

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 26, 2009

8:05 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Carl Gatto
Representative Pete Petersen

COMMITTEE CALENDAR

HOUSE BILL NO. 123

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

- MOVED CSHB 123(STA) OUT OF COMMITTEE

SENATE BILL NO. 29

"An Act naming the Capitol Annex the Thomas B. Stewart Legislative Office Building."

- MOVED SB 29 OUT OF COMMITTEE

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."

- MOVED CSHB 193(STA) OUT OF COMMITTEE

OVERVIEW: ALASKA PUBLIC OFFICES COMMISSION (APOC)

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
03/24/09 (H) Heard & Held
03/24/09 (H) MINUTE(STA)
03/26/09 (H) STA AT 8:00 AM CAPITOL 106

BILL: SB 29

SHORT TITLE: NAMING THOMAS B. STEWART LEG. OFFICE BLDG

SPONSOR(S): SENATOR(S) ELTON

01/21/09 (S) PREFILE RELEASED 1/9/09
01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) STA
02/26/09 (S) STA AT 9:00 AM BELTZ 211
02/26/09 (S) Moved SB 29 Out of Committee
02/26/09 (S) MINUTE(STA)
02/27/09 (S) STA RPT 4DP
02/27/09 (S) DP: MENARD, KOOKESH, PASKVAN, MEYER
03/02/09 (S) TRANSMITTED TO (H)
03/02/09 (S) VERSION: SB 29
03/09/09 (H) READ THE FIRST TIME - REFERRALS
03/09/09 (H) CRA, STA
03/19/09 (H) CRA RPT 5DP
03/19/09 (H) DP: CISSNA, HARRIS, KELLER, HERRON,
MUNOZ
03/19/09 (H) CRA AT 8:00 AM BARNES 124
03/19/09 (H) Moved Out of Committee
03/19/09 (H) MINUTE(CRA)
03/26/09 (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
03/24/09 (H) Heard & Held; Assigned to Subcommittee
03/24/09 (H) MINUTE(STA)
03/26/09 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

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

POSITION STATEMENT: Outlined the changes proposed in the committee substitute (CS) for HB 123, Version 26-LS0500\R, Bullard, 3/24/09, and answered questions.

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

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

KRISTEN BRESSETTE, Staff
Senator Kim Elton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 29 on behalf of Senator Elton, prime sponsor.

CALEB STEWART
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 29.

MICHELLE SYDEMAN
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 29.

KATIE HURLEY
(No address provided)

POSITION STATEMENT: Testified in support of SB 29.

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

POSITION STATEMENT: Offered clarification during the hearing on HB 193, on behalf of Representative Coghill, prime sponsor.

JOYCE ANDERSON, Ethics Committee Administrator
Select Committee on Legislative Ethics
Legislative Agencies and Offices
Anchorage, Alaska

POSITION STATEMENT: Offered input during the hearing on HB 193.

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke to Amendment 1 during the hearing on HB 193.

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

POSITION STATEMENT: Answered questions during the hearing on HB 193.

ACTION NARRATIVE

[8:05:48 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:05 a.m. Representatives Seaton, Wilson, Johnson, and Lynn were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

HB 123-EXTEND SUICIDE PREVENTION COUNCIL

[Contains discussion of SB 35.]

[8:06:33 AM](#)

CHAIR LYNN announced that the first 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."

[8:06:58 AM](#)

REPRESENTATIVE SEATON moved to adopt the proposed committee substitute (CS) for HB 123, Version 26-0500\R, Bullard, 3/24/09,

as a work draft. There being no objection, Version R was before the committee.

CHAIR LYNN noted that HB 123 mirrors a companion bill, [SB 35].

8:07:40 AM

CRYSTAL KOENEMAN, Staff, Representative Anna Fairclough, Alaska State Legislature, outlined the changes proposed in Version R. She said Section 1 would change the number of members on the council from 15 to 16, by adding one public member. Furthermore, the two members appointed by the Senate and the two members appointed by the House would be nonvoting members. Version R would change the number of members appointed by the governor from 11 to 12. One of the members would represent the Department of Health & Social Services (DHSS), while another would represent the Department of Education & Early Development (DEED).

MS. KOENEMAN reminded the committee that the requirement that one of the council members must be a counselor of a secondary school was problematic, and she said Version R proposes to change that requirement so that the position could be filled by any employee of a secondary school. The requirement that one member must be an adult who is active in a statewide youth organization would be changed to require a person active in a youth organization. Finally, Ms. Koeneman noted that previously there was a requirement that one member must be under the age of 18; however, Version R proposes that that person would need to be enrolled in grade 9, 10, 11, or 12 of a secondary school in the state.

8:09:45 AM

MS. KOENEMAN, in response to a question from Representative Johnson regarding tie votes in an even-numbered council, offered her understanding that someone from the Department of Health & Social Services was present and could respond to that concern. She recollected that [the council] had expressed that it had no concern regarding the issue. In response to Chair Lynn, she indicated that there is a provision whereby the chair of the council could abstain from voting.

