

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 16, 2011

1:34 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Chair  
Representative Steve Thompson, Vice Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Lance Pruitt  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Mike Chenault (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 114

"An Act relating to an opt-out charitable giving program offered by an electric or telephone cooperative."

- HEARD & HELD

CONFIRMATION HEARING(S):

Alaska Judicial Council [Continued from 3/14/11]

Donald J. Haase - Valdez

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 175

"An Act relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date."

- MOVED CSHB 175(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 114

SHORT TITLE: OPT-OUT CHARITABLE GIVING PROGRAM

SPONSOR(S): REPRESENTATIVE(S) THOMPSON

01/21/11 (H) READ THE FIRST TIME - REFERRALS  
01/21/11 (H) L&C, JUD  
02/07/11 (H) L&C AT 3:15 PM BARNES 124  
02/07/11 (H) Heard & Held  
02/07/11 (H) MINUTE(L&C)  
02/14/11 (H) L&C AT 3:15 PM BARNES 124  
02/14/11 (H) Moved CSHB 114(L&C) Out of Committee  
02/14/11 (H) MINUTE(L&C)  
02/16/11 (H) L&C RPT CS(L&C) NT 6DP 1NR  
02/16/11 (H) DP: THOMPSON, SADDLER, HOLMES, SEATON,  
MILLER, OLSON  
02/16/11 (H) NR: JOHNSON  
02/25/11 (H) JUD AT 1:00 PM CAPITOL 120  
02/25/11 (H) Scheduled But Not Heard  
03/16/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 175

SHORT TITLE: COURT APPEARANCES; ARSON; INFRACTIONS

SPONSOR(S): JUDICIARY BY REQUEST

02/28/11 (H) READ THE FIRST TIME - REFERRALS  
02/28/11 (H) JUD, FIN  
03/09/11 (H) JUD AT 1:00 PM CAPITOL 120  
03/09/11 (H) Heard & Held  
03/09/11 (H) MINUTE(JUD)  
03/14/11 (H) PRIME SPONSOR CHANGED: JUDICIARY BY  
REQUEST  
03/14/11 (H) BILL REPRINTED 3/14/11  
03/14/11 (H) JUD AT 1:00 PM CAPITOL 120  
03/14/11 (H) Heard & Held  
03/14/11 (H) MINUTE(JUD)  
03/16/11 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

JOE GALLAGHER, Public Relations Coordinator  
Homer Electric Association, Inc. (HEA)  
Kenai, Alaska

**POSITION STATEMENT:** Provided comments during discussion of  
HB 114.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General

Commercial/Fair Business Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions and provided comments during discussion of HB 114.

GENE THERRIAULT, Vice President  
Resource Development  
Golden Valley Electric Association (GVEA)  
Fairbanks, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 114.

DONALD J. HAASE, Appointee  
Alaska Judicial Council (AJC)  
Valdez, Alaska

**POSITION STATEMENT:** Testified as appointee to the Alaska Judicial Council (AJC).

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 175 on behalf of the House Judiciary Standing Committee, the sponsor by request.

QUINLAN STEINER, Director  
Central Office  
Public Defender Agency (PDA)  
Department of Administration (DOA)  
Anchorage, Alaska

**POSITION STATEMENT:** Expressed concerns and responded to questions during discussion of HB 175.

#### **ACTION NARRATIVE**

[1:34:01 PM](#)

**CHAIR CARL GATTO** called the House Judiciary Standing Committee meeting to order at 1:34 p.m. Representatives Gatto, Keller, Pruitt, Thompson, and Gruenberg were present at the call to order. Representatives Holmes and Lynn arrived as the meeting was in progress.

#### **HB 114 - OPT-OUT CHARITABLE GIVING PROGRAM**

1:34:30 PM

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 114, "An Act relating to an opt-out charitable giving program offered by an electric or telephone cooperative." [Before the committee was CSHB 114(L&C).]

