

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 1, 2010

1:32 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Dennis Egan  
Senator John Coghill

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 260

"An Act relating to electronic voting procedures for electric and telephone cooperatives; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 244

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

- HEARD AND HELD

SENATE BILL NO. 209

"An Act providing the Alaska State Council on the Arts the authority to adopt regulations relating to its statutory powers and duties; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 239

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

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 92

"An Act ratifying an interstate compact to elect the President and Vice-President of the United States by national popular vote; and making related changes to statutes applicable to the selection by voters of electors for candidates for President and Vice-President of the United States and to the duties of those electors."

- BILL HEARING POSTPONED

**PREVIOUS COMMITTEE ACTION**

BILL: SB 260

SHORT TITLE: ELECTRIC & TELEPHONE COOPERATIVES' VOTING

SPONSOR(s): STATE AFFAIRS

02/05/10	(S)	READ THE FIRST TIME - REFERRALS
02/05/10	(S)	STA, JUD
02/18/10	(S)	STA RPT 3DP
02/18/10	(S)	DP: MENARD, FRENCH, MEYER
02/18/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)
02/18/10	(S)	Moved SB 260 Out of Committee
02/18/10	(S)	MINUTE(STA)
03/01/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 244

SHORT TITLE: GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES

SPONSOR(s): STEDMAN

01/29/10	(S)	READ THE FIRST TIME - REFERRALS
01/29/10	(S)	STA, JUD
02/11/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)
02/11/10	(S)	Moved SB 244 Out of Committee
02/11/10	(S)	MINUTE(STA)
02/12/10	(S)	STA RPT 4DP
02/12/10	(S)	DP: MENARD, PASKVAN, MEYER, FRENCH
02/24/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/10	(S)	<Bill Hearing Postponed>
03/01/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 209

SHORT TITLE: STATE COUNCIL ON THE ARTS; REGULATIONS

SPONSOR(s): MENARD

01/19/10	(S)	PREFILE RELEASED 1/8/10
01/19/10	(S)	READ THE FIRST TIME - REFERRALS
01/19/10	(S)	EDC, JUD

02/12/10 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)  
 02/12/10 (S) Moved SB 209 Out of Committee  
 02/12/10 (S) MINUTE(EDC)  
 02/17/10 (S) EDC RPT 5DP  
 02/17/10 (S) DP: THOMAS, MEYER, DAVIS, STEVENS,  
 HUGGINS  
 02/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/24/10 (S) <Bill Hearing Postponed>  
 03/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR LINDA MENARD  
 Alaska State Legislature  
 Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 260.

PHIL STEYER, Manager  
 Government & Corporate Communications  
 Chugach Electric Association, Inc.

**POSITION STATEMENT:** Testified in support of SB 260.

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

**POSITION STATEMENT:** Provided information on SB 244 on behalf of the prime sponsor.

KEVIN BROOKS, Deputy Commissioner  
 Department of Administration  
 Juneau, AK

**POSITION STATEMENT:** Responded to questions related to SB 244.

SENATOR LINDA MENARD  
 Alaska State Legislature  
 Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 209.

BENJAMIN BROWN, Chair  
 Alaska State Council on the Arts  
 Juneau, AK

**POSITION STATEMENT:** Testified in support of SB 209.

REBECCA HATTAN, Attorney  
 Civil Division  
 Department of Law (DOL)

**POSITION STATEMENT:** Answered questions related to SB 209.

CHARLOTTE FOX, Executive Director  
Alaska State Council on the Arts  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 209.

**ACTION NARRATIVE**

[1:32:03 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Senators Egan, Coghill and French were present at the call to order. Senator Wielechowski arrived soon thereafter.

**SB 260-ELECTRIC & TELEPHONE COOPERATIVES' VOTING**

CHAIR FRENCH announced the consideration of SB 260.

[1:32:44 PM](#)

SENATOR LINDA MENARD, sponsor of SB 260, read the following sponsor statement into the record:

Senate Bill 260 puts in statute the ability for telephone or electric cooperatives to allow members to vote by electronic transmission as specified by the co-op's by-laws. The bill was filed at the urging of co-ops around the state.

Currently, coop members may only vote in person or via the postal service. This method, however, is outdated and could be having a negative impact on member participation in elections and other important matters.

