

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

January 27, 2011

8:05 a.m.

**MEMBERS PRESENT**

Representative Bob Lynn, Chair  
Representative Wes Keller, Vice Chair  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Max Gruenberg  
Representative Pete Petersen  
Representative Kyle Johansen

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 3

"An Act relating to issuance of driver's licenses."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 3

SHORT TITLE: REQUIREMENTS FOR DRIVER'S LICENSE

SPONSOR(S): REPRESENTATIVE(S) LYNN, HAWKER, CHENAULT, JOHNSON,  
GATTO

01/18/11	(H)	PREFILE RELEASED 1/7/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	STA, FIN
01/27/11	(H)	STA AT 8:00 AM CAPITOL 106

**WITNESS REGISTER**

THOMAS REIKER, Staff  
Representative Bob Lynn  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 3 on behalf of Representative Lynn, joint prime sponsor.

WHITNEY BREWSTER, Director  
Division of Motor Vehicles  
Department of Administration  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 3.

JEFFREY MITTMAN, Executive Director  
American Civil Liberties Union (ACLU) of Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** Expressed concerns regarding the constitutionality of HB 3.

#### **ACTION NARRATIVE**

[8:04:39 AM](#)

**CHAIR BOB LYNN** called the House State Affairs Standing Committee meeting to order at 10:04 a.m. Representatives Keller, Seaton, Wilson, Johansen, Petersen, and Lynn were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

#### **HB 3-REQUIREMENTS FOR DRIVER'S LICENSE**

[8:05:08 AM](#)

CHAIR LYNN announced that the only order of business was HOUSE BILL NO. 3, "An Act relating to issuance of driver's licenses."

[8:05:53 AM](#)

CHAIR LYNN introduced HB 3 as joint prime sponsor. He explained that the subject of HB 3 was proposed during the Twenty-Sixth Legislative Session as House Bill 3; however, unlike the one-page bill presently before the committee, the former House Bill 3 was five pages in length. Chair Lynn described the current five-year length of issuance of an Alaska driver's license as reasonable when it is issued to American citizens. He explained that the bill is designed to address those licenses given to those who are not U.S. citizens. The proposed legislation would allow the Division of Motor Vehicles (DMV) to issue a license with an expiration that matches the length of time a person has been allowed to stay legally in the U.S.

[8:08:12 AM](#)

THOMAS REIKER, Staff, Representative Bob Lynn, Alaska State Legislature, presented HB 3 on behalf of Representative Lynn, joint prime sponsor. He stated that the legal duty to decide how long a person who is not a U.S. citizen may stay in the U.S. belongs to the U.S. Department of Homeland Security ("Homeland Security"); therefore, the joint prime sponsors do not think that the State of Alaska should be issuing a legal document that outlasts that person's legal stay in the U.S. Mr. Reiker echoed Chair Lynn's statement that under HB 3, the DMV would issue a license that is valid only for the period of authorized stay, and he added that if the person is authorized to stay indefinitely, then the DMV would issue a license to that person that must be renewed annually, so that the DMV can ensure that the person is still legally in the U.S.

MR. REIKER stated that the joint prime sponsors wanted to draft the bill as simply as possible, which is why HB 3 does not address the issue of identification (ID) cards. Currently, ID cards are issued for five years under regulations, and the joint prime sponsors did not want to set that requirement in statute. He said the DMV has related that should HB 3 pass, it will set the same regulations for IDs as for driver's licenses.

[8:10:56 AM](#)

WHITNEY BREWSTER, Director, Division of Motor Vehicles, Department of Administration, in response to Representative Petersen, stated that anyone with a license from another state and applying for an original Alaska driver's license would be required to show proof of the following: legal name, date of birth, social security number, and residential address. In response to a follow-up question, she confirmed that currently a person from another country who shows the DMV a valid passport in order to obtain a driver's license would be issued a five-year license.

