

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

February 1, 2011

8:08 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 JOINT RESOLUTION NO. 13

Honoring President Reagan on the 100th anniversary of his birth.

- MOVED HJR 13 OUT OF COMMITTEE

HOUSE BILL NO. 3

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

- MOVED CSHB 3(STA) OUT OF COMMITTEE

HOUSE BILL NO. 14

"An Act authorizing state agencies to pay private legal fees and costs incurred by persons exonerated of alleged Alaska Executive Branch Ethics Act violations; allowing certain public officers and former public officers to accept state payments to offset private legal fees and costs related to defending against an Alaska Executive Branch Ethics Act complaint; and creating certain exceptions to Alaska Executive Branch Ethics Act limitations on the use of state resources to provide or pay for transportation of spouses and children of the governor and the lieutenant governor."

- MOVED OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 13

SHORT TITLE: HONORING RONALD REAGAN

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/21/11 (H) READ THE FIRST TIME - REFERRALS
01/21/11 (H) STA
02/01/11 (H) STA AT 8:00 AM CAPITOL 106

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
01/27/11 (H) Heard & Held
01/27/11 (H) MINUTE(STA)
02/01/11 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 14

SHORT TITLE: EXEC ETHICS: LEGAL FEES/FAMILY TRAVEL

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) STA, JUD, FIN
01/25/11 (H) STA AT 8:00 AM CAPITOL 106
01/25/11 (H) Heard & Held
01/25/11 (H) MINUTE(STA)
02/01/11 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HJR 13 as sponsor.

THOMAS REIKER, Staff

Representative Bob Lynn

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided an update on HB 3 since its last hearing, on behalf of Representative Lynn, sponsor.

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

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

ERLING JOHANSEN, Assistant Attorney General
Labor & State Affairs Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered a question during the hearing on HB 3.

WHITNEY BREWSTER, Director
Division of Motor Vehicles (DMV)
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: Testified during the hearing on HB 3.

MARA KIMMEL
Alaska Immigration Justice Project
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 3.

JUDY BOCKMON, Assistant Attorney General/State Ethics Attorney
Opinions, Appeals, & Ethics
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 14.

ACTION NARRATIVE

[8:08:56 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:08 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.

HJR 13-HONORING RONALD REAGAN

CHAIR LYNN announced that the first order of business was HOUSE JOINT RESOLUTION NO. 13, Honoring President Reagan on the 100th anniversary of his birth.

[8:09:25 AM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, presented HJR 13 as sponsor. He said HJR 13 is a resolution that recognizes the one-hundredth anniversary of President Ronald Reagan's birth. He referred to information in the committee packet that highlights some of the former president's accomplishments [from the second paragraph of the sponsor statement, which read as follows, original punctuation provided]:

In addition to his successful acting career, his leadership as the head of a labor union, his accomplishments as an elected official, both as Governor of California and President of the United States, Reagan was involved in several Alaska-specific initiatives and events, which this resolution recognizes. These include advocating for limited federal control of Alaska's land; signing into law the transfer of the Alaska Railroad from the federal government to the State of Alaska; meeting with Pope John Paul II in Fairbanks; and signing legislation to authorize reparation payments to Aleuts who had been relocated during the Second World War.

REPRESENTATIVE STOLTZE said the resolution would not cost the state anything.

[8:11:47 AM](#)

REPRESENTATIVE SEATON said the information provided by the sponsor was educational and well compiled, and he observed that there were a number of things President Reagan did that were beneficial to Alaska. He indicated that he had not previously been aware of some of this information.

REPRESENTATIVE STOLTZE credited his staff member, Darrell Breese, for doing that research.

8:12:30 AM

REPRESENTATIVE P. WILSON expressed her appreciation of the resolution, and said she remembers when President Reagan served in office people said one day he would be remembered as one of the nation's best Presidents. She echoed Representative Seaton's comment about having learned new information, and she opined that President Reagan did a lot for the country.

8:13:20 AM

CHAIR LYNN stated his support of the resolution and his appreciation of President Reagan.