1:35:13 PM

REPRESENTATIVE THOMPSON, speaking as the sponsor, explained that the concept of HB 114 was brought to his attention by the Golden Valley Electric Association (GVEA), noting that such "opt-out" charitable giving programs have been around for many years, and that more than 250 electric cooperatives across the country have implemented similar programs - generally referred to as "round-up" programs. Such programs enable individuals to contribute small amounts of money to help build strong, local communities. The program proposed by HB 114 is consistent with one of the seven principles espoused by cooperatives, that being concern for the community, which involves working for the sustainable development of the community through policies approved by the membership. The proposed program would allow a cooperative to round up a member's monthly bill to the next dollar, so the member's monthly charitable contribution could be as low as \$.01 or as high as \$.99. Such contributions, though small, add up quickly, and funds collected are dispersed to qualified organizations and individuals within the cooperative's service district. These organizations and individuals are encouraged to compete and to submit written applications outlining their level of need and the possible benefits that could be obtained through receipt of such funding - for example, an exam table for a health clinic, new computers for a library, a microscope for an elementary school, a vehicle for a fire department, grants for a recreational center, et cetera.

REPRESENTATIVE THOMPSON relayed that most cooperatives distribute such funds via the board of a separately-created 501(c)(3) nonprofit corporation; such boards represent a cross section of the membership, with each voting district being represented. Most of the more than 250 cooperatives with a charitable giving program have adopted an "opt-out" program rather than an "opt-in" program, because research indicates that opt-out programs have significantly higher member involvement, with [up to] 90 percent member participation. He relayed that under the bill, members can opt out of the program at any time - either in person, in writing, or via the telephone or Internet -

and can request a refund of their donations for the prior three years. The changes proposed by HB 114 would clarify a potential conflict with AS 45.45.930, which pertains to opt-out marketing plans. The bill would require cooperatives to obtain membership approval before implementing an opt-out charitable giving program, and require that the amount added to the monthly bill be clearly identified on the monthly statement along with information on how to opt out of the program. He noted that CSHB 114(L&C) now contains language - in Section 2 - authorizing an electric cooperative to provide weatherization and energy efficiency products and services to members.

CHAIR GATTO said he isn't in favor of opt-out programs because they can be easily abused, particularly with elderly customers, and indicated that he would be voting against the bill. He said he feels strongly that charitable giving programs shouldn't be an opt-out program, because a person may not be aware enough of the situation to opt out. Under the bill, he surmised, a member of a cooperative would have to take an additional action in order to prevent the cooperative from taking extra money from him/her to fund a charity of its own choosing.

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JOE GALLAGHER, Public Relations Coordinator, Homer Electric Association, Inc. (HEA), referring to Section 2 of CSHB 114(L&C), noted that Alaska's Electric and Telephone Cooperative Act - AS 10.25 - currently allows cooperatives to finance the purchase of electrical and plumbing appliances, equipment, fixtures, and apparatus, and that the HEA has established a "line of credit" program that's been in place for at least 20 years, allowing members to finance the purchase of eligible items under the Act. Under the HEA's existing program, members can borrow up to \$5,000, pay the same amount of interest that the HEA pays when it borrows money, have payments deducted directly from their bank account, and must purchase products from a vendor located within the HEA's service area and that is also a member of the HEA.

MR. GALLAGHER relayed that over the last couple of years, the HEA has been very active with its membership in promoting energy efficiency, particularly given that 90 percent of the HEA's product is generated from natural gas and is therefore subject to rising fuel costs. As a result of increased electrical rates, many of the HEA's members have been taking steps to make weatherization and energy-efficiency improvements, and have been expressing interest in using the HEA's line of credit program to

finance those improvements. Unfortunately, because of how the Electric and Telephone Cooperative Act is currently worded, the program cannot be used to finance weatherization and energy efficiency products and services. [Section 2's proposed change to AS 10.25.20(2)] would be very good for the HEA's members, he concluded.

[1:49:36 PM](#)

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), in response to questions, explained that because provisions of AS 45.45 make it illegal to offer or engage in an opt-out marketing plan to sell goods or services, the question was raised regarding whether charitable donations would be considered a good or service that's prohibited under AS 45.45. [When asked by the GVEA,] the DOL issued an informal opinion indicating that such donations probably would be prohibited, and so the GVEA developed the concept of HB 114 - with help from the DOL regarding specific language - in order to resolve that potential conflict in favor of allowing opt-out charitable giving programs.

MR. SNIFFEN said that although opt-out programs are generally considered bad things in terms of consumer protection, the type of program authorized by HB 114 is very different, containing none of the ills associated with traditional opt-out programs but providing fairly significant protections to consumers. For example, under HB 114, if a member finds out later that he/she has been giving money mistakenly, he/she can get a refund. In response to a question, he offered his hope that HB 114 wouldn't be seen as authorizing any other type of opt-out program, surmising that any such would have to be vetted by the legislature first. He went on to say that one of the problems with HB 114 is that although the GVEA has given this issue a lot of thought and is a responsible company and has a model plan in place that it intends to go forward with, a lot of the things that the GVEA would be doing under its plan aren't required under the bill, and the other cooperatives might not administer their programs in the same way, and so it could take a while to see whether those other cooperatives were trying to abuse the system via such programs.

