

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 20, 2014

9:02 a.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Cathy Giessel, Vice Chair
Senator John Coghill
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Bert Stedman

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 20

Urging the President of the United States and the United States Congress to repeal the excise tax on medical devices.

- MOVED HJR 20 OUT OF COMMITTEE

HOUSE BILL NO. 262

"An Act exempting the Public Defender Agency and the office of public advocacy from certain provisions of the State Procurement Code; and providing for an effective date."

- MOVED HB 262 OUT OF COMMITTEE

SENATE BILL NO. 206

"An Act relating to motor vehicle registration and fees; relating to licensing of school bus drivers; relating to notice of an accident involving a motor vehicle; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 20

SHORT TITLE: MEDICAL DEVICE TAX

SPONSOR(S): REPRESENTATIVE(S) LYNN

01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	HSS

02/11/14 (H) HSS AT 3:00 PM CAPITOL 106
 02/11/14 (H) Moved Out of Committee
 02/11/14 (H) MINUTE(HSS)
 02/12/14 (H) HSS RPT 3DP 2NR
 02/12/14 (H) DP: NAGEAK, KELLER, HIGGINS
 02/12/14 (H) NR: TARR, SEATON
 02/26/14 (H) TRANSMITTED TO (S)
 02/26/14 (H) VERSION: HJR 20
 02/28/14 (S) READ THE FIRST TIME - REFERRALS
 02/28/14 (S) STA
 03/20/14 (S) STA AT 9:00 AM BUTROVICH 205

BILL: HB 262

SHORT TITLE: PROCUREMENT EXEMPTION: PDA, OPA
 SPONSOR(S): REPRESENTATIVE(S) HOLMES

01/21/14 (H) PREFILE RELEASED 1/17/14
 01/21/14 (H) READ THE FIRST TIME - REFERRALS
 01/21/14 (H) STA
 02/20/14 (H) STA AT 8:00 AM CAPITOL 106
 02/20/14 (H) Moved Out of Committee
 02/20/14 (H) MINUTE(STA)
 02/21/14 (H) STA RPT 5DP
 02/21/14 (H) DP: GATTIS, KELLER, KREISS-TOMKINS,
 HUGHES, LYNN
 03/03/14 (H) TRANSMITTED TO (S)
 03/03/14 (H) VERSION: HB 262
 03/05/14 (S) READ THE FIRST TIME - REFERRALS
 03/05/14 (S) STA
 03/20/14 (S) STA AT 9:00 AM BUTROVICH 205

BILL: SB 206

SHORT TITLE: VEHICLE REGIS/LICENSING/ACCIDENT REPORTS
 SPONSOR(S): SENATOR(S) MICCICHE

02/26/14 (S) READ THE FIRST TIME - REFERRALS
 02/26/14 (S) STA
 03/18/14 (S) STA AT 9:00 AM BUTROVICH 205
 03/18/14 (S) Heard & Held
 03/18/14 (S) MINUTE(STA)

WITNESS REGISTER

REPRESENTATIVE BOB LYNN
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Sponsor for HJR 20.

NICK LEWIS, Staff
Representative Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a summary for HJR 20.

REPRESENTATIVE LINDSEY HOLMES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor for HB 262.

MIKE BARNHILL, Deputy Commissioner
Alaska Department of Administration
Juneau, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 262.

RICK ALLEN, Director
Office of Public Advocacy
Alaska Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 262.

SENATOR PETER MICCICHE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor for SB 206.

LARRY SEMMENS, Staff
Senator Micciche
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a committee substitute (CS) overview for SB 206.

AMY ERICKSON, Director
Division of Motor Vehicles
Alaska Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Addressed questions pertaining to SB 206.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
State of Alaska Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding SB 206.

JOANNE OLSEN, Division Operations Manager
Division of Motor Vehicles
Alaska Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to SB 206.