8:10:51 AM

REPRESENTATIVE SEATON directed attention to the use of the word "minority" on page 1, lines 11 and 14. He indicated that in "a

number of statutes," the phrase, "from each major political party" is used. He asked Ms. Koeneman if she could explain the reason for the changed wording.

MS. KOENEMAN responded that this wording mirrors the Senate bill; however, she said she would not anticipate a problem with an amendment to change the wording.

[8:11:57 AM](#)

REPRESENTATIVE WILSON suggested that the wording is such because of the current make-up of the Senate.

CHAIR LYNN remarked that the Minority in the Senate is comprised of Republicans, while the Majority party affiliation is a "mixed bag." He said, "It makes things interesting."

REPRESENTATIVE SEATON said, "The Minority doesn't have voting for committee rights, since there's less than twenty-five percent Minority." He said that is "the questionable part."

[8:13:11 AM](#)

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, in response to Representative Seaton, said the division did not make specific recommendations regarding changes to HB 123, but recognized the requirements that needed to be incorporated. She indicated that [Version R] would accomplish two critical points. First, it would establish legislators as nonvoting members, which would mean their presence would not be essential to making a quorum. Second, it would broaden the criteria. She remarked that in four years' time, [the council] will be reviewed once more to determine "how it works."

[8:14:33 AM](#)

MS. DAVIDSON, in response to Representative Gruenberg, explained that the reason for the four-year extension is that the council does not have grant-making authority or a lot of specific authority or the funding to allow for implementation. The council is an advisory board; therefore, the interval between reviews is kept shorter to keep the council "under the gun" to demonstrate that it is being effective.

REPRESENTATIVE GRUENBERG asked if it is the policy of the division to review boards with funding capabilities every eight

years and entities without funding capabilities every four years.

[8:16:31 AM](#)

MS. DAVIDSON responded that it is not a policy. She said the division looks at the Statewide Suicide Prevention Council as an advisory body because of its statutory responsibilities. It is an active body, which is why the division recommended it for an extension. She stated, "These bodies need to demonstrate that they are serving a public purpose." The council is an exception to other boards and councils that are involved in very structured activity, she remarked. In response to a follow-up question from Representative Gruenberg, she said an extension of less than eight years could be assigned to, for example, an occupational board working on substantive statutory changes to mirror what is happening in the profession. Also, if a board is not operating effectively, the division may recommend a shorter time period between audits. She stated, "The criteria that we use in evaluating these boards are set out in statute, and each of those is considered and addressed during the audit. And at the completion of the audit, the audit team makes a recommendations for an extension."

[8:19:37 AM](#)

CHAIR LYNN closed public testimony.

[8:19:45 AM](#)

REPRESENTATIVE SEATON returned to discussion of the aforementioned language on page 1, lines 11 and 14. He said he wants to know if a member of the Minority means the official Minority, so that "if there's less than 25 percent of the body, there's just not a member." Another possibility would be that [the council] "might end up with both Republicans from the other body," since the President of the Senate is a Republican and because "we have all of the minority members who are Republican."

[8:20:50 AM](#)

MS. KOENEMAN said [the bill drafter] chose the language. She suggested that a change could be made now, or she could research the issue, which could then be addressed in the House Finance Committee.

REPRESENTATIVE SEATON opined that the House State Affairs Standing Committee should address the issue, since it pertains to policy.

[8:21:34 AM](#)

REPRESENTATIVE GRUENBERG noted that the language on page 1, lines 11-14, is current language. He asked the members to look at page 3 of [a legislative audit, control number 06-20055-08, included in the committee packet], which shows the current council members as of the last legislature. The report shows that the two members of the Senate were both members of the Majority, although they were Democrats, because "they were members of the working group." The two members in the House were both members of the Minority, and they were both Democrats.

REPRESENTATIVE GRUENBERG suggested an amendment be adopted to allow the Senate President to appoint two members of the Senate and the Speaker of the House to appoint two members of the House, irrespective of party affiliation. He explained, "They're not following this anyway, and I think they have a tough time, probably, getting members who are interested in doing this."

REPRESENTATIVE SEATON observed, "I think that looking at the current membership and looking at the nonpolitical nature of this, ... that would be a good idea."

[8:23:28 AM](#)

REPRESENTATIVE WILSON pointed out that if a change is made to Version R, it would no longer mirror SB 35.

[8:24:21 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1 to Version R, as follows:

On page 1, beginning on line 10:

Between "senate" and " ;"

Delete ", one of whom shall be a member of the majority and one of whom shall be a member of the minority"

REPRESENTATIVE WILSON objected. She said she thinks the current language in Version R has been crafted thus for a reason.

REPRESENTATIVE GRUENBERG told Representative Wilson that "the only changes they made in this ... section are on line 8."

REPRESENTATIVE WILSON maintained her objection.

