

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 28, 2011

1:11 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Lance Pruitt  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Steve Thompson, Vice Chair  
Representative Max Gruenberg  
Representative Mike Chenault (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 169

"An Act relating to the review of proposed regulations by the Legislative Affairs Agency; and providing for an effective date."

- MOVED HB 169 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 61(STA)

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED CSSB 61(STA) OUT OF COMMITTEE

HOUSE BILL NO. 171

"An Act relating to arrests without warrants by peace officers for certain misdemeanors."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 169

SHORT TITLE: LAA REVIEW OF PROPOSED REGULATIONS

SPONSOR(S): JUDICIARY

02/23/11 (H) READ THE FIRST TIME - REFERRALS  
 02/23/11 (H) JUD  
 02/23/11 (H) STA REFERRAL ADDED BEFORE JUD  
 03/15/11 (H) STA AT 8:00 AM CAPITOL 106  
 03/15/11 (H) Heard & Held  
 03/15/11 (H) MINUTE(STA)  
 03/17/11 (H) STA AT 8:00 AM CAPITOL 106  
 03/17/11 (H) Scheduled But Not Heard  
 03/22/11 (H) STA AT 8:00 AM CAPITOL 106  
 03/22/11 (H) Moved Out of Committee  
 03/22/11 (H) MINUTE(STA)  
 03/23/11 (H) STA RPT 5DP 1NR 1AM  
 03/23/11 (H) DP: JOHANSEN, P.WILSON, KELLER,  
 PETERSEN, LYNN  
 03/23/11 (H) NR: SEATON  
 03/23/11 (H) AM: GRUENBERG  
 03/28/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 61

SHORT TITLE: 2011 REVISOR'S BILL

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/24/11 (S) READ THE FIRST TIME - REFERRALS  
 01/24/11 (S) STA, JUD  
 02/15/11 (S) STA AT 9:00 AM BUTROVICH 205  
 02/15/11 (S) Heard & Held  
 02/15/11 (S) MINUTE(STA)  
 02/17/11 (S) STA AT 9:00 AM BUTROVICH 205  
 02/17/11 (S) Moved CSSB 61(STA) Out of Committee  
 02/17/11 (S) MINUTE(STA)  
 02/21/11 (S) STA RPT CS 2DP 3NR SAME TITLE  
 02/21/11 (S) DP: WIELECHOWSKI, MEYER  
 02/21/11 (S) NR: KOOKESH, PASKVAN, GIESSEL  
 02/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/28/11 (S) Heard & Held  
 02/28/11 (S) MINUTE(JUD)  
 03/09/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/09/11 (S) Moved CSSB 61(STA) Out of Committee  
 03/09/11 (S) MINUTE(JUD)  
 03/11/11 (S) JUD RPT CS(STA) 3DP 1NR  
 03/11/11 (S) DP: FRENCH, WIELECHOWSKI, MCGUIRE  
 03/11/11 (S) NR: COGHILL  
 03/16/11 (S) TRANSMITTED TO (H)  
 03/16/11 (S) VERSION: CSSB 61(STA)  
 03/18/11 (H) READ THE FIRST TIME - REFERRALS  
 03/18/11 (H) JUD  
 03/28/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 171

SHORT TITLE: ARRESTS FOR MISDEMEANORS

SPONSOR(S): MUNOZ BY REQUEST

02/25/11	(H)	READ THE FIRST TIME - REFERRALS
02/25/11	(H)	JUD
03/25/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/25/11	(H)	Heard & Held
03/25/11	(H)	MINUTE(JUD)
03/28/11	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

SARAH MUNSON, Staff  
Representative Carl Gatto  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 169 on behalf of the sponsor, the House Judiciary Standing Committee, chaired by Representative Gatto.

LISA KIRSCH, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** As one of the drafters, responded to questions during discussion of HB 169.

DEBORAH BEHR, Chief Assistant Attorney General - Statewide  
Section Supervisor  
Legislation & Regulations Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 169.