By allowing telephone and electric co-ops to permit voting via electronic transmission approved in its by-laws, the Legislature will make it so common 21<sup>st</sup> century practices may be applied to important public involvement matters.

There is a zero fiscal note with this bill, and co-ops in every corner of Alaska will be enthused the Legislature has had the foresight to pass legislation important to their public process. This bill does not make electronic transmission voting mandatory, and

cooperatives choose whether they want to partake or not.

Already, however, Matanuska Telephone Association (MTA) members have voted to adopt a new bylaw allowing electronic transmission voting. All MTA, and other co-ops, need is for the Legislature to amend the statute to allow these co-ops to do so.

CHAIR FRENCH told the committee that he's comfortable with the bill having heard it in a previous committee. The key is that it's permissive, not mandatory, he said.

SENATOR COGHILL asked for an explanation of what the bylaws would look like under this condition.

[1:36:05 PM](#)

PHIL STEYER, Manager, Government & Corporate Communications, Chugach Electric Association, Inc., said Chugach Electric supports SB 260. It adds an option to what is currently allowed in statute, but it's not mandatory. Members of a co-op would have to vote to amend their bylaws to allow electronic voting. Chugach Electric members already voted to amend their own bylaws to allow this.

He pointed out that the phrase "as specified by the cooperative" is intended to allow each cooperative to define election procedures that work for that organization. Chugach intends for members to vote via the Internet, but it could be something else for another cooperative. Cooperatives that belong to the Alaska Power Association, which is a statewide trade organization for electric utilities, have worked to develop appropriate language that each cooperative could support, he said.

[1:38:33 PM](#)

SENATOR WIELECHOWSKI joined the committee.

SENATOR COGHILL commented that this has been considered in a number of different forms in the Legislature.

CHAIR FRENCH asked what it takes to change a cooperative's bylaws.

MR. STEYER explained that Chugach Electric puts a ballot issue before its members to amend the bylaws. A simple majority is required. He noted that the vote in 2001 to amend the bylaws to allow electronic voting was a significant majority.

MR. STEYER responded to Senator Coghill's question and explained that Chugach Electric's bylaws mirror the language in AS 10.25, which says, "A member may not vote by proxy but may vote, if the bylaws so provide, by mail." Chugach Electric bylaws go on to say that a ballot packet will be mailed out in advance as specified in statute and that the Board is required to set a record date that is consistent with state statute.

If SB 260 passes, Chugach Electric would consider whether or not it could do electronic voting securely before moving ahead. Electronic voting would need to be as secure as by mail and in-person voting is today.

SENATOR WIELECHOWSKI asked if security procedures are sufficient to do this safely.

MR. STEYER replied Chugach Electric hasn't entered any agreement, but it has met with prospective vendors. He's spoken with two co-ops in other states that participate in electronic voting to ask if it increased voter turnout, if younger voters in particular are participating, and if there have been problems. Answers to the first two questions weren't illuminating, but both co-ops indicated that they encountered no problems with the process.

[1:43:25 PM](#)

SENATOR WIELECHOWSKI asked if the bill would allow a co-op to offer only electronic elections. He said he'd have a problem with that because a lot of his constituents don't have access to computers.

MR. STEYER replied the statute has been amended over time as accepted procedures and technology has changed. Initially members could only vote in person and now they are able to vote either in-person or by mail. The language in the bill doesn't take away that ability, he said.

CHAIR FRENCH suggested it might be a good idea to clarify that electronic and by mail balloting would take place simultaneously in the same election.

SENATOR WIELECHOWSKI commented that the proposed language appears to make it possible for a co-op to opt to offer only the less expensive electronic voting. He reiterated that it's a concern for those people who don't have access to a computer.

[1:46:02 PM](#)

SENATOR EGAN commented that if Alaskans can file electronically for a PFD then they can figure this out too. He said he is pleased that both large and small co-ops are enthusiastic about this possibility.

CHAIR FRENCH observed that support is quite strong, and announced he would hold SB 260 to consider some clarifying language.

**SB 244-GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES**

CHAIR FRENCH announced the consideration of SB 244.

[1:48:03 PM](#)

DARWIN PETERSON, Staff to Senator Stedman, introduced himself and related that Senator Egan would present the bill.

