

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

April 3, 2012

8:03 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. 351

"An Act establishing procedures relating to issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 345

"An Act relating to regulations adopted by the Department of Administration waiving the commercial motor vehicle driving skills test for certain drivers with military commercial motor vehicle experience."

- MOVED HB 345 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53(FIN)

"An Act reestablishing the Alaska Commission on the Status of Women; and relating to the purpose and powers of the Alaska Human Relations Commission."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 351

SHORT TITLE: POLICE OFFICER PROTECTIONS/CERTIFICATION

SPONSOR(s): REPRESENTATIVE(s) HAWKER

02/22/12 (H) READ THE FIRST TIME - REFERRALS
02/22/12 (H) STA, JUD
04/03/12 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 345

SHORT TITLE: WAIVE CDL SKILL TEST FOR CERTAIN VETERANS

SPONSOR(s): REPRESENTATIVE(s) SADDLER

02/22/12 (H) READ THE FIRST TIME - REFERRALS
02/22/12 (H) TRA, STA
03/27/12 (H) TRA AT 1:00 PM CAPITOL 17
03/27/12 (H) Moved Out of Committee
03/27/12 (H) MINUTE(TRA)
03/28/12 (H) TRA RPT 3DP 2NR
03/28/12 (H) DP: PETERSEN, GRUENBERG, P.WILSON
03/28/12 (H) NR: JOHNSON, PRUITT
04/03/12 (H) STA AT 8:00 AM CAPITOL 106

BILL: SB 53

SHORT TITLE: COMMISSION ON THE STATUS OF WOMEN

SPONSOR(s): SENATOR(s) DAVIS

01/19/11 (S) READ THE FIRST TIME - REFERRALS
01/19/11 (S) STA, FIN
03/24/11 (S) STA AT 9:00 AM BUTROVICH 205
03/24/11 (S) Heard & Held
03/24/11 (S) MINUTE(STA)
03/29/11 (S) STA AT 9:00 AM BUTROVICH 205
03/29/11 (S) Moved SB 53 Out of Committee
03/29/11 (S) MINUTE(STA)
03/30/11 (S) STA RPT 3DP 1DNP 1NR
03/30/11 (S) DP: WIELECHOWSKI, KOOKESH, PASKVAN
03/30/11 (S) DNP: GIESSEL
03/30/11 (S) NR: MEYER
01/20/12 (S) FIN AT 9:00 AM SENATE FINANCE 532
01/20/12 (S) Heard & Held
01/20/12 (S) MINUTE(FIN)
02/02/12 (S) FIN AT 9:00 AM SENATE FINANCE 532

02/02/12 (S) Moved CSSB 53(FIN) Out of Committee
02/02/12 (S) MINUTE(FIN)
02/03/12 (S) FIN RPT CS 5DP 2NR SAME TITLE
02/03/12 (S) DP: HOFFMAN, THOMAS, EGAN, MCGUIRE,
ELLIS
02/03/12 (S) NR: STEDMAN, OLSON
02/22/12 (S) TRANSMITTED TO (H)
02/22/12 (S) VERSION: CSSB 53(FIN)
02/24/12 (H) READ THE FIRST TIME - REFERRALS
02/24/12 (H) STA, FIN
04/03/12 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 351 as sponsor.

DAVE SEXTON, Executive Director
Alaska Police Standards Council
Department of Public Safety
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 351.

JOHN SKIDMORE, Division Director
Legal Services Section
Criminal Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 351.

JAKE METCALF, Executive Director
Public Safety Employees Association, Inc./American Federation of
State, County, Municipal Employees (PSEA/AFSCME) Local 803
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 351.

STEVE SORENSON, General Council
Corporate Board
Public Safety Employees Association (PSEA)
Anchorage, Alaska

POSITION STATEMENT: Provided information during the hearing on
HB 351.

REPRESENTATIVE DAN SADDLER
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 345 as sponsor.

AVES THOMPSON, Executive Director
Alaska Trucking Association (ATA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 345.

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

POSITION STATEMENT: Testified during the hearing on HB 345.

CELESTE HODGE, Staff
Senator Bettye Davis
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 53 on behalf of Senator Davis, sponsor.

JUDITH VAUGHAN-PRATHER, Member
Board of Directors
National Association of Commissions on Women;
Executive Director
Montgomery County Commission for Women
Maryland

POSITION STATEMENT: Testified on behalf of the National Association of Commissions on Women during the hearing on HB 345.

ACTION NARRATIVE

[8:03:39 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:03 a.m. Representatives Keller, Seaton, P. Wilson, Petersen, and Lynn were present at the call to order. Representatives Johansen and Gruenberg arrived as the meeting was in progress.

HB 351-POLICE OFFICER PROTECTIONS/CERTIFICATION

[8:04:02 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 351, "An Act establishing procedures relating to

issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date."

