

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

March 16, 2010

8:09 a.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 348

"An Act relating to the membership of the state personnel board."

- MOVED CSHB 348(STA) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 194(JUD)

"An Act relating to penalties and civil damages for certain alcohol violations."

- MOVED OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 348

SHORT TITLE: PERSONNEL BOARD MEMBERSHIP

SPONSOR(S): REPRESENTATIVE(S) LYNN

02/17/10	(H)	READ THE FIRST TIME - REFERRALS
02/17/10	(H)	STA, JUD
03/11/10	(H)	STA AT 8:00 AM CAPITOL 106
03/11/10	(H)	Heard & Held
03/11/10	(H)	MINUTE(STA)
03/16/10	(H)	STA AT 8:00 AM CAPITOL 106

BILL: SB 194

SHORT TITLE: MINORS: ALCOHOL VIOLATIONS/ I.D. CARDS  
SPONSOR(s): SENATOR(s) MEYER

04/17/09 (S) READ THE FIRST TIME - REFERRALS  
04/17/09 (S) STA, JUD  
01/28/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
01/28/10 (S) Moved CSSB 194(STA) Out of Committee  
01/28/10 (S) MINUTE(STA)  
01/29/10 (S) STA RPT CS 5DP NEW TITLE  
01/29/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,  
KOOKESH  
02/10/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/10/10 (S) Heard & Held  
02/10/10 (S) MINUTE(JUD)  
02/15/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/15/10 (S) Heard & Held  
02/15/10 (S) MINUTE(JUD)  
02/17/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/17/10 (S) Moved CSSB 194(JUD) Out of Committee  
02/17/10 (S) MINUTE(JUD)  
02/18/10 (S) JUD RPT CS 3DP 1NR NEW TITLE  
02/18/10 (S) DP: FRENCH, WIELECHOWSKI, EGAN  
02/18/10 (S) NR: COGHILL  
02/22/10 (S) TRANSMITTED TO (H)  
02/22/10 (S) VERSION: CSSB 194(JUD)  
02/23/10 (H) READ THE FIRST TIME - REFERRALS  
02/23/10 (H) STA, JUD  
03/16/10 (H) STA AT 8:00 AM CAPITOL 106

**WITNESS REGISTER**

MICHAEL SICA, Staff  
Representative Bob Lynn  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 348 on behalf of  
Representative Lynn, sponsor.

WILLIAM MILKS, Assistant Attorney General  
Labor and State Affairs Section  
Civil Division (Juneau)  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the hearing on HB 348.

MIKE FORD, Assistant Attorney General & Legislative Liaison  
Legislation & Regulations Section

Civil Division (Juneau)  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Offered information during the hearing on HB 348.

DOUG WOOLIVER, Administrative Attorney  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information during the hearing on HB 348.

NICKI NEAL, Director  
Division of Personnel & Labor Relations  
Department of Administration  
Juneau, Alaska

**POSITION STATEMENT:** Discussed the zero fiscal note to HB 348.

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

**POSITION STATEMENT:** Introduced SB 194 on behalf of Senator Meyer, sponsor.

OTHAL C. MADDEN III, Director of Operations  
Brown Jug, Inc.  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 194.

SENATOR KEVIN MEYER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as sponsor of SB 194.

#### **ACTION NARRATIVE**

[8:09:06 AM](#)

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

**HB 348-PERSONNEL BOARD MEMBERSHIP**

8:09:58 AM

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 348, "An Act relating to the membership of the state personnel board."

8:10:15 AM

MICHAEL SICA, Staff, Representative Bob Lynn, Alaska State Legislature, presented HB 348 on behalf of Representative Lynn, sponsor. He reminded the committee that HB 348 would change the membership of the Alaska State Personnel Board from three to five. The governor would make an appointment from a list of at least three nominees selected by the chief justice of the Alaska Supreme Court. Furthermore, the proposed legislation would ensure that at least one member of the political party of the candidate for governor who received the highest number of votes and one member of the political party of the candidate for governor who received the second-highest number of votes would serve on the board. Mr. Sica explained that the reason for the legislation is to create a board that operates with greater independence.

MR. SICA said Sections 2 and 4 are conforming sections. He described Section 3 as a "conflict" section, because it would prohibit board members from certain activities that may lead to or be perceived as a conflict of interest. Mr. Sica said Section 5 relates to the duration of terms.

8:12:01 AM

CHAIR LYNN said there are two reasons for the proposed bill. First, it would protect the governor from unfair criticism from the public, by reassuring the public regarding the personnel board appointments. Second, it would help the governor to know that he/she is receiving unbiased decisions from the board.

8:14:19 AM

WILLIAM MILKS, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Juneau), Department of Law, stated that the bill as currently drafted would change the process for appointment to the personnel board, wherein the governor would make an appointment from a list of nominees chosen by the chief justice, and the governor's choice would be

subject to confirmation by the legislature. He reminded the committee that the Department of Law has taken the position that these types of restrictions on the governor's appointment power create constitutional issues. He explained that is because Article 3, Section 26, of the Alaska State Constitution directly addresses appointments to commissions or boards and provides that the board member shall be appointed by the governor, subject to confirmation of the legislature. He referred to a case, Bradner v. Hammond, in which the court indicates that Sections 25 and 26 are clear. He related that the executive's point of power is limited only as set forth in Section 26, which provides for confirmation.