KATHRYN KURTZ, Assistant Revisor of Statutes  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** As an assistant revisor of statutes, presented SB 61 on behalf of the Senate Rules Standing Committee, sponsor by request of Legislative Council.

KENDRA KLOSTER, Staff  
Representative Cathy Munoz  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of HB 171, responded to questions and comments on behalf of Representative Munoz, sponsor by request.

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

**POSITION STATEMENT:** Responded to questions during discussion of HB 171, and expressed concerns.

GERALD LUCKHAUPT, Assistant Revisor of Statutes  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** As the drafter, provided comments and responded to questions during discussion of HB 171.

#### **ACTION NARRATIVE**

[1:11:34 PM](#)

**CHAIR CARL GATTO** called the House Judiciary Standing Committee meeting to order at 1:11 p.m. Representatives Gatto, Lynn, Keller, and Holmes were present at the call to order. Representative Pruitt arrived as the meeting was in progress. Representative Thompson was excused.

#### **HB 169 - LAA REVIEW OF PROPOSED REGULATIONS**

[1:12:20 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 169, "An Act relating to the review of proposed regulations by the Legislative Affairs Agency; and providing for an effective date."

The committee took an at-ease from 1:13 p.m. to 1:15 p.m.

[1:15:23 PM](#)

SARAH MUNSON, Staff, Representative Carl Gatto, Alaska State Legislature, on behalf of the sponsor, the House Judiciary Standing Committee, chaired by Representative Gatto, explained that [by amending AS 24.20.105(e),] HB 169 would fix problems with the statutes pertaining to regulation review. Existing AS 24.20.105 enumerates who can request Legislative Legal and Research Services to conduct a review of proposed regulations - a standing committee, the Administrative Regulation Review Committee, and Legislative Council - and who Legislative Legal and Research Services is allowed to notify of the results of such a review when it finds a problem with the proposed regulations - the Administrative Regulation Review Committee, the president of the Senate, and the speaker of the House of Representatives. The existing statute does not, however, currently allow the standing committee or the Legislative Council that requested the review to be notified of such results, and HB 169 would address this problem by adding those entities to the list of those who could be notified. Furthermore, in order to address situations involving a review of proposed regulations implementing newly enacted legislation, HB 169 would add language allowing the prime sponsor of such legislation to also be consulted by Legislative Legal and Research Services during the review and to be notified of the results of the review if a problem with the proposed regulations is found. The bill would also add language allowing Legislative Legal and Research Services to notify the requester of the review in situations where no problem with the proposed regulations is found.

MS. MUNSON mentioned that under the bill, when proposed regulations are found to have a problem, notification must be made in writing, but when no problem is found, notification may be communicated by [other, less formal means]. She also mentioned that some people have expressed concern that HB 169 would alter how regulations are promulgated, but pointed out that those concerns are unfounded because the bill only pertains to Legislative Legal and Research Services' review of, and subsequent communications regarding, proposed regulations.

CHAIR GATTO indicated that HB 169 was developed at his request.

MS. MUNSON, in response to questions, reiterated that under existing law, reviews may be requested by a standing committee, the Administrative Regulation Review Committee, or Legislative Council; and offered her understanding that when a problem with proposed regulations is found by Legislative Legal and Research

Services, just the chair of the committee or council that requested the review would be notified.

REPRESENTATIVE HOLMES indicated interest in possibly expanding the list of who could be notified.

1:22:15 PM

LISA KIRSCH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), as [one of the drafters], explained that under Alaska's Administrative Procedure Act (APA), all legislators get notice of proposed regulations, and so if an individual legislator has an interest in a particular proposed regulation but is not a member of one of the aforementioned legislative bodies, under other provisions of existing AS 24.20, he/she could still request a legal opinion on the proposed regulation, which would then undergo a similar, confidential review as that provided for under AS 24.20.105. In response to a question about the phrase, "consult with", as used on page 1, lines 6 and 9, she explained that under current law, when conducting a review of proposed regulations, Legislative Legal and Research Services is allowed to discuss the proposed regulation and the issues surrounding it with the Department of Law (DOL), the requesting legislative body, and the state agency proposing the regulatory change. Under the bill, in conducting a review of proposed regulations implementing newly enacted legislation, Legislative Legal and Research Services would also be able to discuss those things with the sponsor of the enabling legislation.

