

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 4, 2011

1:09 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Bob Lynn
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 168

"An Act requiring the amount of the security given by a party seeking an injunction or order vacating or staying the operation of a permit affecting an industrial operation to include an amount for the payment of wages and benefits for employees and payments to contractors and subcontractors that may be lost if the industrial operation is wrongfully enjoined."

- MOVED CSHB 168(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 1

"An Act stating a public policy that allows a person to choose or decline any mode of securing health care services."

- HEARD & HELD

HOUSE BILL NO. 6

"An Act authorizing the governor to remove or suspend a member of the Board of Regents of the University of Alaska for good cause; and establishing a procedure for the removal or suspension of a regent."

- MOVED CSHB 6(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 161

"An Act requiring that all information in a declaration of candidacy, letter of intent, or nominating petition for a candidate for elective state executive and state and national legislative office is open to public inspection."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 168

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION

SPONSOR(S): REPRESENTATIVE(S) FEIGE

02/23/11	(H)	READ THE FIRST TIME - REFERRALS
02/23/11	(H)	JUD
02/25/11	(H)	BILL REPRINTED 2/24/11
03/21/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/21/11	(H)	Heard & Held
03/21/11	(H)	MINUTE(JUD)
03/23/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/23/11	(H)	<Bill Hearing Canceled>
03/30/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/30/11	(H)	Scheduled But Not Heard
04/04/11	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 1

SHORT TITLE: POLICY FOR SECURING HEALTH CARE SERVICES

SPONSOR(S): REPRESENTATIVE(S) GATTO, LYNN

01/18/11	(H)	PREFILE RELEASED 1/7/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	HSS, JUD
03/01/11	(H)	HSS AT 3:00 PM CAPITOL 106
03/01/11	(H)	Scheduled But Not Heard
03/08/11	(H)	HSS AT 3:00 PM CAPITOL 106
03/08/11	(H)	Heard & Held
03/08/11	(H)	MINUTE(HSS)
03/15/11	(H)	HSS AT 3:00 PM CAPITOL 106
03/15/11	(H)	Moved CSHB 1(HSS) Out of Committee
03/15/11	(H)	MINUTE(HSS)
03/16/11	(H)	HSS RPT CS(HSS) 2DP 3NR
03/16/11	(H)	DP: DICK, KELLER
03/16/11	(H)	NR: SEATON, MILLER, HERRON
04/01/11	(H)	JUD AT 1:00 PM CAPITOL 120
04/01/11	(H)	Heard & Held
04/01/11	(H)	MINUTE(JUD)
04/04/11	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 6

SHORT TITLE: REMOVING A REGENT

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG

01/18/11	(H)	PREFILE RELEASED 1/7/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	EDC, JUD
02/11/11	(H)	EDC AT 8:00 AM CAPITOL 106
02/11/11	(H)	Heard & Held
02/11/11	(H)	MINUTE(EDC)
02/21/11	(H)	EDC AT 8:00 AM CAPITOL 106
02/21/11	(H)	Moved CSHB 6(EDC) Out of Committee
02/21/11	(H)	MINUTE(EDC)
02/23/11	(H)	EDC RPT CS(EDC) 5DP
02/23/11	(H)	DP: P.WILSON, SEATON, KAWASAKI, FEIGE, DICK
03/21/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/21/11	(H)	Heard & Held
03/21/11	(H)	MINUTE(JUD)
03/23/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/23/11	(H)	Scheduled But Not Heard
04/04/11	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE ERIC FEIGE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 168.

TINA KOBAYASHI, Chief Assistant Attorney General - Statewide
Section Supervisor

Oil, Gas & Mining Section

Civil Division (Juneau)

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 168.

DOUG WOOLIVER, Administrative Attorney

Administrative Staff

Office of the Administrative Director

Alaska Court System (ACS)

Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 168.

KAREN SAWYER, Staff
Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Addressed HB 1 on behalf of Representative Gatto, one of the bill's joint prime sponsors.

SIGNE ANDERSON, Chief Assistant Attorney General - Statewide
Section Supervisor
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 1.