8:05:03 AM

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, presented HB 351 as sponsor. He stated that the proposed legislation was introduced at the request of the Public Safety Employees Association (PSEA) and would ensure that police officers are afforded protection of their civil liberties when faced with unproven allegations or threats related to their job performance. He directed attention to a matrix [in the committee packet], which shows four general areas within the legislation: Licensure Impacts for Misconduct; Definition of Police Officer; Administration of Lie Detector Tests; and Confidentiality of Personal Information. Currently, he said, revocation and refusal to issue a permit is left to the discretion of the Alaska Police Standards Commission.

REPRESENTATIVE HAWKER said under HB 351 suspension would be allowed without a hearing; revocation and refusal to issue a permit would be allowed after a hearing and decision if the allegations were proven by clear and convincing evidence; and suspension, revocation, or refusal to issue a certificate based on a disciplinary action that has been reversed or removed based on an official proceeding outlined by a collective bargaining agreement, personnel rules, or the Administrative Procedure Act would be prohibited.

REPRESENTATIVE HAWKER said court services officers would be added to the definition of police officer. Regarding the administration of lie detector tests, he mentioned [AS 23.10.037], which currently prohibits employers from administering lie detector tests to employees and job applicants. He indicated that HB 351 would repeal a section of law that exempts police officers from the current prohibition. He indicated that [job applicants] are not supposed to be part of that exemption, and he said there is an amendment prepared to address that. He stated that under HB 351, personal information

would remain confidential unless the officer voluntarily authorizes its release in writing.

8:13:37 AM

DAVE SEXTON, Executive Director, Alaska Police Standards Council, Department of Public Safety (DPS), said under HB 351, the council would have to follow along with decisions made at a hearing, for example. Currently, he said, although the council takes many sources under advisement, it is totally independent. He relayed that when an officer in an agency is terminated, the hiring agency is required to report that termination, as well as report whether the officer resigned under investigation or in lieu of investigation, and whether the agency recommends decertification. He said the council takes that information under advisement. He said there are a number of ways that the council can start an investigation on its own, for example, in response to reading an article in the newspaper or receiving a tip from a citizen; however, most of the time the information received is from the hiring agency.

MR. SEXTON emphasized that revocation is rare. He relayed that at any particular time there are 3,000 officers in Alaska, and in the last five years the council has revoked only six certificates, and those were for serious criminal matters. He said his staff does the primary investigation, and many times decides at that level that there is no reason to revoke. If the matter goes to council, the council thoroughly vets the matter. He reemphasized the need for the council to maintain its independence. He noted there has been one instance in which the hearing officer ruled to give the officer his job back, but the council revoked the certificate anyway. He indicated that the hearing officer had ruled on a procedural issue, while the council considered that the behavior of the officer had been egregious and unprofessional in nature.

8:17:29 AM

REPRESENTATIVE GRUENBERG directed attention to Section 1 of the proposed bill, which would amend AS 18.65.240(c). He said currently there is no requirement for a notice and a hearing in statute. He asked if Mr. Sexton has received or requested any legal opinions regarding the constitutionality of the statute.

8:18:54 AM

MR. SEXTON deferred to the Department of Law, but said that the council gives notice.

REPRESENTATIVE GRUENBERG asked Mr. Sexton if Section 1 of HB 351 would bring the statute into conformance with existing regulations.

MR. SEXTON reiterated that currently the council gives notice.

REPRESENTATIVE GRUENBERG referenced page 1, lines 12, and asked if current regulations allow the accused to request a hearing for a suspension as well as for a revocation.

MR. SEXTON answered that currently the council does not have the authority to suspend; language in Section 1 would give that authority. He stated that the council supports having that capability.

REPRESENTATIVE GRUENBERG asked Mr. Sexton if he would support allowing the accused officer to request a hearing before a suspension.

MR. SEXTON replied that the council has not yet discussed that matter.

REPRESENTATIVE GRUENBERG said he would explore that issue when the bill is heard by committees of referral.

[8:21:28 AM](#)

REPRESENTATIVE JOHANSEN directed attention to the fiscal note prepared by David Sexton, Executive Director, Alaska Police Standards Council [included in the committee packet].

MR. SEXTON clarified that although his name is on the fiscal note, it was actually prepared by his staff.

REPRESENTATIVE JOHANSEN observed that it is a zero fiscal note, but noted language in the analysis portion states that ["DPS could potentially be required to pay hundreds of thousands of dollars in back wages to cover the period of time from the date of termination until the date of the decision."] He remarked that it is unusual for HB 351 not to have a referral to the House Finance Committee. He asked Mr. Sexton to point to the section in HB 351 that refers to the possible cost to DPS.