[8:16:27 AM](#)

MR. MILKS said the department is aware that there are a number of statutes that have been enacted that provide for the governor to appoint from lists; however, he said the department has held the position that appointments from lists raise constitutional issues under Bradner and under the Constitution of the State of Alaska.

CHAIR LYNN asked, "Has this been a problem in these other appointments?"

MR. MILKS answered, "Well, I suppose any case can always be brought in litigation, so, that's there, just like this bill would be there; we do identify that issue." Mr. Milks said other types of limitations exist, such as qualifications for certain boards or commissions where there may be requirements for members to hold certain advanced degrees in order to address certain issues. He said that has not proved to be a significant issue, whereas "strict appointments off lists" has.

[8:18:01 AM](#)

REPRESENTATIVE GATTO asked what the governor's rights are in making appointments, under current law.

[8:18:19 AM](#)

MR. MILKS answered by citing Article 3, Section 26, of the Constitution of the State of Alaska, which read as follows [original punctuation provided]:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

MR. MILKS, in response to Representative Gatto, said the Bradner case relates to Section 25 of the Constitution of the State of Alaska. He explained that the legislature passed a statute to enable itself to provide for confirmation of deputy heads of departments and 19 specific directors of divisions, and in the Bradner case, the court decided that the effort to require confirmation of these executive branch appointees violated the separation of powers. Mr. Milks said there is also language in the court's decision regarding Sections 25 and 26, which "indicates that ... the powers have been separated here through the constitution, and shows ... where the legislative [branch's] power is and where the executive [branch's power is]."

REPRESENTATIVE GATTO questioned if it is against separation of powers when [the governor's] appointments are subject to confirmation by the legislature. He added, "That gives us authority over the governor's ability to appoint."

MR. MILKS responded that the provisions and the Bradner case exist, but he cannot predict how "this entire system plays itself out" if a court reviews any particular statute.

REPRESENTATIVE GATTO asked if a governor could repeatedly demand three additional appointees, and continue to refuse them all.

[8:22:00 AM](#)

MR. MILKS responded said he thinks that the proposed legislation does provide for the ability to ask for additional names.

CHAIR LYNN suggested this is somewhat parallel to when the legislature had to fill the vacancy in the Senate and several lists were submitted before the governor made an appointment.

[8:22:38 AM](#)

MIKE FORD, Assistant Attorney General & Legislative Liaison, Legislation & Regulations Section, Civil Division (Juneau), Department of Law, concurred that there are some parallels to that situation in the sense that there are some gray areas. Statute offers certain guidelines, he said, "but there are some gaps." He said the situation to which Chair Lynn referred highlighted some of those gaps.

MR. FORD offered his understanding that the department is pointing out that since the 1976 Alaska Supreme Court case, there have been a lot of variations on a theme. He said the legislature passed some provisions that may not comply with the state constitution, but there has not been litigation to the point that the department has any new information to present to the legislature. He clarified:

So, all we're trying to do is say we think there's an issue here. Obviously, if this became law and no one challenged it, there is no issue, but if it does become law and someone does challenge it, then the court's going to have to look at this case and decide if it's still valid law. If it is, then the bill you have in front of you could create some problems.

CHAIR LYNN suggested that that could be said of almost any bill passed by the legislature.

MR. FORD responded that some bills raise more issues than others.

[8:24:08 AM](#)

CHAIR LYNN asked which would insulate the governor from incoming complaints: the system in place now or the one proposed in HB 348.

[8:24:42 AM](#)

MR. FORD said he thinks the bill does provide at least a layer of insulation; it would create a system where there is some distance between the governor and the board.

[8:25:06 AM](#)

REPRESENTATIVE P. WILSON opined, "If it's okay to do it with appointing a Senator, surely [it] should be okay ... to do it with appointing someone to the personnel board."

[8:25:37 AM](#)

REPRESENTATIVE PETERSEN observed that the fact that the terms on the personnel board are six years and staggered means that some members will be left over from the previous governor; therefore, the governor could not be accused of stacking the board.

CHAIR LYNN expressed his hope that by having a larger number of board members, there would be a greater diversity of opinion when it comes to making decisions.

[8:26:53 AM](#)

REPRESENTATIVE SEATON directed attention to language in HB 348, beginning on page 1, line 15, through page 2, line 3, which read as follows:

A vacancy in an unexpired term shall be filled by appointment by the governor for the remainder of the term. The appointment is **made from a list of nominees and** subject to confirmation in the same manner as a full-term appointment.

REPRESENTATIVE SEATON asked if that language is written in a way that would allow a person to serve on the board until the legislature comes into session and confirms his/her appointment.

[8:27:58 AM](#)

MR. FORD noted that proposed language in the sentence preceding line 15 read, "**the member remains in office after expiration of the term until a successor is confirmed**". He said he does not see that there would be a vacancy.