JON SHERWOOD
Medicaid Special Projects
Medicaid and Health Care Policy
Division of Health Care Services
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 1.

PATRICK LUBY, Advocacy Director
AARP Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 1.

TED MADSEN, Staff
Representative Max Gruenberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Addressed HB 6 on behalf of the sponsor, Representative Gruenberg.

JEAN MISCHEL, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 6.

JUDY BOCKMAN, Assistant Attorney General

State Ethics Attorney
Opinions, Appeals, & Ethics
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 6.

ACTION NARRATIVE

[1:09:19 PM](#)

VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Thompson, Gruenberg, Holmes, and Keller were present at the call to order. Representative Pruitt arrived as the meeting was in progress. Representatives Gatto and Lynn were excused.

HB 168 - INJUNCTION SECURITY: INDUSTRIAL OPERATION

[1:09:45 PM](#)

VICE CHAIR THOMPSON announced that the first order of business would be HOUSE BILL NO. 168, "An Act requiring the amount of the security given by a party seeking an injunction or order vacating or staying the operation of a permit affecting an industrial operation to include an amount for the payment of wages and benefits for employees and payments to contractors and subcontractors that may be lost if the industrial operation is wrongfully enjoined."

[1:11:58 PM](#)

REPRESENTATIVE ERIC FEIGE, Alaska State Legislature, sponsor, to briefly recap, indicated that HB 168 would establish in statute language similar to that of Rule 65(c) of the Alaska Rules of Civil Procedure in order to address lawsuits involving resource development projects, specifically those wherein a party seeks a restraining order, preliminary injunction, or order vacating or staying the operation of a permit that affects an industrial operation, [thereby essentially] requiring the court, when setting the amount of the required security bond, to consider the costs associated with that restraining order, preliminary injunction, or order vacating or staying the operation of a permit.

REPRESENTATIVE HOLMES noted that a memorandum in members' packets dated March 21, 2011, from Legislative Legal and Research Services indicates that if HB 168 is interpreted as requiring the security bond to include an amount for wages, benefits, and contract payments, then the bill might also be interpreted as changing a court rule [because currently the court may consider including amounts for those items in a security bond but isn't required to]. She asked whether it's the sponsor's intention to require that the security bond include amounts for wages and benefits and contract payments.

REPRESENTATIVE FEIGE said, "[The] intent of the bill is to make sure that the court at least includes that in their consideration for the security amount; ... I don't believe it directs ... them to impose that, particularly, but it does ... ask that they consider that in the"

REPRESENTATIVE HOLMES sought clarification that the bill would not require the court to include those amounts.

REPRESENTATIVE FEIGE said, "Correct."

REPRESENTATIVE GRUENBERG said, "With that clarification, that there's not to be any change in the court rule but simply an admonition, in the judge's discretion, that we'd like that to be considered, then I don't think a court rule [change] is ... required, and I feel much more comfortable with the bill."

REPRESENTATIVE FEIGE concurred with Representative Gruenberg's interpretation.

REPRESENTATIVE GRUENBERG characterized HB 168 as being in line with Rule 65(c).

[1:16:26 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, labeled 27-LS0395\B.2, Bailey, 3/29/11, which read:

Page 1, line 10:

Delete "determined by the court"

Insert "the court considers proper"

REPRESENTATIVE KELLER objected.

REPRESENTATIVE GRUENBERG explained that Amendment 1 provides for language tracking that of Rule 65(c), and so could further

clarify that the bill is intended to do exactly the same thing as that court rule.

REPRESENTATIVE FEIGE concurred.

REPRESENTATIVE KELLER offered his understanding, though, that the term, "determination" constitutes a final judgment, and expressed a preference for retaining the phrase, "determined by the court", considering it to be "tighter."

REPRESENTATIVE HOLMES explained that that term, as used in the bill, doesn't in any way refer to any sort of final judgment, and instead simply means that the court shall decide what amount the security bond should be for. Amendment 1 would not change the meaning of the bill, does not constitute a substantive change, and would instead simply allow the bill to track the aforementioned court rule. Adoption of Amendment 1 would also clarify that the legislature is not trying to change that court rule, she ventured.