[8:26:13 AM](#)

A roll call vote was taken. Representatives Seaton, Johnson, and Gruenberg voted in favor of Amendment 1 to Version R. Representatives Wilson and Lynn voted against it. Therefore, Amendment 1 to Version R was adopted by a vote of 3-2.

[8:26:51 AM](#)

REPRESENTATIVE SEATON moved to report CSHB 123, Version 26-LS0500\R, Bullard, 3/24/09, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 123(STA) was reported from the House State Affairs Standing Committee.

The committee took an at-ease from [8:27:24 AM](#) to [8:28:57 AM](#).

SB 29-NAMING THOMAS B. STEWART LEG. OFFICE BLDG

[8:28:58 AM](#)

CHAIR LYNN announced the next order of business was SENATE BILL NO. 29, "An Act naming the Capitol Annex the Thomas B. Stewart Legislative Office Building."

[8:29:13 AM](#)

KRISTEN BRESSETTE, Staff, Senator Kim Elton, Alaska State Legislature, introduced SB 29 on behalf of Senator Elton, prime sponsor. She offered information from the sponsor statement, which read as follows [original punctuation provided]:

SB 29 would name the Capitol Annex the Thomas B. Stewart Legislative Office Building in honor of Judge Thomas B. Stewart and his countless contributions to the State of Alaska. The Capitol Annex was formerly known as the Scottish Rite Temple and is currently under renovation.

Tom Stewart was known and respected throughout Alaska. He served in the territorial House of

Representatives and was a driving force behind the Alaska Constitutional Convention and Alaska statehood. Tom then served as a state senator in the first Alaska Legislature. The remainder of his professional career was spent serving as a Superior Court judge.

More than the distinguished positions he held, Tom was known and respected for his character, wisdom, and leadership. He led by example and remains an inspiration to Alaskans. As we celebrate Alaska's 50th anniversary of statehood this year, it's an appropriate time to honor Judge Thomas B. Stewart.

The estimated completion date of the renovation of Capitol Annex is August 31, 2009.

MS. BRESSETTE noted that there are letters of support from former Governors Walter J. Hickel and Steve Cowper [included in the committee packet]. Governor Sarah Palin has also expressed her support for the proposed legislation, she added.

[8:31:18 AM](#)

CALEB STEWART told the committee that he is the son of the late Judge Thomas B. Stewart. He indicated that five out of six of the children of Judge Stewart support the proposed legislation. In response to Chair Lynn, he shared his memory of his father splitting wood at the age of 74. He relayed that during the time his father ran the territorial committee equivalent to the House State Affairs Standing Committee, he wrote the bill which established the Constitutional Convention.

CHAIR LYNN commented that the state is young enough, at 50 years of age, that many of its founders are still alive.

[8:33:42 AM](#)

MICHELLE SYDEMAN specified that [although she works for the legislature], she is testifying as a private citizen. She spoke of having the privilege of knowing the late Judge Tom Stewart and his many accomplishments. She stated:

In the deepest sense of the word, he was a public servant; he devoted his life to serving his country, his state, his community, his family, and his extraordinarily large circle of friends. I doubt

anyone has ever compiled a complete list of the boards and commissions on which Tom served or the organizations to which he contributed his time and money or the individuals to whom he lent a hand. Tom was a marvelous, highly principled, and generous person. He was a consummate gentleman.

MS. SYDEMAN stated her belief that it is a fitting tribute to this founding father of Alaska to name the capitol annex after him. It will be a small and daily reminder of his great contributions to a state he deeply loved, she concluded.

MS. SYDEMAN, in response to Chair Lynn, recollected that Judge Stewart passed away a year ago, December. She noted that he had been writing a book about the constitutional convention, which some have expressed interest in finishing.

[8:35:46 AM](#)

REPRESENTATIVE WILSON directed attention to an entry [in a compilation of remembrances, included in the committee packet], which was written by a granddaughter of Judge Stewart [Jessica Dillon], and which read as follows [original punctuation provided]:

I was stranded one day and could not get hold of anyone to provide me with a ride down-town, including Grandpa. So, I went to the bus stop and got on the next bus. I found Grandpa sitting in the first seat, first row, and was so surprised, because at that time he had three cars. I asked him why he was riding the bus. He responded that he had a lot of houseguests who needed his cars, and that he enjoyed taking the bus. His generosity and unselfishness never ceased to amaze me. Since it was raining, I tried to persuade him to get off the bus at a stop where it would be a short walk to his house, instead of at his usual stop that was several blocks further away. He turned to me, and said, "of course it's raining, we live in a rain forest and we need the rain." And he then continued, "and we need the exercise too." Of course! What was I thinking? So, we had a nice stroll up through Evergreen Cemetery, and although I returned to work soaked from the rain, I felt fortunate to have had this additional time with him before I headed south, and to have gained a few more "little life lessons" from him.

