

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 16, 2014

9:38 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- MOVED SCS CSHB 127(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 60(JUD)

"An Act adopting and relating to the Uniform Real Property Transfer on Death Act; relating to establishing the law governing certain trusts; and relating to disclaimers of property interests."

- MOVED CSHB 60(JUD) OUT OF COMMITTEE

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."

- MOVED SCS CSHB 140(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
 04/15/14 (S) Heard & Held
 04/15/14 (S) MINUTE(JUD)
 04/16/14 (S) JUD AT 9:30 AM BUTROVICH 205

BILL: HB 60

SHORT TITLE: UNIFORM REAL PROPERTY TRANSFERS ON DEATH
 SPONSOR(S): GRUENBERG

01/16/13 (H) PREFILE RELEASED 1/11/13
 01/16/13 (H) READ THE FIRST TIME - REFERRALS
 01/16/13 (H) L&C, JUD
 03/21/14 (H) L&C AT 3:15 PM BARNES 124
 03/21/14 (H) -- MEETING CANCELED --
 03/24/14 (H) L&C AT 3:15 PM BARNES 124
 03/24/14 (H) Heard & Held
 03/24/14 (H) MINUTE(L&C)
 03/28/14 (H) L&C AT 3:15 PM BARNES 124
 03/28/14 (H) Moved CSHB 60(L&C) Out of Committee
 03/28/14 (H) MINUTE(L&C)
 03/31/14 (H) L&C RPT CS(L&C) NT 2DP 3NR
 03/31/14 (H) DP: JOSEPHSON, OLSON
 03/31/14 (H) NR: CHENAULT, HERRON, JOHNSON
 04/07/14 (H) JUD AT 1:00 PM CAPITOL 120
 04/07/14 (H) Heard & Held

04/07/14 (H) MINUTE(JUD)
 04/09/14 (H) JUD AT 1:00 PM CAPITOL 120
 04/09/14 (H) Moved CSHB 60(JUD) Out of Committee
 04/09/14 (H) MINUTE(JUD)
 04/10/14 (H) JUD RPT CS(JUD) NT 3DP 1NR
 04/10/14 (H) DP: LEDOUX, GRUENBERG, LYNN
 04/10/14 (H) NR: KELLER
 04/11/14 (H) JUD AT 1:00 PM CAPITOL 120
 04/11/14 (H) <Bill Hearing Canceled>
 04/14/14 (H) ENGROSSED
 04/15/14 (H) TRANSMITTED TO (S)
 04/15/14 (H) VERSION: CSHB 60(JUD)
 04/15/14 (S) READ THE FIRST TIME - REFERRALS
 04/15/14 (S) JUD
 04/16/14 (S) JUD AT 9:30 AM BUTROVICH 205

BILL: HB 140

SHORT TITLE: REGULATIONS: NOTICE, REVIEW, COMMENT

SPONSOR(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
04/15/14 (S) Heard & Held
04/15/14 (S) MINUTE(JUD)
04/16/14 (S) JUD AT 9:30 AM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Answered questions related to HB 127.

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 60.

BEN ORZESKE
Uniform Law Commissioner
Chicago, Illinois

POSITION STATEMENT: Provided supporting information related to HB 60.

JORDAN SHILLING, Aide
Senate Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced the SCS for HB 140.

REPRESENTATIVE LORA REINBOLD
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor 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.

NORMAN ROKEBURG, Commissioner
Regulatory Commission of Alaska (RCA)
Anchorage, Alaska

POSITION STATEMENT: Testified that the RCA doesn't object to Version L of HB 140.

STUART GOERING, Assistant Attorney General
Civil Division
Commercial and Fair Business Section
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Provided information related to HB 140.

ARNOLD LIEBELT, Policy Analyst
Office of Management and Budget
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Provided information related to HB 140.

DANIEL T. SEAMOUNT, Geologist Commissioner
Alaska Oil and Gas Conservation Commission (AOGCC)
Anchorage, Alaska

POSITION STATEMENT: Testified that AOGCC had no objection to HB 140.

LYNN KENT, Deputy Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Discussed the DEC fiscal note for HB 140.

WENDY WOOLF, Petroleum Land Manager
Division of Oil and Gas
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Discussed the DNR fiscal note for HB 140.

ACTION NARRATIVE

9:38:13 AM

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 9:38 a.m. Present at the call to order were Senators Wielechowski, Dyson, McGuire, and Chair Coghill.

