

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 15, 2014

1:42 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Lesil McGuire, Vice Chair  
Senator Fred Dyson  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Donald Olson

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 250(HSS) AM

"An Act making an expression of apology, sympathy, commiseration, compassion, or benevolence by a health care provider inadmissible in a medical malpractice case; requiring a health care provider to advise a patient or the patient's legal representative to seek legal advice before making an agreement with the patient to correct an unanticipated outcome of medical treatment or care; and amending Rules 402, 407, 408, 409, and 801, Alaska Rules of Evidence."

- MOVED CSHB 250(HSS) AM OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 127(JUD)

"An Act relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to the privilege of the ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents; relating to procedures for procurement by the ombudsman; and amending Rules 501 and 503, Alaska Rules of Evidence."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 140(FIN) AM

"An Act relating to the proposed adoption, amendment, or repeal of a regulation; and relating to contact with agencies about regulations."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 250

SHORT TITLE: MEDICAL MALPRACTICE ACTIONS

SPONSOR(s): REPRESENTATIVE(s) OLSON

01/21/14	(H)	PREFILE RELEASED 1/17/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	HSS, JUD
02/27/14	(H)	HSS AT 3:00 PM CAPITOL 106
02/27/14	(H)	Heard & Held
02/27/14	(H)	MINUTE(HSS)
03/13/14	(H)	HSS AT 3:00 PM CAPITOL 106
03/13/14	(H)	Scheduled But Not Heard
03/14/14	(H)	HSS AT 8:00 AM CAPITOL 106
03/14/14	(H)	Moved CSHB 250(HSS) Out of Committee
03/14/14	(H)	MINUTE(HSS)
03/17/14	(H)	HSS RPT CS(HSS) NT 6DP
03/17/14	(H)	DP: REINBOLD, PRUITT, KELLER, NAGEAK, TARR, HIGGINS
03/24/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/14	(H)	Heard & Held
03/24/14	(H)	MINUTE(JUD)
03/26/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/26/14	(H)	Moved CSHB 250(HSS) Out of Committee
03/26/14	(H)	MINUTE(JUD)
03/27/14	(H)	JUD RPT CS(HSS) NT 3DP 2NR
03/27/14	(H)	DP: FOSTER, GRUENBERG, KELLER
03/27/14	(H)	NR: LEDOUX, LYNN
04/11/14	(H)	TRANSMITTED TO (S)
04/11/14	(H)	VERSION: CSHB 250(HSS) AM
04/11/14	(S)	READ THE FIRST TIME - REFERRALS
04/11/14	(S)	JUD
04/14/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/14/14	(S)	Heard & Held
04/14/14	(S)	MINUTE(JUD)
04/15/14	(S)	JUD AT 1:30 PM FAHRENKAMP 203