MR. SEXTON answered that the language is in Section 4, [paragraph (7)], subparagraph (D), on page 3, lines 5-7, and would add to the definition of police officer:

(D) a person who is designated under AS 22.20.130 to assist the commissioner of public safety in the execution of the authority and duty vested by AS 22.20.100 - 22.20.140;

[8:23:57 AM](#)

MR. SEXTON said the reason for the cost is that if court officers are brought in under the definition of police officer, then they would have to have the same training. He said under HB 351, there are 50-plus court officers who would have to be trained. In response to Representative Johansen, he said the expense would not be incurred by the Alaska Police Standards Council, but would be incurred by the department. He added:

Part of [the Department of] Public Safety has since started discussions with the union. Everybody's under the agreement that we can bring the court service officers in without this change, and this change ... was taken out of the Senate version of the bill. So, we're just doing it administratively now, bit by bit, and that won't have the fiscal impact. So, ... we're currently looking at handling it administratively and not in this bill.

REPRESENTATIVE JOHANSEN said he appreciates that information, but opined that it is irrelevant to the committee's discussion of the proposed bill.

[8:25:58 AM](#)

MR. SEXTON, in response to Representative P. Wilson, explained the reason the court services officers have been added is to give them the ability to serve warrants and make arrests; it increases their abilities.

CHAIR LYNN opined that that is "quite a jump" in abilities.

MR. SEXTON, in response to Chair Lynn, said a court officer could give a warrant in the court room.

MR. SEXTON, in response to Representative P. Wilson, said currently court officers act as bailiffs who maintain order in

the courtroom and transport prisoners. In response to a follow-up question, he deferred to the department representatives to speak to how they envision using court services officers under HB 351.

REPRESENTATIVE P. WILSON surmised that if court services officers are going to be asked to do a lot more, then they are going to want an increase in pay, which would be reflected in the fiscal note.

MR. SEXTON said current discussions with the union have elicited an agreement that a pay raise would not happen.

[8:28:29 AM](#)

MR. SEXTON, in response to the chair, said under HB 351 court services officers would be, in theory, fully trained police officers; however, he said he cannot speak to how DPS would use them. In response to a follow-up question, he said he does not know the current pay difference between police officers and court services officers.

[8:29:12 AM](#)

REPRESENTATIVE KELLER asked if the courts have expressed a need for their court services officers to have an increase in abilities.

MR. SEXTON answered not that he is aware.

[8:29:35 AM](#)

MR. SEXTON, in response to a series of questions from Representative Seaton, confirmed that the Alaska Police Standards Council bases its conclusions on the Administrative Procedures Act, which requires preponderance of evidence. He offered his understanding that under HB 351 the council would need to "follow decisions made outside to hearings." He relayed that if the standard for proving allegations is changed to clear and convincing evidence, then the assumption is that a higher burden of proof will be required. He said he does not know how that will "shake out," but said it would separate the council from the four dozen boards and commissions that follow the Administrative Procedures Act.

[8:32:07 AM](#)

REPRESENTATIVE JOHANSEN asked who would do the extra work in reaching the higher burden of proof if the standard for proving allegations is raised.

MR. SEXTON suggested that the council may already be finding clear and convincing evidence. He said the council is comprised of 13 members, including law enforcement and corrections administrators, citizens at large, and union members, all of whom take their jobs seriously. He reiterated that out of 200 cases there have been only six revocations. He stated that the council takes only serious cases. He said there would be no more staff to address finding clear and convincing evidence, so the burden would fall on existing staff.

[8:34:24 AM](#)

MR. SEXTON, in response to Representative Gruenberg, offered his understanding that clear and convincing evidence must be used in order to disbar an attorney at law. In response to a follow-up question, he said he has not heard of any challenges as to the constitutionality of requiring only preponderance of evidence in matters related to the council.

REPRESENTATIVE GRUENBERG stated his intent to find out more on the matter.

[8:36:18 AM](#)

JOHN SKIDMORE, Division Director, Legal Services Section, Criminal Division, Department of Law (DOL), offered his personal background. He stated that in the role of supervisor to special prosecutions, he was responsible for reviewing all cases that involved officers and would address all officer-involved shootings. He said he also reviewed conflict cases. He related that in his current position, he acts as the legal advisor for the Alaska Police Standards Council. Regarding HB 351, he said he would address the topic of licensure impacts, as shown on the aforementioned matrix.

[8:38:42 AM](#)

MR. SKIDMORE directed attention to Section 1, on page 1, line 9, through page 2, line 5, of HB 351. He offered his understanding that Section 1 would repeal AS 18.65.240(c), which is the provision that gives the council the ability to revoke the license or certificate of a law enforcement officer. He said "it" does not specify that "we" would follow the Administrative

Procedures Act; however, he noted that within the Act, which is referenced on page 2, line 1, as AS 44.62.330 - 44.62.630, it is specifically stated that the Alaska Police Standards Council must follow the Act. He said under the Act there is a hearing to which anyone is entitled and during which the hearing officer makes findings of fact and recommendations to the council. The council then exercises its own independent judgment as to whether to follow the recommendation of the hearing officer. He stated that this is the same procedure as is followed by the Alaska Bar Association, but the association is not controlled by the Administrative Procedures Act.