HB 127-OMBUDSMAN

9:39:41 AM

CHAIR COGHILL 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 the proposed amendment.

9:40:10 AM

SENATOR WIELECHOWSKI moved to adopt Amendment 2, labeled 28-LS0088\B.4.

AMENDMENT 2

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

Page 2, line 19, following "subsection":

Insert "unless the communication is evidence of an act of an agency that the ombudsman reasonably believes is criminal."

CHAIR COGHILL objected for discussion purposes.

SENATOR WIELECHOWSKI discussed the work session last evening to craft the amendment. The phrase "contrary to law" was deleted because the ombudsman was concerned that it was too broad and could result in different agency interpretations. The goal is to have the ombudsman disclose criminal conduct if it is discovered in the course of an investigation. He noted that there was some discussion about adding a provision saying that agencies must disclose attorney-client privileged communications, but it was

too complicated to include this year. It may be pursued next year.

CHAIR COGHILL asked Ms. Lord-Jenkins if she had any comments on the provision.

[9:42:32 AM](#)

LINDA LORD-JENKINS, Ombudsman, Office of the Ombudsman, Alaska State Legislature, Juneau, Alaska, expressed more comfort with the wording in this amendment than the "contrary to law" wording.

CHAIR COGHILL removed his objection and Amendment 2 was adopted.

[9:43:13 AM](#)

SENATOR MCGUIRE moved to report HB 127, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection SCS CSHB 127(JUD) was reported from the Senate Judiciary Standing Committee.

[9:43:57 AM](#)

At Ease

HB 60-UNIFORM REAL PROPERTY TRANSFERS ON DEATH

[9:44:41 AM](#)

CHAIR COGHILL reconvened the meeting and announced the consideration of HB 60. "An Act adopting and relating to the Uniform Real Property Transfer on Death Act; relating to establishing the law governing certain trusts; and relating to disclaimers of property interests. " This was the first hearing.

[9:45:54 AM](#)

REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, Juneau, Alaska, sponsor of HB 60, said this legislation does two things. First, it has a provision that models a Delaware Supreme Court case which said that if a trust instrument is silent as to the choice of law and it is administered in Delaware, the choice of law would be Delaware. The House Judiciary Committee added this provision in Section 1 of the bill. It helps keep Alaska's trust laws as competitive and trust-friendly as possible.

The rest of the bill adds a new chapter to AS 13 called the "Uniform Real Property Transfer on Death Act." This avoids probate and legal fees for estates that aren't huge or

complicated. The property owner records a deed that says it becomes effective upon their death. The property owner has the ability to change the deed but it must be recorded so that it is in the chain of title and easily ascertainable. This protects the title and any of the people who may be involved.

REPRESENTATIVE GRUENBERG noted that the bill contains forms for the deed and the revocation of the deed. It has been thoroughly vetted through the Bar probate and real property sections and they suggest seeking legal advice if there is any doubt. About 23 states have these laws. The first was passed in the 1980s and then the Uniform Commissioners promulgated this Act about six or seven years ago and it is gaining appeal.

[9:51:31 AM](#)

SENATOR WIELECHOWSKI asked if there was a financial limit on the size of an estate that can be deeded.

REPRESENTATIVE GRUENBERG said no.

SENATOR WIELECHOWSKI asked if the property has to be in Alaska.

REPRESENTATIVE GRUENBERG said yes and whether a TOD deed would be effective depends upon the law in the state where the property is located. For example, Missouri has a similar law so a TOD deed would apply, whereas California does not so a TOD deed would not apply.

CHAIR COGHILL asked how Section 1 applies to the Uniform Act.

REPRESENTATIVE GRUENBERG explained that that provision applies to states in which trusts are administered. It clarifies that it is the law of Alaska generally that applies if the trust is administered here regardless of where the property is located, the trust was drafted, and the donors and beneficiaries reside.

[9:56:10 AM](#)

SENATOR WIELECHOWSKI asked if this would allow parties in other states to bypass estate taxes.

REPRESENTATIVE GRUENBERG clarified that it is not a tax saving device. A transfer on death is subject to estate taxes.

SENATOR WIELECHOWSKI asked if the main advantage is to avoid probate.

REPRESENTATIVE GRUENBERG said yes.

SENATOR DYSON questioned the provision in paragraph (4) on page 5, lines 6-7.