8:14:41 AM

REPRESENTATIVE JOHANSEN expressed appreciation for the work of President Reagan, not only as President, but as a candidate for Governor of California during a contentious time in the 1960s. He applauded the introduction of the legislation.

8:15:30 AM

REPRESENTATIVE GRUENBERG stated that sometimes it takes some time for great presidents to be recognized.

8:15:47 AM

CHAIR LYNN closed [public testimony].

8:15:55 AM

REPRESENTATIVE P. WILSON, with the permission of the chair, read onto the record [language from page 2, lines 14-28, of the proposed resolution], which credits President Reagan for having done the following for Alaska: advocating the limitation of federal control over Alaska's land and natural resources; in 1983, signing into law the Alaska Railroad Transfer; transferring ownership of the Alaska Railroad to the state; in 1984, meeting with Pope John Paul II in Fairbanks to discuss pressing world issues; signing legislation that authorized the payment of reparations to the Aleuts who had been displaced from their homes and sent to internment camps during World War II; supporting the Village Built Clinic Program, which funded Indian

Health Service clinics in Alaska Native villages throughout the state; bringing basic health care to many Alaskans; and authorizing the establishment of the federal government 8(a) Business Development Program, which brought economic development and benefits to Alaska Native Corporations.

[8:17:24 AM](#)

REPRESENTATIVE STOLTZE remarked upon Ted Stevens' involvement during this time period.

[8:17:51 AM](#)

REPRESENTATIVE KELLER moved to report HJR 13 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 13 was reported out of the House State Affairs Standing Committee.

HB 3-REQUIREMENTS FOR DRIVER'S LICENSE

[8:18:16 AM](#)

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

CHAIR LYNN reviewed that at its last hearing of HB 3, on January 27, 2011, the committee heard from [Jeffrey Mittman] of the ACLU regarding concerns about constitutionality. He opined that the committee has good legal advice both from the Department of Law and Legislative Legal and Research Services. The former submitted a memorandum to the committee stating that the department has no concerns regarding the constitutionality of HB 3, and the latter has confirmed that many other states have implemented the provisions of HB 3 without meeting with problems of constitutionality. He said that in response to previously stated concerns from some committee members, an amendment had been prepared that would change the requirement under HB 3 that anyone in the United States under a temporary status would have to renew his/her driver's license every 30 to 90 days, to every year. He opined that HB 3 is constitutional, and he expressed his wish to see the bill move from committee today.

[8:20:52 AM](#)

THOMAS REIKER, Staff, Representative Bob Lynn, Alaska State Legislature, provided an update on HB 3 since its last hearing, on behalf of Representative Lynn, sponsor. He said a

representative of Legislative Legal and Research Services said 48 states have legal presence requirements in place for obtaining a driver's license. Furthermore, 30 states also tie the expiration date of their drivers' licenses to a person's legal presence in the U.S. Therefore, he concluded that the ACLU's argument that determining a resident's length of stay would violate the supremacy clause, that requiring license renewal for reasons other than driving ability would be unreasonable, and that the "risk of error is high" seems spurious. He said the Department of Law's response [written by Erling Johansen on behalf of the attorney general, dated January 28, 2011, included in the committee packet] to the concerns of the ACLU was that there was no basis upon which to challenge the constitutionality of HB 3.

[8:24:40 AM](#)

REPRESENTATIVE GRUENBERG noted that Mr. Johansen's memorandum refers to the bill, not to Mr. Mittman's memorandum.

[8:25:32 AM](#)

MR. REIKER said Mr. Mittman's memorandum was forwarded to Mr. Johansen with a request that he read it, and he stated his assumption that Mr. Johansen would have done so. In response to follow-up comments from Representative Gruenberg, he said he would review all correspondence between himself and Mr. Johansen, and bring to the committee any which suggests that Mr. Johansen had, indeed, read the memorandum from Mr. Mittman.