BILL: HB 140

SHORT TITLE: REGULATIONS: NOTICE, REVIEW, COMMENT

SPONSOR(s): REPRESENTATIVE(s) REINBOLD

02/22/13	(H)	READ THE FIRST TIME - REFERRALS
02/22/13	(H)	JUD

03/18/13 (H) JUD AT 1:00 PM CAPITOL 120  
 03/18/13 (H) Heard & Held  
 03/18/13 (H) MINUTE(JUD)  
 03/25/13 (H) JUD AT 1:00 PM CAPITOL 120  
 03/25/13 (H) Scheduled But Not Heard  
 03/27/13 (H) JUD AT 1:00 PM CAPITOL 120  
 03/27/13 (H) Scheduled But Not Heard  
 03/29/13 (H) JUD AT 1:00 PM CAPITOL 120  
 03/29/13 (H) <Bill Hearing Canceled>  
 04/08/13 (H) JUD AT 1:00 PM CAPITOL 120  
 04/08/13 (H) Moved CSHB 140(JUD) Out of Committee  
 04/08/13 (H) MINUTE(JUD)  
 04/09/13 (H) JUD RPT CS(JUD) 5DP 1NR  
 04/09/13 (H) DP: PRUITT, FOSTER, LEDOUX, LYNN,  
 KELLER  
 04/09/13 (H) NR: GRUENBERG  
 04/09/13 (H) FIN REFERRAL ADDED AFTER JUD  
 03/13/14 (H) FIN AT 8:30 AM HOUSE FINANCE 519  
 03/13/14 (H) Heard & Held  
 03/13/14 (H) MINUTE(FIN)  
 03/21/14 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 03/21/14 (H) Moved CSHB 140(FIN) Out of Committee  
 03/21/14 (H) MINUTE(FIN)  
 03/25/14 (H) FIN RPT CS(FIN) NT 10DP  
 03/25/14 (H) DP: NEUMAN, THOMPSON, EDGMON, MUNOZ,  
 GARA, HOLMES, T.WILSON, COSTELLO,  
 STOLTZE,  
 03/25/14 (H) AUSTERMAN  
 03/31/14 (H) TRANSMITTED TO (S)  
 03/31/14 (H) VERSION: CSHB 140(FIN) AM  
 04/02/14 (S) READ THE FIRST TIME - REFERRALS  
 04/02/14 (S) JUD, FIN  
 04/09/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/09/14 (S) <Above Bill Hearing Canceled>  
 04/11/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/11/14 (S) -- MEETING CANCELED --  
 04/14/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/14/14 (S) Heard & Held  
 04/14/14 (S) MINUTE(JUD)  
 04/15/14 (S) JUD AT 1:30 PM FAHRENKAMP 203

BILL: HB 127

SHORT TITLE: OMBUDSMAN

SPONSOR(s): RULES BY REQUEST

02/18/13 (H) READ THE FIRST TIME - REFERRALS  
 02/18/13 (H) STA, JUD

03/12/13 (H) STA AT 8:00 AM CAPITOL 106  
03/12/13 (H) Heard & Held  
03/12/13 (H) MINUTE(STA)  
03/21/13 (H) STA AT 8:00 AM CAPITOL 106  
03/21/13 (H) <Bill Hearing Rescheduled to 3/26/13>  
03/26/13 (H) STA AT 8:00 AM CAPITOL 106  
03/26/13 (H) Heard & Held; Assigned to Subcommittee  
03/26/13 (H) MINUTE(STA)  
02/07/14 (H) STA AT 3:00 PM CAPITOL 120  
02/07/14 (H) Work Session on above Bill  
02/25/14 (H) STA AT 8:00 AM CAPITOL 106  
02/25/14 (H) Heard & Held  
02/25/14 (H) MINUTE(STA)  
02/27/14 (H) STA AT 8:00 AM CAPITOL 106  
02/27/14 (H) Heard & Held  
02/27/14 (H) MINUTE(STA)  
03/06/14 (H) STA AT 8:00 AM CAPITOL 106  
03/06/14 (H) Moved CSHB 127(STA) Out of Committee  
03/06/14 (H) MINUTE(STA)  
03/07/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/07/14 (H) <Bill Hearing Canceled>  
03/10/14 (H) STA RPT CS(STA) NT 1DP 1NR 3AM  
03/10/14 (H) DP: LYNN  
03/10/14 (H) NR: GATTIS  
03/10/14 (H) AM: KELLER, KREISS-TOMKINS, HUGHES  
03/12/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/12/14 (H) -- MEETING CANCELED --  
03/14/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/14/14 (H) Heard & Held  
03/14/14 (H) MINUTE(JUD)  
03/19/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/19/14 (H) Heard & Held  
03/19/14 (H) MINUTE(JUD)  
03/24/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/24/14 (H) Moved CSHB 127(JUD) Out of Committee  
03/24/14 (H) MINUTE(JUD)  
03/25/14 (H) JUD RPT CS(JUD) NT 3DP 2NR  
03/25/14 (H) DP: GRUENBERG, LYNN, KELLER  
03/25/14 (H) NR: LEDOUX, PRUITT  
03/25/14 (H) FIN REFERRAL ADDED AFTER JUD  
03/31/14 (H) FIN AT 8:30 AM HOUSE FINANCE 519  
03/31/14 (H) Heard & Held  
03/31/14 (H) MINUTE(FIN)  
04/01/14 (H) FIN RPT CS(JUD) NT 9DP 1NR  
04/01/14 (H) DP: GUTTENBERG, HOLMES, MUNOZ,  
THOMPSON, EDGMON, T.WILSON, COSTELLO,  
STOLTZE,