REPRESENTATIVE GRUENBERG explained that the transfer doesn't occur until the transferor's death.

SENATOR WIELECHOWSKI asked if the contents of a property transfer along with the property.

REPRESENTATIVE GRUENBERG replied only something like a shed that is affixed to the land would transfer with the property.

SENATOR WIELECHOWSKI asked Mr. Orzeske if there were inheritance tax implications.

[10:02:12 AM](#)

BEN ORZESKE, Uniform Law Commissioner, Chicago, Illinois, said the bill removes the property from the probate estate for administrative purposes, but would not remove it from the taxable estate under federal law.

REPRESENTATIVE GRUENBERG added that it would be subject to death tax.

MR. ORZESKE agreed that the bill doesn't affect whatever tax it would be if the property were transferred any other way.

SENATOR MCGUIRE requested a list of the states that have TOD deeds.

Unidentified speaker said the packets should contain Mr. Orzeske's written testimony that has an attachment showing those states.

MR. ORZESKE reported that since he submitted his testimony, Washington state and West Virginia enacted the Uniform Act bringing the total to 23.

[10:04:54 AM](#)

SENATOR MCGUIRE moved to report HB 60 from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection, CSHB 60(JUD) was reported from the Senate Judiciary Standing Committee.

[10:05:22 AM](#)

At Ease

HB 140-REGULATIONS: NOTICE, REVIEW, COMMENT

[10:07:21 AM](#)

CHAIR COGHILL reconvened the meeting and 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." He noted the new Senate committee substitute (CS) and asked Senator Dyson to rescind the motion to adopt Version K.

SENATOR DYSON rescinded the motion to adopt Version K Senate CS for HB 140.

[10:07:43 AM](#)

SENATOR DYSON moved to adopt the work draft Senate CS for CSHB 140, labeled 28-LS0478\L, as the working document.

CHAIR COGHILL objected for discussion purposes.

[10:08:49 AM](#)

JORDAN SHILLING, Aide, Senate Judiciary Standing Committee, described the three main changes between Version K and Version L of HB 140. First, the exemption for the Alaska Public Offices Commission (APOC) was removed throughout the bill. The affected sections are 2-8. The second large change appears on page 2, line 5. Following the words "30 days" the phrase "after the approval is prepared under AS 44.62.060(b)" was removed. The intent is to keep the review within the tight 30 day window and not include a reference to the statute that outlines how a state agency prepares and files regulations. The third major change removed the exemptions in Section 9. Both the sponsor and the Department of Law agree that they weren't necessary.

CHAIR COGHILL noted that he and the sponsor hadn't agreed about the exemptions for the Regulatory Commission of Alaska (RCA), the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission (AOGCC). He asked the sponsor to comment.

[10:10:23 AM](#)

REPRESENTATIVE LORA REINBOLD, Alaska State Legislature, Juneau, Alaska, sponsor of HB 140 said she was happy with the changes in Section 2 that removed duplication that could delay regulations, and she wouldn't object to the exemptions mentioned above. However, she wanted it on the record that many constituents want

the Board of Game and the Board of Fisheries to be mindful that the 100,000 Alaskans who hunt and fish want their boards to be very pro-Alaskan. Also, the RCA should be on notice that Alaskans and the legislature want a business-friendly climate and affordable energy for all citizens, businesses, schools, and governments.

She and the other sponsors would like all agencies, boards, and commissions to comply with the requirements in Section 5. Many boards and commissions already post notice of proposed regulations on their own websites so it wouldn't be difficult to also post the information on the Alaska Online Publication Notice System. Section 6 requires a notice to include a brief, clear description of the impact of the regulation. This is already a requirement in statute. She noted that her staff brought examples of a brief description of a Board of Game regulation.

[10:15:13 AM](#)

CRYSTAL KOENEMAN, Staff, Representative Lora Reinbold, Alaska State Legislature, Juneau, Alaska, sponsor of HB 140, read examples of acceptable descriptions.

- The Alaska Board of Fisheries calls for proposed changes in the subsistence, personal use, sport, guide sport, and commercial fishing regulations for the Prince William Sound and the upper Copper/Susitna finfish, in Southeast and Yakutat finfish areas, in Southeast and Yakutat crab - king, tanner, Dungeness - shrimp, miscellaneous shellfish, and statewide except Southeast and Yakutat areas, Dungeness crab, shrimp, miscellaneous shellfish areas.
- The Alaska Board of Game calls for proposed changes in the regulations pertaining to hunting, trapping, and the use of game for the following regions: Southeast region, Southcentral region, Central and Southwest region.