REPRESENTATIVE SEATON suggested that there could be a situation in which someone dies before his/her term expires. He said it appears that the bill is anticipating those situations, and he wants to ensure that a person will be able to fill that vacancy and serve until his/her confirmation or rejection has been decided. He stated that the last thing he wants to see is a political fight over an appointment.

[8:29:29 AM](#)

MR. FORD stated his belief that serving before actual confirmation is the usual practice. In response to Chair Lynn, he confirmed that that applies to the attorney general, as well.

8:32:02 AM

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System, stated that although the Alaska Court System typically does not support or oppose bills, it is not enthusiastic about HB 348. The court occasionally is involved in forwarding names for nominations. For example, the court forwards names to the Select Committee on Legislative Ethics and appoints the fifth member of the redistricting board. However, Mr. Wooliver said the court is reluctant regarding the proposed legislation for a couple reasons. First, there is an inherent political aspect to the appointment process, and the court must pay attention to the political affiliation of the names it submits. This is a political environment, which the court generally tries to avoid. The other area of concern, he related, is that unlike the Select Committee on Legislative Ethics, which deals with ethics issues, the personnel board keeps an eye on how personnel in the executive branch is managed. He stated, "The court is reluctant to take on a role that is even kind of minor and indirect in determining how that management defers or how that management staff is put in place."

8:34:04 AM

MR. WOOLIVER, in response to Chair Lynn, said the court's reaction to the proposed legislation does not have to do with an issue of workload.

8:34:26 AM

REPRESENTATIVE PETERSEN asked Mr. Wooliver if he can suggest who better to bring forth these names.

MR. WOOLIVER answered no. He said he understands the rationale behind proposing that the court make the list of nominees.

8:35:05 AM

MR. WOOLIVER, in response to Chair Lynn, said he is not sure how the chief justice would select the names, but it could involve a

combination of accepting names from interested parties and searching for suitable parties.

[8:35:36 AM](#)

REPRESENTATIVE GATTO directed attention to a term on page 1, line 10: "party of the candidate for governor". He pointed out that as soon as the election is over, the governor is no longer a candidate, and he asked how that term applies to a governor making appointments.

[8:36:23 AM](#)

MR. WOOLIVER said he interprets that language to mean that in a typical election, there is a candidate from each major party, and one of them gets the highest number of votes, while the other gets the second-highest votes and does not become governor. He speculated that the language may come from the existing language of the appointment process for the Select Committee on Legislative Ethics. He said Representative Gatto is correct that at the point of making the appointments, the governor would no longer be a candidate.

[8:37:09 AM](#)

MR. SICA offered his understanding that the language in that section of the proposed legislation merely refers to the last general election, and it comes from AS 15.13.020(b), which read as follows:

(b) The governor shall appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party.

REPRESENTATIVE GATTO, in response to Chair Lynn, said that response cleared up the issue.

[8:38:12 AM](#)

REPRESENTATIVE GRUENBERG opined that it would be a fairly cumbersome process for the chief justice to propose to the governor, who would then propose to the legislature. He

suggested one alternative would be for the governor to propose appointees to the legislature without involving the chief justice. The other option, he proffered, would be to have the chief justice propose appointees to the legislature, without involving the governor. He said he favors the latter approach, because it would avoid the appearance of impropriety that may result in having the governor choosing members for the chief ethics board for the executive branch. He asked Mr. Wooliver to comment.

[8:39:25 AM](#)

MR. WOOLIVER responded that the court's only concern is being in the process. He offered his understanding that it would make no difference to the chief justice where he/she sends a nominee's name.

[8:40:31 AM](#)

MR. WOOLIVER, in response to Representative Seaton, said the proposed process of having the chief justice submit "a name," at which point the legislative confirmation process would take place, does not cause him concern, because that process is similar to the one currently used for the Select Committee on Legislative Ethics.

[8:41:05 AM](#)

REPRESENTATIVE P. WILSON said she can see no difference between the current method and having the chief justice send a list of three people to the governor - the governor would still have the ability to turn down those on the list. She stated, "I'm not sure why it's too cumbersome of a process here when it's not too cumbersome somewhere else."

[8:42:54 AM](#)

REPRESENTATIVE SEATON said he thinks traditionally the requirement has been to submit three names, but that is not a statutory requirement. In response to Chair Lynn, he clarified that he thinks the reference to the Select Committee on Legislative Ethics is specific and direct in statute, but he does not want the committee to draw too much comparison to what traditionally has been done.

[8:44:14 AM](#)

REPRESENTATIVE P. WILSON said she would like clarification regarding what the statutes require and what is traditionally done.

[8:45:01 AM](#)

MR. WOOLIVER, in response to Representative Johnson, reviewed the process by which a judge is appointed. He said there are certain statutory qualifications that have to be met. The applicants submit their names to the judicial council, which is a body made up of members of the bar association and public members confirmed by the legislature. The chief justice sits as the official head, but only votes in the case of a tie. He said that committee goes through a public comment period and selection process, then it sends at least two names for each vacancy to the governor. The governor then chooses from that list to make the judicial appointment.