[8:37:20 AM](#)

KATIE HURLEY testified that she thinks it is wonderful that a building will be named after the late Judge Thomas B. Stewart. She related that two reasons for the success of the Alaska Constitutional Convention were Thomas Stewart's insistence that it be held on the campus of the now University of Alaska - at that time a college - and Bill Egan's election as the chair.

[8:39:51 AM](#)

CHAIR LYNN closed public testimony.

The committee took an at-ease from [8:40:04 AM](#) to [8:40:56 AM](#).

[8:40:58 AM](#)

REPRESENTATIVE SEATON moved to report SB 29 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 29 was reported out of the House State Affairs Standing Committee.

The committee took an at-ease from 8:41:30 to 8:45:34.

HB 193-LEGISLATIVE ETHICS ACT

[8:45:36 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."

[HB 193 was heard and held on 3/24/09, with an objection to the proposed committee substitute (CS), Version 26-LS0656\S, Wayne, 3/23/09, left pending.]

[8:46:18 AM](#)

REPRESENTATIVE SEATON reported on the progress of the subcommittee assigned to consider those items in HB 193 that were highlighted by the House State Affairs Standing Committee. Working with Version S, the subcommittee agreed that "private benefit" [as used in Section 8 of Version S] should mean a benefit, not just a financial benefit. Furthermore, the subcommittee considered the term "legislative purpose" [defined in Section 8 of Version S].

[8:48:51 AM](#)

REPRESENTATIVE SEATON moved to adopt the proposed committee substitute (CS) for HB 193, Version 26-LS0656\C, Wayne, 3/25/09, as a work draft.

[8:49:07 AM](#)

REPRESENTATIVE GRUENBERG objected for discussion purposes.

[8:49:30 AM](#)

REPRESENTATIVE SEATON said he would hence forth be discussing changes to the bill as reflected in [Version C]. He continued with his presentation of the subcommittee's report. He returned the subject of the definition of "legislative purpose" - [in Section 9 of Version C], on page 10, line 24. He said the subcommittee adopted a definition in which legislative purpose "means legislative action or providing constituent service". In the definition of "constituent" found in Section 9 of Version C, the subcommittee deleted the word "natural" before the word "person". He directed attention to Section 1, on page 2 of Version C, wherein he noted that the subcommittee had eliminated wording. In Version S, the wording read as follows:

Section 1. AS 24.60.030(a) is amended to read:

(i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly

contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board or commission with authority to make the final decision in the case unless the legislator or legislative employee is representing another person in the case for compensation and subject to AS 24.60.100

REPRESENTATIVE SEATON said the change to that language would read thus in Version C:

Section 1. AS 24.60.030(a) is amended to read:

(a) A legislator or legislative employee may not
(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080(a)(2)(B), or the acceptance of a gift [LAWFUL GRATUITY] under AS 24.60.075 or 24.60.080 [AS 24.60.080];

REPRESENTATIVE SEATON noted that was not a unanimous decision, but passed in the subcommittee by a 2:1 vote.

[8:53:16 AM](#)

REPRESENTATIVE SEATON noted that the subcommittee also changed the word "gratuity" in AS 24.60.030 to "gift", because "gift" is "the word that is used throughout."

REPRESENTATIVE SEATON said the subcommittee asked the bill drafter, Mr. Wayne, to prepare a legal opinion regarding the definition of the word "constituent" and the use of a constituent e-mail list that is not available to the general public.

[8:54:37 AM](#)

REPRESENTATIVE GRUENBERG noted that the reference to an e-mail list occurs in language on page 2, lines 17-18, [of Version C], which read as follows:

(B) the use of a legislator's legislative mailing list for campaign purposes, or the use of mailing lists, computer data, or other information lawfully obtained from a government agency and

available to the general public for nonlegislative purposes;

REPRESENTATIVE GRUENBERG stated his belief that that language was an amendment that is not formally listed [in the subcommittee report].

[8:55:42 AM](#)

RYNNIEVA MOSS, Staff, Representative John Coghill, Alaska State Legislature, on behalf of Representative Coghill, prime sponsor of HB 193, related:

It was discussed with Mr. Wayne that if this language did not cover that, he was to come up with some language that did.

REPRESENTATIVE SEATON confirmed that it is also his understanding that a request had been made of the bill drafter to research the issue to determine whether or not there was a conflict or clarification was needed between the statute and the legal advisory opinion. He said Mr. Wayne must have decided that there was no conflict.

[8:59:01 AM](#)

JOYCE ANDERSON, Ethics Committee Administrator, Select Committee on Legislative Ethics, stated:

You certainly could use that address or that e-mail address, but you could not use state resources to do it if you were going to use it for campaign purposes.

CHAIR LYNN indicated that that information could be taken to a home computer for "doing my campaign thing."

MS. ANDERSON replied, "Exactly."

[8:59:26 AM](#)

REPRESENTATIVE JOHNSON asked if this would work in reverse - "if it would be covered" if he brought his campaign mailing list to the legislature.

MS. ANDERSON responded, "Yes, it would be."