REPRESENTATIVE KELLER predicted that adoption of Amendment 1 would then allow people to make the argument that the bill isn't necessary because [the situations that are of concern to the sponsor] would be covered under the court rule. He then sought clarification from the Department of Law regarding what the effect of adopting Amendment 1 would be.

[1:22:55 PM](#)

TINA KOBAYASHI, Chief Assistant Attorney General - Statewide Section Supervisor, Oil, Gas & Mining Section, Civil Division (Juneau), Department of Law (DOL), said she agrees with Representative Holmes's summation that because the language of Amendment 1 more closely tracks the language of the court rule, its adoption would clarify that the proposed statute would not change the court rule, that the discretion would be left entirely up to the court. In response to a question, she offered her belief that under Amendment 1's proposed new language - "the court considers proper" - the court would simply continue following its current procedure.

REPRESENTATIVE GRUENBERG observed that the dictionary, which the courts normally look to, in part defines the term, "determine" as meaning to find out or come to a decision about something via investigation, reasoning, or calculation.

REPRESENTATIVE FEIGE, in response to a question, concurred that that was the meaning he intended when initially including the phrase, "determined by the court" in HB 168.

REPRESENTATIVE GRUENBERG posited that Amendment 1's proposed new language merely restates that intent, thereby removing all question regarding what the bill does.

REPRESENTATIVE KELLER indicated that he still has concerns about the meaning of Amendment 1's proposed new language.

[1:25:51 PM](#)

REPRESENTATIVE HOLMES reiterated that she doesn't consider Amendment 1 to be effecting a substantive change. Instead, she ventured, Amendment 1's proposed new language is just another way of saying what the bill already says, and pointed out that the bill's sponsor is in agreement. It is seemingly being argued that the language currently in the bill should be kept because it means something different than Amendment 1's proposed new language and that which is currently in the court rule, but if that's really the case, and it really does mean something different, then by not adopting Amendment 1, it means that the bill would indeed be changing a court rule - thereby requiring an affirmative two-thirds vote. The closer the language of the court rule is tracked, she opined, then the more likely it is that the bill isn't going to get struck down as having inappropriately effected a court rule change. In conclusion, she urged adoption of Amendment 1.

REPRESENTATIVE KELLER mentioned that he simply didn't want to change the bill contrary to what the sponsor wants. He then removed his objection to the motion to adopt Amendment 1.

VICE CHAIR THOMPSON, noting that there were no further objections, announced that Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG asked the sponsor to consider, as the bill moves forward, possibly changing it in order to ensure that its proposed AS 09.40.230(c) would apply fairly to both parties in a lawsuit; proposed subsection (c) currently reads:

(c) The existence of security under (b) of this section does not

(1) prohibit a person who is wrongly enjoined or restrained from obtaining relief that may be available to that person; or

(2) limit the amount that a party may recover in the action.

VICE CHAIR THOMPSON questioned how the portion of a security bond that reflects lost wages and benefits would be distributed to employees.

[1:31:09 PM](#)

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), explained that if a security bond is posted to protect the interests of a company that's alleging potential lost wages, and if that security bond is then forfeited, the court would pay that bond amount to the party that was enjoined, but the court wouldn't have any way of knowing who the company should be reimbursing for lost wages - the decision of who to reimburse would be left up to the company that received the forfeited bond.

VICE CHAIR THOMPSON questioned whether a company could simply pocket that money and not reimburse its employees for wages.

MR. WOOLIVER acknowledged that a company could do that. Again, the court isn't going to have any of the information necessary to address the distribution of funds, and so it must be left up to the receiving party to appropriately reimburse its employees and subcontractors.

REPRESENTATIVE GRUENBERG ventured that certain types of trusts and specific court actions could probably be utilized to mitigate the potential for an enjoined/restrained industrial operation to abuse the system.

MR. WOOLIVER mentioned that the apportioning of a forfeited security bond could get somewhat complicated and has the potential of engendering further litigation.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HB 168.

[1:36:38 PM](#)

REPRESENTATIVE KELLER moved to report HB 168, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 168(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:37 p.m. to 1:40 p.m.