REPRESENTATIVE JOHNSON remarked that that is not dissimilar to the process being discussed by the committee, except for the confirmation process with the legislature.

MR. WOOLIVER responded that it is a little different, but there are some similarities. He said one [difference] is that "one's in the constitution."

[8:46:26 AM](#)

NICKI NEAL, Director, Division of Personnel & Labor Relations, Department of Administration, reminded the committee that at the last bill hearing, there had been a question regarding the zero fiscal note. She said the personnel board consists of volunteer members, and it is the current members' preference to meet during the noon hour, with quarterly meetings that typically last one to two hours. Because of this, the department currently does not pay for members' travel costs. She explained that due to the short duration of the meetings, any members from out of town can participate via teleconference. She said the department expects this pattern to continue.

[8:48:06 AM](#)

CHAIR LYNN, after ascertaining that there was no one else who wished to testify, closed public testimony.

The committee took an at-ease from [8:48:13 AM](#) to [8:48:34 AM](#).

8:48:46 AM

REPRESENTATIVE GRUENBERG, responding to Representative Wilson's previous question, said the Constitution of the State of Alaska sets out that if there is a vacancy in the legislature, the procedure for filling that vacancy shall be provided by law. If there is no provision in the law, the governor shall fill the vacancy by appointment. He relayed that AS 15.40.330 does not specifically require that the political party shall send names to the governor. AS 15.40.330 read as follows:

Sec. 15.40.330. Qualification and confirmation of appointee.

(a) The appointee shall meet the qualifications of a member of the legislature as prescribed in Sec. 2, art. II of the state constitution, shall be a member of the same political party as that which nominated the predecessor in office, and shall be subject to confirmation by a majority of the members of the legislature who are members of the same political party which nominated the predecessor in office and of the same house as was the predecessor in office. If the predecessor in office was not nominated by a political party or if no other member of the predecessor's political party is a member of the predecessor's house of the legislature, the governor may appoint any qualified person. If the appointee is not a member of a political party, the appointment is not subject to confirmation. If the appointee is a member of a political party, the appointment is subject to confirmation as provided by this section for the confirmation of political party appointees.

(b) A member of a political party is a person who supports the political program of a party. The filing for office of a candidate as an independent or no-party candidate does not preclude a candidate from being a member of a political party. Recognition of an independent or no-party candidate as a member of a party caucus of members of the legislature at the legislative session following the election of the independent or no-party candidate is recognition of that person's party membership at the time filings were made by party candidates for the preceding general election.

REPRESENTATIVE GRUENBERG said he hopes that answered Representative Wilson's question.

[MS. WILSON nodded.]

[8:51:42 AM](#)

REPRESENTATIVE GRUENBERG said he composed two amendments [forthwith called Amendment 1 and Amendment 2] to address his previously stated idea regarding either having the chief justice submit to the legislature or having the governor submit to the legislature. The language of the latter amendment is taken from the language in the existing Legislative Ethics statute. In response to Chair Lynn, he said the second amendment would take some power out of the governor's hands, but would "avoid the possibility of the appearance of a conflict of interest, because these are the people that would judge his own ethics."

[8:52:46 AM](#)

CHAIR LYNN said he thinks the governor should be involved.

[8:53:45 AM](#)

REPRESENTATIVE GRUENBERG stated that there is a difference between this process and the Legislative Ethics process. He continued as follows:

If there is an ethical complaint against a member of the House, then it's judged by a subcommittee of the committee on Legislative Ethics consisting of the members of that committee from the House and the public members. If there's an ethical complaint against a Senator, it's judged by the Senate members and the members of the public. So, this is a little bit different than that, and that may be why they require two-thirds separate vote rather than in a joint session. So, ... they'll be voted on separately in the Legislative Ethics process.

REPRESENTATIVE GRUENBERG said the reason he chose doing it this way is because it would not be necessary to wait until a joint session and the issue could be taken care of right away. He related the other reason is because if the process is being truncated, it would make sense to be certain there is more unanimity, and two-thirds is a super majority. This would

ensure that the people chosen are not "terrifically controversial."

CHAIR LYNN remarked that sometimes when a person is known as controversial it means he/she is not afraid to address important issues. He reiterated that he thinks the governor should have a hand in deciding the makeup of boards and commissions.

[8:56:00 AM](#)

REPRESENTATIVE SEATON asked if Amendment 1 had been offered.

[8:56:27 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Conceptual Amendment 1, which read as follows [original punctuation provided, with some handwritten changes]:

Page 1, Line 5 after the word "and"

Delete: the rest of line 5 through the word "nominations" on line 8

Insert: "ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house."

Page 3 line 9

delete "chief justice of the Alaska Supreme Court

insert "goveror"

Page 3 line 9

delete "governor"

insert "legislature"

[8:57:18 AM](#)

REPRESENTATIVE SEATON objected to Conceptual Amendment 1.

[8:57:43 AM](#)

REPRESENTATIVE GRUENBERG, in response to Representative Seaton, said his intent in offering Conceptual Amendment 1 is that for each position the governor would propose one name.