[8:12:23 AM](#)

MS. BREWSTER, in response to Representative Seaton, said the DMV would provide someone who comes in with a valid passport a five-year driver's license, if that person also showed proof of residential address. In response to a follow-up question, she said proof of residential address could be supplied through the following: an Alaska voter registration card, a utility bill, a vehicle title, a paycheck stub, a cancelled check or bank statement, a hotel or shelter document, a vehicle title, a medical assistant card, a public assistance card, and a mortgage

or rental document. She said the person has to show some sort of proof of residential address, and that address is then printed on the license or ID card. She confirmed that a person could have a note sent from a university dormitory or bring in a piece of mail that they sent to themselves. She said the person should indicate to the DMV if there has been a change of address, but would not be required to show proof of residential address upon renewal.

MS. BREWSTER, in response to Representative Seaton, said depending upon the passage of HB 3, the DMV would promulgate regulations that would describe the process. She stated her assumption that someone with a document that expired in six months would be required to come in to the DMV office and show a document that has extended his/her stay so that the DMV could then issue an extended license.

REPRESENTATIVE SEATON questioned the zero fiscal note.

MS. BREWSTER responded that HB 3 would allow the DMV to promulgate regulations, and that would entail no extra expenditure.

[8:20:02 AM](#)

MR. REICKER, in response to Representative Johansen, offered his understanding that the meaning of "indefinite" stay would apply to someone who is presently in the U.S. seeking asylum.

[8:21:03 AM](#)

MS. BREWSTER concurred with Mr. Reiker's statement. She indicated that currently the DMV issues those with a "pending status" a five-year license. In response to Representative Petersen, she said the DMV would charge the same \$20 fee for a license, no matter whether the license was issued every five years or every six months. In response to a follow-up question, she said a person from another country who wants to get an Alaska driver's license has to take a driving test, as well as a written and vision test.

[8:23:06 AM](#)

REPRESENTATIVE SEATON questioned why, if Homeland Security decides to give someone permission for an indefinite stay in the U.S., the State of Alaska would want to override that by requiring the person to come into the DMV annually.

MR. REICKER prefaced his answer by offering his understanding that an indefinite stay means that Homeland Security is determining their interest in the person's status. He reiterated his opening statement that the joint prime sponsors do not want the state to give the person a license that extends beyond the time that is given the person by Homeland Security.

8:25:30 AM

MS. BREWSTER, in response to Chair Lynn, indicated concurrence with Mr. Reiker's explanation.

8:25:36 AM

REPRESENTATIVE P. WILSON questioned how the DMV would know if a person had been "downgraded" from indefinite status to six-month status, since the person could show the DMV the same papers they showed to prove indefinite status.

MS. BREWSTER responded that Representative Wilson has a good point. She noted that there is an electronic method available that could be used to verify the information given. She relayed that the system is called, "Systematic Alien Verification For Entitlement System"; however, she said the state currently is not hooked up to that system. In response to a follow-up question, she said it would be up to the legislature whether the DMV would implement the system. She offered her understanding that the aforementioned system would cost approximately \$200,000.

8:28:01 AM

REPRESENTATIVE SEATON questioned why the price of that system is not reflected in the fiscal note if having the system is necessary for the division to comply with the proposed bill.

MS. BREWSTER responded that that would be in a fiscal note related to the regulations that would have to be passed. In response to a follow-up question, she explained that the bill would be strictly for those who have "indefinite" status; the DMV does not address a large number of those with pending status. She offered her understanding that the proposed legislation does not require the DMV to purchase the aforementioned system, but would allow the DMV to adopt its own regulations to acquire the system, at which point the division would put forth a fiscal note.

8:31:16 AM

REPRESENTATIVE JOHANSEN, recalling that Ms. Brewster said there are few cases related to those with pending status, suggested that the DMV could simply call U.S. Customs to get verification.

MS. BREWSTER said that is what is done at this time, and concurred that that method can suffice until the legislature takes up the issue of appropriating the \$200,000 necessary for the purchase of the system. In response to Chair Lynn, she speculated that the DMV's main office processes approximately one pending status case a day.