[8:27:08 AM](#)

GERALD LUCKHAUPT, Assistant Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), in response to Chair Lynn, confirmed that he does not see any legal problems with HB 3. He relayed that currently 48 states have a legal presence requirement; Washington and New Mexico do not, but Washington is in the process of passing similar legislation. He noted that during the January 25 House State Affairs Standing Committee hearing on HB 3, Mr. Mittman had cited Hines v. Davidowitz to prove that a state and municipality cannot do anything in regard to aliens. Mr. Luckhaupt said the U.S. Supreme Court devised a three-part test, with the part most pertinent to this issue being a determination of whether or not a state is attempting to regulate the admission of aliens into the country. He said the State of Alaska is not attempting to do so through HB 3; it

would merely be asking for documents that show that the federal government has made that determination. He stated that he has not been able to find cases to support Mr. Mittman's argument, but he has found 10 cases over the last eight or ten years where that argument has failed. He concluded that this is something that is up to the legislature, but he noted that there are already regulations related to this.

[8:32:41 AM](#)

REPRESENTATIVE SEATON explained that he is not trying to figure out if this is legal to do, but rather whether it should be done. He said the categories that are most often appointed indefinite stays by the U.S. Department of Homeland Security ("Homeland Security") are asylum seekers, refugees, diplomats, and foreign spouses of American citizens who are waiting for status to be resolved. He asked if there is any legal reason why the state would determine to not accept the decisions of Homeland Security when those decisions are made for each individual in the aforementioned categories.

[8:35:06 AM](#)

MR. LUCKHAUPT responded that he does not have a lot of personal experience with that issue, but he related a story regarding a co-volunteer firefighter's wife who was from another country and took about a year to go through the process, but was able to get a driver's license. He said indefinite stays are for shorter periods of time. He reiterated that this is a choice for the committee to make. He related that the State of Delaware waived renewal fees for people in the indefinite state status, so that those people could renew for the five-year length of a driver's license without even coming into the office, and then after five years would pay the renewal fee.

[8:38:06 AM](#)

MR. LUCKHAUPT, in response to Representative Seaton, said he thinks that under HB 3, those whose authorized stay in the country indefinitely could be allowed to renew their license by mail and without charge if the division adopted regulations to that effect.

[8:39:24 AM](#)

REPRESENTATIVE GRUENBERG asked if the division has the ability to do that under current law.

MR. LUCKHAUPT responded that AS 28.15.101 addresses the issue of expiration and renewal of drivers' licenses. He cited the first sentence of subsection (a) of that statute, which read as follows:

(a) Except as otherwise provided in this chapter, a driver's license expires on the licensee's birthday in the fifth year following issuance of the license.

MR. LUCKHAUPT stated, "This isn't going to be a five-year license anymore; ... it's going to be a one-year license expiration period, and they can go ahead and set how that renewal process will occur." He continued, "We don't have anything that says that a one-year license expires and can't be renewed in any particular process; they'll be able to identify that process by regulation if they choose to."

[8:40:53 AM](#)

ERLING JOHANSEN, Assistant Attorney General, Labor & State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), confirmed that before writing the memorandum to the House State Affairs Standing Committee, he had read [Mr. Mittman's] memorandum dated January 27, 2011.

[8:41:42 AM](#)

WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), Department of Administration, responded that conceptually the DMV would not be opposed to waiving fees or allowing a by-mail process for licenses that are issued for less than a five-year period, but AS 28.15.271 (a)(1)(A) states that the fees for drivers' licenses and permits, "including but not limited to renewals," is \$20 for "each license fee"; therefore, she stated that although she is certain that Mr. Luckhaupt has studied the matter closely, she would like to confer with the Department of Law on this matter.

[8:43:13 AM](#)

MS. BREWSTER, in response to Chair Lynn, confirmed that the DMV currently honors letters received from the U.S. Customs and Immigration Service Agency extending a person's immigration document, and that would not change under HB 3.

[8:44:25 AM](#)

CHAIR LYNN reopened public testimony, [which had been closed on 1/27/11].