SENATOR EGAN read the following sponsor statement into the record:

Senate Bill 244 will clarify state law regarding the governor's duty station and travel allowance. Currently in statute, there are no provisions that require the governor to reside in the capital city and occupy the governor's mansion during his or her term of office. The bill specifies that the governor's duty station, defined as the location where the governor spends the major portion of time assigned to fulfill the duties of office, is considered to be Juneau.

The proposed law does not prohibit the governor from maintaining a personal residence in another part of the state, but if he chooses to reside there and not in the governor's mansion, he will not be entitled to a travel allowance when away from the capital.

CHAIR FRENCH noted that the administration is available to answer questions. He relayed that he heard the bill in a previous committee and his initial questions had been answered.

SENATOR COGHILL said he has procedural questions for the administration.

SENATOR WIELECHOWSKI observed that the bill says that the governor can choose where to reside, even during the legislative

session, but he or she couldn't receive per diem when living somewhere other than in Juneau.

MR. PETERSON clarified that the bill deals with travel allowance, not per diem. The Alaska Administrative Manual separates those, he said. He confirmed that that the governor would not be required to live in Juneau. Rather, the bill codifies in statute that Juneau is the governor's duty station. If the governor chooses not to make the capital city his or her home, the worst that could happen is that it would be the basis of a complaint from the public.

[1:51:33 PM](#)

SENATOR WIELECHOWSKI asked how, if this were to pass, someone could file a complaint against the governor for not living in Juneau.

MR. PETERSON replied, according to Legislative Legal and Research Services, failure to make Juneau the governor's duty station would amount to a misuse of official position. If such a complaint were lodged, it would be up to the executive ethics branch to make a determination. The other options would be recall or impeachment, but it's unlikely that either would occur.

SENATOR WIELECHOWSKI asked if he's saying that this bill would make where the governor lives an ethics issue.

MR. PETERSON said correct; the bill was drafted to amend the Executive Branch Ethics Act making it mandatory that the governor's duty station is Juneau.

SENATOR COGHILL asked what percentage of time the governor would be required to spend in the capital city to avoid a violation.

MR. PETERSON deferred the question to the administration.

SENATOR WIELECHOWSKI asked if the Legislature has an official duty station.

MR. PETERSON answered no.

[1:55:08 PM](#)

KEVIN BROOKS, Deputy Commissioner, Department of Administration, explained that every position in the budget has a duty station; it's the city where the person spends a majority of their time. He noted that Section 2 defines the governor's duty station as

the location where he or she spends the major portion of time to fulfill the duties of the office. He said he's unaware of anything in writing that would define "the major portion of time."

CHAIR FRENCH asked if the commissioners have defined duty stations.

MR. BROOKS replied they are defined in the budget detail.

CHAIR FRENCH asked if the duty stations are set dependant on how the administration submits the budget.

MR. BROOKS answered yes, and it's not uncommon for positions or duty stations to move. Usually they're changed annually when the budget is put together.

CHAIR FRENCH asked if duty stations are typically set by statute or the budget.

MR. BROOKS replied it's not statutory; it's a management prerogative depending on where the resource is needed. He clarified that although they do move, a majority of the 15,000 to 17,000 permanent full-time positions in the executive branch have a static duty station.

SENATOR COGHILL said he appreciates the sentiment behind the bill, but he's concerned about the ethics of requiring the governor to be in Juneau over 50 percent of the time because that may limit his or her ability to represent all of Alaska. "I want the office to be centered here. ...it's the capital - it's the place where it should happen. ... But I don't know if I like that language yet," he said.

[1:59:19 PM](#)

CHAIR FRENCH said that today he'd like to focus on the financial impacts of the legislation; discussion of the potential ethics charges could be reserved for a future hearing. He said he too has concerns about exposing the governor to an ethics charge for spending too much time traveling around the state. He asked Mr. Brooks to tell the committee which travel payments would be allowed and which would be disallowed if this were adopted.

MR. BROOKS replied the bill specifically addresses the lodging amount. His understanding is that if a governor traveled away from Juneau, he or she would not be eligible for a lodging allowance if they stayed in their residence located in another

part of the state. As a rule the state does not pay for lodging unless an invoice is presented. That would continue to be the practice under this bill, he said.