8:33:03 AM

REPRESENTATIVE KELLER questioned what the proposed legislation would prevent. He suggested a factor to consider is what a person needs when he/she comes into the U.S., for example: health care or public school. He surmised that an ID or driver's license would be helpful in applying for entitlement programs in the U.S.

8:34:12 AM

MR. REICKER said he thinks a big issue is reciprocity. He explained that a person with an Alaska driver's license can go to any state in the Union and his/her license will be treated as valid. He echoed Representative Keller's statement that that license serves as a key to other services. He reiterated that the joint prime sponsors do not want the benefits of the driver's license to be extended beyond what the federal government has deemed appropriate.

8:35:23 AM

REPRESENTATIVE P. WILSON offered her understanding that because of the use of the word "may" in the proposed legislation, if HB passed, the DMV would not be required to do anything.

MS. BREWSTER indicated that she understood that to be correct.

REPRESENTATIVE P. WILSON expressed concern that the bill does not do anything. She suggested changing the language to "shall".

8:36:16 AM

REPRESENTATIVE GRUENBERG related the following:

As I understand it, Ms. Brewster, you do not feel you have the statutory authority to do it now, and you can't do it without this bill. So, you may not do it now unless the bill is passed and says you may do it. Is that correct from what you've said?

MS. BREWSTER responded, "If I understood you correctly, yes."

[8:36:47 AM](#)

REPRESENTATIVE GRUENBERG asked Ms. Brewster to confirm whether she previously said that the division does not have the authority to issue driver's licenses for a period of less than five years, but already has the authority to issue IDs for less than five years.

MS. BREWSTER responded that the statutes addressing ID cards are brief and essentially point to statute addressing driver's licenses. She cited AS 18.65.310(b), related to ID cards, which read as follows:

(b) A person may obtain an identification card provided for in (a) of this section by applying to the department on forms and in the manner prescribed by the department.

MS. BREWSTER concluded that that statute makes it possible to set those standards through regulation.

[8:38:09 AM](#)

REPRESENTATIVE GRUENBERG, with respect to the previous concerns about the fiscal note, related that the statute that addresses fiscal notes is AS 24.08.035(a), from which he paraphrased the first sentence, which read as follows:

(a) Before a bill or resolution, except an appropriation bill, is reported from the committee of first referral, there shall be attached to the bill a fiscal note containing an estimate of the amount of the appropriation increase or decrease that would result from enactment of the bill for the current fiscal year and five succeeding fiscal years or, if

the bill has no fiscal impact, a statement to that effect shall be attached.

REPRESENTATIVE GRUENBERG asked Ms. Brewster if, given that is the standard, she is saying that she will not be seeking an increase in the appropriation for the DMV.

MS BREWSTER responded, "No, the DMV is not requesting an increase or decrease in its appropriation for this bill."

REPRESENTATIVE GRUENBERG asked how the public's waiting time at the DMV may be affected if the DMV has to make calls [to U.S. Customs regarding those people in the U.S. on temporary status].

MS. BREWSTER replied that this would have no impact on the amount of time a person waits at the DMV. She said, for example, that a manager in the back of the office could be making the necessary call, while others were being served by the front counter staff.

[8:41:34 AM](#)

REPRESENTATIVE GRUENBERG echoed the concerns of the committee that there is no definition for an authorized stay that is indefinite.

[8:42:46 AM](#)

MR. REICKER suggested that the federal definition could be used or perhaps the words, "a document without ... an expiration date."

[8:43:17 AM](#)

MS. BREWSTER said she does not disagree that a definition would be helpful; however, she said she does not have a definition ready at this time. She said she could consult with the U.S. Citizen and Immigration Services (USCIS) and work with the joint prime sponsors to come up with a definition.

[8:43:47 AM](#)

REPRESENTATIVE SEATON expressed his primary concern is for foreign students who are encouraged to come to Alaska, most of whom will obtain only a student ID. He asked Ms. Brewster, "So, is there any necessity for those people that aren't going to drive to get an Alaska ID?"