[8:58:11 AM](#)

REPRESENTATIVE SEATON concluded that [with Conceptual Amendment 1], the proposed legislation would expand the number of members to five and "leave everything else in law as it currently is."

REPRESENTATIVE GRUENBERG confirmed that is correct.

8:58:38 AM

MR. SICA noted that Conceptual Amendment 1 would not delete the language [in Section 1] regarding the members of each political party. He noted that Rule 46 addresses confirmation of appointments, and language in it read, "Such appointments are subject to confirmation by a majority vote of the full membership of the legislature in joint session." He related that Rule 46 makes reference to Sections 25 and 26, Article III, of the Constitution of the State of Alaska.

9:00:13 AM

REPRESENTATIVE GATTO questioned how the governor would ensure that the board has at least one member from the political party whose candidate for governor was elected and one member from the political party whose candidate for governor was not elected, when it is the legislature that has the final word through confirmations.

REPRESENTATIVE GRUENBERG said Representative Gatto makes a good point and suggested that the language may need to be drafted to address that issue.

9:02:46 AM

REPRESENTATIVE SEATON said he thinks the purpose of the bill is two-fold: to increase the membership of the board, and to somewhat insulate the governor from the direct appointment process. He opined that the court would be an appropriate body to be making the list. If there was a resignation of a person with a political party affiliation, the court would submit the names of individuals with the same party affiliation, so that whoever was selected from that list could be confirmed. He maintained his objection to Conceptual Amendment 1.

CHAIR LYNN remarked that [Conceptual Amendment 1] would defeat the basic purpose of the proposed bill.

9:04:19 AM

MR. SICA suggested that it might be helpful to understand the history of the Select Committee on Legislative Ethics and how the chief justice of the court became involved. He said in 1986, then Chief Justice Robinowitz wrote that although he did not seek the task, he did not object to appointing the public members. Mr. Sica speculated that Chief Justice Robinowitz realized that in his position he was probably the most impartial, and he understood the need to be the one to do the appointing.

[9:05:02 AM](#)

REPRESENTATIVE GRUENBERG withdrew Conceptual Amendment 1, in view of the arguments made against it. He said he would not offer the other amendment.

REPRESENTATIVE GRUENBERG, regarding the previous comment on Rule 46, noted that appointments by the governor are made pursuant to AS 39.05.080, which states: "Except as otherwise provided in a law relating to the positions or memberships on a specific board or commission, appointment to a position or membership shall be made in the following manner:" Representative Gruenberg stated, "This would be an exception in that, because this is AS 39.25.060, so I do not believe it would violate Rule 46."

[9:06:21 AM](#)

REPRESENTATIVE SEATON directed attention to language on page 2, line 15, which read:

(3) lobby, employ, or assist a lobbyist.

REPRESENTATIVE SEATON reminded the committee that at the last hearing he had suggested inserting "for compensation". He said he wants to avoid "an ethical charge against somebody because they work together on something else and could be considered assisting a lobbyist when it had nothing to do with lobbying or they weren't being employed by a lobbyist."

[9:07:42 AM](#)

CHAIR LYNN moved to adopt Amendment 2, labeled R.1, which read as follows:

Page 2, line 15:

Delete ", employ, or assist"  
Insert "or directly employ"

REPRESENTATIVE SEATON objected for discussion purposes. He questioned the word "directly".

[9:08:22 AM](#)

MR. FORD said Representative Seaton has pointed out an issue that should be resolved by the committee. He recommended adding "for compensation" after the word "lobbyist" on line 15 [in Section 3, paragraph (3)].

[9:09:11 AM](#)

CHAIR LYNN withdrew Amendment 2.

[9:09:19 AM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 3, as follows:

Page 2, line 15:  
Following "lobbyist"  
Insert "for compensation"

[9:09:36 AM](#)

REPRESENTATIVE P. WILSON objected.

REPRESENTATIVE SEATON, in response to Representative Wilson, said "for compensation" would modify "assist a lobbyist".

[9:11:28 AM](#)

REPRESENTATIVE GATTO directed attention to paragraphs (1) and (2), preceding the language in Conceptual Amendment 3. Paragraph (1) would prohibit a board member and board employees and contractors from holding a campaign for elective office. Representative Gatto asked if that means they could not help a legislator in his/her campaign.

MR. FORD said he thinks a reasonable interpretation of that language is that the member could assist a legislator in his/her campaign but could not run for office him/herself.

MR. FORD, in response to Representative Gatto, said he interprets Conceptual Amendment 3 to mean the proposed

compensation language would apply only to the assisting of a lobbyist.

[9:13:16 AM](#)

MR. FORD, in response to Representative P. Wilson, reiterated his understanding that under Conceptual Amendment 3, the member could assist a legislator in his/her campaign but could not run for office him/herself.