04/01/14 (H) AUSTERMAN  
 04/01/14 (H) NR: NEUMAN  
 04/01/14 (H) FIN AT 8:30 AM HOUSE FINANCE 519  
 04/01/14 (H) Moved CSHB 127(JUD) Out of Committee  
 04/01/14 (H) MINUTE(FIN)  
 04/07/14 (H) RLS AT 5:00 PM CAPITOL 120  
 04/07/14 (H) -- MEETING CANCELED --  
 04/09/14 (H) TRANSMITTED TO (S)  
 04/09/14 (H) VERSION: CSHB 127(JUD)  
 04/11/14 (S) READ THE FIRST TIME - REFERRALS  
 04/11/14 (S) JUD  
 04/14/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/14/14 (S) Heard & Held  
 04/14/14 (S) MINUTE(JUD)  
 04/15/14 (S) JUD AT 1:30 PM FAHRENKAMP 203

**WITNESS REGISTER**

ERIKA O'SULLIVAN, Staff  
 Representative Kurt Olson  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Reviewed the changes between HB 250 Version A and Version P.A on behalf of the sponsor.

DOUG WOJCIESZAK, Sorry Works

**POSITION STATEMENT:** Testified in support of HB 250.

LINDA LORD-JENKINS, Ombudsman  
 Office of the Ombudsman  
 Alaska State Legislature  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to HB 127.

BETH LEIBOWITZ, Assistant Ombudsman  
 Office of the Ombudsman  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Provided information related to HB 127.

REPRESENTATIVE LORA REINBOLD  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 140

MARK ECK, representing himself  
 Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 140.

JAMES SQUYRES, representing himself  
Delta Junction, Alaska

**POSITION STATEMENT:** Testified in support of HB 140.

PAMELA GOODE, representing herself  
Delta Junction, Alaska

**POSITION STATEMENT:** Testified in support of HB 140.

JIM POUND, Staff  
Representative Wes Keller  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Voiced concerns with Version K of HB 140.

CRYSTAL KOENEMAN, Staff  
Representative Lora Reinbold  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided information related to HB 140 on behalf of the sponsor.

#### **ACTION NARRATIVE**

[1:42:52 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:42 p.m. Present at the call to order were Senators Dyson, Wielechowski, and Chair Coghill. Senator McGuire arrived during the course of the meeting.

#### **HB 250-MEDICAL MALPRACTICE ACTIONS**

[1:43:52 PM](#)

**CHAIR COGHILL** announced the consideration of HB 250. "An Act making an expression of apology, sympathy, commiseration, compassion, or benevolence by a health care provider inadmissible in a medical malpractice case; requiring a health care provider to advise a patient or the patient's legal representative to seek legal advice before making an agreement with the patient to correct an unanticipated outcome of medical treatment or care; and amending Rules 402, 407, 408, 409, and 801, Alaska Rules of Evidence." [This was the second hearing and CSHB 250(HSS) AM was before the committee.]

[1:44:18 PM](#)

ERIKA O'SULLIVAN, Staff, Representative Kurt Olson, Alaska State Legislature, Juneau, Alaska, reviewed the following changes between HB 250 Version A and Version P.A: [Original punctuation provided.]

On page 1, line 1 of the bill title, the words 'liability' and 'responsibility' were deleted. Under Sec. 1(a) on page 1, line 12 'liability' and 'responsibility' were deleted.

Under Sec. 1(a), page 2, line 14, subsection (5) was added to read: "evidence of a health care provider requesting, demanding, inquiring, or directing another to write-off, offer or promise to pay medical, hospital, or similar expenses, in whole or in part, following an unanticipated outcome of medical treatment or care."

Under Sec. 1, page 2, line 18, subsection (b) was added to read: "If an expression of apology, sympathy, commiseration, compassion, or benevolence made under (a)(1) of this section is made in conjunction with an admission of liability, or negligence, only the expression of apology, sympathy, commiseration, compassion, or benevolence is inadmissible, and the admission of liability, or negligence may be admissible as evidence."