[8:59:48 AM](#)

REPRESENTATIVE SEATON continued with the subcommittee report. He said the subcommittee asked Mr. Wayne for a legal opinion regarding the definition of a constituent and an interpretation of duty of representation under the Constitution of the State of Alaska. Mr. Wayne reported that he could find no explicit duty of representation in the constitution, and he suggested one interpretation may be that "you owe a duty under the constitution." Representative Seaton indicated that the subcommittee is comfortable having that legal opinion follow to the House Judiciary Standing Committee.

[9:01:19 AM](#)

REPRESENTATIVE GRUENBERG noted that the language on page 4, lines 9-10, is similar to the language on page 2, lines 17-18 [text provided previously].

MS. MOSS, in response to Representative Gruenberg, confirmed that the review of the subcommittee's proposed changes was complete.

[9:02:18 AM](#)

REPRESENTATIVE GRUENBERG removed his objection to adopting Version C as a work draft. There being no further objection, Version C was before the committee.

[9:02:46 AM](#)

MS. MOSS said the bill sponsor feels strongly that when [a legislator] takes the oath of office, he/she is taking an oath to represent everyone in Alaska, to protect the rights given them through the Constitution of the State of Alaska.

CHAIR LYNN commented that although he represents his constituency, 99 percent of everything on which he has voted affects the entire state. He asked, "Does one duty or representation surpass the other?"

MS. MOSS opined that the answer is no, because all Alaskans have equal rights under the constitution.

[9:03:55 AM](#)

REPRESENTATIVE SEATON noted that part of the subcommittee's discussion revolved around the question of what makes up the

definition of an Alaskan. For example, would a company that has activity in the state be an Alaskan? He mentioned financial benefit and indicated that was part of "the ... moving natural person discussion." He stated that one intent of the subcommittee is to make clear for the Ethics Committee the bases on which it makes its decisions. He said he thinks the entire subcommittee agreed to identify the issue and request the [legal] information, then pass that on to the next committee of referral.

[9:05:40 AM](#)

MS. MOSS, in response to Representative Wilson, explained that the subcommittee report currently in the committee packet contains some notes unrelated to HB 193, and she said she would e-mail an updated copy to each committee member.

The committee took an at-ease from [9:08:27 AM](#) to [9:09:34 AM](#).

[9:09:47 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1, labeled 26-LS0656|S.1, Wayne, 3/25/09, which read as follows:

Page 1, line 7, following "**subcommittees**;"

Insert "**establishing that persons who are subject to the Legislative Ethics Act may rely without prejudice on certain advice from employees of the Select Committee on Legislative Ethics**;"

Page 7, following line 22:

Insert a new bill section to read:

"* **Sec. 8.** AS 24.60.158 is repealed and reenacted to read:

Sec. 24.60.158. Informal advice. (a) The committee shall authorize and train at least one committee staff employee to respond to requests from legislators, legislative employees, or public members of the committee for advice about the legal requirements of this chapter, including advice as to whether the facts and circumstances of a particular case constitute a violation of ethical standards under this chapter. However, the advice provided by staff is not binding on the committee except as provided under (b) of this section.

(b) A person who is a legislator, legislative employee, or public member of the committee may

request a written staff opinion as to whether the facts and circumstances of a particular case constitute a violation of ethical standards under this chapter, and committee staff shall respond to a request made under this subsection in a writing entitled "staff advisory opinion." If the person who requests the opinion provides with the request all information that the person reasonably believes is material to the request, and all information the staff requests, and if the information provided is accurate to the best of the person's understanding, then the person may rely on the written opinion without prejudice unless it is rescinded by the committee.

(c) The committee is bound by a staff advisory opinion under (b) of this section to the same extent it is bound by an advisory opinion under AS 24.60.160; however, a staff advisory opinion may be rescinded by a majority vote of the committee. An opinion under (b) of this section, whether or not it is rescinded, is subject to the redaction and confidentiality requirements of AS 24.60.160(b)."

Renumber the following bill section accordingly.

[9:09:59 AM](#)

REPRESENTATIVE JOHNSON objected.

[9:10:08 AM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, spoke to Amendment 1. He explained that according to current law, when legislators or legislative employees ask for advice from the staff of the Ethics Committee, they rely on that advice at their own risk. The problem with getting fined related to an Ethics complaint is that the public then thinks that the legislator involved is unethical, when he/she may have been just following the advice given by the Ethics Committee staff. Amendment 1 would allow legislators and legislative staff to rely on that advice, provided they had given the Ethics Committee staff all relevant information.

CHAIR LYNN asked how this might affect Ms. Anderson's position.

[9:15:29 AM](#)

REPRESENTATIVE GARA responded that he assumes Ms. Anderson is already doing a thorough job in her response to ethics questions; therefore, the only difference to Ms. Anderson may be that her response would be in writing.

