

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 21, 2018
1:54 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold
Representative Louise Stutes (alternate)

MEMBERS ABSENT

Representative Zach Fansler, Vice Chair
Representative Charisse Millett (alternate)

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Board of Governors of the Alaska Bar Association

William Gordon - Salcha

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 330

"An Act authorizing the commissioner of natural resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and issue a protective order limiting the persons who have access to the confidential information."

- HEARD & HELD

CONFIRMATION HEARING(S) :

Violent Crimes Compensation Board

Jeffrey Stubblefield - Eagle River

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 307

"An Act requiring a person who commits certain offenses under the code of military justice to register as a sex offender or child kidnapper; relating to the Servicemembers Civil Relief Act; relating to contracts made by a member of the organized militia; relating to nonjudicial punishment of members of the organized militia; relating to offenses subject to court-martial proceedings; and providing for an effective date."

- MOVED CSHB 307(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 259

"An Act relating to containing or confining loads being transported on highways."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 330

SHORT TITLE: DNR: DISCLOSURE OF CONFIDENTIAL INFO

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/05/18	(H)	READ THE FIRST TIME - REFERRALS
02/05/18	(H)	JUD, RES
02/16/18	(H)	JUD AT 1:00 PM GRUENBERG 120
02/16/18	(H)	Heard & Held
02/16/18	(H)	MINUTE(JUD)
02/21/18	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 307

SHORT TITLE: MILITARY JUSTICE & MILITIA CIVIL RELIEF

SPONSOR(S): TUCK

01/24/18	(H)	READ THE FIRST TIME - REFERRALS
01/24/18	(H)	MLV, JUD
01/30/18	(H)	MLV AT 1:30 PM GRUENBERG 120
01/30/18	(H)	Heard & Held
01/30/18	(H)	MINUTE(MLV)
02/06/18	(H)	MLV AT 1:00 PM GRUENBERG 120
02/06/18	(H)	Heard & Held
02/06/18	(H)	MINUTE(MLV)
02/13/18	(H)	MLV AT 1:00 PM GRUENBERG 120
02/13/18	(H)	Moved CSHB 307(MLV) Out of Committee
02/13/18	(H)	MINUTE(MLV)
02/14/18	(H)	MLV RPT CS(MLV) NT 2DP 1NR 2AM
02/14/18	(H)	DP: PARISH, TUCK

02/14/18 (H) NR: SADDLER
02/14/18 (H) AM: RAUSCHER, LEDOUX
02/19/18 (H) JUD AT 1:30 PM GRUENBERG 120
02/19/18 (H) Heard & Held
02/19/18 (H) MINUTE (JUD)
02/21/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

WILLIAM GORDON

Fairbanks, Alaska

POSITION STATEMENT: As appointee to the Board of Governors of the Alaska Bar Association, discussed his qualifications and answered questions.

KEN ALPER, Director

Tax Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 330, testified and answered questions.

JEFFREY STUBBLEFIELD, Appointee

Eagle River, Alaska

POSITION STATEMENT: As appointee to the Violent Crimes Compensation Board, discussed his qualifications and answered questions.

MICHAEL HURLEY

Director of Government Relations

ConocoPhillips Alaska, Inc.

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 330, offered testimony and answered questions.

PETER CALTAGIRONE, Assistant Attorney General

Natural Resources Section

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 330, answered questions.

ED KING, Special Assistant

Commissioners Office

Department of Natural Resources

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 330, answered questions.

KENDRA KLOSTER, Staff
Representative Chris Tuck
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 307, explained Amendment 1.

REPRESENTATIVE CHRIS TUCK
Alaska State Legislature, Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 307, offered his thoughts regarding the legislation and adoption of Amendment 1, as prime sponsor.

LIEUTENANT COLONEL CHRIS WEAVER
Alaska National Guard
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 307, answered a question.