HB 1 - POLICY FOR SECURING HEALTH CARE SERVICES

[1:40:07 PM](#)

VICE CHAIR THOMPSON announced that the next order of business would be HOUSE BILL NO. 1, "An Act stating a public policy that allows a person to choose or decline any mode of securing health care services." [Before the committee was CSHB 1(HSS), as amended on 4/1/11.]

[1:40:17 PM](#)

REPRESENTATIVE PRUITT moved to adopt the proposed committee substitute (CS) for HB 1, Version 227-LS0006\B, Bailey, 4/1/11, as the working document.

REPRESENTATIVE GRUENBERG objected.

[1:40:46 PM](#)

KAREN SAWYER, Staff, Representative Carl Gatto, Alaska State Legislature, on behalf of Representative Gatto, one of the bill's joint prime sponsors, explained that Version B incorporates an amendment made to CSHB 1(HSS) during the bill's last hearing. Under that amendment - which altered both proposed AS 44.99.130(a) and the title - the word, "choose" was replaced with the word, "accept", and the word, "offered" was added. The proposed state policy under Version B now says in part, "a person has the right to accept or decline any offered mode of obtaining health care services".

REPRESENTATIVE GRUENBERG removed his objection.

VICE CHAIR THOMPSON, noting that there were no further objections, announced that Version B was before the committee.

MS. SAWYER, to briefly recap, explained that HB 1 pertains to the federal Patient Protection and Affordable Care Act (PPACA), and offered her belief that the PPACA is going to mandate that all individuals have qualifying healthcare insurance or pay a tax penalty. Specifically, HB 1 is proposing to establish a state policy that a person has the right to accept or decline any offered mode of obtaining healthcare services without penalty or threat of penalty. She also noted that a change made

in a prior committee specifies that as used in proposed AS 44.99.130, the term, "penalty" does not mean liability for the cost of healthcare services.

VICE CHAIR THOMPSON, offering his understanding that the bill is intended to address the issue of [healthcare] insurance, expressed dissatisfaction that the bill's language instead focuses on healthcare services, and characterized this discrepancy as confusing.

MS. SAWYER indicated that the bill was written as it was in order to specifically address provisions of the PPACA.

REPRESENTATIVE HOLMES, offering her understanding that the stated goal of the bill is to ensure that no one be required to have healthcare insurance, pointed out that that's not what the language of the bill actually says. Unintended consequences, therefore, could result from passage of HB 1.

MS. SAWYER, relaying that HB 1 is based on model legislation produced by the American Legislative Exchange Council (ALEC) and being used by other states, agreed to research the issue further. In response to a question, she said HB 1 was written as if the PPACA is going to be found to be constitutional.

REPRESENTATIVE HOLMES pointed out, though, that if the PPACA is found to be constitutional, HB 1 would be preempted, and if the PPACA is found to be unconstitutional, then HB 1 won't be necessary. Either way, isn't it that the bill will have no actual effect?

MS. SAWYER offered her understanding that over 40 other states thus far have either passed or are considering passing similar legislation. The hope is that "all off this" will illustrate that a number of states disagree that the federal government has the right to mandate that a person either have healthcare insurance or pay a tax penalty.

[1:48:44 PM](#)

SIGNE ANDERSON, Chief Assistant Attorney General - Statewide Section Supervisor, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), concurred that if the PPACA is found to be constitutional, federal preemption would be an issue, but relayed that she was not prepared at this point in time to say that the bill would have no effect at all.

REPRESENTATIVE HOLMES pointed out that regardless of whether the PPACA is found to be unconstitutional, if passed, HB 1 would still be in effect and therefore could still have unintended consequences, particularly given that its language broadly refers to healthcare services in general. If the bill is intended as a statement of disagreement over provisions of the PPACA, Alaska is already a party in the federal lawsuit, Florida et al v. United States Department of Health and Human Services, and so what more of a statement of disagreement than that is necessary?

REPRESENTATIVE GRUENBERG asked why the bill, via Section 1, is proposing to add a short title to uncodified law. He offered his understanding that except in situations involving interstate compacts and uniform Acts, providing for a short title was just not done. He asked whether the [joint prime sponsors] would object to deleting Section 1 of HB 1.