MS BREWSTER replied that if those people are not going to drive, then they would not need a state ID; their student ID would suffice.

[8:45:01 AM](#)

CHAIR LYNN opened public testimony.

[8:45:16 AM](#)

JEFFREY MITTMAN, Executive Director, American Civil Liberties Union (ACLU) of Alaska, expressed concerns regarding the constitutionality of the proposed legislation. He said the issues raised as a result of HB 3 are those issues that have come before the U.S. Supreme Court for the last 70 years. He stated that the primary issue is what the role is between the state and federal government. Generally, he said, the federal government addresses the issues of immigration and who can lawfully be in the country, and is sensitive to any state's impingement on that area. For example, he relayed that in Hines v. Davidowitz, 312 U.S. 52, 59-60 (1941), the U.S. Supreme Court found a Pennsylvania statute requiring an annual renewal of an ID card unconstitutional. He said a series of (related) cases followed, including a recent decision in Lozano v. City of Hazelton, 620 F.3d 170, 220 (3d Cir. 2010). He stated that at issue here is the driver's license, which he said is meant to determine who can safely and legally drive a car, not to be used as an identification document.

[8:47:48 AM](#)

MR. MITTMAN said that in addition to federal problems, there are state constitutional problems. Under the state constitution, he reviewed, there are equal protection rights, and he indicated that those rights could be violated under HB 3. He said the courts typically look very carefully at instances where an individual has been burdened based on his/her immigration status. He said that is what is known as a suspect class, and it is when an individual is treated differently without an appropriate governmental interest.

MR. MITTMAN concluded that as drafted, the proposed legislation would be subject to findings of unconstitutionality both on federal and state grounds. In response to Chair Lynn, he said if it is clear that the bill has implications for residency status that relate to immigration status, that would be an

impingement on a federal area of law. He pointed to language in the proposed legislation that could be implied as such [contained in the first sentence of subsection (d), on page 1, lines 4-7, which read as follows]:

(d) Under regulations adopted by the department, the department may issue to a person a driver's license with a duration of less than five years if the person is authorized to stay in the United States for less than five years or the period of authorized stay is indefinite.

[8:49:26 AM](#)

CHAIR LYNN noted that Alaska is one of only six states that does not have a legal presence requirement, and he questioned whether all the other states [that do] are violating the Constitution.

MR. MITTMAN explained that it is not the requirement of a legal presence, per se, that is problematic, but rather it would be unconstitutional to require someone to go through a different licensing process based on his/her immigration status. In response to a follow-up question regarding the requirement that certain individuals wear corrective lenses, he explained that for those individuals, wearing glasses affects their ability to see and to operate a vehicle, which is clearly related to the purpose of the driver's license. He offered his understanding that there have been no court cases that have found that "the class of individuals with diminished eyesight that is not a disability ... [is] a suspect class."

[8:51:53 AM](#)

REPRESENTATIVE KELLER talked about dual citizenship - state and federal - and how important that is to Alaskans. He asked Mr. Mittman to comment.

[8:53:04 AM](#)

MR. MITTMAN said there are broad areas of state citizenship regulation, which fall "squarely within the realm of what state regulations can be drawn up." He stated that the issue here is that the bill clearly relates to an area that the federal government holds as its own, and typically, state intervention into federal immigration issues is generally disfavored. Mr. Mittman said it would be difficult to find instances where a federal or state court would interfere with a state's right

regarding state constitutionality in relation to citizenship of that state. He emphasized, "But where there's an existing scheme where the federal government establishes rules as to non-U.S. citizens who can enter the country, state regulations that interfere in that area are really suspect."

MR. MITTMAN, in response to Chair Lynn, clarified that the issue has to do with the first [sentence of subsection (d), text provided previously]. He said individuals who are authorized to stay for less than five years are individuals who presumably are non-U.S. citizens from outside the country. Regulation of entry and exit and determination of status within the U.S. are made by the federal government; therefore, the issue is clearly related to federal immigration status. In response to a follow-up question, he reemphasized that the problem is that "if any state were to seek to adopt a regulation like this that impinged on federal regulation standards, that's where the constitutional infirmities begin."