[9:17:12 AM](#)

REPRESENTATIVE WILSON said she has called Ms. Anderson many times and has been told various considerations that need to be made rather than being given a yes or no answer. She said she does not want to put Ms. Anderson into a position where she may not have been given a detail that would have changed her response, resulting in the matter becoming one of "he said/she said."

REPRESENTATIVE GARA said that situation would be protected by the language [found within subsection (b)] of Amendment 1.

CHAIR LYNN asked what use there would be for the Select Committee on Legislative Ethics if Amendment 1 was adopted.

REPRESENTATIVE GARA replied that the ethics committee would still review the cases involving "close questions," the remainder of the ethics statute would still exist, and the Ethics Committee could still consider each situation independently.

[9:20:07 AM](#)

REPRESENTATIVE WILSON said any time Ms. Anderson tells her she is not 100 percent certain about an issue, she [Representative Wilson] decides, "I'm not going to do it." She said Representative Gara has not yet convinced her [of the need for Amendment 1].

REPRESENTATIVE GARA noted that current statute requires Ms. Anderson to tell the inquirer that she is not 100 percent certain. Amendment 1 would not change that.

REPRESENTATIVE WILSON stated another concern that it costs those in remote areas quite a bit of money to have a formal hearing.

[9:22:15 AM](#)

REPRESENTATIVE JOHNSON, regarding subsection (b) in Amendment 1, asked Representative Gara how he defines "reasonably believes" when what is reasonable to one person may not be to the next.

REPRESENTATIVE GARA said the goal is for the legislator to provide the Ethics Committee staff with "all material information." He said a person may submit 10 pieces of information and not know that an eleventh piece existed; therefore, the person would have submitted everything he/she knew about. He said a legislator cannot be asked to do more than provide information in all honesty and in good faith.

[9:23:45 AM](#)

REPRESENTATIVE JOHNSON indicated that the language is ambiguous, and he said he would like to know, "What exactly are we trying to fix?" He asked for an example of a specific case.

REPRESENTATIVE GARA offered an example in which a legislator is offered "some sort of event to go to," and he/she does not know whether or not the event must be reported or is okay to attend. The event is happening eminently. If the legislator goes to the event based on the opinion received from Ethics Committee staff, and subsequently the Ethics Committee decides that the event is not sanctioned, the legislator could be accused of committing an ethics violation.

REPRESENTATIVE JOHNSON said there are various levels involved. For example, he said he would feel comfortable defending his attendance at his daughter's Girl Scout troop's jamboree. However, there are some events that may result in a battle that he does not want to fight. In those cases, he said, he wants very specific information and would wait however long it takes to get [an okay from the Ethics Committee]. He stated, "I have a lot of confidence in Joyce, but ... if it rises to that level to where I think it can cost me an election, that's a no-brainer."

REPRESENTATIVE GARA said he also would not engage in a situation that he thinks is a "close call." He offered another example in which a legislator wants to work longer on a case for a constituent in need, but there is a limit of 10 hours that a legislator can give to one constituent's case. That constituent needs help by the end of the week. The legislator asks [Ms. Anderson] if it would be okay to help the constituent more than 10 hours and "the answer is yes." However, someone who knows the issue has been one of contention files a complaint against the legislator. The Ethics Committee then deliberates and decides that although what the legislator did was motivated by good intentions, the statute does limit the time to 10 hours,

thus, the legislator has violated ethics statute. Representative Gara said that legislator would, for the rest of his/her life, "walk around with the badge that says you engaged in unethical conduct."

9:29:39 AM

REPRESENTATIVE SEATON said the problem is that most of the informal advice obtained will be "not 100 percent sure," which means that those issues will be heard by the Ethics Committee. Furthermore, he stated his belief that "they" would not be issuing an opinion in the one-week time period used in Representative Gara's example without the issue going through legal review. He said it seems that [Amendment 1] is an attempt for a "quick cure," but "we're putting in a bullet that's a long, long bullet."

9:31:20 AM

MS. ANDERSON said she agrees with a lot of the comments of the committee members thus far. She stated that if it is the legislature's wish to change the process for informal advice, she, and the Ethics Committee would take whatever action needed to implement that process. However, she pointed out some areas that she thinks may be problematic. She said she agrees with Representative Seaton's comment that more people would request her opinion in writing, which would increase her work load and make it necessary to increase her staff from part time to full time and hire an attorney. She stated, "I feel that if someone's going to want to have binding advice, it's going to involve just a little bit more; I might not have a yes or no answer, because there is no yes or no answer with ethics."

MS. ANDERSON stated that sometimes when she gives advice, she talks about the appearance of impropriety - that although the statute does not prohibit the questioned thing, there are concerns that she suggests the individual might want to consider. She then leaves it to the individual to make the decision. She stated that she would feel a little uncomfortable doing that "if this was going to be binding advice," even if she told the individual that it would be his/her choice.