Under Sec. 09.55.545 on page 3, line 7, "to" was deleted, and "in writing that the patient or patient's legal representative may" was inserted.

Under Sec. 2(1), on page 3, line 14, 'liability' and 'responsibility' were deleted.

Under Sec. 4, page 4, line 4, the CONDITIONAL EFFECT was amended to include Sec. AS 09.55.545.

[1:48:40 PM](#)

SENATOR WIELECHOWSKI asked if she was aware of any opposition to the bill.

MS. O'SULLIVAN said a trial attorney expressed concern with the original version, but most people have expressed satisfaction with the changes that exclude the words "liability" and "responsibility."

SENATOR WIELECHOWSKI asked if it's fair to say that the changes found in Version P.A represent a compromise between the doctors and lawyers.

MS. O'SULLIVAN responded that the intent is to open the dialog with doctors while including important consumer protection components in the bill.

SENATOR WIELECHOWSKI asked if there have been cases where doctors have apologized and had that used against them in court.

MS. O'SULLIVAN deferred the question to Mr. Wojcieszak.

[1:50:16 PM](#)

DOUG WOJCIESZAK, Founder of Sorry Works, the leading organization teaching healthcare professionals how to talk with families and disclose when things go wrong in a medical setting, stated support for HB 250. He said that states that have apology laws offer encouragement for doctors to talk with patients and families when a medical event goes wrong. Data shows that these laws improve communication in difficult situations, which is to everyone's benefit. When something goes wrong from a known complication or a true error, the best thing that can happen for everyone involved is to sit down and have an adult conversation about what happened and try to seek solutions. When doctors and nurses don't communicate and instead choose to run away and hide, consumers are more inclined to seek retribution through the legal system.

Responding to Senator Wielechowski's question, he said a paper that came out several years ago looked at that question but the author couldn't find any cases. There have been times when trial lawyers have tried to use it against doctors, but it usually backfires because a doctor who apologizes doesn't appear to be an unfeeling and uncaring human being. He reiterated his support for HB 250.

[1:53:40 PM](#)

SENATOR MCGUIRE joined the committee. She disclosed that her father is a surgeon licensed in the state of Alaska.

CHAIR COGHILL found no further testimony, questions, or comments and solicited a motion.

[1:54:54 PM](#)

SENATOR DYSON moved to report HB 250, Version P.A, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection CSHB 250(HSS) AM was reported from the Senate Judiciary Standing Committee.

[1:55:32 PM](#)

At Ease

### HB 127-OMBUDSMAN

[1:57:15 PM](#)

CHAIR COGHILL reconvened the meeting and announced the consideration of HB 127. "An Act relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to the privilege of the ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents; relating to procedures for procurement by the ombudsman; and amending Rules 501 and 503, Alaska Rules of Evidence." He noted that this was the second hearing. [CSHB 127(JUD) was before the committee.]

He asked Senator Wielechowski if his questions were answered.

[1:57:47 PM](#)

SENATOR WIELECHOWSKI moved Amendment 1, labeled 28-LS0088\B.2

CHAIR COGHILL objected.

### AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI  
TO: CSSB 127(JUD)

Page 2, line 19, following "subsection":

Insert "unless the communication is evidence of illegal activity"

SENATOR WIELECHOWSKI explained that his concern was that illegal activity that an ombudsman finds in the course of an investigation should not be shielded.

CHAIR COGHILL asked Ms. Lord-Jenkins to clarify how the proposed amendment to Subsection 4 would affect the ombudsman's investigative procedures under AS 24.55.160.

2:00:19 PM

LINDA LORD-JENKINS, Ombudsman, Office of the Ombudsman, Alaska State Legislature, Anchorage, Alaska, read the statutes governing the ombudsman's duty to publish recommendations under AS 24.55.200 and the procedure under AS 24.55.220 if the ombudsman believes there is misconduct by agency personnel.

CHAIR COGHILL asked how the new subsection (c) for AS 24.55.160 differs from the ombudsman's current responsibility.