MS. SAWYER, noting [the joint prime sponsors'] absence, relayed that she would be unable to speak for [them] on this issue at this time.

REPRESENTATIVE GRUENBERG expressed a preference for not including a short-title provision. Observing, then, that proposed AS 44.99.130(b)(2) says that the proposed state policy may not impair a contract right that provides healthcare services, he asked whether any federal law requiring a person to have or purchase healthcare insurance would simply become part of [employment] contracts as an "implied-in-law" provision, thereby rendering HB 1's proposed state policy inapplicable.

MS. ANDERSON - noting that under Alaska's insurance laws, such a requirement by the state would be implied in [employment] contracts - relayed that due to her nescience regarding federal jurisprudence, she is unable to say whether such would also be the case with federal law.

REPRESENTATIVE GRUENBERG surmised, then, that that issue still needs clarification, particularly if the PPACA does contain such a requirement.

REPRESENTATIVE HOLMES asked whether the Department of Health and Social Services has any concerns that HB 1 would have a negative impact on other federal programs such as Medicaid or Medicare.

[1:57:07 PM](#)

JON SHERWOOD, Medicaid Special Projects, Medicaid and Health Care Policy, Division of Health Care Services, Department of Health and Social Services (DHSS), said he is unable to speak to the question of whether Medicare would be impacted, because it's a federal program that the DHSS is not involved in the administration of, but with regard to the question of whether the bill would impact other state, and state and federal programs - such as Medicaid - he said he'd specifically asked the Department of Law (DOL) whether the exemption provided for via proposed AS 44.99.130(b)(1) would be adequate for the DHSS's purposes, including its child support enforcement efforts - a linked requirement for certain assistance programs - and the DOL assured him that the exemption was adequate for the purpose of allowing the DHSS to continue administering its programs. In response to another question, he said it was his understanding that the PPACA's tax penalty would apply to someone who doesn't have health insurance or some other means of obtaining healthcare - such as through the Indian Health Service (IHS), for example - and that that's why the bill uses [the phrase, "mode of obtaining health care services"].

REPRESENTATIVE HOLMES shared her concern that regardless of the joint prime sponsors' intent, the language of the proposed state policy could be interpreted as allowing for something that's contrary to public policy or current law.

VICE CHAIR THOMPSON, reiterating his concern that the proposed state policy doesn't specifically reference healthcare insurance, again characterized this lack as confusing.

REPRESENTATIVE GRUENBERG questioned whether the bill isn't simply stating legislative intent.

MS. SAWYER said she is unable to speak to whether that's what the drafter intended when he chose to address [the joint prime sponsors' concerns about the PPACA] via the proposed state policy.

REPRESENTATIVE GRUENBERG said that's how he is interpreting the bill, and is therefore questioning how, as a practical matter, [the proposed state policy] would be applied and whether it establishes a statutory right.

MR. SHERWOOD indicated that because of the exemption laid out in proposed AS 44.99.130(b)(1) and because the programs offered by [the DHSS] are generally authorized via statute, the DHSS would

not be bound by HB 1's proposed state policy, and this is why the DHSS submitted a zero fiscal note for HB 1.

[2:07:01 PM](#)

REPRESENTATIVE GRUENBERG asked what the joint prime sponsors intend for the bill to actually do.

MS. SAWYER, in response, said the joint prime sponsors don't believe an individual should be mandated by the federal government to purchase a particular product, and instead believe that to then penalize that individual for not doing so would be another error.

REPRESENTATIVE GRUENBERG pointed out, though, that it's the federal courts that are responsible for addressing the provisions of the PPACA and any constitutional questions that arise. Given that under the Supremacy Clause, the state is required to follow federal mandates, wouldn't the joint prime sponsors' beliefs regarding the PPACA be better addressed via a house joint resolution urging the federal government to change the PPACA, or urging the state to challenge the provisions of the PPACA? "I don't think that this has any authority -- we can't ... have the kind of effect on federal law and the federal Constitution that you're saying you want this bill to have," he concluded.