MS. MUNSON - in response to a question about the term, "statutory standards" as used in the sponsor statement - clarified that under existing AS 24.20.105(d)(1)-(3), in reviewing a proposed regulation, Legislative Legal and Research Services is required to evaluate the legality and constitutionality of the proposed regulation; whether the state agency has the statutory authority to adopt the proposed regulation in order to implement, interpret, make specific, or otherwise carry out a statute; and whether the proposed regulation is consistent with the applicable statutes.

MS. KIRSCH noted that during such reviews, Legislative Legal and Research Services also evaluates whether a proposed regulation is consistent with legislative intent - at least in so far as such can be determined.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 169.

[1:33:39 PM](#)

DEBORAH BEHR, Chief Assistant Attorney General - Statewide Section Supervisor, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL), in response to questions and comments, indicated that the existing limitations under AS 24.20.105 regarding who may request a Legislative Legal and Research Services' review of a proposed regulation and who receives notification of the results of such a review were meant to ensure that a review didn't take on a life of its own, particularly when the proposed regulation raised constitutional issues. She, too, noted that under Alaska's Administrative Procedure Act (APA), all legislators get notice of proposed regulations, and that under other provisions of AS 24.20, any legislator may request a review of a proposed regulation from Legislative Legal and Research Services.

CHAIR GATTO indicated that he is disinclined to further expand the bill's proposed list of who is notified of review results.

MS. KIRSCH, in response to a question, clarified that the bill is not proposing to expand the list of who can request a review under AS 24.20.105; reiterated aspects of Ms. Munson's explanation of the bill; and pointed out that if a legislator isn't specifically entitled under AS 24.20.105 to receive notification of the results of a review conducted under that provision, he/she could simply ask Legislative Legal and Research Services to conduct a review of the proposed regulation under other provisions of AS 24.20.

REPRESENTATIVE KELLER expressed favor with keeping the bill's proposed list of who may receive notification of review results under AS 24.20.105 as is.

[1:40:45 PM](#)

REPRESENTATIVE PRUITT moved to report HB 169 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 169 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:41 p.m. to 1:43 p.m.

**SB 61 - 2011 REVISOR'S BILL**

1:43:16 PM

CHAIR GATTO announced that the next order of business would be CS FOR SENATE BILL NO. 61(STA), "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

1:43:35 PM

KATHRYN KURTZ, Assistant Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), explained that revisor's bills are prepared annually to correct or remove deficiencies, obsolete provisions, and conflicts in statute; and that members' packets contain a sectional analysis of SB 61. [Sections 6-8, 14, 23-35, 39-40, and 44 would amend various provisions in Titles 9, 18, 22, 24, 33, 36, 39-40, and 44] to create uniformity among the statutory references to the administrative director of the Alaska Court System (ACS). [Sections 1 and 36-37 would change references in AS 03.22.050 and AS 38.07] to the United States Soil Conservation Service, to references to the United States Department of Agriculture, Natural Resources Conservation Service, to reflect a 1994 renaming of that service. Sections 42 and 45 would amend references to federal laws [in AS 42.06.430(7)(A) and AS 45.68.120(a)] to reflect renumbering changes in those referenced federal laws. [Sections 10-12 would remove references in AS 14.40.809(b) and AS 14.42.015(a) and (d)] to Sheldon Jackson College because that institution no longer exists.

MS. KURTZ explained that Sections 15, 18-19, and 41 would delete obsolete, and therefore unnecessary, date references in [provisions of AS 29, and in AS 42.04.080(b)]. Section 2 would add a definition of the term, "department" in AS 08.02 to clarify that as used in that chapter, that term means the Department of Commerce, Community & Economic Development (DCCED). Section 9 would make a conforming change in AS 14.07.020(a)(16)(B) by replacing the term, "math" with the term, "mathematics", which is the term used elsewhere in Alaska's statutes.