CHAIR GATTO expressed disfavor with authorizing any type of opt-out program.

[1:56:07 PM](#)

GENE THERRIAULT, Vice President, Resource Development, Golden Valley Electric Association (GVEA), assured the committee that the program the GVEA's membership has approved is not an opt-out marketing plan. He relayed that the GVEA has spoken with the sponsor of the legislation that prohibited opt-out marketing plans selling goods or services, and the sponsor indicated that his legislation was not intended to also prohibit opt-out charitable giving programs. Mr. Therriault confirmed that the DOL had issued an opinion indicating that an opt-out charitable giving program might conflict with provisions of AS 45.45, and relayed that the GVEA, via HB 114, is simply asking for a clarification. He proffered that one of the things that differentiates the proposed program from an opt-out marketing program is that a round-up opt-out charitable giving program such as would be authorized by the bill could only be implemented after an affirmative response from a cooperative's membership. In the case of the GVEA, 70 percent of its membership voted in favor of starting a round-up opt-out charitable giving program. Furthermore, the bill only applies to electric or telephone cooperatives, which already have statutory standards in place for polling members.

MR. THERRIAULT, in response to a question, indicated that the GVEA chose an opt-out program rather than an opt-in program because research indicated that the level of participation was greater with an opt-out program.

CHAIR GATTO acknowledged that an opt-out program would be more successful at raising funds.

MR. THERRIAULT, too, noted that the bill also requires a cooperative to clearly notify its members regarding how to opt out, and requires that a member's contributions for the prior three years be refunded if he/she requests. He offered his belief that the bill's requirements would ensure that only those charities that have broad support in a community would get chosen as a recipient by the board responsible for distributing the funds.

CHAIR GATTO recounted how his mother, an elderly widow with some dementia living alone in New York City, was taken advantage of by a telephone utility through the use of an opt-out program. His concern, he relayed, is that people won't take the steps to opt out even though they don't want to be participating in a particular program. Opting in is the better approach, he

opined, since even now utilities take advantage of their customers through the use of opt-out programs.

MR. THERRIault offered his belief that the requirements of the bill would limit the types of abuse that could occur. For example, under the bill, people could either officially opt out or just choose not to pay the extra, rounded up amount listed on their monthly statements. In response to a question, he noted that the bill would only apply to cooperatives, which are controlled by their membership.

CHAIR GATTO announced that [CSHB 114(L&C)] would be held over.

**Confirmation Hearing(s):**

**Alaska Judicial Council**

[2:06:53 PM](#)

CHAIR GATTO announced that the committee would next consider the appointment of Donald J. Haase to the Alaska Judicial Council (AJC).

[2:07:59 PM](#)

DONALD J. HAASE, Appointee, Alaska Judicial Council (AJC), relayed that his few interactions with the courts have all been brief and positive - two adoptions, one stint as a juror, and one speeding ticket; that his educational background provided him with an understanding of how the judicial system is designed to work and sparked his interest in serving on the AJC; and that he's gained experience participating in public meetings and at weighing all sides of an issue through his work on the City of Valdez Planning & Zoning Commission and is currently serving his second term as chair, that he's recently had an opportunity to talk with Alaskans from many walks of life while campaigning for a seat on the Alaska State Legislature, and that he now has a broader perspective on life than he had as a young man as the result of his being a father. He offered his belief that as a result of all his experience, he is now more thoughtful, forward-looking, and inclusive.

MR. HAASE opined that it's vastly important for Alaska to have a slate of unbiased, thoughtful, and considerate judges, and assured the committee that if he is confirmed, that that's what he would be striving to ensure. Referring to an issue raised during the committee's last meeting, he again acknowledged that

during his recent campaign for a legislative seat, he'd responded affirmatively to the following question on a questionnaire distributed by [Alaska Family Action, the lobbying arm of the Alaska Family Council]:

Would you support a state constitutional amendment that would allow the Governor the same leeway for appointing state judges as the U.S. President has for appointing federal judges, i.e., the Governor could nominate any candidate of his or her choosing for a judicial vacancy, and such nominee would have to be confirmed by the Alaska Senate?