MS. SAWYER offered [the joint prime sponsors' belief] that healthcare insurance isn't something the federal government should be mandating, that that duty instead lies with the state. To address the concern about the language of the proposed state policy possibly being interpreted as allowing for something that's contrary to public policy or current law, she noted that proposed AS 44.99.130(c)(2) defines the term, "mode of obtaining" in part as meaning directly purchasing healthcare services from a healthcare provider.

[2:11:17 PM](#)

PATRICK LUBY, Advocacy Director, AARP Alaska, stated that the AARP opposes HB 1. He then offered his belief that individuals, businesses, and government entities/programs that have, offer, or administer a healthcare insurance plan, end up picking up the shifted healthcare costs incurred by the uninsured. Not complying with the provisions of the PPACA will only allow this practice of cost-shifting to continue, and for this reason, the AARP is requesting a "No" vote on HB 1. In response to a

question, he offered his belief that the possible benefits afforded by the provisions of the PPACA won't be realized unless everyone participates - that's the whole purpose of group healthcare insurance; the more people who have healthcare insurance, the less healthcare services and healthcare insurance will cost everybody. In response to other questions, he said he agrees that everyone should be mandated to have healthcare insurance, but acknowledged that to some extent, cost-shifting also occurs when particular individuals - regardless of whether they already have healthcare insurance - require expensive/extensive healthcare services.

REPRESENTATIVE KELLER suggested that because the AARP offers supplemental Medicare insurance, Mr. Luby has a conflict of interest.

REPRESENTATIVE HOLMES pointed out, though, that those on Medicare would be considered to already have healthcare insurance and thus wouldn't be required under the PPACA to purchase more healthcare insurance, either through the AARP or elsewhere.

[2:17:32 PM](#)

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HB 1, and announced that HB 1 would be held over.

REPRESENTATIVE KELLER offered his belief that under HB 1's proposed state policy, a person employed by a company that provides its employees with healthcare services would have the right to either accept or decline such services without penalty or threat of penalty. In conclusion, he said he would like the legislature to establish the right policy for Alaska and its citizens.

[HB 1, Version B, was held over.]

HB 6 - REMOVING A REGENT

[2:19:56 PM](#)

VICE CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 6, "An Act authorizing the governor to remove or suspend a member of the Board of Regents of the University of Alaska for good cause; and establishing a procedure for the removal or suspension of a regent." [Before

the committee was CSHB 6(EDC); left pending from the hearing on March 21, 2011, was the motion to adopt the proposed committee substitute (CS) for HB 6, Version 27-LS0027\T, Mischel, 2/25/11, as the working document; included in members packets was a new proposed committee substitute (CS) for HB 6, Version 27-LS0027\R, 3/25/11.]

[2:20:11 PM](#)]

REPRESENTATIVE PRUITT moved to adopt the proposed CS for HB 6, Version 27-LS0027\R, 3/25/11 as the working document.

REPRESENTATIVE HOLMES objected for the purpose of discussion.

[2:20:46 PM](#)

TED MADSEN, Staff, Representative Max Gruenberg, Alaska State Legislature, on behalf of the sponsor, Representative Gruenberg, explained that Version R incorporates three changes. Proposed AS 14.40.155(a)(3) now uses the phrase, "an accusation" rather than the phrase "a complaint"; this new language conforms to that used by the Department of Law (DOL) with regard to the state's personnel board. Proposed AS 14.40.155(g)(1) now includes the additional wording of, "that results in a recommendation of removal under AS 39.52.410(b)(3)"; this additional language should ensure that only the most serious of such violations may constitute good cause for removal. And proposed AS 14.40.155(g)(4)(B) now includes the additional wording of, "for an extended period of time"; this additional wording should ensure that an inability to serve for just one meeting, for example, wouldn't constitute grounds for removal.

REPRESENTATIVE HOLMES removed her objection.

VICE CHAIR THOMPSON, noting that there were no further objections, announced that Version R was before the committee.