ACTION NARRATIVE

[9:02:02 AM](#)

CHAIR FRED DYSON called the Senate State Affairs Standing Committee meeting to order at 9:02 a.m. Present at the call to order were Senators Giessel, Coghill, and Chair Dyson.

[9:02:24 AM](#)

CHAIR DYSON reviewed the committee's meeting agenda.

HJR 20-MEDICAL DEVICE TAX

[9:03:06 AM](#)

CHAIR DYSON announced the consideration of HJR 20.

[9:03:32 AM](#)

REPRESENTATIVE BOB LYNN, Alaska State Legislature, Juneau, Alaska, HJR 20 sponsor. He presented a sponsor statement as follows:

HJR 20 is about pacemakers, artificial hips, heart stints, surgeon birth control devices, CAT scan machines, robotic surgical devices, and a multitude of other very important medical devices, medical devices that might someday save your life or the life of a loved one. Medical devices are expensive as you know, very, very expensive. The 2.3 percent Medical Device Tax (MDT), as part of the Affordable Care Act, increases the already high cost of medical devices and the extra cost will be passed on in one form or another down to patients. The MDT had a very chilling effect on new medical device innovation and increases the cost of manufacturing. We are talking about almost \$4 billion a year and that of course is very bad for business, in fact it's antibusiness; it's not only that, but at worst, the MDT is bad for patients and increases the already astronomical cost of health care and that's why I brought this resolution before you, it urges the elimination of the MDT, it came to my

attention this morning, there is a Washington Times article on this subject.

[9:04:47 AM](#)

SENATOR WIELECHOWSKI joined the committee meeting.

[9:05:25 AM](#)

NICK LEWIS, Staff, Representative Lynn, Alaska State Legislature, Juneau, Alaska, explained that the Washington Times article quotes a finding by the Advanced Medical Technology Association (AMTA) that companies have cut 14,000 jobs and have decided not to hire 19,000 workers due to MDT.

SENATOR GIESSEL noted that the Washington Times article indicated that the U.S. Senate voted overwhelmingly to repeal MDT. She asked for an update on MDT's status.

MR. LEWIS replied that MDT has currently not been repealed.

CHAIR DYSON asked if anyone wanted to testify or if the committee had any further questions or comments.

[9:08:17 AM](#)

SENATOR GIESSEL moved to report HJR 20, labeled 28-LS1072\U, from committee with individual recommendations and attached zero fiscal note.

[9:08:34 AM](#)

CHAIR DYSON said without objection, HJR 20 is reported from the Senate State Affairs Standing Committee.

[9:08:44 AM](#)

CHAIR DYSON declared that the committee will stand at ease.

HB 262-PROCUREMENT EXEMPTION: PDA, OPA

[9:09:55 AM](#)

CHAIR DYSON announced the consideration of HB 262.

[9:10:15 AM](#)

REPRESENTATIVE LINDSEY HOLMES, Alaska State Legislature, Juneau, Alaska, HB 262 sponsor, said HB 262 was drafted in response to an audit by the Alaska Division of Legislative Audit (ADLA) in 2012. She explained that ADLA audited the Department of Administration (ADA) and the Office of Public Advocacy (OPA). She said OPA was found not to be in total compliance with the

Alaska Procurement Code (APC). She set forth that HB 262 is an attempt to make sure OPA is in compliance with APC.

REPRESENTATIVE HOLMES detailed that OPA and the Public Defender Agency (PDA) are entities housed within ADA. She said OPA and PDA are in charge of defending indigent and poor Alaskans in criminal cases. She noted that OPA and PDA are almost always opposing counsel to the Alaska Department of Law's (ADOL) prosecutors.

CHAIR DYSON asked what the difference is between OPA and PDA.

REPRESENTATIVE HOLMES explained that PDA acts principally as the primary group and OPA takes on criminal cases where the public defenders have conflicts. She added that OPA also serves in the capacity of guardian ad litem.

[9:11:56 AM](#)

CHAIR DYSON asked what the situations are where PDA has real or perceived conflicts of interest.