REPRESENTATIVE REINBOLD continued to comment on Version L. She said she and the sponsors have no objection to sections 7-11. She concluded that it's good public policy to make the regulatory process more business and people friendly and more transparent.

SENATOR MCGUIRE thanked the sponsor for bringing the legislation forward and the chair for being statesman in making compromises.

[10:19:41 AM](#)

NORMAN ROKEBURG, Commissioner, Regulatory Commission of Alaska (RCA), Anchorage, Alaska, stated that the RCA does not oppose Version L of HB 140. He said that the RCA takes pride in its best practices methods for undertaking rulemaking and its transparent public process. Regulations are adopted at public meetings and the records are available online. He described it as the most transparent method of regulatory development in the state. Addressing an apparent misunderstanding on the distinction between ratemaking and rulemaking, he clarified that HB 140 is talking about rulemaking, which is the process for changing regulations. The dockets regarding ratemaking are handled under different procedural methods and are almost totally judiciary in context.

He requested that the sponsor return for another visit so he could walk her through the rulemaking process, which could be a template for other state agencies. He concluded stating that Version L would not prompt a fiscal note from the RCA.

[10:23:31 AM](#)

SENATOR DYSON asked if he had concerns that adversarial groups could flood an agency with superfluous requests.

MR. ROKEBURG agreed that the RCA is vulnerable to that type of attack, but it has a complaint section and hopefully will be able to shield itself.

SENATOR MCGUIRE asked if he had objection to the requirement in Section 5 to post a notice on the Alaska Online Public Notice System and if it was a fair characterization to say that it was already a requirement in statute. She also asked if he had any objection to the requirement in Section 6 to provide a brief description of changes to the regulation that a layperson could understand.

MR. ROKEBURG said his understanding is that the RCA is required by statute to post an online notice of regulation changes and he believes they already exceed that requirement. The problem with the requirement in Section 6 is that the complexity of the issues makes brief descriptions difficult. Executive summaries are provided. He deferred further response to Stuart Goering.

[10:26:45 AM](#)

STUART GOERING, Assistant Attorney General, Civil Division, Commercial and Fair Business Section, Department of Law, Anchorage, Alaska, said that with regard to Section 5, the RCA already utilizes the Alaska Online Public Notice System. Current

regulations are housed on the RCA website and links to those regulations are typically available. However, it's important that links goes to the entire docket, not just the text. This is because the accompanying written orders are much more detailed, explain the reasoning for the regulations, and often contain suggestions or questions the commission wants the public to comment on.

He said the same concern rests with Section 6. While the commission's rulemaking is typically procedural, the complex concepts can't be condensed to a brief description. Doing so would be a disservice to the people and potentially misleading. Currently the orders explain the problem the proposed regulation is intended to solve in layman's terms.

MR. GOERING suggested that what the commission does is already very transparent for the public and the requirements in sections 5-6 would be something of a step backwards in terms of keeping the public informed and giving information about the commission's rulemaking process.

SENATOR WIELECHOWSKI asked what his concerns were having this bill apply to a quasi-judicial board.

MR. GOERING said there's particular concern with Section 2 that allows the governor to return regulations because this could jeopardize the independent function of the RCA. Sometimes there is tension between the state and parties that appear before the RCA and on occasion the state appears before the RCA on pipeline and utility matters, so exposing the RCA to any kind of political influence by inserting the governor into the process would erode that independence and potentially hamper the work of the commission.

CHAIR COGHILL asked the agencies that couldn't zero their fiscal notes to get that information to his office before 1:30 this afternoon because his intention was for the bill to have no fiscal impact.

SENATOR WIELECHOWSKI asked Mr. Goering what other quasi-judicial boards there are and whether they've had an opportunity to comment on the bill. He also asked if the bill requires the State Assessment Review Board to submit their order to the governor for review and if the governor could potentially disapprove of a SAR decision.

CHAIR COGHILL asked Mr. Goering to address the question when the committee returned.

[10:33:16 AM](#)

CHAIR COGHILL recessed the meeting until 1:30 p.m.

[1:34:47 PM](#)

CHAIR COGHILL reconvened the meeting. Present were Senators Dyson, McGuire, Olson and Chair Coghill. Senator Wielechowski arrived during introductory comments.