[8:56:14 AM](#)

MR. MITTMAN, in response to Representative Keller, explained that the issue at hand is that under HB 3, two separate licenses would be created: a standard five-year driver's license and a lesser class of driver's license given to individuals who would then seek to renew the license. He cited Hines v. Davidowitz, 312 U.S. 52, 59-60 (1941), which required aliens to have a different ID card that had to be renewed annually. The card was required in order to obtain a driver's license. He stated, "Because Congress reserved that area for itself, that requirement was found unconstitutional." He explained that the dual class of driver's license [proposed under HB 3] would not be based on whether the individual licensed was a qualified driver, but would be based on the person's federal immigration status.

[8:58:10 AM](#)

REPRESENTATIVE GRUENBERG said Mr. Mittman has related the issue of supremacy - whether the field is an exclusively federal one - and the issue of equal protection. He requested that Mr. Mittman submit his legal citations to the committee. He expressed concern about a state constitutional right that Mr. Mittman has not mentioned, and that is that the Alaska State Supreme Court has held on several occasions that an Alaska driver's license represents an important property interest that is protected by the due process clause of the Constitution of

the State of Alaska. He cited Javed v. the Department of Public Safety Division of Motor Vehicles, 921 p2nd 620. He said, "I'm wondering, since that is a fundamental right, whether that might be impinged or have constitutional issues, as well."

[9:00:09 AM](#)

MR. MITTMAN responded:

Because the status of one's presence in the country - immigration or alien status - is what's known as a suspect class, if ... something is considered a property right, there could be significant due process concerns if an impingement on that right is drawn in such a way that it is not tailored appropriately - does not meet the balancing that the courts applied to determine whether a government or regulation is appropriately tailored.

So, again, it's not that a state government might not be able to infringe on the right; it's ... how it's done - how narrowly or how broadly - and what interest it's serving. So, for example, if it were drawn up in such a way as the purpose it was serving were to ensure that a driver were a safe driver or that the streets could be appropriately negotiated, that might be something that the courts would look on kindly. If the intention is to ensure that somebody is meeting the requirement of the Department of Homeland Security of federal immigration requirement - that's something the courts could look askance at.

[9:01:30 AM](#)

REPRESENTATIVE GRUENBERG noted that HB 3 had not been referred to the House Judiciary Standing Committee, and he opined that the issues being discussed warrant the bill being referred to that committee. He then observed that there does not appear to be a connection between the length of the license and anything having to do with driving safety. He asked, "Does the constitution require, to be upheld, that there be some kind of a nexus between the limitation and driving?"

[9:02:32 AM](#)

MR. MITTMAN indicated that Representative Gruenberg had highlighted a key point. He said it is clearly within the

state's power to regulate its streets and highways and to determine who has an opportunity to drive based on state-required driving skills. He added, "The problem here is that it's difficult to see how one's immigration status relates to one's ability to drive a vehicle."

[9:04:04 AM](#)

MR. MITTMAN, in response to a question from Chair Lynn, said the issue is what the purpose of a document is. He said an Alaska driver's license would never be presumed to determine whether or not somebody has a right to stay in the country. If somebody is issued a license for five years, but they are only permitted to stay in the country for three years, than regardless of the length of the driver's license, at the end of three years, their stay in the country ends. In response to a remark from Chair Lynn, Mr. Mittman stated that the way HB 3 is drafted, it would put the burden on certain people to have to make multiple trips to the DMV to renew their driver's licenses; it would turn a document given to people who can safely drive a vehicle into one that reflects their immigration status, which is not permitted by the federal government. He said the bill mixes function.

[9:07:31 AM](#)

REPRESENTATIVE JOHANSEN remarked that a driver's license may not serve as proof of citizenship before a federal court, but in "the real world" a driver's license can "get you things." He concurred with Representative Keller's previous remarks. He indicated that there is no way to outguess what the courts will decide. He stated his support of the bill and his desire to see it moved out of committee expediently.