CHAIR FRENCH noted that page 2, line 2, references "travel allowances" and page 2, line 9, references "lodging allowance." He asked the difference between the two.

MR. BROOKS explained that "travel allowance" would encompass all costs a person might incur in a trip, including lodging. To claim reimbursement a person would submit a form and attach their receipts. The bill doesn't address a meal allowance; it's specific to the lodging allowance.

CHAIR FRENCH asked if it's necessary to submit a receipt to get reimbursed for meals.

MR. BROOKS explained that a claim for meal allowance would be submitted on the travel authorization form; it specifies days and hours in travel status. Payments are prorated based on \$60/day for meals and miscellaneous expenses, but it's not necessary to accumulate receipts related to meals.

[2:03:43 PM](#)

SENATOR WIELECHOWSKI asked who determines the governor's and lieutenant governor's duty station under current law.

MR. BROOKS replied the Alaska Administrative Manual (AAM) contains the rules that govern travel for all executive branch employees. The Department of Administration interacts with each department's administrative services division, but it's those directors that set the policy for their department based on the AAM.

SENATOR WIELECHOWSKI referenced the AAM and noted that on page 60.3 it says that the duty station is essentially where the traveler spends a major portion of their working time. He asked if it's accurate to say that the former governor spent a major portion of her working time in Wasilla and determined that was her duty station.

MR. BROOKS replied his understanding it that the determination of the Governor's Office was that the governor's duty station was Juneau.

SENATOR WIELECHOWSKI asked if under this law a governor could get a travel allowance for the time he or she spends in their home in North Pole, for example.

[2:06:13 PM](#)

MR. BROOKS said that under current law and this bill the governor would be entitled to a meal allowance at \$60/day, but not lodging. It's also important to remember that it's not automatic; a claim must be submitted, he said.

SENATOR COGHILL observed that under this law travel is only reimbursed from the duty station and that could create an economic and ethical problem.

MR. BROOKS said the Alaska Administrative Manual is capable of handling situations where travel legs are disjointed. The policies handle a wide variety of situations so that the traveler isn't harmed or unduly rewarded.

[2:10:02 PM](#)

SENATOR COGHILL said he wanted to make sure that this statute would align with that sort of thinking. It wasn't that clear to me, he added.

CHAIR FRENCH described lines 8-10 on page 2 as the meat of the bill. It makes it clear that the governor will no longer get a lodging allowance when staying in their personal residence away from Juneau. The bill doesn't say the governor wouldn't be compensated to travel from their residence to Juneau or their residence to Washington or their residence to Eielson if it's down the street.

SENATOR COGHILL said it was a question that occurred to him during the testimony.

[2:11:12 PM](#)

SENATOR WIELECHOWSKI asked if the governor gets per diem.

MR. BROOKS answered no.

SENATOR WIELECHOWSKI noted that Mr. Brooks said the governor could still claim a meal allowance and the committee may want to change that.

MR. BROOKS clarified that the governor is not entitled to and may not claim a lodging allowance as part of a travel allowance.

CHAIR FRENCH added that while the governor could claim a meal allowance, it is not issued automatically. He or she would have to submit a claim for reimbursement just like every other state employee.

SENATOR EGAN asked what would happen if the governor stayed at a hotel while in their community.

MR. BROOKS replied the actual lodging costs would be reimbursed based on a receipt from the hotel.

CHAIR FRENCH said that's the paradox and at some level you have to let your conscience be your guide.

[2:13:11 PM](#)

SENATOR WIELECHOWSKI asked Mr. Brooks if someone could file an ethics complaint based on his reading of the personnel rules.

MR. BROOKS replied he didn't know what the basis would be but as they've seen, anyone can file a complaint for any number of reasons.

CHAIR FRENCH said he'll pose that question to legislative legal because it's worth exploring. He closed public testimony and announced he would hold SB 244 for more legal analysis.

**SB 209-STATE COUNCIL ON THE ARTS; REGULATIONS**

[2:14:33 PM](#)

CHAIR FRENCH announced the consideration of SB 209.

SENATOR LINDA MENARD, Sponsor of SB 209, read the following sponsor statement:

Senate Bill 209 will provide the Alaska State Council on the Arts the authority to adopt regulations relating to its statutory powers and duties.