2:03:25 PM

BETH LEIBOWITZ, Assistant Ombudsman, Office of the Ombudsman, Alaska State Legislature, Juneau, Alaska, explained that, under AS 24.55.220, the ombudsman is required to refer a finding of misconduct or blatant illegality to the appropriate entity. However, that does not give the ombudsman the ability to disclose a record that is otherwise confidential. The proposed amendment to Section 4 says that if the ombudsman receives a privileged communication from an agency, the ombudsman would hand that over as part of the referral. Without the amendment, the ombudsman would continue to be able to refer the matter to the appropriate authority, but would not be able to deliver a copy of a privileged communication that the ombudsman may have received.

SENATOR DYSON said he assumes that much of what the person who requests an investigation says is privileged.

MS. LEIBOWITZ replied the ombudsman has an obligation of confidentiality to the person who comes forward with a complaint. There is also testimonial privilege which says the ombudsman may only disclose as necessary to carry out the duties of the Ombudsman Act.

SENATOR DYSON observed that the discussion is that the ombudsman can refer a client's disclosure of illegal activities to the appropriate agency.

MS. LEIBOWITZ replied the statute doesn't talk about what the ombudsman is to do if a complainant discloses criminal activity, whereas AS 24.55.160 gives the clear duty to refer the misconduct to the head of the agency, law enforcement, or both.

SENATOR DYSON asked if the ombudsman can under present law disclose information from one person alleging illegal activity by another person or group.

MS. LEIBOWITZ said she believes so.

SENATOR DYSON asked if it's correct to infer that the amendment would restrict the ombudsman in a way that it is not presently restricted.

MS. LEIBOWITZ clarified that it would undermine the specific provision that would allow an agency to share attorney-client privileged material with the ombudsman who would respect the privilege. Responding to a further question from Senator Dyson, she explained that Section 4 deals specifically with attorney-client privileged material that is given to the ombudsman in the course of an investigation.

[2:09:12 PM](#)

SENATOR WIELECHOWSKI provided an example. During the course of an agency investigation the ombudsman uncovers attorney-client privileged documents in which an executive admits to having broken the law. The statute requires the ombudsman to report the admission, but Section 4 makes it clear that the accompanying document may not be provided. He maintained that creating that shield does not benefit the public and was a bad policy.

SENATOR MCGUIRE discussed the balance between getting agencies to cooperate in an investigation versus the public's right to get reconciliation and understand what's going on. She said she was torn.

MS. LEIBOWITZ said she believes that if an agency director admits to illegal conduct in a privileged communication with the Department of Law, it probably will lead to plenty of non-privileged evidence that can be disclosed.

SENATOR MCGUIRE said she could support that.

MS. LORD-JENKINS again pointed out that under AS 24.55.200 the ombudsman not only reports the activity to the agency but also has the option of presenting it to "the governor, the legislature, a grand jury, the public or any of these." The ombudsman could tell a complainant their allegations are substantiated, but the complainant could not be told why because it's based on confidential information that the complainant is not otherwise entitled to have.

MS. LORD-JENKINS said that in the name of transparency she agrees that citizens have the right to know, but under the law there are certain things that citizens are not entitled to know.

2:15:37 PM

SENATOR WIELECHOWSKI maintained that it's good state policy to require departments in Alaska to cooperate with the ombudsmen. That means turning over privileged documents and if they show illegal activity it will be reported.

MS. LORD-JENKINS, responding to a question from Senator Dyson, explained that when the ombudsman office was created in 1976, it had access to privileged attorney-client information. The legislature amended the statute in the early 1990s at the request of the Public Defender Agency and the Office of Public Advocacy defense section. The unintended consequence was that the ombudsman lost access to attorney-client privileged material. An agency can waive the attorney-client privilege, but based on case law if an agency and the DOL waives privilege as to one entity then all other entities have that access. The provision in Section 4 would allow an agency to waive privilege without having it be public information for everybody.

SENATOR DYSON asked if Senator Wielechowski's amendment would give the ombudsman's office the same access to privileged attorney-client information that it had in 1976.

MS. LEIBOWITZ said the amendment may approach the original access, but it may create problems if agencies realize that the waiver allows other entities to have access to the privileged material.

SENATOR WIELECHOWSKI addressed Senator Dyson's question. The bill says that the ombudsman may not disclose a privileged communication under subsection (c). The amendment adds that this doesn't apply if the information pertains to illegal activity.