[8:41:47 AM](#)

MR. SKIDMORE stated that under HB 351, the discretion of the council would be removed, which he opined is not a good idea. He said the 13 people serving on the council decide whether or not [the officer in question] has fallen below the minimum level of the expectations for the standards that are set for officers across the state. Under HB 351, the person making those decisions would be a hearing officer who is not in law enforcement, and the council would not be able to revoke a license unless the hearing officer had first made that decision. He stated that society is built on trust that people will follow the rules of the state or be held accountable by law enforcement officers. He talked about the importance of being able to trust law enforcement officers, because without that trust the whole system falters. He said that is why the decision of who is and is not an appropriate officer should remain within the council.

[8:44:21 AM](#)

MR. SKIDMORE stated that there are also issues with how [HB 351] would affect the criminal justice system's function. For example, he said as a prosecutor he is obligated to disclose to the defense whether an officer is deemed to be dishonest or there are problems with his/her credibility. The defense will ask "those questions" during the trial, the jury will judge the officer, and judges may not be willing to issue a search warrant to the officer in the future. Current law ensures that only trustworthy officers are certified, and if [the council] finds one that is not trustworthy, it is invested with the power to remove him/her. The proposed legislation would eliminate that ability and give the decision to a sole hearing officer. He asked the committee not to let that happen.

[8:45:52 AM](#)

REPRESENTATIVE JOHANSEN asked what the qualifications are for the single hearing officer to which Mr. Skidmore referred.

MR. SKIDMORE answered that the specifics are included in the Administrative Procedures Act.

REPRESENTATIVE JOHANSEN offered his understanding that Mr. Skidmore's testimony implies that [a hearing officer] is not the right person to [make those decisions], and he said he would like to know why.

MR. SKIDMORE said that while he cannot relate how [hearing officers] are selected, part of his concern is that the person selected is not likely to be a member of the law enforcement community. Furthermore, he reiterated his concern in giving the decision making to one individual rather than to a group of individuals that can bring different points of view.

[8:49:15 AM](#)

REPRESENTATIVE P. WILSON asked if the reason for HB 351 is because someone lost his/her license and is disgruntled.

[8:50:11 AM](#)

MR. SKIDMORE mentioned recent court cases, but said he does not know if those cases were the instigators of the proposed legislation. In the cases, he said, even though the court determined that the officers had engaged in egregious conduct, because the department had a history of not firing those officers in the past who engaged in similar conduct, it was determined that it would not be fair to fire the officers in question. He directed attention to Section 3, which read as follows:

***Sec. 3.** AS 18.65 is amended by adding a new section to read:

Sec. 18.65.244. Deference to prior resolutions. Notwithstanding AS 18.65.240, the council may not suspend, revoke, or refuse to issue a certificate to a police officer based on a disciplinary action against the police officer that has been reversed or removed as the result of

(1) an arbitration or grievance proceeding under a collective bargaining agreement;

- (2) a grievance, hearing, or other proceeding under applicable personnel rules; or
(3) a proceeding under AS 44.62 (Administrative Procedure Act).

MR. SKIDMORE said lines 10-19 state that the council would also be bound by what happens in employment law rather than being allowed to exercise its own discretion and judgment. He offered further details.

MR. SKIDMORE talked about another case, which involved sexual harassment and dishonesty, both of which are of concern to the council. He said there was no question that the harassment and dishonesty occurred; the question was what the appropriate sanction would be. He said the answer is completely different depending on whether the focus is on employment or certification. He offered an example, in which a lawyer engages in criminal conduct. He said the lawyer's employer may not ultimately be able to fire the lawyer, but if the bar decides to revoke the lawyer's license, then he/she would not be able to practice law anyway. He said he thinks the view is that if litigation results in someone being able to remain employed, then it is unfair that his/her license could then be taken away. He said he understands that viewpoint but respectfully disagrees, because the two processes are separate: one is employment law, while the other is a statewide standard - the minimum of what should apply. He said there are boards and councils across the state to uphold those standards. He said he has worked in places in the state where he is unsure whether that the litigation that would be involved in employment issues would be "the same level of litigation." He stated, "Even if it's dealing with APD or the Alaska State Troopers, I don't even want to rely on that, because the council conducts its own independent investigation and reaches its own conclusions, and I don't think it should have to be bound by what occurs in the employment litigation context."

[8:57:35 AM](#)

REPRESENTATIVE JOHANSEN offered his understanding that Mr. Skidmore had said that Section 3 would limit the council. He stated his belief that the legislature confirms each member [of the council].

MR. SKIDMORE confirmed that is correct.

REPRESENTATIVE JOHANSEN ventured that the legislature's confirmation of members is a good indication they are capable. He asked if Mr. Skidmore is saying that Section 3 would limit the information that [the council] would have to make decisions.

MR. SKIDMORE answered no. He clarified that Section 3 would require the council to follow along with what happens in an arbitration or a grievance under collective bargaining. He added, "So, it's not that it limits the information they have; it just [limits] what they can do."