[9:14:05 AM](#)

REPRESENTATIVE GRUENBERG objected to Conceptual Amendment 3. He stated:

There are only ... five people in the whole state government involved in this, and they're acting as quasi-judicial people in very important respects. For most of the time, they're acting as quasi-appellate people on the board, and they would conduct the hearings themselves for the governor, lieutenant governor, and attorney general. And whether they're assisting the lobbyist for compensation or not, I think it avoids the appearance of an impropriety in either case, and I would hope we don't just limit it for compensation, because that will provide a loophole for somebody to say, "I'm delighted to assist you, you just can't pay me." And I think quasi-judicial people should stay away from that.

[9:15:20 AM](#)

REPRESENTATIVE SEATON moved an amendment to Conceptual Amendment 3, to move "employ or assist a lobbyist for compensation" to a new [paragraph] 4, to treat it as "another thought other than lobbying itself."

[9:15:58 AM](#)

REPRESENTATIVE GRUENBERG objected to the proposed amendment to Amendment 3 for discussion purposes. He said he thinks the term "employ" implies there is a contract under which a person is paid for services rendered.

[9:16:40 AM](#)

REPRESENTATIVE SEATON said he believes there is a difference between lobbying and employing a lobbyist.

REPRESENTATIVE GRUENBERG suggested that Representative Seaton may wish to separate the language into three categories: "lobby", "employ", and "assist a lobbyist". He said he would not object to that.

[9:17:43 AM](#)

REPRESENTATIVE P. WILSON objected to the proposed amendment to Conceptual Amendment 3.

REPRESENTATIVE SEATON, in response to Representative P. Wilson, clarified that his intent is to have the language moved into a new paragraph 4, not into Section 4.

REPRESENTATIVE P. WILSON said that makes a difference to her.

REPRESENTATIVE GRUENBERG maintained his objection to the proposed amendment to Conceptual Amendment 3. He said he would not object if Representative Seaton were willing to accept his aforementioned proposal to further separate the terms.

[9:19:06 AM](#)

REPRESENTATIVE SEATON said he would accept that amendment to the proposed amendment to Conceptual Amendment 3.

[The amendment to the proposed amendment to Conceptual Amendment 3 was treated as adopted.]

REPRESENTATIVE GRUENBERG removed his objection to the proposed amendment, as amended, to Conceptual Amendment 3.

CHAIR LYNN announced that the proposed amendment, as amended, to Conceptual Amendment 3, was adopted.

[9:20:53 AM](#)

REPRESENTATIVE GRUENBERG maintained his objection to Conceptual Amendment 3, as amended. He reiterated his opinion that the members of the board serve quasi-judicial positions and should not be assisting lobbyists, whether or not they do so for compensation.

MR. SICA suggested it would be helpful for the committee to look at the definition under AS 24.45.171(11), which read as follows:

(11) "lobbyist" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

MR. SICA stated, "I think if someone holds a door open for a lobbyist, they're not assisting a lobbyist, they're assisting a person. I think when we talk about 'assist a lobbyist', we talk about assisting them in this definition."

[9:22:50 AM](#)

REPRESENTATIVE GATTO suggested using a term that encompasses not just lobbyists, but also those "involved in influencing." He said, "It's something for the committee to look at before we get ourselves in the trap of saying, 'Can't do it for a lobbyist, but you're not a lobbyist on the second week because you didn't meet those minimums.'"

[9:24:05 AM](#)

REPRESENTATIVE SEATON suggested using the term "assist in lobbying".

[9:24:27 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 2 to Conceptual Amendment 3, as amended, to change "assist a lobbyist", now in the new paragraph 5, in Section 2 of the bill, to read: "assist in lobbying".

[9:25:00 AM](#)

REPRESENTATIVE GRUENBERG objected.

[9:25:55 AM](#)

REPRESENTATIVE SEATON, in response to Representative Gruenberg, clarified that the issue is not judicial officers but personnel board members, and the focus of Section 3 is prohibitions, which means under the proposed Amendment 2 to Conceptual Amendment 3, as amended, the board members would not be allowed to assist in lobbying.

[9:28:36 AM](#)

REPRESENTATIVE GRUENBERG withdrew his objection to the proposed Amendment 2 to Conceptual Amendment 3, as amended. There being no further objection, it was so ordered.

[9:28:55 AM](#)

REPRESENTATIVE GRUENBERG withdrew his objection to Conceptual Amendment 3, as amended.

REPRESENTATIVE P. WILSON offered her understanding that the final result of Conceptual Amendment 3, as amended, is that a board member cannot assist in lobbying for compensation.

REPRESENTATIVES GRUENBERG AND GATTO responded no.

REPRESENTATIVE P. WILSON said she thought the original amendment added the words "for compensation".

REPRESENTATIVE SEATON responded as follows:

That is correct, and we solved that because it was the act of lobbying that we're taking out. So, it doesn't matter whether it's for compensation or not - you may not assist in lobbying. And we get rid of the problem of opening the door for a lobbyist as a person. So, ... this was conceptual, because, of course, "employ" in number 4 is going to have to "employ a lobbyist".

REPRESENTATIVE P. WILSON reiterated that the original amendment used the words "for compensation" and those words are still there.

REPRESENTATIVE SEATON responded, "No, I removed those in my amendment to the amendment."