CHAIR COGHILL asked if the agencies are shielded without this amendment.

MS. LEIBOWITZ stated that under current law they are completely shielded.

CHAIR COGHILL offered his understanding that under current law the ombudsman's ability to receive any privileged information is negotiated.

MS. LEIBOWITZ responded that agencies have an active disincentive to waive privilege to the ombudsman because case law indicates that it would evaporate the privilege for all parties.

SENATOR WIELECHOWSKI said he wants a strong ombudsman and doesn't believe that agencies should be coddled. In light of this discussion, he suggested adding a provision requiring agencies to disclose attorney-client privileged or attorney work product to the ombudsman upon request.

SENATOR DYSON said he supports the ombudsman and he technically agrees with the amendment, but he did not want to jeopardize the bill.

[2:27:40 PM](#)

SENATOR MCGUIRE asked if the ombudsman had the power to compel attorney-client privileged documents before the legislature changed the statute in the 1990s. She also asked if they would object to reinserting that language.

MS. LEIBOWITZ clarified that the original statute gave the ombudsman broad power but it was not express. The 1990 amendments were designed to make the ombudsman's authority to access agency records absolutely express, and one of the compromises to get that amendment through was to exclude attorney-client privileged material and attorney work product.

CHAIR COGHILL offered his understanding that [Section 4] is the first attempt to get back to attorney-client privileged information.

MS. LEIBOWITZ said that's correct.

SENATOR MCGUIRE said her concern is that the net effect will be that an agency will disclose attorney-client privileged information that supports their position, but not if the information supports the other side or reveals some misconduct.

[2:30:24 PM](#)

MS. LORD-JENKINS agreed there is always that concern and it might be a good idea to think about this in small steps. She suggested that her office could track their requests to agencies to waiver attorney-client privilege and the rate of cooperation. She opined that it would be a very telling fact if an agency

agreed to waive the privilege as long as they didn't have to worry about the waiver going to all parties.

[2:32:41 PM](#)

CHAIR COGHILL maintained his objection to Amendment 1.

SENATOR WIELECHOWSKI responded that he believes in the attorney-client privilege for private parties, but it's a little different with government. Taxpayers pay the salaries of government employees and would essentially be paying an attorney to potentially cover up some illegal activity. He said that's fundamentally wrong and he continues to believe that there should be another provision that requires agencies to disclose attorney-client privileged information. He offered to continue to work on the amendment between now and when the bill reaches the floor if there wasn't support for it in the committee.

SENATOR MCGUIRE suggested the amendment say that the waiver does not apply to any other person and that illegal activity can be disclosed. She said she would vote for the amendment because it's right and she had no compelling reason not to.

CHAIR COGHILL asked Senator Wielechowski to withdraw the amendment, do more homework, and address it tomorrow.

[2:35:55 PM](#)

SENATOR WIELECHOWSKI withdrew Amendment 1.

SENATOR DYSON requested the bill sponsor be included in the discussion.

CHAIR COGHILL agreed.

MS. LEIBOWITZ said she believes the ombudsman is unlikely to obtain privileged information that would fit the amendment.

SENATOR MCGUIRE restated her proposal to compel agencies to provide the information in all cases.

SENATOR WIELECHOWSKI stated his intention to work cooperatively with the interested parties.

SENATOR WIELECHOWSKI distributed another amendment for the committee to review.

[2:39:49 PM](#)

CHAIR COGHILL held HB 127 for further consideration.

**HB 140-REGULATIONS: NOTICE, REVIEW, COMMENT**

[2:40:23 PM](#)

CHAIR COGHILL announced the consideration of HB 140. "An Act relating to the proposed adoption, amendment, or repeal of a regulation; and relating to contact with agencies about regulations." This was the second hearing and he noted the new committee substitute (CS).

[2:41:24 PM](#)

SENATOR DYSON moved to adopt the work draft committee substitute to HB 140, labeled 28-LS0478\K, as the working document.

CHAIR COGHILL objected. He explained that the CS removes the Regulatory Commission of Alaska (RCA), the Board of Fisheries, the Board of Game, the Alaska Public Offices Commission (APOC), and the Alaska Oil and Gas Conservation Commission (AOGCC) from the requirements in the bill.