CHAIR COGHILL removed his objection and Version L was adopted. He opened the discussion on the fiscal notes.

[1:36:39 PM](#)

ARNOLD LIEBELT, Policy Analyst, Office of Management and Budget (OMB), Office of the Governor, Juneau, Alaska, explained that changes were anticipated when HB 140 was introduced, and OMB decided to prepare one indeterminate statewide OMB fiscal note that summarized the impact in the analysis section. For Version L the Department of Natural Resources (DNR), the Department of Environmental Conservation (DEC), and the Department of Commerce, Community and Economic Development (DCCED) submitted more detailed fiscal notes that total \$700,000.

SENATOR WIELECHOWSKI asked if there was any response from the Department of Health and Social Services (DHSS) and the Department of Labor and Workforce Development (DOLWD).

MR. LIEBELT said DHSS believes they will be impacted but they couldn't quantify the amount so they would have submitted an indeterminate fiscal note. DOLWD opted to track the expenses and perhaps come back for an increment in the future. Other departments may have to make similar requests.

CHAIR COGHILL said his intention was to learn if there were real impacts.

MR. LIEBELT responded that all the departments indicated that additional resources would be necessary.

[1:40:38 PM](#)

DANIEL T. SEAMOUNT, Geologist Commissioner, Alaska Oil and Gas Conservation Commission (AOGCC), stated that AOGCC is satisfied with the current version of HB 140 and has no objection to sections 5-6.

[1:41:22 PM](#)

LYNN KENT, Deputy Commissioner, Department of Environmental Conservation (DEC), Juneau, Alaska, discussed the DEC fiscal note. With regard to Section 3, she said the term "good faith" is in the eye of the beholder, but there is certainly a cost to the department to provide a credible cost estimate for implementation of proposed regulations. Another phrase in Section 3 talks about basing the estimate on "information available to the department" but that isn't defined and there doesn't appear to be any legislative intent on the record as to what that means. DEC notices about 15 proposed regulation packages each year and the monetary impact varies. Some could result in a cost savings to those that DEC regulates.

She explained that DEC's fiscal note includes contractual funds that would be used to help the divisions sort out what actions have to be taken by state agencies, the public, or municipalities in complying with the proposed regulations. The fiscal note does include one economist because the department doesn't have that type of expertise. The work necessary to estimate the costs would vary with the regulation, but it's not possible to do a credible job of giving a cost estimate without additional resources.

MS. KENT said the fiscal note doesn't include any cost associated with Section 5 because it will take just a little administrative time to make sure that the proposed regulations are posted on the Alaska Online Public Notice System.

CHAIR COGHILL asked if the bill would impose a cost when a regulation has to be written based on a change in federal law.

MS. KENT explained that when the federal government proposes a regulation the cost estimate is the aggregate nationwide. It would be difficult for DEC to separate the costs that would apply in Alaska and the cost difference to do something in Alaska versus the Lower 48.

CHAIR COGHILL asked if it's fair to say that some cost estimates are based on public comment on proposed regulations.

MS. KENT said DEC often receives cost feedback from those who will be regulated, but that comes after the public notice is issued. This bill requires a cost estimate before the regulations are put out for public comment.

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NORMAN ROKEBURG, Commissioner, Regulatory Commission of Alaska, referenced a comment about the RCA's impact on utility rates and pointed out that the commission operates under statutory guidelines to find just and reasonable rates, but tries to keep affordability in mind.

SENATOR DYSON said he, too, wanted to clarify that RCA's work isn't solely limited to keeping rates down. The commission is charged with regulating utilities to ensure the delivery of safe, reliable, and economic energy, which includes dealing with proposed rate increases that are not directly related to the immediate operation of the plants. He discussed his disagreement with the RCA during the Cook Inlet oil and gas production crisis and his opinion that the commission's policy not to let fuel prices drift up to reflect the market was very foolish. He also mentioned his disagreement when he approached the RCA about allowing the upper Cook Inlet electric utilities to work on getting an alternative fuel supply and having the authority to charge that off against the rate base. He concluded his comments stressing that just looking out for utility rates to the consumer has worked against guaranteeing a secure fuel supply and a reliable transmission system.

CHAIR COGHILL noted that the analysis section of the DNR fiscal note specifically discussed a "good faith estimate." He asked if this record needed to clarify the intent of that term.