[9:30:36 AM](#)

REPRESENTATIVE GRUENBERG clarified that [paragraphs (3), (4), and (5)], under the proposed Conceptual Amendment 3, as amended, would read as follows:

- (3) lobby
- (4) employ a lobbyist
- (5) or assist in lobbying

CHAIR LYNN announced that there being no further objection, Conceptual Amendment 3, [as amended], was adopted.

[9:31:03 AM](#)

REPRESENTATIVE GATTO directed attention to paragraph (2) of Section 3, on page 2, line 14, which read as follows:

(2) be an officer of a political party,  
political committee, or group; or

REPRESENTATIVE GATTO indicated that without specifying political group, a board member would not be allowed to be, for example, a captain of a basketball team.

[9:31:59 AM](#)

REPRESENTATIVE GATTO [moved to adopt Conceptual Amendment 4] as follows:

Page 2, line 14:  
Between "or" and "group"  
Insert "political"

REPRESENTATIVE SEATON objected. He said he wants to make certain the amendment is conceptual. He removed his objection.

CHAIR LYNN announced that [Conceptual Amendment 4] was adopted.

[9:32:43 AM](#)

REPRESENTATIVE GRUENBERG said he cannot remember the exact word, but an adjective is needed with the word "group".

CHAIR LYNN recommended that issue be addressed in the next committee of referral.

[9:33:00 AM](#)

REPRESENTATIVE P. WILSON moved to adopt Conceptual Amendment 5, to removed the final "or" from page 2, line 14, and insert it between the new paragraphs (4) and (5). There being no objection, Conceptual Amendment 5 was adopted.

[9:34:12 AM](#)

REPRESENTATIVE GRUENBERG indicated a need for a letter to be drafted for the House Judiciary Standing Committee regarding an "important point" raised previously by Representative Gatto.

CHAIR LYNN and REPRESENTATIVE GATTO indicated that the point would be remembered by the three members of the House State Affairs Standing Committee who also sit on the House Judiciary Standing Committee.

[9:34:38 AM](#)

REPRESENTATIVE SEATON moved to report HB 348, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 348(STA) was reported out of the House State Affairs Standing Committee.

The committee took an at-ease from [9:34:57 AM](#) to [9:37:20 AM](#).

**SB 194-MINORS: ALCOHOL VIOLATIONS/ I.D. CARDS**

[9:37:23 AM](#)

CHAIR LYNN announced that the final order of business was CS FOR SENATE BILL NO. 194(JUD), "An Act relating to penalties and civil damages for certain alcohol violations."

[9:37:36 AM](#)

CHRISTINE MARASIGAN, Staff, Senator Kevin Meyer, Alaska State Legislature, introduced SB 194 on behalf of Senator Meyer, sponsor. She paraphrased the sponsor statement, which read as follows [original punctuation provided]:

CSSB 194 increases civil damages from \$1,000 to \$1,500 for three alcohol violations.

- 1) Minors who knowingly enter or remain in premises licensed to sell alcohol.
- 2) People who purchase or deliver alcohol to persons under the age of 21.

3) Persons with restrictions on purchasing alcohol who knowingly enter or remain on premises licensed to sell alcohol.

Additionally, CSSB 194 may also require a person who is under 21 years of age and convicted of the aforementioned offenses to pay for and enroll in a juvenile alcohol safety action program or similar education or treatment program if one is available.

Underage drinking is a problem in Alaska. According to the State of Alaska's Plan to Reduce & Prevent Underage Drinking (October 2009), 11 percent of all treatment admissions for alcohol abuse in the state were youth aged 12-20. There are currently 2,133 alcohol restricted licenses issued in the state.

An increase in civil damages would reinforce the message to youth that underage drinking will not be tolerated. The increased civil penalty would also be a financial deterrent for those who purchase alcohol for minors as well as adults holding a restricted license who are tempted to purchase alcohol.

Passing CSSC 194 will encourage licensees to continue their enforcement of underage and restricted license drinking laws. This bill will also serve as a deterrent to underage and restricted consumers of alcohol.

MS. MARASIGAN said many underage youths get their alcohol from adults. She said the increased civil penalty would help offset the cost of "tracking down and pursuing civil action for the licensees." She relayed that licensees like this program, because it discourages those who should not be purchasing alcohol from even trying. The proposed legislation would help enforce Alaska's laws while helping the licensee protect his/her license by discouraging those under the legal drinking age from trying to acquire alcohol.

[9:42:35 AM](#)

MS. MARASIGAN, in response to Representative Seaton, said current law addresses the three situations previously outlined in the sponsor statement; the proposed legislation would increase the civil penalties for occurrence of those situations. She offered an example of a minor entering a bar and trying to

get served alcohol, and she said in that instance, the licensee could "take a civil action against" the minor.

REPRESENTATIVE SEATON described a hypothetical situation in which an adult buys alcohol from a store and later gives it to a minor. He asked whether - if it is established in a criminal proceeding that the adult purchased the alcohol at a certain store - the licensee of that store, based on that criminal proceeding, could "get a judgment of \$1,500" against the adult who bought the alcohol.