MS. KURTZ, in response to a question, clarified that for purposes of avoiding the use of a split infinitive in AS 14.40.809(b)(5), [Section 10] is also proposing to replace the phrase, "to annually report on", with the phrase, "to report annually on". In response to further questions, she reiterated

that [Sections 10-12] are proposing to delete the obsolete references to Sheldon Jackson College, and explained that although the legislature could choose to remove [Sections 10-12 of the bill - thereby leaving existing AS 14.40.809(b) and AS 14.42.015(a) and (d) as is] - retaining the references to Sheldon Jackson College could put [the Board of Regents of the University of Alaska and the Alaska Commission on Postsecondary Education] in the difficult position of being statutorily required to treat with, and include individuals from, a nonexistent entity. Should another private college come to the legislature's attention at some point, then the legislature could decide at that time whether to add the appropriate statutory references via a substantive bill.

CHAIR GATTO indicated favor with the bill's proposal to delete the obsolete references to Sheldon Jackson College; retaining such references would only serve to mislead people, he predicted. In response to a question, he pointed out that even if the legislature was already considering other private colleges, it couldn't insert statutory references to any of them via SB 61 because SB 61 is a revisor's bill and as such is precluded from proposing substantive changes.

MS. KURTZ, in response to comments, ventured that perhaps researching legislative history could provide insight into the reasoning behind the initial inclusion of references to Sheldon Jackson College in AS 14.40.809(b) and AS 14.42.015(a) and (d).

[2:00:06 PM](#)

REPRESENTATIVE KELLER moved to report CSSB 61(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 61(STA) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:01 p.m. to 2:03 p.m.

#### **HB 171 - ARRESTS FOR MISDEMEANORS**

[2:03:41 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 171, "An Act relating to arrests without warrants by peace officers for certain misdemeanors."

[2:04:06 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Conceptual Amendment 1, which read [original punctuation provided]:

Page 2, line 5

following "AS 11.41":

Insert "and there is reasonable cause to believe arrest without warrant is a practical necessity to prevent imminent physical harm to the public"

CHAIR GATTO objected.

REPRESENTATIVE HOLMES ventured that Conceptual Amendment 1 would address the concerns raised during HB 171's last hearing that the bill would allow warrantless arrests for all misdemeanor offenses against a person, even very low-level offenses such as reckless endangerment, and those wherein no additional danger to the public exists if someone isn't arrested.

[2:07:30 PM](#)

KENDRA KLOSTER, Staff, Representative Cathy Munoz, Alaska State Legislature, on behalf of Representative Munoz, sponsor of HB 171 by request, in response to a question, indicated that many other states do allow, to some degree or another, warrantless arrests for certain misdemeanor offenses committed outside the presence of an officer. The sponsor, she relayed, feels that when a person [poses a danger to others,] he/she should be removed from the [vicinity]. Similar to the laws in some other states, HB 171 would only apply in situations involving a misdemeanor offense against a person. She noted that members' packets contain a memorandum by Legislative Legal and Research Services detailing the specifics of the warrantless-arrest authority granted in other states.

REPRESENTATIVE KELLER expressed concern that Conceptual Amendment 1 wouldn't actually narrow the bill much, and that insufficiently-trained law enforcement officers could still end up abusing the arrest authority granted by the bill.

MS. KLOSTER relayed that the concept of HB 171 was brought forth by the Juneau Police Department (JPD), and that other law enforcement organizations throughout Alaska have also requested the type of warrantless-arrest authority the bill would provide for. The goal, however, is to sufficiently narrow the bill while still giving law enforcement officers an adequate tool with which to address situations that involve imminent danger to

the public. She offered her understanding, and hope, that law enforcement officers already receive the training necessary to make determinations about whether there is probable cause to make an arrest and whether the behavior in question constitutes an offense against a person.

REPRESENTATIVE PRUITT expressed concern that the warrantless-arrest authority being granted by the bill would still be abused regardless of the training law enforcement officers receive.