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WENDY WOOLF, Petroleum Land Manager, Division of Oil and Gas, Department of Natural Resources, Anchorage, Alaska, stated that it would help DNR if the committee would clarify what it expects in terms of a good faith effort. She agreed with the deputy commissioner of DEC who requested clarity on the type of information available to state agencies.

CHAIR COGHILL asked Mr. Liebelt if he had additional comments.

MR. LIEBELT said he believes that the testimony from DEC is reflective of all the departments. It's Section 3 that triggers the fiscal impacts.

CHAIR COGHILL asked the sponsor to comment on Section 3 (d).

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REPRESENTATIVE REINBOLD said that Section 3 and Section 7 are the meat of the bill and that's why she questioned potentially exempting the AOGCC and RCA. Her decided preference is to have

them comply with sections 5-6. After discussing the quasi-judicial question with legislative legal, she feels that may no longer be an issue. When she introduced the bill, the goal and guiding question was what did she want government to look like when she was no longer a public official. The answer is affordable utilities, less government subsidies, affordable energy to Alaskans, and a responsible government that has checks and balances.

She said the intent of Section 3 is to ensure that agencies don't promulgate regulations without looking at the impacts on citizens, businesses, municipalities and other government agencies. An agency currently only has to look at their cost, whereas the bill requires an agency to look at the cost in the aggregate for other state agencies, private persons, and municipalities.

REPRESENTATIVE REINBOLD discussed Administrative Order 266, which was issued in 8/2013. It establishes regulatory efficiency guidelines for state agencies. She read the following excerpts from Administrative Order 266:

- Minimize the cost, time, and burden to the affected public of complying with State regulations and encouraging State agencies to work with all stakeholders, to meet the objectives of Alaska Statutes;
- Ensure that State regulations are consistent with Alaska Statutes and limited to carrying out the statutory purpose;
- Share ideas with members of the affected public to develop the proposed regulations through publicly noticed workshops or hearings, calls for written suggestions to improve the process, meetings with advisory boards to the State agency, or other similar means consistent with legal requirements;
- Verify costs of implementation to the State agency and the affected public to ensure that the least costly alternatives are considered or enabled consistent with legal requirements;

In this Order, "affected public" includes

1. Small and other businesses subject to regulation or conducting regulated activity;
2. State government;
3. Local governments;

4. Nonprofit organizations; and
5. Individuals.

Consistent with law and available appropriations, each affected State agency shall use existing personnel and monetary resources to comply with this Order.

REPRESENTATIVE REINBOLD said that in light of the forgoing, the fiscal notes were a surprise.

She directed attention to an article in the Alaska Journal of Commerce by Tim Bradner to explain why she wants assurance that all state agencies will promulgate regulations that will benefit the state in general. A critical part of that is for agencies to identify whether their orders come from statute, the legislature, or the federal government. The hearing on April [15] showed that DNR was responding to the federal government when it requested well log data from private entities.

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CHAIR COGHILL asked if she wanted to supplement the record with regard to what constitutes a good faith effort to estimate.

REPRESENTATIVE REINBOLD said it's self-explanatory; the idea is that they'll try. Several indemnity clauses were included in the bill to protect the state in every way possible.

CHAIR COGHILL recapped that agencies are asked to give a reason for the proposed action, the initial cost, and estimated annual costs based on individual, municipal, and state actions. He described that as fair.

REPRESENTATIVE REINBOLD said it mirrors Administrative Order 266.

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SENATOR WIELECHOWSKI expressed bewilderment and suggested that the chair had whacked the hornet's nest, because the bill was non-controversial in the other body. When people he respects in AOGCC and RCA express concern, it causes him concern. He noted the number of commissions that are quasi-judicial and that he didn't know how the bill would impact them.

REPRESENTATIVE REINBOLD offered the following closing comments: "The highest level of prosperity occurs when there is a free market economy and limited government regulations. A system of checks and balances should be adopted to prevent the abuse of

power by the different branches of government. And the beliefs must be understood and perpetuated by every people who desire peace, prosperity, and freedom." HB 140 helps with transparency and accountability of government to the people.

CHAIR COGHILL offered supporting comments and solicited a motion.

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SENATOR MCGUIRE moved to report CS for HB 140, Version L, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection, SCS CSHB 140(JUD) moved from the Senate Judiciary Standing Committee.

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:09 p.m.