REPRESENTATIVE HOLMES replied that the legal codes dictate conflict of interest situations.

She explained that a level playing field does not exist in the APC for the PDA and OPA versus ADOL. She said an inadvertent omission was made when the APC was written where state attorneys were not taken into consideration outside of ADOL. She specified that state attorneys exist in the ADA and noted that her oversight as Chair for ADA's budget sub-committee precipitated her involvement with HB 262. She cited an example where outside counsel, conflict counsel, or expert witnesses are hired where prosecutors are given APC spending exemptions to retain qualified experts that the attorney general signs-off on. She said PDA and OPA are not afforded the same APC budgetary spending exemptions as ADOL.

She summarized that HB 262 creates a level playing field by providing the same ADOL exemptions to PDA and OPA. She added that PDA and OPA directors will be allowed to sign-off on exemptions rather than requiring the attorney general's authorization. She pointed out that the attorney general is technically the opposing counsel's boss.

[9:14:18 AM](#)

SENATOR COGHILL asked how long the inequity has been present based upon the auditors' findings.

REPRESENTATIVE HOLMES replied that the audit discovered that the PDA and OPA did not actually realize that the inequity was covered by APC. She said the noncompliance has been going on for a while.

CHAIR DYSON remarked that PDA and OPA were fortunate not to be busted for their actions.

REPRESENTATIVE HOLMES answered that the auditors slapped PDA and OPA "on the wrists" for their noncompliance.

CHAIR DYSON called attention to the value of good auditors.

REPRESENTATIVE HOLMES agreed that audits were an important function.

SENATOR COGHILL asked if the current statute on contracts up to \$100,000 were limited to \$1,000 exemptions on both sides.

9:16:16 AM

MIKE BARNHILL, Deputy Commissioner, Alaska Department of Administration, Juneau, Alaska, answered that Senator Coghill's inquiry pertains to section 2 of HB 262 which amends APC's limited competition, AS 36.33.05. He detailed that the \$100,000 limitation only applies to construction contracts. He specified that the use of the limited competition statute for professional services has no limitation.

SENATOR COGHILL asked Mr. Barnhill to address the question previously posed when a perceived conflict occurs between PDA and OPA.

MR. BARNHILL replied that when the public defender has represented a witness who then turns out to be a defendant or vice versa, conflicts arise due to the knowledge that a public defender has with respect to the witness or the defendant's prior history.

9:17:47 AM

RICK ALLEN, Director, Office of Public Advocacy (OPA), Alaska Department of Administration, Anchorage, Alaska, added that conflict also arises when there are co-defendants where each individual requires independent and conflict free counsel. He noted that OPA's cases are about 50 percent criminal and 50 percent civil. He explained that OPA's conflict cases from PDA tend to be big cases where added witnesses are involved. He said

civil cases encompass guardian ad litem for abused and neglected kids, public guardianship for disabled adults who are wards of the states, elder-fraud, and an appellate unit. He set forth that HB 262 would assist OPA in retaining professionals needed to appropriately represent its clients.

CHAIR DYSON asked if other individuals would like to address HB 262.

[9:19:45 AM](#)

SENATOR GIESSEL moved to report HB 262, labeled 28-LS1222\A, from committee with individual recommendations and attached zero fiscal note.

[9:20:09 AM](#)

CHAIR DYSON announced that without objection, HB 262 passes out of the Senate State Affairs Standing Committee.

[9:20:23 AM](#)

CHAIR DYSON declared that the committee will stand at ease.

[9:21:35 AM](#)

CHAIR DYSON called the committee back to order.

SB 206-VEHICLE REGIS/LICENSING/ACCIDENT REPORTS

[9:21:40 AM](#)

CHAIR DYSON announced the consideration of SB 206.

[9:21:45 AM](#)

SENATOR GIESSEL moved that the CS for SB 206, version 28-LS1531\U, be adopted as the committee's working document.