[8:44:41 AM](#)

JEFFREY MITTMAN, Executive Director, American Civil Liberties Union (ACLU) of Alaska, said he thinks Mr. Luckhaupt's testimony focused on the issues that he raised in his memorandum. He indicated that the issue is not the legal requirement per se, but the details therein. He clarified that the concern he had raised at the previous hearing on HB 3 was that under HB 3, the state would be interpreting a variety of federal immigration documents and issuing what could be interpreted as two classes of licenses to those who are legally present in the U.S.

[8:45:56 AM](#)

MARA KIMMEL, Alaska Immigration Justice Project (AIJP), stated that the Alaska Immigration Justice Project is the only nonprofit agency in Alaska that provides legal services to non-citizen victims of domestic violence and other violent crimes, such as human trafficking and sexual assault. She explained that AIJP is concerned about the affect of the proposed legislation on these clients. She said HB 3 would prevent these clients, who are victims of crime and are in the process of applying for legal status or who have applied but do not have any documentation from the U.S. Department of Homeland Security, from obtaining a license or state identification card. She said this could prevent these people from obtaining safety from their perpetrators. Ms. Kimmel said the legislature is well aware that Alaska suffers from inordinately high rate of sexual and domestic violence. She noted that in May 2010, the Justice Center at the University of Alaska reported that almost half of the women in Alaska experience domestic violence, and almost 40 percent experience sexual violence. Ms. Kimmel said there are a variety of security issues that are raised by HB 3. She reiterated that the proposed legislation would hurt her clients and prevent them from getting the help they need. In response to a question from Chair Lynn, she said the people whom she referenced are currently not able to obtain a driver's license.

[8:48:30 AM](#)

CHAIR LYNN closed public testimony.

[8:49:01 AM](#)

REPRESENTATIVE GRUENBERG asked Ms. Kimmel why the people whom she referenced are not currently able to obtain a driver's license and whether there is any amendment to HB 3 that would help these women.

[8:49:27 AM](#)

MS. KIMMEL responded that there really is not. She explained that if the bill goes forward, there is no allowance for those who are in the process of applying for [legal presence] status or don't get told that they are in fact eligible to get a driver's license. She emphasized that obtaining a driver's license is absolutely critical to the safety of these people. She added that the zero fiscal note that is attached to the bill is "just not practical at all."

CHAIR LYNN questioned that someone in a dangerous situation would not drive a vehicle to get away from that situation just because he/she did not have a driver's license. He asked, "Which would be worse, being caught without a driver's license or having damaging sexual or domestic violence applied to them?"

MS. KIMMEL answered that that is an untenable position in which to put a victim. She pointed out that if a victim gets pulled over and is found to be driving without a driver's license, he/she gets put into removal proceedings.

[8:51:38 AM](#)

REPRESENTATIVE GRUENBERG said he is chilled by this information. He asked Mr. Johansen if the Administrative Procedure Act governs the regulatory process of the Department of Administration.

MR. JOHANSEN answered, "AS 44.62 does."

REPRESENTATIVE GRUENBERG asked if HB 3 would have to be amended in order for there to be authority for the division to decide not to charge any fees and to waive the requirement that the person come in to the DMV office "every other time."

MR. JOHANSEN offered his understanding that if the fee is set out in statute currently, then it would not be amendable through regulation, but would require an amendment to statute. He said he is not familiar with the specific requirement regarding people coming in to the DMV in person; however, he surmised that

if that is in statute, it would still be controlled by the statute. However, if that requirement appears in regulations, he said, then the department would have control over it.

[8:54:16 AM](#)

MR. LUCKHAUPT, in response to Representative Gruenberg, said he did not bring the Delaware regulations with him, but could provide them if needed. He pointed out that AS 28.15.101 is the expiration and renewal section, which addresses a five-year license, and states that a person can renew within one year of the expiration date. He said, "If you get a one-year license, you can automatically renew under this; it doesn't make sense." He indicated that the department has been given authority to deal with regulations addressing the shorter length licenses. He said his extensive experience writing statutes has shown that if a statute does not address a particular situation, then that gives the department the authority to address the situation [through regulation]. He said Alaska has never before authorized a license of less than five years duration, and because the statute addresses renewals related to a five-year period, then a one-year period is not covered under statute. He said an amendment could be added to clarify that the department would have the authority to provide for extensions and renewal of shorter-length licenses.