MS. ANDERSON talked about the make-up of the Ethics Committee: nine members, four of which are legislators and five public members who vote on advisory opinions. The chair of the committee is a volunteer, she noted. She stated that she would be uncomfortable issuing advice in writing that would not be

"black and white," without running it by the chair. Therefore, she said she thinks [the requirements in Amendment 1] would put a burden on the committee. She pointed out that if she did have to hire staff, her office would have to be moved to create more space.

9:34:36 AM

MS. ANDERSON related that she receives hundreds of calls. Some of the answers she gives are very black and white. She said she does not anticipate that those answers would be required in writing, but it would be the option of the legislator or legislative staff person to request the answer in writing. There are times when people call and ask questions, to which Ms. Anderson says she does follow up in writing, because she feels that the conversation was very complicated, and many facets were involved in the answer. Ms. Anderson said she is confused as to whether Amendment 1 would require that the advice be published, which would then require a redaction of all the identifying information. She said that would take time, but is possible, and would perhaps be helpful to people looking to see what advice has been given to other individuals. She noted that she publishes advisory opinions every January. She continued:

That's a very positive part of this particular amendment, because then it would get the information out for questions that might be similar. On the other hand, what we do on our web site right now with advisory opinions is we say that if the facts and circumstances are not exactly the same as in the advisory opinion, you cannot rely on that advisory opinion for your own particular situation.

MS. ANDERSON cited AS 24.60.165, which read as follows:

Sec. 24.60.165. Use of information submitted with request for advice.

The committee may not bring a complaint against a person based upon information voluntarily given to the committee by the person in connection with a good faith request for advice under AS 24.60.158 or 24.60.160, and may not use that information against the person in a proceeding under AS 24.60.170. This section does not preclude the committee from acting on a complaint concerning the subject of a person's request for advice if the complaint is brought by

another person, or if the complaint arises out of conduct taking place after the advice is requested, and does not preclude the committee from using information or evidence obtained from an independent source, even if that information or evidence was also submitted with a request for advice.

MS. ANDERSON concluded, "So, there is some sort of protection there right now, but it's not exactly what is in the amendment.

[9:37:38 AM](#)

REPRESENTATIVE WILSON asked if Ms. Anderson holds some people at a higher standard than others. She explained that in the medical profession, a nurse would be held to a higher standard than a nurse's aide, because the former would know more than the latter.

MS. ANDERSON answered no. She added that the only exception may be that the language she uses to verbally explain a matter to an attorney may be different from what she would use to explain the same information to someone who is not an attorney.

[9:39:30 AM](#)

MS. MOSS said she has not discussed [Amendment 1] with the bill sponsor, and whether or not to adopt it would be a policy call for the committee to make. She predicted the amendment would not pass through the committee, but she hopes the matter will be discussed in the House Judiciary Standing Committee.

[9:40:05 AM](#)

A roll call vote was taken. Representative Gruenberg voted in favor of Amendment 1. Representatives Seaton, Wilson, Johnson, and Lynn voted against it. Therefore, Amendment 1 failed by a vote of 1-4.

[9:40:57 AM](#)

REPRESENTATIVE SEATON [moved to adopt] Conceptual Amendment 2, which read as follows [original punctuation provided]:

Page 5 line 7 following "or witness in the matter" insert "or responding to an interrogative from an administrative officer"

REPRESENTATIVE WILSON objected for discussion purposes.

[9:42:10 AM](#)

MS. MOSS, in response to Representative Wilson, explained that an interrogative is a list of questions that are written and responded to in writing. She likened it to a deposition, except that the answers are written rather than given orally.

[9:42:49 AM](#)

REPRESENTATIVE SEATON pointed out that the amendment is being offered conceptually. He noted that there had been some question regarding the language that had been proposed [at the end of the first paragraph in Section 1, Version S, which read as follows]:

(i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the **legislator or legislative employee is representing another person in the case for compensation and subject to AS 24.60.100**

REPRESENTATIVE SEATON said the question came up as to whether or not a legislator or legislative office could respond if not serving as a witness but asked for information by an administrative officer. The purpose of Conceptual Amendment 2 is to clarify that a legislator or legislative office could respond to such a request.

MS. MOSS said she thinks the use of the word "interrogative" may be restrictive. She suggested using the word "inquiry" instead.

[9:44:40 AM](#)

REPRESENTATIVE SEATON moved to amend Conceptual Amendment 2, to use the word "inquiry" rather than "interrogative".

[9:45:28 AM](#)

REPRESENTATIVE GRUENBERG questioned which terms should be used: "inquiry", "interrogative", or "interrogatory". Furthermore, he questioned, "Should it also cover these kinds of formal discovery requests or whatever, from another party?"

[9:45:40 AM](#)

TERRY L. THURBON, Chief Administrative Law Judge, Office of Administrative Hearings, Department of Administration, said she would recommend using the word "inquiry". She offered further details. She emphasized that "this shouldn't be happening to begin with." She explained that if the administrative officer who is sending an office inquiry of some kind is actually "the neutral" who is ultimately going to decide the case, he/she should not be outside the context of the hearing process on the record with the other parties involved. Sometimes, she related, a discussion changes course and suddenly pertains to an issue in a case that will come before the administrative officer. When that happens, it is time to end the conversation and make a disclosure for the record that the mention of the topic was inadvertent and no harm was done. If it will appear that the administrative officer was influenced by the conversation, he/she could recuse him/herself. The matter would be open and transparent, so there would be no ethical problem.