CHAIR DYSON asked if there is an objection.

SENATOR COGHILL objected for discussion purposes.

[9:22:17 AM](#)

SENATOR PETER MICCICHE, Alaska State Legislature, Juneau, Alaska, SB 206 sponsor.

[9:22:20 AM](#)

LARRY SEMMENS, Staff, Senator Micciche, Alaska State Legislature, Juneau, Alaska.

SENATOR MICCICHE said in response to previous discussions at the last meeting, changes were made and Mr. Semmens will review the CS.

MR. SEMMENS reviewed the CS as follows:

Page 3, line 25, we changed the unconditional discharge language to conviction.

On page 4, section 7, line 31, this is a new section that a license issued under this section expires unless renewed within five years after the date of its issuance, that is to allow the department to review current applicants or current holders of school bus driver licenses; currently that license does not expire, once it is obtained it stays, so this would give the department an opportunity to review those at least every five years.

Section J, page 5, line 5, this is a new section that requires the holder of a school bus driver license to self-report in the event that they are convicted under any of these sections.

Section K, page 5, line 8, this gives the department discretion in situations where persons convicted of a misdemeanor, but if the misdemeanor does not involve a child, it gives the department discretion to grant the license.

[9:24:26 AM](#)

SENATOR COGHILL asked for the Alaska Department of Law (ADOL) to address applicability issues.

SENATOR MICCICHE replied that Amy Erickson from the Division of Motor Vehicles (DMV) and Anne Carpeneti from ADOL will address applicability.

SENATOR WIELECHOWSKI asked for an explanation on the changes made in section 7, page 4, line 31.

SENATOR MICCICHE responded that licensing does not expire in the current statute. He explained that the change provides an expiration and allows DMV to review a driver's background.

SENATOR WIELECHOWSKI asked if the change means a reapplication for a license requires an individual to get another eye exam.

SENATOR COGHILL specified that the section in question pertains to page 4, subsection I. He noted that he agrees with Senator Wielechowski's inquiry regarding the requirement for renewal and an eye exam.

9:27:05 AM

AMY ERICKSON, Director, Division of Motor Vehicles (DMV), Alaska Department of Administration, Anchorage, Alaska, answered that having a five year renewal allows DMV to review background checks to determine disqualification if SB 206 passes. She noted that DMV does not store background records. She added that finger prints are forwarded to the Department of Public Safety and all background records are destroyed. She pointed out that DMV has no way of going back to review School Bus "S" endorsements to determine disqualification if SB 206 passes.

SENATOR WIELECHOWSKI asked to verify that the change only applies to people who have bus driver licenses.

MS. ERICKSON answered correct.

SENATOR MICCICHE added that the entire section only relates to bus driver licenses.

CHAIR DYSON confirmed that the section applies to school bus drivers and not tour, city, or senior citizen bus drivers.

SENATOR WIELECHOWSKI asked if a person has to pay for their eye exam or background check.

MS. ERICKSON replied yes.

SENATOR WIELECHOWSKI asked what the fees are.

MS. ERICKSON replied that fees will range between \$10 and \$50. She added that DMV does not charge for eye exams.

SENATOR WIELECHOWSKI asked if SB 206 has a zero fiscal note and will DMV incur any charges.

MS. ERICKSON replied that DMV does not incur any charges.

SENATOR WIELECHOWSKI asked to clarify that DMV does not incur charges in the entire bill.

MS. ERICKSON answered that the bill will allow DMV to realize savings from online transactions.

CHAIR DYSON asked if a mechanism exists in the state where a licensing agency is notified when an individual with a professional license is convicted of a crime that would disqualify them.

[9:30:07 AM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, State of Alaska Department of Law (ADOL), Juneau, Alaska, replied that she did not know. She addressed a situation with licensed lawyers and surmised that a mechanism for agency notification must be in place.

CHAIR DYSON added that there must be an agency notification process for doctors as well.

MS. CARPENETI offered that she would have to check on the notification process and get back to the committee.