[8:56:33 AM](#)

MR. LUCKHAUPT, in response to Representative P. Wilson, confirmed that nowhere in statute does it state that a woman in trouble cannot call the police or go next door for help.

[8:57:43 AM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 1, as follows:

On page 1, following line 9:

Insert "(e) A driver's license issued for less than five years may be renewed by mail and fees waived."

CHAIR LYNN announced that there being no objection, Conceptual Amendment 1 was adopted.

[8:58:43 AM](#)

REPRESENTATIVE SEATON, in response to Mr. Luckhaupt, confirmed that the intent of Conceptual Amendment 1 is that the time period is up to the normal five-year period. In response to Representative Keller, he confirmed that Conceptual Amendment 1 is permissive; it is not a requirement.

[9:00:19 AM](#)

CHAIR LYNN moved to adopt Amendment 2, labeled 27-LS0010\E.3, Luckhaupt, 1/27/11, which read as follows:

Page 1, lines 8 - 9:
Delete "may not"
Insert "shall"

Page 1, line 9:
Delete "greater than"

[9:00:29 AM](#)

REPRESENTATIVE JOHANSEN objected for discussion purposes.

[9:00:43 AM](#)

Mr. REIKER explained that Amendment 2 clarifies that a person assigned an indefinite, durational, or provisional period of authorized stay would receive a driver's license for one year [when otherwise qualified to receive the license]. At the end of the one year, the division would review the person's status to determine whether to renew the license.

[9:01:28 AM](#)

REPRESENTATIVE JOHANSEN said he has confidence in the DMV's ability to handle flexibility, but he would not oppose the amendment. He removed his objection to Amendment 2.

CHAIR LYNN announced that there being no further objection, Amendment 2 was adopted.

[9:01:59 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 3, as follows:

On page 1, line 4:
Between "under" and "regulations"
Insert "reasonable"

REPRESENTATIVE GRUENBERG said there are a number of cases in Alaska that require procedural safeguards and well-drafted regulations. He cited State of Alaska v. Beans 965 p. 2nd 725, September 1998. He said in at least 25 instances, statutes state that departments may adopt "reasonable" regulations. He expressed concern that the regulations adopted by departments be rational rather than arbitrary, and he explained that that is what he means when he uses the word "reasonable" in Amendment 3.

[9:04:20 AM](#)

REPRESENTATIVE KELLER objected to Amendment 3. He opined that Amendment 3 would invite someone - often the courts - to make the determination whether a regulation is reasonable, which is a standard that already exists. He opined that making this specification would invite court action.

[9:05:32 AM](#)

REPRESENTATIVE P. WILSON concurred with Representative Keller.

[9:05:48 AM](#)

REPRESENTATIVE JOHNSON stated his assumption that Representative Gruenberg would say that the 25 statutes he mentioned are reasonable, while all the others are not because they do not use the word "reasonable". He concurred with Representative Keller.

[9:06:34 AM](#)

MR. LUCKHAUPT indicated that regardless of whether or not the word reasonable is used in statute referring to department regulations, all regulations must be reasonable. In response to a Representative Gruenberg, he confirmed that he is saying that regulations must be reasonable as a matter of law, and that would be read into statute, even without the adoption of Amendment 3. He said, "That's part of the analysis." He offered further details. In response to Representative Petersen, he said the legislature's grant of authority to the departments is that they adopt regulations that are reasonable and relate to the subject matter, but the legislature does not assume that all the regulations the departments adopt are reasonable. He said lawmaking is the purview of the legislature, but departments are allowed to add the details that probably do not need to be included in statute.

[9:10:50 AM](#)

REPRESENTATIVE GRUENBERG asked Mr. Johansen if he agrees with Mr. Luckhaupt's interpretation.