[8:59:31 AM](#)

REPRESENTATIVE P. WILSON said she has a problem with that, because there are times when she has felt the outcome of a collective bargaining agreement was unsafe. She offered an example of a school district that could not do something about a person who was saying and doing things that were "not good for students." She opined that the current ability of the council to override a decision is good.

MR. SKIDMORE noted that teachers are governed under the Administrative Procedures Act; therefore, the example offered by Representative P. Wilson is right on point.

[9:01:27 AM](#)

REPRESENTATIVE PETERSEN asked Mr. Skidmore to clarify if what he is saying is that this could lead down a slippery slope.

MR. SKIDMORE responded that he could not have said it more clearly than that.

[9:02:01 AM](#)

REPRESENTATIVE KELLER referred to the mission statement of the council, which read as follows:

To produce and maintain a highly trained and positively motivated professional, capable of meeting contemporary law enforcement standards of performance.

REPRESENTATIVE KELLER said Mr. Skidmore's testimony is convincing; however, he noted that the mission statement has no mention of maintaining the public's trust.

MR. SKIDMORE responded that he equates "professional" with someone in whom the public can place its trust. He said that his experience as head of special prosecutions brought him to consider whether individuals who hold positions of public trust should be sentenced for criminal conduct beyond what the average citizen would. He stated his belief that the answer to that question is yes, because it is the violation of public trust that is so important. He offered an example. He said he believes that the vast majority of people working in law enforcement right now are professionals.

9:05:42 AM

REPRESENTATIVE SEATON directed attention to the words "reversed or removed" in Section 3, and he asked for clarification as to the difference between them.

9:07:01 AM

MR. SKIDMORE answered that a reversal is the ultimate decision. He said he is not certain of the meaning of removed in the bill language, but ventured that it may mean the removal from a personnel file any mention of an allegation. He said the council already takes into consideration what has happened in an employment context, but should not be bound by that information.

9:08:31 AM

REPRESENTATIVE JOHANSEN, in response to Representative Keller's previous remark, proffered that mission statements are often written by a group of people trying to figure out a way to present the actual statutory requirements. He read an excerpt of subsection (a) of AS 18.65.240, which read as follows [original punctuation provided]:

Sec. 18.65.240. Standards.

(a) A person may not be appointed as a police officer, except on a probationary basis, unless the person (1) has satisfactorily completed a basic program of police training approved by the council, which includes at least 12 hours of instruction regarding domestic violence as defined in AS 18.66.990, and (2) possesses other qualifications the council has established for the employment of police officers, including minimum age, education, physical and mental standards, citizenship, moral character, and experience. The council shall prescribe the means

of presenting evidence of fulfillment of these requirements.

REPRESENTATIVE JOHANSEN said, "It's not in the mission statement; it's in the statute that this body at some point over time has passed. And I think that may be the basis for some of the testimony that we've had today."

[9:09:49 AM](#)

JAKE METCALF, Executive Director, Public Safety Employees Association, Inc./American Federation of State, County, Municipal Employees (PSEA/AFSCME) Local 803, said PSEA/AFSCME Local 803 represents state troopers, court services officers, airport police in Anchorage and Fairbanks, and police officers in Ketchikan, Sitka, Juneau, Fairbanks, Soldotna, Dutch Harbor, and Dillingham. He relayed that prior to his current position, he served as an assistant attorney general and attorney general in Bethel, and as a prosecutor in the Office of Special Prosecutions, where he was a colleague of Mr. Skidmore. He said as a prosecutor he dealt with misconduct by police officers.

MR. METCALF stated that PSEA/AFSCME Local 803 believes that the APSC has a job that is important to the people PSEA/AFSCME Local 803 represents and the job that those people do. He said PSEA/AFSCME Local 803 does not want to take away any of APSC's powers. He said PSEA/AFSCME Local 803 helps police officers surrender their certificates when it is time to do so, but believes that the process should be a fair one. He stated that a police officer who has had his/her certificate revoked cannot work anywhere else in the country. He said this is not wrong for those who are bad police officers, but for those who have been accused unfairly, without the full facts, it can ruin their lives. He stated that PSEA/AFSCME Local 803 does not disagree with testimony stating that there have not been many cases of revocation, but wants to ensure that the process is fair. He said the proposals made in HB 351 would make the process fair and would not take away anything from the APSC, but would actually give the council more tools.

[9:13:37 AM](#)

MR. METCALF, regarding licensure impacts of misconduct, said PSEA/AFSCME Local 803 has asked that suspension be allowed in the process. Currently the council has no power to suspend a license; all it can do is revoke or grant a certificate.

MR. METCALF referred to [paragraph (3), in Section 1], on page 2, which read: "(3) following the filing of a statement of issues, hearing, and decision under AS 44.62.330 - 44.62.630, refuse to issue a certificate to an applicant, if refusal is consistent with the decision." He said PSEA/AFSCME Local 803 thinks that the person who is coming under revocation should be given notice, that there should be a hearing, and that the rules of the APA should be followed. He said PSEA/AFSCME Local 803 does not believe that is the case currently. He gave an example, in which someone was given the opportunity to surrender his/her license, but had not been given notice as to the reason for decertification. He said PSEA/AFSCME Local 803 hopes that HB 351 will lay out groundwork for the council for the fair treatment of people.