CHAIR DYSON remarked that he believes there is no notification process.

MS. CARPENETI noted that she did not recall, but she may have to submit a disclosure statement when paying her annual lawyer dues.

SENATOR WIELECHOWSKI addressed page 4, line 31 and asked how bus drivers in rural Alaska will be impacted if they do not have access to a local DMV office.

MS. ERICKSON replied that she does not know where the bus driver licensees reside. She said she will have to see if licensee locations can be determined.

SENATOR WIELECHOWSKI noted that Senator Olson or Senator Hoffman will ask about the bill's impact on rural Alaska.

SENATOR COGHILL suggested asking the Anchorage-DMV on the bill's effect on rural Alaska.

SENATOR MICCICHE stated that there currently is no way to look back once someone has a school bus endorsement to address a prior conviction. He said SB 206 will allow the following:

At least what this bill does is the longest you can go is five years without someone having knowledge, if this were to pass, without someone having knowledge that you are someone that would be a risk to children.

CHAIR DYSON offered that SB 206 may not solve the more global problem, but may make an improvement.

SENATOR WIELECHOWSKI asked how SB 206 will impact rural Alaska if an eye exam and background check is required when an individual does not have access to a DMV office.

[9:33:27 AM](#)

JOANNE OLSEN, Operations Manager, Division of Motor Vehicles, Alaska Department of Administration, Anchorage, Alaska, replied that DMV does accept eye exams from physicians to accommodate people in rural areas.

SENATOR GIESSEL addressed Chair Dyson's question pertaining to self-disclosure in other professions. She noted that medical professionals have a biennial application that requires self-disclosure which may result in a judgment against one's license.

SENATOR COGHILL noted that "unconditional discharge" was taken out of section 4, pages 3 and 4. He asked if removing "unconditional discharge" and leaving the applicant's date of first conviction was a good moment in history to make the judgment call on.

MS. CARPENETI replied that date of conviction should be defined because the date of conviction can be several things under law. She offered that date of conviction could be the date of finding of guilt in a jury trial or it could be the date the sentence was imposed. She set forth that the date of conviction was generally defined as the date the sentence is imposed. She continued as follows:

You can make that as a statement of your intent here in this committee that that is what you are intending that date to be, or you could, maybe possibly considering down the line, writing that down what the conviction means in this context. For example in theft, your third theft conviction in a five year period is a one jump up from what it would normally be. In Title 11 we say the date of conviction for purposes of these statutes is the date that sentence was imposed.

SENATOR WIELECHOWSKI addressed the applicability section on page 7. He asked if there were constitutional implications by applying the changes to offenses committed before the effective date.

9:36:30 AM

MS. CARPENETI answered that she does not think so because the statutes promote the health and safety of children. She noted that Senator Wielechowski's question was good because constitutional issues will arise in terms of ex post facto.

SENATOR WIELECHOWSKI inquired if the U.S. Supreme Court said you could go back and require sex offenders to register before the date the law passed.

MS. CARPENETI answered that the U.S. Supreme Court ruled that registering prior to the date a law passes was allowed. She countered that the Alaska Supreme Court stated that registering prior to a law going into effect was a violation of ex post facto and the state does not go back before 1994.

SENATOR WIELECHOWSKI asked if the same applies to SB 206.

MS. CARPENETI answered that she did not think so because dealing with school bus drivers was in the interest of child safety.

SENATOR WIELECHOWSKI asked DMV about the practicability of applying section 7 and the impact on 1000 bus drivers.

MS. ERICKSON replied that DMV would need to run a computer search to identify "S" endorsements. She said DMV would create a process to notify licensees that endorsements will expire and the requirements for renewal.

SENATOR WIELECHOWSKI asked if there is a fiscal note to address what Ms. Erickson described.

MS. ERICKSON replied that because SB 206 was not adopted, she did not look deeper and does not currently have an answer.