[2:15:51 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), in response to a question, paraphrased portions of AS 11.41.250, AS 11.41.230, and AS 11.41.220 to illustrate what kinds of activities could constitute the misdemeanor crime of reckless endangerment, what kinds of activities could constitute the misdemeanor crime of assault in the fourth degree, and what kinds of activities could constitute the felony crime of assault in the third degree.

REPRESENTATIVE LYNN [speaking as a former law enforcement officer] opined that police officers are already cognizant of the substantial consequences of making a false arrest, particularly given that anytime they are called to a scene or come across a situation, they are faced with the decision of whether or not to arrest somebody - such decision-making is already part of their job.

MR. STEINER, in response to a question, said that the language of Conceptual Amendment 1 does appear to "reduce the discretion in a definable way, to kind of mimic what the other parts of ... [AS 12.25.030(b)] are getting at, which is inferred exigency or some necessary reason for concluding that if something doesn't happen now, the public's at risk"; in so doing, Conceptual Amendment 1 somewhat targets one of the concerns he has with HB 171. He pointed out, however, that a police officer would still have to make a judgment call regarding whether, at that moment, there's a practical reason for trying to control the situation by making an arrest. Furthermore, because there is no statutory time limit by which the state must act to indict someone arrested for a misdemeanor offense, such cases tend to go on quite a bit longer without judicial or state review than what occurs with a felony case, which, by statute, must be acted upon within 10 days of the person being put in jail. Theoretically, therefore, adoption of Conceptual Amendment 1 would limit the proposed warrantless-arrest authority to only

those situations in which there is a physical danger to the public if someone isn't arrested, thereby mitigating the bill's potential to further increase law enforcement's already-substantial misdemeanor workload.

REPRESENTATIVE HOLMES - in response to questions/comments regarding Conceptual Amendment 1's use of the phrase, "imminent physical harm to the public" - indicated that she would be amenable to replacing that language with the phrase, "imminent physical harm to a person".

[2:23:36 PM](#)

GERALD LUCKHAUPT, Assistant Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), as the drafter of HB 171, concurred that Conceptual Amendment 1 would narrow the [arrest] discretion that would be available under the bill, and acknowledged that in some situations involving misdemeanor offenses against a person, law enforcement officers simply aren't going to be able to show that physical harm would occur absent an immediate arrest. He added that he would be able to draft appropriate replacement language for Conceptual Amendment 1. In response to questions and comments, he offered his understanding that the fact of an arrest does stay on a person's record even if he/she isn't convicted; that for purposes of the criminal justice system, juveniles are treated differently than adults and by statute cannot be held in adult jails; that law enforcement officers must still have probable cause to make an arrest regardless of what the offense is and HB 171 wouldn't change that; and that with the other offenses for which law enforcement officers are already permitted to make a warrantless arrest without having witnessed the offense - whether felony or misdemeanor - officers are already making such probable-cause determinations. In conclusion, he surmised that law enforcement officers' responsibility to make good choices and apply their training would somewhat increase under the bill, which currently addresses seven misdemeanor offenses against a person.

REPRESENTATIVE KELLER indicated that he'd been considering a conceptual amendment that would allow for a warrantless arrest for the crimes addressed by the bill [only] if the victim expressed or claimed fear of being in imminent danger absent an arrest of the alleged perpetrator.

REPRESENTATIVE PRUITT, referring to testimony heard during HB 171's last hearing, offered his understanding that law enforcement officers are in favor of the bill because they believe that their current inability to make a warrantless arrest for certain misdemeanor offenses against a person committed outside their presence does put the public in imminent danger.

CHAIR GATTO, in response to a question, surmised that [having the warrantless-arrest authority proposed by the bill for the misdemeanor offenses outlined therein] would better allow law enforcement officers to put end to whatever crisis they are responding to.

REPRESENTATIVE PRUITT indicated disfavor with the bill's current language.

CHAIR GATTO relayed that HB 171 would be held over [with the motion to adopt Conceptual Amendment 1 left pending].

[2:37:28 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:37 p.m.