MR. METCALF referred to Section 2, which would require the council to "prove the conduct alleged in the accusation or statement of issues by clear and convincing evidence." He recollected that Mr. Skidmore had said that the bar association is outside of the Administrative Procedure Act. He said the Act addresses consideration of the preponderance of evidence. He said that is the lowest burden of proof that the Act requires; however, an agency is allowed to use a higher burden of proof under the Act. Mr. Metcalf listed the three burdens of proof: preponderance of the evidence, clear and convincing evidence, and beyond a reasonable doubt. The latter is used in criminal trial, while clear and convincing is used in employment trial. He said PSEA/AFSCME Local 803's "changes" would protect all police officers, not just those with collective bargaining agreements.

[9:18:19 AM](#)

MR. METCALF stated that collective bargaining agreements include clauses that make the decisions of the arbitrator binding on the employee and the employer. He said the language in PSEA/AFSCME Local 803's agreement with the state troopers has existed for over 30 years. He said there is a standard that is followed. If there is an issue regarding employment, a hearing is held, in which each side can present relevant evidence. The arbitrator is trained in employment matters and makes the binding decision. He said in recent cases the state has not liked the binding decision and the matter has been brought to the Alaska State Superior Court and the Alaska Supreme Court. He mentioned cases where both courts decided that the arbitrator had made the right decision. Further, a hearing officer decided that the employee

in question does not deserve to have his/her certificate revoked. Mr. Metcalf indicated that six years may have gone by, during which the officer in question has not worked, and that officer may think the case has been settled, but the APSC then overturns all the decisions. He said PSEA/AFSCME Local 803 thinks that the council should pay attention to the decisions of both parties, the Alaska Supreme and Superior Court judges, and the hearing officer chosen by both parties.

MR. METCALF said PSEA/AFSCME Local 803 thinks Section 1-3 would make the system fairer and give the council more tools, without placing burden or taking away any of the standards currently outlined in statute.

[9:23:13 AM](#)

MR. METCALF, regarding Section 3 and the deference of prior resolutions, said PSEA/AFSCME Local 803 wants the council to pay attention to arbitration, personnel rules, and court arbitration, but it also believes that the council can make an independent decision based on new facts.

[9:26:20 AM](#)

REPRESENTATIVE SEATON asked what the purpose is for suspending a certificate.

[9:26:32 AM](#)

MR. METCALF answered that one purpose may be to use a suspension until such time as the council makes a decision on a termination. It makes it possible for the officer in question to deal with a problem, for example drug addiction, before being allowed to come back to work.

REPRESENTATIVE SEATON offered his understanding that Mr. Metcalf had noted instances where the APA has not been followed, and he asked Mr. Metcalf if he has gone to court to address that issue.

MR. METCALF said there are cases in process. He said last week PSEA/AFSCME Local 803 received letters from APSC regarding the actions that the council is taking. He said PSEA/AFSCME Local 803 would rather have statutes that set up a fair system that is clearly defined for APSC, with full disclosure of the actions being taken against the officer involved, and with due process followed.

REPRESENTATIVE SEATON said he is confused, because Mr. Metcalf is asking for statute to be changed when the APA is already in statute and includes full hearing requirements.

MR. METCALF explained that PSEA/AFSCME Local 803 is not asking to move away from the APA, but is asking that the Act be followed and that the APSC be given guidance as to how to follow it correctly.

[9:29:55 AM](#)

STEVE SORENSON, General Council, Corporate Board, Public Service Employees Association (PSEA), stated that the intent of the proposed legislation is to make sure the council follows the APA. Regarding the information provided by Mr. Metcalf, he stated that back in December, the council voted in executive session to take away someone's certificate, but without notice to the officer and without due process. Echoing Mr. Metcalfe's testimony, he outlined the process that should have occurred. He said the council should make the determination whether to revoke a certificate at the end of the process, not at the beginning.

REPRESENTATIVE SEATON said that before the next hearing he would like to hear a discussion of the APA and how it falls within an occupational licensing board and whether that involves an administrative hearing officer or is an employment action.

[9:33:49 AM](#)

REPRESENTATIVE P. WILSON, regarding the aforementioned cases, said she cannot imagine that the officers had no clue they had done something big enough to result in council action.

MR. SORENSON confirmed that in none of the cases were the officers informed of the council's action in December; it was not until March that any of them were notified.

[9:38:06 AM](#)

REPRESENTATIVE PETERSEN referred to language in Section 1 that would allow the council to suspend an officer's certificate if that officer did not meet the standards [under AS 18.65.240(c)]. He asked if the reason for the suspension would be to allow time for due process.

[9:38:48 AM](#)

MR. METCALF said he thinks that is one reason. Another, he said, is to give a middle ground between granting and revoking a license.