[9:08:59 AM](#)

REPRESENTATIVE KELLER said Alaska has as much right to protect its sovereignty as the federal government does to protect its sovereignty. He questioned Mr. Mittman's citation of a case dating back to 1941. He concurred with Representative Johansen that the bill should move out of committee.

[9:09:50 AM](#)

REPRESENTATIVE SEATON asked Mr. Mittman if there are other folks who have indefinite stay documentation from Homeland Security other than refugees and asylum seekers.

MR. MITTMAN prefaced his response by saying that his knowledge of federal immigration law is limited. Notwithstanding that, he offered his understanding that asylum seekers and refugees are individuals who have differential state statuses that are under review and, thus, could be affected by the proposed legislation. He reminded the committee that the U.S. Supreme Court did look at this issue when hearing *Lozano V. City of Hazelton*, 620 F.3d 170,220 (3d Cir. 2010). He stated that the federal courts are continuing to find that these sorts of cases are problematic. Mr. Mittman further noted that in Alaska's court system there was another case regarding the same issue, *Department of Revenue v. Andrade*, 23 P.3d 58, 78(Alaska 2001). He explained that he cited both cases to show that the issue has been heard recently by both the state and federal court system. In response to a follow-up question from Representative Seaton, he said he is not aware of other classes that may be implicated, but will look into it.

[9:13:01 AM](#)

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

[9:13:27 AM](#)

REPRESENTATIVE GRUENBERG emphasized his concern regarding the constitutional issues raised through HB 3, and he opined that either the House State Affairs Standing Committee must fulfill its duty in considering these issues or he will ask that the bill be referred to the House Judiciary Standing Committee. He cautioned against treating this issue lightly.

[9:15:32 AM](#)

REPRESENTATIVE KELLER expressed appreciation of Representative Gruenberg's concern, and said it is completely appropriate to ask for an attorney general's opinion regarding the Constitution of the State of Alaska. Referring back to discussion about the definition of indefinite, he said he does not see that as a reason to hold the bill back in committee.

[9:16:24 AM](#)

REPRESENTATIVE GRUENBERG, regarding the use of "indefinite", clarified that he wants to be sure that the bill is drafted properly, which he said would only take a day or so. The most important issue is that of constitutionality, he said.

CHAIR LYNN stated his intention to get the attorney general's opinion.

[9:17:51 AM](#)

REPRESENTATIVE JOHANSEN responded to Representative Gruenberg's comments regarding the import of the bill and said by no means is he taking the issue lightly. He opined that just because someone from ACLU says there are legal problems with the bill does not mean a House Judiciary Standing Committee referral should be sought. He stated that he thinks the bill should move out of committee.

CHAIR LYNN said he would prefer to move the bill out of committee; however, as a courtesy to all committee members, he would first seek the opinion of the attorney general.

[9:20:04 AM](#)

MR. MITTMAN, in response to Representative Gruenberg, confirmed that he would deliver his memorandum to committee members by the end of day [and subsequently it was added to the committee packet].

[9:20:45 AM](#)

REPRESENTATIVE SEATON reiterated his concern about the issue of indefinite stay. He said he thinks refugees and asylum seekers are a small enough group that Homeland Security has a handle on them, and no other group gets the same status. He said he would probably offer an amendment to address this concern. In response to Chair Lynn, he explained that the amendment would be to remove the final sentence in the proposed bill regarding indefinite stay. He offered further explanation.

[9:24:30 AM](#)

CHAIR LYNN said his heart goes out to refugees and asylum seekers. Nevertheless, he stated that being in the U.S., in Alaska, and getting a driver's license is a privilege. He opined that each state has a right to set standards regarding their driver's licenses.

[9:25:04 AM](#)

CHAIR LYNN announced that HB 3 was held over.

9:28:08 AM

**ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:28 a.m.