MR. MADSEN, to briefly recap, explained that HB 6 has been introduced in response to an incident that occurred back in 2007, when a member of the Board of Regents of the University of Alaska was indicted on many counts of fraud and embezzlement of federal funds [but refused to resign his position as regent]. Inquiries by various legislative committees at the time revealed that the Board of Regents didn't have a procedure in place by which to remove a regent. To date, the Board of Regents has yet to adopt such a procedure. House Bill 6 would insulate the university from any cloud of suspicion, and ensure that the

university remains free from political pressure. Under HB 6, a regent could only be removed or suspended for good cause.

[2:24:23 PM](#)

REPRESENTATIVE KELLER referred to a proposed amendment included in members' packets that read [original punctuation provided]:

Page 2 line 5

Delete all language and insert

05 (1) clarify that the governor may remove a regent for good cause, or a determination that the good of the university requires it;

REPRESENTATIVE KELLER noted that currently the bill authorizes the governor to remove a regent only for "good cause", with that concept then being defined in terms of actions undertaken by the regent, and asked why the bill wasn't written such that the governor could simply remove a regent if he/she thinks doing so would be good for the university. With some other boards, for example, members serve at the pleasure of the governor.

REPRESENTATIVE GRUENBERG, speaking as the sponsor, explained that the University of Alaska was set up as a separate constitutional entity, with its Board of Regents being different than other boards or commissions, which fall under the purview of the executive branch. Under Article III, Section 26, of the Alaska State Constitution, the members of those other boards and commissions may be removed as provided by law. [Under Article VII, Section 3, of the Alaska State Constitution, regents are also appointed by the governor and subject to legislative confirmation, but in contrast, that constitutional provision doesn't directly address the removal of a regent and instead mandates that the Board of Regents formulate policy in accordance with law. Again, the Board of Regents has yet to exercise] this inherent constitutional authority to establish a policy for removing a regent for good cause, and so the only option currently is for the legislature to conduct a formal impeachment proceeding, but such proceedings, in addition to being cumbersome, are not practical given that the legislature meets for only part of the year. He offered his understanding that members' packets include a legal opinion to this effect.

REPRESENTATIVE GRUENBERG, referring, then, to the proposed amendment, said he is concerned that it would subject the Board

of Regents to potential political pressure and political interpretation regarding what would constitute "the good of the university" in the eyes of the governor, particularly given that in the Alaska State Constitution, the university has been set apart from the executive branch of government. The proposed amendment would therefore be subject to constitutional challenge and likely be found unconstitutional, he predicted.

REPRESENTATIVE KELLER asked of Legislative Legal and Research Services whether, if the committee were to choose to allow, as a matter of policy, for the removal of a regent by the governor for the good of the university, that would pass constitutional muster, and whether there is currently a way to remove a regent because of some wrong that the regent is accused of committing.

[2:31:01 PM](#)

JEAN MISCHEL, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), ventured that impeachment would be one way of removing a regent, and offered her belief that currently the governor has the implied authority to remove any regent, and that nothing in current case law or the Alaska State Constitution prohibits the governor from removing a regent under the governor's inherent appointment authority. The legislature's options are to either clarify that point in statute and risk a constitutional challenge over separation of power, or change Article VII, Section 3, of the Alaska State Constitution to allow for the removal of a regent as provided by law.

VICE CHAIR THOMPSON asked whether the governor supports HB 6.

MS. MISCHEL relayed that she wasn't able to say.

[2:33:28 PM](#)

JUDY BOCKMAN, Assistant Attorney General, State Ethics Attorney, Opinions, Appeals, & Ethics, Civil Division (Anchorage), Department of Law (DOL), relayed that she wasn't able to say, either.

VICE CHAIR THOMPSON asked whether passage of HB 6 would provide the governor with the immediate authority to suspend a regent and have that suspension remain in effect until the regent is cleared in a hearing.

MS. BOCKMAN said she was unable to say.