SENATOR COGHILL asked Ms. Carpeneti to address the self-reporting applicability in section 7, subsection J.

MS. CARPENETI surmised that the section appears to refer to convictions in the future due to having a timeline for 30 days from the date of conviction. She explained as follows:

You can't expect somebody to report that if the law was now in effect at the time 30 days after that person's conviction. I think this was intended to apply to convictions in the future.

[9:39:56 AM](#)

SENATOR COGHILL replied as follows:

I took that the same way too until I read the applicability section that says on, before, or after. So then, certainly I think probably would be quite a cleanup thing if anybody had any convictions under some of these new laws, they would now have to know it and report it.

He asked if his previous statement was true.

MS. CARPENETI answered yes.

SENATOR WIELECHOWSKI asked what would happen if a bus driver with 30 years of experience reports something from 31 years in the past. He inquired if the bus driver would be fired for something that occurred prior to being a bus driver.

MS. ERICKSON replied that DMV would be able to cancel their license.

SENATOR WIELECHOWSKI asked if DMV would "be able to" or "be required to."

MS. ERICKSON responded that DMV would "be required to."

SENATOR COGHILL remarked that the look-back is indefinite.

CHAIR DYSON asked Ms. Carpeneti to explain her previous comment where the committee might want to put in its intent.

MS. CARPENETI replied as follows:

In terms of your intent, in subsection J on page 5, line 5, the 30 day requirement for reporting a conviction would be, I am assuming, for convictions that are happening after the effective date of the act, but it is important that whatever intention you have, it is on the record and or even better in the legislation.

9:42:09 AM

SENATOR COGHILL addressed pages 3 and 4, line 25. He noted that the "day of conviction" replaced "unconditional discharge." He detailed that a conviction would be either sentencing or the day of conviction. He set forth that judgment of conviction is reasonable, but noted that sentencing really tells the whole story if there are mitigating factors. He said the committee needs to decide on conviction upon sentencing or judgment before sentencing.

MS. CARPENETI replied that Senator Coghill's statement is the reason why the date of sentencing is the one chosen for look-backs. She asserted that a date of sentencing is the moment when an individual undergoes a program for society.

CHAIR DYSON stated that no matter what happens in a sentencing, the conviction has already happened. He added that a conviction does not get bargained down to a lesser offense. He asked why the sentencing date would be more significant.

MS. CARPENETI replied that the date of sentencing is generally used for look-backs similar to the one proposed in SB 206.

9:44:48 AM

CHAIR DYSON commented that using the conviction date allows for a look-back that goes further back. He said sentencing is often weeks or months after a conviction.

MS. CARPENETI remarked that the offenses being addressed are misdemeanors. She asserted that sentencing is often not months afterwards and occurs much closer to the time of the determination of guilt.

SENATOR WIELECHOWSKI addressed page 3, section 4, lines 9 and 10. He noted a possible scenario where a bus driver is fired due to a delinquency of minor charge that occurred 30 years in the past.

9:46:12 AM

SENATOR MICCICHE replied that the section referred to is not a change and is currently in the law.

SENATOR WIELECHOWSKI said he believes the law is a little extreme. He asserted that a school bus driver can be fired if convicted 10 to 30 years in the past.

SENATOR MICCICHE stated that he would be willing to bring it down to the misdemeanor section, but insisted that the section in the bill is applicable.

[9:46:49 AM](#)

CHAIR DYSON declared that the committee will stand at ease.

[9:57:28 AM](#)

CHAIR DYSON called the committee back to order. He announced that SB 206 will be held in committee and heard again at the next committee meeting.

[9:57:50 AM](#)

CHAIR DYSON declared an initial adjournment.

[9:57:59 AM](#)

CHAIR DYSON called the committee back to order and announced that public testimony [for SB 206] is closed.

[9:58:04 AM](#)

There being no further business to come before the committee, Chair Dyson adjourned the Senate State Affairs Standing Committee hearing at 9:58 a.m.