[9:48:29 AM](#)

JUDGE THURBON stated, "So, with that in mind, I don't think the amendment is necessary." She added that it also may not be necessary because "earlier up in the section, we have the legislator or legislative employee being told they may not attempt to influence the outcome of the hearing by directly or indirectly contacting the person who's going to hear the case."

[9:48:53 AM](#)

REPRESENTATIVE SEATON said if someone is asking a legislator or legislative employee a question, "we shouldn't be under some burden to ... figure out" whether or not it is okay to give out the information being requested.

[9:50:32 AM](#)

REPRESENTATIVE GRUENBERG clarified that Judge Thurbon is saying that it is a violation of the Canons of Judicial Ethics for a judge or anybody who is a decision maker to contact a legislator or legislative employee in an ex parte basis; therefore [Conceptual Amendment 2] is unnecessary.

[9:51:10 AM](#)

REPRESENTATIVE SEATON clarified that he is not talking about what "they" can do; he wants it clear what "we" can answer. He offered an example.

[9:51:38 AM](#)

MS. MOSS described an instance where both parties may be asked, separate of each other, to do something in the best interest of a constituent. In response to Chair Lynn, she said she does not think Conceptual Amendment 2 would hurt anything, and it would help legislators and legislative employees feel better about "acting when they are contacted."

[9:52:48 AM](#)

JUDGE THURBON stated that it is not always clear what the role is of people in the executive branch; therefore, it will not always be clear when such a person is talking about a case. She said anyone else is okay to talk to, for example: a representative from the oil and gas industry, the lawyer representing that industry, a private party, or the private party's lawyer. She stated:

The only bar that this provision that's currently on the books was intended to bar was the inappropriate contacts with a decision-maker. And I don't know that adding this phrase, "or responding to an inquiry from an administrative officer" cures that problem; I think it muddies the water a little bit, perhaps, by bringing back in some of the language that the ... CS is getting rid of.

JUDGE THURBON reiterated that the ethical problem surrounding responding to a question from an administrative officer who is hearing the case being discussed is mostly the problem of that administrative officer for having asked the question privately in the first place. If the legislator or legislative employee being asked the question becomes aware of the situation, then

he/she needs to disclose the exchange in order to solve the ethical problem.

REPRESENTATIVE WILSON questioned why Conceptual Amendment 2 could not read "for responding to an inquiry".

[9:55:00 AM](#)

MS. MOSS, in response to Representative Gruenberg, related that in her previous example, one of the people of whom she spoke is an employee who sits in hearings and makes decisions.

[9:56:17 AM](#)

REPRESENTATIVE GRUENBERG told Representative Seaton that when the bill is heard by the House Judiciary Standing Committee, he [Representative Gruenberg] would commit to working with the parties and Representative Seaton. He said he has an amendment that he will defer to the House Judiciary Standing Committee.

REPRESENTATIVE SEATON said he would like the committee to vote on the amendment.

[9:57:11 AM](#)

A roll call vote was taken. Representatives Johnson, Seaton, and Lynn voted in favor of Conceptual Amendment 2, [as amended]. Representatives Wilson and Gruenberg voted against it. Therefore, Conceptual Amendment 2, as amended, was adopted by a vote of 3-2.

CHAIR LYNN offered his understanding that the amendment to Conceptual Amendment 2 had previously been adopted.

The committee took an at-ease from [9:58:09 AM](#) to [9:58:50 AM](#).

[9:58:53 AM](#)

REPRESENTATIVE JOHNSON moved to adopt Amendment 3, which read as follows [original punctuation provided]:

Page 1, line 12 insert:

(i) Except when representing another person as a licensed professional in the State of Alaska in the case for compensation and subject to AS 24.60.100

REPRESENTATIVE JOHNSON explained that he was moving the amendment just to have it on the record that it had been discussed during the subcommittee meeting.

[9:59:12 AM](#)

REPRESENTATIVE GRUENBERG objected. He stated that he thinks it was improper for his own amendment to have been offered when there is no time to debate the issue.

[9:59:56 AM](#)

REPRESENTATIVE JOHNSON explained that he did not intent to advance the amendment, and he reiterated that the subcommittee discussed the issue at length. He withdrew Amendment 3.

REPRESENTATIVE GRUENBERG said he appreciates that.

[10:00:16 AM](#)

REPRESENTATIVE SEATON moved to report CSHB 193, Version 26-LS0656|C, Wayne, 3/25/09, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 193(STA) was reported out of the House State Affairs Standing Committee.

[10:00:48 AM](#)

CHAIR LYNN discussed the upcoming calendar.

[10:01:18 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:01.