MR. JOHANSEN responded that in order for regulations to be upheld, they have to be consistent with the statute under which they are developed. He said, "It's probably specific to each situation, but generally speaking, regulations need to be reasonable."

[9:12:29 AM](#)

REPRESENTATIVE GRUENBERG withdrew his motion to adopt Amendment 3.

[9:12:37 AM](#)

REPRESENTATIVE KELLER moved to report HB 3, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE JOHANSEN objected.

REPRESENTATIVE GRUENBERG explained why he removed Amendment 3.

REPRESENTATIVE JOHANSEN removed his objection. There being no further objection, CSHB 3(STA) was reported out of the House State Affairs Standing Committee.

The committee took an at-ease from [9:13:38 AM](#) to [9:13:44 AM](#).

HB 14-EXEC ETHICS: LEGAL FEES/FAMILY TRAVEL

[9:16:10 AM](#)

CHAIR LYNN announced that the last order of business was HOUSE BILL NO. 14, "An Act authorizing state agencies to pay private legal fees and costs incurred by persons exonerated of alleged Alaska Executive Branch Ethics Act violations; allowing certain public officers and former public officers to accept state payments to offset private legal fees and costs related to defending against an Alaska Executive Branch Ethics Act complaint; and creating certain exceptions to Alaska Executive Branch Ethics Act limitations on the use of state resources to provide or pay for transportation of spouses and children of the governor and the lieutenant governor."

9:16:26 AM

REPRESENTATIVE GRUENBERG, as sponsor, noted that the following was included in the committee packet: a memorandum, dated January 31, 2011, from Dan Wayne of Legislative Legal and Research Services, which discusses the terms "apportionment" and "necessarily incurred"; a technically updated sponsor statement; a sectional analysis; and a memorandum, dated January 25 2011, from Patricia Young of Legislative Legal and Research Services, which is in regard to state payment of legal fees incurred in defense of an ethics complaint against a public official.

REPRESENTATIVE GRUENBERG reviewed that HB 14 is similar to House Bill 289 from the Twenty-Sixth Alaska State Legislature. He paraphrased the first two paragraphs of the revised sponsor statement, which read as follows [original punctuation provided]:

House Bill 14 sets forth in statute the substance of the Attorney General's recently-enacted regulations establishing standards for (1) reimbursement of legal fees and costs for any executive branch employees accused of ethical violations, and (2) payment of travel expenses for the families of only the governor and lieutenant governor.

HB 14 differs from the regulations in two important ways. First, although both the regulations and HB 14 authorize the use of state funds to pay the travel costs of children of the governor and lieutenant governor to certain events, HB 14 would authorize this payment not just for minor children, but also for mentally and physically disabled children who are dependent on the governor or lieutenant governor for care.¹ Second, the regulations authorize the state to pay, *in advance of exoneration*, the ongoing legal fees and costs of an employee accused of an ethics violation. If the employee is not exonerated of the ethics charges, the state must then attempt to recoup the funds it advanced to defend the guilty employee. HB 14, on the other hand, would require that an employee *be exonerated* before the state could reimburse the employee for his or her fees and costs.² HB 14 cures both problems.

REPRESENTATIVE GRUENBERG noted that the reference to "exonerated" is on page 4, lines 10-11.

9:21:03 AM

CHAIR LYNN closed public testimony.

9:21:16 AM

REPRESENTATIVE SEATON expressed appreciation for the legal memorandum from Mr. Wayne.

9:21:33 AM

REPRESENTATIVE GRUENBERG, in response to Representative P. Wilson, said there is no provision currently in statute or proposed in the bill for recoupment by the state from the person who filed the original complaint [if the complaint was unfounded]. He cited a portion of Ms. Young's memorandum, which read as follows:

The Connecticut law further authorizes that if the complainant brought the charge knowing that it was baseless, the public official or state employee will have a cause of action against the complainant for double the amount of damage caused. If the action is successful, the courts may also award the individual the costs and reasonable attorneys' fees for the action.