[9:39:20 AM](#)

REPRESENTATIVE PETERSEN asked if the suspension could be used as a form of punishment.

[9:39:38 AM](#)

MR. METCALF answered yes, and he reiterated his previous example of an officer that may have a substance abuse issue.

[9:39:53 AM](#)

REPRESENTATIVE JOHANSEN asked if PSEA would still support HB 351 if the language in Section 1 regarding suspension were the only language left in the bill.

[9:40:26 AM](#)

MR. SORENSEN answered yes.

REPRESENTATIVE JOHANSEN opined that saying the council is not following the APA is a serious allegation. He asked if PSEA instigated the proposed legislation "as a result of this case."

[9:41:57 AM](#)

MR. METCALF said he respects people on "the board" but thinks that current statutes have no direction, and that lack of direction adversely affects police officers.

[9:42:58 AM](#)

REPRESENTATIVE KELLER said in future he wants to know what the procedure is that would prevent recertification after revocation.

[HB 351 was held over.]

HB 345-WAIVE CDL SKILL TEST FOR CERTAIN VETERANS

[9:43:51 AM](#)

CHAIR LYNN announced that the next order of business was HOUSE BILL NO. 345, "An Act relating to regulations adopted by the Department of Administration waiving the commercial motor vehicle driving skills test for certain drivers with military commercial motor vehicle experience."

[9:44:15 AM](#)

REPRESENTATIVE DAN SADDLER, Alaska State Legislature, presented HB 345 as sponsor. He paraphrased the sponsor statement, which read as follows [original punctuation provided]:

HB 345 allows the state of Alaska to waive the commercial driver's license road skills test for Alaska military personnel who earned their driving experience operating commercial-grade vehicles in the armed services.

The modern U.S. military is a highly mobile force, depending on skilled drivers operating a wide range of vehicles, under often harsh conditions. Impending budget cuts and troop reductions mean thousands of Alaska service members, including active duty, Guard and Reserve, will soon be hanging up their uniforms to seek civilian jobs.

In Alaska, where many trades and occupations involve transportation of goods and people across challenging landscapes, a commercial driver's license (CDL) is a valuable credential that can offer a significant boost to those seeking to enter the civilian work force, whether in tourism, commercial fishing, construction, oil field services or other industries.

HB 345 seeks to help returning Alaska military personnel find good jobs, and to help Alaska businesses find qualified and credentialed employees, by acknowledging that many military drivers already possess the skills they need to be safe, productive civilian drivers.

HB 345 directs the Department of Administration to adopt regulations in accordance with Federal Motor Carrier Safety Administration guidelines, allowing the Alaska Division of Motor Vehicles to waive the road test in accordance with federal law.

To be eligible for a waiver, a driver must have spent the last two years or more driving the kind of equipment he expects to use in a civilian job, must have worked in the past 90 days as a military driver and must meet federal exemption requirements outlined

in CFR 383.77. He/she also cannot have ever had any license suspended or revoked, had more than one minor traffic violation, been convicted of any driving offense involving drugs or alcohol, or been convicted for any serious traffic violation involving an accident.

Alaskans who honed their driving skills while in service to our nation deserve to have that experience validated and honored in the civilian world. HB 345 is an important tool to help them get the credentials they need to land good civilian jobs, and to help Alaska employers hire skilled and motivated employees.

[9:46:23 AM](#)

REPRESENTATIVE SADDLER, in response to Representative Keller, said those who would qualify under HB 345 would have to have operated a commercial vehicle while in the military.

[9:47:16 AM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association (ATA), testified in support of HB 345. He stated that one of the pressing problems in the industry today is finding qualified commercial vehicle drivers. He said a lot of time is used in training. He related that in-depth knowledge is needed by drivers of commercial vehicles. He said sometimes the operating skills of commercial vehicle drivers can save the lives of those drivers or the lives of others. He stated that the industry supports the return of veterans and welcomes the opportunity to do something that would both support them and the industry. He urged the committee to support the proposed legislation.

[9:49:12 AM](#)

WHITNEY BREWSTER, Director, Division of Motor Vehicles, Department of Administration, noted that the Federal Motor Carrier Safety Administration (FMCSA) finalized federal regulations which allow states to adopt programs that substitute the required [commercial] driving skills for those that have recent military commercial motor vehicle experience. She said the division would build into its regulation the requirements under HB 345, which are: the individual is or was within the last 90 days regularly employed in a military position requiring operation of a commercial motor vehicle; and the individual was also operating a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate for

at least the two years immediately preceding discharge from the military. She said the regulation the division promulgates would include the requirements under [federal regulation] 49 CFR 383.77. She said there are many states that have implemented a similar program, including Washington, Pennsylvania, Connecticut, New York, and Nevada. She told the committee that FMCSA is urging states to adopt programs that will allow for this waiver and is working closely with the U.S. Department of Defense (DoD), as well as with the American Association of Motor Vehicle Administrators (AAMVA), to make implementation of this program easier across the country.