MS. MARASIGAN responded as follows:

This is more sort of like an on-site civil penalty that people try to enact. I can't imagine that somebody would be following so closely to every single proceeding that they would track somebody who bought for a minor in a criminal proceeding, because they'd already be in such big trouble that I don't know that anyone would then end up going back and then bringing a civil [action], but it certainly is possible.

[9:46:05 AM](#)

OTHAL C. MADDEN III, Director of Operations, Brown Jug, Inc., testified in support of SB 194. He said Brown Jug, Inc., has used the aforementioned civil penalty statutes for over 10 years to prevent underage drinking. He said the law deters minors from coming in the door to make the purchase in the first place. In the event the minor does come in, the law gives the establishment some means by which to "go after him." Mr. Madden related that when a Brown Jug, Inc., employee is successful in collecting a civil penalty from a minor, the establishment awards that employee a bonus of \$270. He said Brown Jug, Inc., also offers the minor involved an opportunity to wave [the civil penalty] by completing a two-day alcohol education training through the Crime for Life program handled through Mothers Against Drunk Driving (MADD) and sexual assault awareness training through Standing Together Against Rape (STAR).

MR. MADDEN said one of the great aspects of the civil penalty program is that it gets the family involved with the minor. Before the program, many families never found out that the minor had been caught. Now, the family gets a letter in the mail saying the family owes Brown Jug, Inc., \$1,000 for "illegal entry into the store," and that gets the attention of the family. Mr. Madden said since the first civil penalty was

enacted in 1998, Brown Jug, Inc., has pursued actions against over 2,000 minors who have been caught. He said although the company has not been successful in collecting against all 2,000, at least the process has initiated family involvement. Mr. Madden said Brown Jug, Inc., has also used the civil penalty program to address the problem of adults buying alcohol for minors, and to seek civil damages against the minors who wait outside to solicit adults to buy alcohol for them.

[9:49:23 AM](#)

REPRESENTATIVE SEATON asked if the civil penalty has been used against "someone that is very much removed from your premises."

MR. MADDEN responded, "There may have been a couple of situations with kegs over the years, where the police actually let us know that an adult had bought a keg from us and provided [it] to minors, but [in] most cases the licensee would have no idea that that ever occurred, or that those events were ever related to the business."

[9:50:44 AM](#)

REPRESENTATIVE SEATON expressed appreciation for the work that Mr. Madden has been doing regarding these civil penalties. He opined that everything that is done to stop underage drinking is a benefit to the entire state.

[9:51:09 AM](#)

SENATOR KEVIN MEYER, Alaska State Legislature, as sponsor of SB 194, said related city ordinance was passed by the Anchorage Assembly in 1997, and Fairbanks adopted a similar ordinance. The aforementioned statute followed in 2003, he said. The proposed legislation would address the need to raise the amount of civil damages, which have not been raised since the statute was enacted.

[9:52:04 AM](#)

REPRESENTATIVE P. WILSON asked if Senator Meyer has considered increasing the amount to \$2,000 for people who purchase or deliver alcohol to person under the age of 21.

SENATOR MEYER responded that the criminal penalty for adults who supply alcohol to minors is effective. He stated, "The civil side is handy more for the kids who are trying to buy it." He

explained that sometimes when Brown Jug, Inc., gets a minor's identification and calls the police, the police are too busy to do anything; however, the consequences to the licensee are great if they are caught selling alcohol to a minor. He continued:

So, ... the licensees ... [are] taking action on behalf of the state by going through civil court, because there really isn't much done on the criminal side for the minors. For adults trying to purchase [for minors] there ... [are] some consequences on the criminal side and whatever we can do on the civil side. So, we're really trying to discourage adults from even buying for the kids, by ... [utilizing both] the criminal and the civil side.

REPRESENTATIVE P. WILSON explained she is considering whether or not other businesses would have more incentive to get involved if the fine was higher.

[9:55:11 AM](#)

SENATOR MEYER concurred that there are some places, like Brown Jug, Inc., that have a reputation for catching minors trying to buy alcohol. He said the Cabaret Hotel Restaurant & Retailer's Association (CHARR) will "take this action" on behalf of smaller organizations. In response to a follow-up question, he confirmed that CHARR has been following through with quite a few civil actions.

[9:56:51 AM](#)

REPRESENTATIVE GATTO noted that according to Mr. Madden's testimony, if the option for having \$700 waived if a minor takes part in one of the aforementioned programs is used, then the establishment only gets \$300 of the current \$1,000 amount. Under the proposed bill, if the option for having \$700 waived is taken advantage of, then the establishment would only get \$800 of the \$1,500. He asked Senator Meyer if it is his intent to "just get the liquor store owner a higher award."

SENATOR MEYER reminded Representative Gatto that that option is the policy of Brown Jug, Inc. He stated, "Each establishment has kind of different policies and costs associated in implementing this program."

[9:58:22 AM](#)

REPRESENTATIVE SEATON moved to report CSSB 194(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 194(JUD) was reported out of the House State Affairs Standing Committee.

[9:59:03 AM](#)

**ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:59 a.m.