[2:42:11 PM](#)

REPRESENTATIVE LORA REINBOLD, Alaska State Legislature, Juneau, Alaska, sponsor of HB 140 expressed concern that Version K unnecessarily excludes a number of agencies and may decrease transparency. She stated her four guiding principle when she wrote the legislation:

1. The highest level of prosperity occurs when there is a free market economy and a minimum of government regulations.
2. The government should be separated into three branches. She said that she wanted to ensure that the Department of Law does not have any undue influence over the legislative branch.
3. A system of checks and balances should be adopted to prevent the abuse of power by the different branches of government.
4. Only limited and carefully defined powers should be delegated to government and all others being retained by the people. She said the whole purpose of the legislation was to empower the people and she wanted to maintain that as much as possible.

CHAIR COGHILL opened public testimony.

[2:46:15 PM](#)

MARK ECK, representing himself, Fairbanks, Alaska, stated that passing HB 140 would impose unconstitutional and overreaching

regulations on the people and businesses that support the Alaskan and U.S. economies. He mentioned overregulation by agencies that have little to no check on the way they operate, regulations that have the unintended consequence of hurting more people than they help, and the financial impact of regulations on businesses that support Alaskan families and bring revenue to the state. He stated support for having the governor review regulations and posting notifications to the public about regulations that would help the people comply with such regulations.

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JAMES ARTHUR SQUYRES, representing himself, Delta Junction, Alaska, testified in support of HB 140. He said that the fact that there is an Administrative Regulation Review Committee and that Governor Parnell wrote Administrative Order 266 support the notion that many state regulations overreach the statutes. He stressed the importance of checks and balances to ensure that new regulations are well written and fully vetted to avoid the unnecessary burden of changing or removing them after the fact. This can be very difficult because departments say they need every one of their regulations, citing broad statutory powers that allow their bureaucracies to grow seemingly unchecked. He pointed out that Alaska has a looming financial crisis on the horizon which makes it more important than ever to run the leanest most efficient state government possible. He applauded HB 140 as a new tool to hold regulation writing state agencies accountable, to encourage dialog between all parties, and to protect the people of Alaska from overreaching regulations.

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PAMELA GOODE, representing herself, Delta Junction, Alaska, testified in support of HB 140. She said she used to think that state government had control over the state bureaucrats and the regulations that they write but she now realizes that isn't necessarily true. She discussed the problems that the groundwater protection and water well stakeholder work group is having because wellhead protection is funded 100 percent by the EPA and is a required element for Alaska to maintain primacy for Clean Water Act regulations. The group came to realize that the conflict over data and well drillers logs were an overreach of statute and constitutionality. She urged the legislature to regain its proper lawful authority.

CHAIR COGHILL asked Mr. Pound to comment on the Senate committee substitute, Version K.

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JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, Juneau, Alaska, said he worked on HB 140 with Representative Reinbold over the Interim and he had concerns with Version K. He agreed with the sponsor that the RCA should not be exempt because their decisions directly affect the public. If they approve a pipeline tariff, gas prices go up and if they approve a rate increase for a utility, light bills or telephone bills go up. He declined to address the APOC exemption without doing some homework.

CHAIR COGHILL said he wanted to highlight APOC because he was concerned that it was taking over the ethics statute, but he didn't necessarily mean to provide an exemption.

SENATOR MCGUIRE asked Mr. Pound his thoughts on the Board of Fisheries and AOGCC.

MR. POUND said the sponsor had no objection to those exemptions because their processes are more public than other boards and commissions.

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CRYSTAL KOENEMAN, Staff, Representative Lora Reinbold, Alaska State Legislature, Juneau, Alaska, added that there are certain justifications for potentially exempting the Board of Fisheries the Board of Game, and AOGCC in the bill. She cited the cost analysis of fish runs and the open public processes as reasons.

REPRESENTATIVE REINBOLD highlighted that those entities need to be excluded from certain but not all provisions.

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CHAIR COGHILL stated that he was maintaining his objection to Version K and would hold HB 140 for further consideration.

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:01 p.m.