MR. HAASE noted that several other candidates did so as well, including several current members of the legislature. In response to questions regarding "area representation" as referenced in Article IV, Section 8, of the Alaska State Constitution - the provision addressing the makeup of the AJC - Mr. Haase offered his understanding that neither Valdez nor any other community in the Prince William Sound area has been represented on the AJC; that the Second Judicial District - which spans the most northern and northwestern area of the state - has historically had less representation than the other three judicial districts; that the First Judicial District - which spans Southeast Alaska - is currently represented; and that he would be representing the Third Judicial District. In response to comments and questions regarding political ties, he said he doesn't consider having a partisan background as necessarily being a problem in terms of serving on the AJC, noted that one past member of the AJC had such a background, and relayed that he resigned from the Republican Party's central committee in 2008, and resigned from the board of Eagle Forum Alaska in December 2010.

[2:23:19 PM](#)

MR. HAASE, in response to further comments and questions, assured the committee that he wants to see a balanced judiciary, and ventured that his political views, as they relate to the questions asked on the aforementioned questionnaire, wouldn't be relevant with regard to his duties on the AJC because his responses to that questionnaire only reflected what he, as a candidate for State House, wished to see happen in the legislature. He assured the committee that should he be confirmed as a member of the AJC, he would put forward the names of only the most qualified judicial candidates. He then pointed out that in Article I of the AJC's bylaws, Section 1 -

Concerning Selection of Justices, Judges, and Public Defender - says in part, "The Council shall actively encourage qualified members of the bar to seek nomination to such offices, shall endeavor to prevent political considerations from outweighing fitness"; and that Section 2 - Concerning Retention of Judges - says in part, "The Council shall endeavor to prevent political considerations from outweighing fitness in the judicial retention recommendation process".

MR. HAASE, in continued response, noted that although the AJC is required to forward the names of at least two judicial candidates, he would tend towards sending up more names rather than fewer, with the main criteria being how qualified each candidate was; that he doesn't anticipate running for a seat on the Alaska State Legislature again, and only did so in 2010 in order to fill a gap left by a friend of his; that while serving on the board of Eagle Forum Alaska, he was responsible for moderating the organization's "blog" and posting the comments of others on it, and although he may have perhaps agreed with most of the comments, he didn't write them himself; and that he wouldn't characterize any of the judges he's dealt with or met as being too liberal, nor would he be using any such criteria when deciding which names to forward on to the governor.

[2:31:45 PM](#)

MR. HAASE relayed that what he would be looking for in a judicial candidate would be his/her interpersonal skills, because he wants judges who have an ability to make all sides feel that they'd been heard and understood and were treated fairly regardless of the trial outcome. Such an ability is much more important than a candidate's political views, he opined, particularly since judges don't have much power to change a particular political situation anyway, and so his hope is that a judge is going to make his/her decisions based on the facts of the case, not his/her personal views. In response to further questions, Mr. Haase indicated that when making a decision regarding which names to forward, he wouldn't be considering judicial candidates' political views, whether they were divorced, what their sexual orientation was, or whether they were male or female; instead, he would be choosing only the names of the most qualified judicial candidates to send forward.

REPRESENTATIVE GRUENBERG expressed his hope that at some point the interview process for judicial candidates would be held in a public-meeting format so that the public could learn about

candidates' qualifications and what AJC members are looking for in a candidate.

MR. HAASE offered his understanding that currently it's up to the individual candidate to decide whether he/she wants a public interview or a private interview, and said he tends to agree that conducting meetings out in the open is best, though he could understand that some candidates might be a bit shy and feel nervous in front of a large crowd.

[2:40:05 PM](#)

REPRESENTATIVE THOMPSON made a motion to advance from committee the nomination of Donald J. Haase as appointee to the Alaska Judicial Council. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

CHAIR GATTO reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

The committee took an at-ease from 2:41 p.m. to 2:43 p.m.

**HB 175 - COURT APPEARANCES; ARSON; INFRACTIONS**

[2:43:21 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 175, "An Act relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date."