REPRESENTATIVE GRUENBERG offered his belief that passage of HB 6 would provide that authority. [Under proposed AS 14.40.155(b),] the governor could remove a regent for good cause, [with proposed AS 14.40.155(g) defining what would constitute good cause]; some examples are felony convictions, or malfeasance or nonfeasance in office, including an inability to serve [for an extended period of time. Under proposed AS 14.40.155(a)], the governor, after providing notice and an opportunity for a hearing, could suspend a regent while final disposition on certain issues is pending; one example would be a felony indictment. With regard to suspensions, either the governor or the regent could request a hearing, which would be conducted by the Office of Administrative Hearings.

REPRESENTATIVE GRUENBERG, regarding the question of whether the governor supports HB 6, mentioned that the previous administration had assisted in drafting a previous iteration of the bill, and that no one from the current administration has expressed concern about HB 6.

[2:37:27 PM](#)

REPRESENTATIVE KELLER asked Representative Gruenberg whether he would be amenable to altering the bill such that it would provide the governor with a means of removing a regent for the good of the university, or whether he would prefer to keep the bill's current limitation of removing a regent only for good cause.

REPRESENTATIVE GRUENBERG offered his belief that from both a policy perspective and a constitutional-law perspective, there should be specific guidelines set out in the bill rather than just a vague and standard-less delegation of authority. The language in the proposed amendment - "the good of the university" - goes beyond what he would be comfortable with, he relayed, because adoption of such language would allow the governor to impose his/her political will simply because he/she disapproves of certain decisions made by the Board of Regents - for example, how many football scholarships to provide for. It would therefore be unwise to adopt such vague language, he opined, surmising that it would probably also be unconstitutional.

REPRESENTATIVE GRUENBERG pointed out that even proposed AS 14.40.155(g)(4) - which currently lists malfeasance or nonfeasance in office as one meaning of the term, "good cause" -

further outlines in its subparagraphs (A)-(E) what would constitute malfeasance or nonfeasance in office, and regardless that some of those items are subjective, a nexus is required. In other words, there must be a finding that the regent had either done something or failed to do something and that that action or failure to act was connected with the duty of the regent.

REPRESENTATIVE KELLER indicated a preference for ensuring that the legislature, along with the executive branch, be able to provide input regarding the university and its Board of Regents.

REPRESENTATIVE GRUENBERG expressed a preference for setting up some sort of procedure now, regardless that it may not yet be perfect, that would allow for the removal a regent for good cause. Doing something now would ensure that the legislature isn't put in the same position it found itself in a few years ago, when a regent was indicted on criminal charges but refused to resign his position.

REPRESENTATIVE KELLER - mentioning that he wouldn't be moving the proposed amendment because he agrees that it's too broad - requested that the bill not be reported from committee at this time. He indicated, however, that he would be amenable to reporting the bill from committee if that was the vice chair's preference.

[2:44:47 PM](#)

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

Page 2, line 14
after the word "suspend"

Add

14 ...with or without pay....

REPRESENTATIVE PRUITT objected for the purpose of discussion.

REPRESENTATIVE KELLER explained that [Conceptual Amendment 1] would address situations in which the governor wishes to suspend a regent without pay.

MR. MADSEN relayed that information he's been provided with indicates that regents do not receive pay for serving on the Board of Regents but instead receive per diem when traveling to meetings, and since a suspended regent wouldn't be attending any

meetings during the period of suspension, he/she wouldn't be entitled to per diem.

REPRESENTATIVE KELLER withdrew [Conceptual Amendment 1].

REPRESENTATIVE KELLER then mentioned that he would not be offering another proposed amendment he'd had drafted [that would also have provided for the removal of a regent for the good of the university].

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HB 6.

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REPRESENTATIVE GRUENBERG moved to report the proposed CS for HB 6, Version 27-LS0027\R, Mischel, 3/25/11, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KELLER objected, expressing a preference that more research be conducted on the bill before it's reported from committee.

REPRESENTATIVE GRUENBERG, in response, relayed that he would continue working on the bill to try to address members' concerns about it.

[2:49:01 PM](#)

A roll call vote was taken. Representatives Pruitt, Thompson, Gruenberg, and Holmes voted in favor of reporting the bill from committee. Representative Keller voted against it. Therefore, CSHB 6(JUD) was reported out of the House Judiciary Standing Committee by a vote of 4-1.

[2:49:43 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:50 p.m.