The bill has been introduced at the request of the Alaska State Council on the Arts (ASCA), which is the Last Frontier's state arts agency, created over 40 years ago. The council works in partnership with the National Endowment for the Arts (NEA) to foster the development of the arts for all Alaskans through education, partnerships, grants and services.

Several of ASCA's programs are governed by regulations, which ASCA has promulgated and updated over the years. Recently ASCA has sought to improve

and streamline its grant-making policies, procedures, and regulations. In the course of this effort, ASCA was informed by the Department of Law that ASCA technically does not have statutory authority to adopt regulations under the Administrative Procedures Act (APA). While this legal opinion is at odds with long-standing practice, ASCA considered the advice from the Attorney General's office, and determined that the best way to rectify the current anomalous situation is to amend its enabling statute to allow ASCA the explicit statutory authority to adopt regulations. This legislation will in essence codify existing practice and will enable ASCA to continue to administer and oversee its existing programs. Any and all regulations adopted in future will have to comply with the review and public-notice provisions of the APA. This bill has a zero fiscal note and will help ASCA continue performing its long-standing mission of helping more Alaskans appreciate, create, and enjoy the arts and having regulatory authority will directly contribute to ASCA's ability to do so.

SENATOR WIELECHOWSKI asked her to explain the structure of the Alaska State Council on the Arts.

SENATOR MENARD said ASCA is a state agency that was formed with assistance from the National Endowment of the Arts. The governor appoints the board members and they must adhere to the Administrative Procedures Act.

SENATOR WIELECHOWSKI noted that the Workers' Compensation Board develops their regulations through the Department of Labor and asked if ASCA would likewise develop regulations through a department.

2:18:50 PM

BENJAMIN BROWN, Chair, Alaska State Council on the Arts, explained that ASCA is a stand-alone within the Department of Education and Early Development (DEED). State employees do the day-to-day work, but ASCA staff would draft the regulations that would be approved by the Department of Law (DOL) and then the Lieutenant Governor's Office. The problem came to light through efforts to streamline ASCA grants. He noted that ASCA regrants money it receives from the National Endowment for the Arts and the Legislature to arts organizations like Out North Theatre, Perseverance Theatre, Anchorage Concert Association, and Fairbanks Drama Association. ASCA was able to streamline many

procedures in its policies, but some were ensconced in state regulations. When ASCA asked DOL to review the proposed changes, DOL determined that AKSA didn't have the authority to make these changes.

CHAIR FRENCH noted that his letter summarizes the problem and points out that the best remedy would be to add the missing language to the statute. I believe that's wise, he said.

SENATOR WIELECHOWSKI asked if ASCA has policies and procedures in place and if it currently works with an assistant attorney general when it adopts regulations.

MR. BROWN answered yes; when Ms. Fox drafts something it is reviewed by an assigned assistant attorney general. Ms. Hattan is that person. She inherited the problem after it came to Mr. Slotnick's attention. ASCA has also worked with Ms. Behr and Mr. Weaver both of whom do regulatory review. These regulations would go through all the same hoops as any other proposed regulations, he added.

SENATOR WIELECHOWSKI asked if someone from DOL is online.

[2:22:26 PM](#)

REBECCA HATTAN, Attorney, Civil Division, Department of Law (DOL), introduced herself.

SENATOR WIELECHOWSKI asked if this proposal is unusual.

MS. HATTAN replied it's not at all uncommon. She explained that Alaska has advisory and non advisory councils that have the authority to promulgate regulations. She named as examples the Council on Domestic Violence and Sexual Assault, the Police Standards Council, and the Fire Council.

CHAIR FRENCH asked Ms. Fox if she had anything to add to the conversation.

CHARLOTTE FOX, Executive Director, Alaska State Council on the Arts, related that it was a surprise to learn that ASCA didn't have the statutory authority to promulgate regulations since it had been operating under its regulations for a number of years.

SENATOR COGHILL questioned what will happen to the regulations that were passed without statutory authorization.

MR. BROWN opined that they would be repromulgated. This will be a little more work, but it would get ASCA into the public eye and provide an opportunity to publicize changes to the grant program.

CHAIR FRENCH closed public testimony and announced he would hold SB 209 for a future hearing.

[2:25:38 PM](#)

There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee at 2:25 p.m.