[2:43:38 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), explained that [Sections 1, 2, and 6 of HB 175 - pertaining respectively to AS 12.25.150, rights of prisoner after arrest, AS 12.70.130, arrest without warrant of a person charged with a crime in another state, and Rule 5(a)(1) of the Alaska Rules of Criminal Procedure, proceedings before the judge or magistrate - would

conform those provisions of law to reflect changes made last year via House Bill 324. Specifically, that bill last year increased the timeframe - from 24 hours to 48 hours - in which a person must be brought before a judicial officer after being arrested;] unfortunately, that bill, although it changed the court rule to reflect the new deadline, neglected to also make conforming changes to AS 12.25.150 and AS 12.70.130. In response to questions, she indicated that a person might have his/her charges dismissed, depending on the circumstances, if he/she isn't brought before a judicial officer within the required timeframe; and relayed that law enforcement agencies and the Department of Corrections (DOC) are still following the statute's requirement of 24 hours rather than the court rule's requirement of 48 hours.

[2:45:41 PM](#)

MS. CARPENETI explained that [Section 3 - pertaining to AS 28.15.131, license to be carried and exhibited on demand - would conform that statute to current court rules - Alaska Rules of Administration - which provide that not having one's valid driver's license in one's possession while driving is merely a correctable infraction, with bail set at \$50, rather than a class B misdemeanor. Section 4 - pertaining to AS 28.22.019, proof of insurance to be carried and exhibited on demand [and] penalty - would similarly conform that statute to current court rules - Alaska Rules of Administration - which provide that not having proof of insurance in one's possession while driving is merely a correctable infraction, with a mandatory fine of \$500, rather than a class B misdemeanor with a discretionary minimum fine of \$500].

MS. CARPENETI explained that [Section 5 - pertaining to AS 41.23.220, penalty for committing violations in the Knik River Public Use Area - would conform that statute to AS 11.46.420, pertaining to the crime arson in the third degree. Enacted in 2006, AS 41.23.220 and associated regulations provided that burning a vehicle in the Knik River Public Use Area would be a violation, with a bail amount of \$50; in contrast, when enacted in 2008, AS 11.46.420 provided that burning a vehicle on state or municipal land would be a class C felony property crime. Under Section 5, all burning of vehicles in public areas would be a class C felony, and this is in keeping with the latest expression of legislative intent as evidenced by the enactment of AS 11.46.420]. In response to questions, she indicated that AS 11.46.420 doesn't apply in situations involving private land.

[2:53:33 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), in response to questions, acknowledging that the bill is only providing for conforming changes to those made last year, shared his concern that the [existing] 48-hour timeframe in which a person must be brought before a judicial officer after being arrested could result in the person having to remain in jail longer than necessary, particularly in situations involving lower-level offenses and particularly if waiting the entire 48 hours becomes the standard operating procedure for law enforcement. He expressed his hope that in the majority of cases, a person would be brought before a judicial officer within 24 hours and a delay to 48 hours would only occur in the few cases where it's truly necessary.

MS. CARPENETI noted that the existing language of AS 12.25.150(a) - found in Section 1 of the bill - says in part, "A person arrested shall be taken before a judge or magistrate without unnecessary delay", and relayed that most entities involved in the criminal justice system are already geared up to meet a 24-hour deadline, but there are a few situations in which that doesn't provide enough time for all parties involved in the case, including the victim. Again, the law would still require that no unnecessary delay occur between the person's arrest and his/her initial judicial hearing.

CHAIR GATTO, in response to a question, expressed a preference for not delaying the bill, given that it's only addressing conforming changes.

[3:04:52 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 1, labeled 27-ls0579\A.1, Gardner, 3/14/11, which read:

Page 3, following line 18:

Insert a new bill section to read:

**\* Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application of it to any person or circumstance, is held invalid, the remainder of this Act and the application to other persons or circumstances is not affected."

Renumber the following bill section accordingly.

REPRESENTATIVE GRUENBERG ventured that Amendment 1 would preclude any potential problems pertaining to severability from arising.

MS. CARPENETI, in response to a question, indicated her belief that Alaska's general severability clause would already apply if the issue were raised, but acknowledged that the adoption of Amendment 1 wouldn't hurt.

REPRESENTATIVE KELLER objected, and expressed a concern that adopting Amendment 1 could unnecessarily "red flag" the issue of severability. He then removed his objection.

REPRESENTATIVE GRUENBERG said he just wants to be sure that the court understands [it could simply sever those provisions of the bill it finds to be unconstitutional and leave the other provisions intact].

CHAIR GATTO, upon ascertaining that there were no further objections, announced that Amendment 1 was adopted.

[3:07:23 PM](#)

REPRESENTATIVE THOMPSON moved to report HB 175, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 175(JUD) was reported from the House Judiciary Standing Committee.

[3:07:41 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:07 p.m.