confidential would remain confidential.

REPRESENTATIVE JOHNSON said a person's salary is not made confidential by law, but rather is confidential through the policy of a company. However, he said he thinks that would be covered under the Constitution of the State of Alaska as a privacy issue.

REPRESENTATIVE GRUENBERG proffered that there are a series of cases on that issue, and the supreme court, in at least three cases, has "delineated the contours of disclosure in these circumstances." He added, "It's not just your salary's confidential; they haven't gone that far."

[9:59:45 AM](#)

MS. MOSS concluded the sectional analysis, by discussing Section 7, [which would amend AS 24.60.130(n)]. She noted that Section 7 proposes that an alternate public member be allowed on the Ethics Committee. Furthermore, it would provide that if an alternate were to start a proceeding, he/she would finish the proceeding.

[10:00:26 AM](#)

CHAIR LYNN appointed Representative Seaton as chair of the subcommittee.

[10:01:06 AM](#)

TERRY L. THURBON, Chief Administrative Law Judge, Office of Administrative Hearings, Department of Administration, stated that her comments are entirely confined to Section 1 of the bill. She said the goal of the bill, to make a brighter line to limit inappropriate contacts, is laudable. However, the way the bill and committee substitute were originally drafted does not preserve two important things: one, the ability of a legislator or legislative employee to participate in an administrative adjudication as a party or a witness without running afoul of the ethics laws; and, two, the solution to inadvertent ex parte contacts, which is in the subparagraph to the original

provision, which was put into law initially when the Office of Administrative Hearing was created in 2004.

JUDGE THURBON said she has discussed concerns with Representative Seaton and Ms. Moss at much greater length than with Ms. Anderson, and she offered her understanding that there may be an amendment forthcoming, perhaps during the bill's hearing before the House Judiciary Standing Committee or perhaps as a result of the meeting of the newly appointed subcommittee.

CHAIR LYNN suggested the issues brought forth by Judge Thurbon could be addressed in the subcommittee.

[REPRESENTATIVE GRUENBERG] acknowledged yes.

JUDGE THURBON stated, "With that in mind, I don't think I need to add anything else."

[HB 193 was held over, with the objection to the proposed committee substitute (CS), Version 26-LS0656\S, Wayne, 3/23/09, left pending.]

[10:02:50 AM](#)

CHAIR LYNN discussed the upcoming calendar.

[10:03:27 AM](#)

REPRESENTATIVE SEATON indicated he would be announcing a subcommittee meeting time.

REPRESENTATIVE GRUENBERG requested that the announcement be made on the House floor.

[10:04:22 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:04 a.m.