[9:51:21 AM](#)

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

[9:51:29 AM](#)

MS. BREWSTER, in response to Representative Seaton, confirmed that the division has the authority to adopt the aforementioned regulations.

[9:52:16 AM](#)

REPRESENTATIVE JOHANSEN said he worked with a crew of truck drivers in past, and the best drivers were those who had driven in the military. He thanked the bill sponsor for bringing forward HB 345.

[9:52:51 AM](#)

CHAIR LYNN remarked upon the thoroughness of military technical schools.

[9:53:04 AM](#)

REPRESENTATIVE KELLER relayed that he used to run a truck driving school and has a commercial driver's license.

[9:53:30 AM](#)

REPRESENTATIVE KELLER moved to report HB 345 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 345 was reported out of the House State Affairs Standing Committee.

SB 53-COMMISSION ON THE STATUS OF WOMEN

9:53:50 AM

CHAIR LYNN announced that the final order of business was CS FOR SENATE BILL NO. 53(FIN), "An Act reestablishing the Alaska Commission on the Status of Women; and relating to the purpose and powers of the Alaska Human Relations Commission."

9:54:11 AM

CELESTE HODGE, Staff, Senator Bettye Davis, Alaska State Legislature, presented SB 53 on behalf of Senator Davis, sponsor. She stated that SB 53 would reestablish the Alaska Commission on the Status of Women, a nine-member body devoted to improving the status of women in Alaska, established in 1978, renewed and renamed The Alaska Women's Commission in 1983, and absorbed into the Alaska Human Relations Commission along with Alaska Commission on Children and Youth. She said the Alaska Human Relations Commission still exists in statute, but was never funded and was declared inactive in 1996. She continued as follows:

Staggering statistics for women in Alaska show the need to establish the Alaska Women's Commission to focus on a broad and diverse cross-section of issues effecting women. ... Alaska continues to have the highest rates of sexual assault and domestic violence in the nation and historically women are more likely to be poor than men. Poverty rates of unmarried female householders with children are particularly high and have ... consistently been two or three times as high as overall male and female poverty rates in 1996.

Survey data compiled by the American Community Survey shows that of 26,518 families in Alaska with a female head of household, 22.6 percent live below the poverty level. The gender wage gap persists in Alaska and across a wide spectrum of occupations and industries. In 2009, according to [the Alaska Department of Labor & Workforce Development], Alaska women on average earned only 66.6 percent of what men earned. And although more women than men in Alaska hold a bachelor's degree or higher, data shows that men's median annual earnings are higher in every educational level.

Alaskan ... women, in particular women of color, experience health care disparities, and women living in rural Alaska have worse than average disparities on access and utilization of services. These statistics speak for themselves and fully justify the need to reestablish the Alaska Women's Commission.

9:57:08 AM

JUDITH VAUGHAN-PRATHER, Member, Board of Directors, National Association of Commissions on Women; Executive Director, Montgomery County Commission for Women, testified on behalf of the National Association of Commissions on Women (NACW). She said NACW commends the legislature for addressing the issue and Senator Davis for sponsoring SB 53. She said NACW urges the passage of SB 53, which would reestablish the Alaska Commission on the Status of Women and provide both staffing and some funding to ensure the commission is able to carry out its mandate.

MS. VAUGHAN-PRATHER relayed that there are close to 200 commissions for women and commissions on the status of women around the country at the state, county, and city level. She said the commissions are distinguished from other advocacy organizations and each commission is established by the jurisdiction it serves as an advisory board to the government of that state or county. She said commissions for women are the governments' way of assuring that the needs of women are identified and addressed in bodies that are largely constituted by men. She related having found out that in the Alaska State Legislature, only 9 of the 40 members of the House are women and only 3 of the members of the Senate are women, despite the fact that of Alaska's total number of females constitute approximately 48 of the general population of the state.

MS. VAUGHAN-PRATHER said that when the voice of almost half the population is omitted from the discussion, important and often critical implications can exist. For example, she said until this year car manufacturers and the regulating agencies used crash test dummies that were the size and weight of an average man; it never occurred to them to design vehicle safety standards that would protect the other half of the population. She said there is documentation, including the sponsor's statement, which highlights other inequities that occur nationwide.

MS. VAUGHAN-PRATHER said SB 53 proposes to create an advisory board with a staff of three at a total cost of \$515,400 in fiscal year 2013 (FY13), with the cost decreasing in future years after the start-up costs are eliminated. The [initial] budget represents an investment of only about \$1.50 per female in Alaska. She posited, "Surely that would be money well spent and a tiny cost to pay to ensure that their very real needs are not overlooked." She stated that NACW urges the committee to pass SB 53, and she offered the support of its collective membership and experience to help the staff and commissioners of the Alaska commission, so that they can "begin again providing informed, balanced, and valuable advice to the government and to the people of your state."

[10:01:38 AM](#)

CHAIR LYNN announced that SB 53 was held over.

[10:02:35 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:02 a.m.