REPRESENTATIVE GRUENBERG said he thinks Alaska's reason for not adopting such a policy is that it could dissuade people with legitimate complaints from coming forward. He said that idea may have merit, but the Department of Law has not suggested that it is needed, and he decided not to bring that issue into the proposed legislation.

9:23:59 AM

REPRESENTATIVE P. WILSON expressed her hope that some provision like that would prevent baseless accusations.

REPRESENTATIVE GRUENBERG said he thinks the concern is that "the net would cast too broadly." In response to Representative P. Wilson, he offered to contact Ms. Young to obtain the Connecticut law.

REPRESENTATIVE P. WILSON said she thinks that would be worth looking into.

[9:25:53 AM](#)

CHAIR LYNN suggested it would be problematic to distinguish which complaint is and is not frivolous.

REPRESENTATIVE P. WILSON said that is why she would like to have the Connecticut law before the committee.

[9:26:27 AM](#)

REPRESENTATIVE PETERSEN expressed concern that Alaskans would see this as a way to caution against complaining, and he said he does not think that is the right direction to be headed.

[9:27:41 AM](#)

REPRESENTATIVE GRUENBERG noted that the issue of vexatious litigants has occupied the attention of the court for a small number of litigants who take up an inordinate amount of the court's time. In some cases, the court has required a person who submits complaints repeatedly to first get court approval before his/her complaint is heard. Representative Gruenberg said that is not done "in this area," because the person brings the matter to the attention of the government, and the government decides which cases merit attention.

[9:30:07 AM](#)

JUDY BOCKMON, Assistant Attorney General/State Ethics Attorney, Opinions, Appeals, & Ethics, Civil Division (Anchorage), Department of Law, stated that she thinks that Representative Gruenberg has "fairly summarized the posture that we're in with ethics complaints." She added that in statute there are two layers of review prior to the probable cause finding: the intake review to see that the complaints meet the requirement of statute and warrant investigation; and the more formal investigation which leads to probable cause and a public accusation and hearing, which rarely happens.

REPRESENTATIVE P. WILSON asked Ms. Bockmon what the effect would be if Alaska adopted a law such as Connecticut's. In response to Chair Lynn, she confirmed that she was asking about a possible law that would pertain to the administrative branch of Alaska's government.

MS. BOCKMON responded that she is not sure it would change how the state treats a complaint or the levels of review or process of investigation. She echoed the concern expressed by others that such a law may dissuade members of the public from bringing forward complaints. She asked the committee to keep in mind that the complaints that are brought forth are not always of the nature that have been seen in the last couple years; there are complaints that state employees might wish to bring because they see what they believe to be improper action. She indicated that a law, such as the aforementioned Connecticut law could add process, but not necessarily for the Department of Law. She explained that it seems that what is being contemplated is that the subject [of an ethics complaint, who is knowingly wrongly accused,] would later have to take action to recover the fees, and she said she does not know "how that would work."

[9:34:23 AM](#)

REPRESENTATIVE JOHANSEN concurred with Representative Gruenberg that this is a larger issue, and he suggested that the topic of curtailing frivolous litigation in, for example, the areas of resource extraction and economic development could be taken up another time, while not [dissuading the public regarding the issue of ethics complaints].

[9:35:14 AM](#)

REPRESENTATIVE GRUENBERG noted that in the civil litigation, the recovery of costs and fees is under Civil Rules 79 and 82. The general rule is that the prevailing party recovers its costs in full and its fees on a sliding scale. He offered further details.

[9:38:13 AM](#)

REPRESENTATIVE SEATON expressed concern that [making citizens pay for a complaint that is later found untrue] means that the legislature would be requiring them to know the outcome of the case before they even file a complaint, and that would be "chilling." He said he thinks HB 14 is a good bill.

[9:40:28 AM](#)

REPRESENTATIVE PETERSEN moved to report HB 14 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 14 was reported out of the House State Affairs Standing Committee.

9:43:52 AM

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:44 a.m.