ACTION NARRATIVE

[1:54:10 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:54 p.m. Representatives Claman, Reinbold, Kopp, Kreiss-Tomkins, and DeDoux were present at the call to order. Representatives Eastman and Stutes (alternate for Representative Fansler) arrived as the meeting was in progress.

CONFIRMATION

Board of Governors of the Alaska Bar Association

[1:54:38 PM](#)

CHAIR CLAMAN announced that the first order of business brought before the committee would be the confirmation hearing for the Board of Governors.

[1:55:24 PM](#)

WILLIAM GORDON advised that he would like to continue his service on the Board of Governors of the Alaska Bar Association because continuity on that board is important and the board is facing pressing issues. He added to his resume and advised that he has been a co-chair of a "C3 and C4 Group" entitled "Justice,

Not Politics, Alaska" which may be germane to this discussion. This group is set up to defend the judicial articles and the constitution on a merit based (audio difficulties) system and, he explained, it also determines how to better weigh in on judicial (audio difficulties) and collection processes. Mr. Gordon advised that he is a second-generation Alaskan, and has lived in Fairbanks, Anchorage, Juneau, and Nenana, and all of those places have given him a wealth of information about Alaska and some of its needs. He noted that he has worked in positions that have possibly taken him to every village in Alaska, sometimes on multiple occasions, and he remarked that he is "pretty well versed" on what is going on and he brings that knowledge to the Board of Governors of the Alaska Bar Association. Mr. Gordon pointed out that he has served in some of the highest positions of both state government and the private sector, on many boards in the private sector, in Governor Jay Hammond's administration, he served as chair of the Alcoholic Beverage Control Board ("ABC Board"), served on the Alaska Judicial Council, and served on the Board of Governors on the Alaska Bar Association for "a couple of terms."

[1:58:10 PM](#)

REPRESENTATIVE KOPP remarked that he had served with Mr. Gordon on the Alaska Judicial Council, his service there was exemplary, and he could not be more pleased to advance Mr. Gordon's nomination.

CHAIR CLAMAN closed the invited testimony for the Board of Governors on the Alaska Bar Association.

[1:59:15 PM](#)

REPRESENTATIVE REINBOLD referred to Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] and asked whether Mr. Gordon had an opinion on Senate Bill 91, and whether the number one policy should be to protect the citizens of Alaska and ensure they are safe in their communities.

[1:59:54 PM](#)

CHAIR CLAMAN instructed Representative Reinbold that he would allow Mr. Gordon to broadly answer her question about the number of measures involving criminal justice beginning with Senate Bill 64 [passed in the Twenty-Eighth Alaska State Legislature]. Except, for purposes of this application and his qualifications to serve on the Board of Governors of the Alaska Bar

Association, whether Mr. Gordon has a position as to the efforts to improve public safety is not part of that application process.

MR. GORDON responded that he has some knowledge of the criminal justice efforts regarding recidivism in the state's prisons and other issues relating to criminal justice that are (audio difficulties). He offered that he had listened to presentations on the bills during bar conventions, and during one bar convention spoke with a presenter from Georgia who explained Georgia's criminal justice reform efforts. Outside of that exposure, he commented, he was not qualified to say anything other than, as an Alaskan he applauds any efforts to take hard looks at the state's policies and processes that might make the public safer, and possibly save "a dollar or two somewhere along the road."

[2:01:27 PM](#)

REPRESENTATIVE REINBOLD said that due to the audio difficulties it was difficult to understand Mr. Gordon's testimony, but that she basically understood something about recidivism. She commented to Chair Claman that she has to defer with the people on the "Judicial Council" and its administrators all the time for the work she is doing ...

CHAIR CLAMAN interrupted and advised Representative Reinbold that Mr. Gordon is not the Alaska Judicial Council nominee, he is the Board of Governors of the Alaska Bar Association nominee.

REPRESENTATIVE REINBOLD said that she understood that information, except Mr. Gordon had referred to recidivism in his comments.

CHAIR CLAMAN reminded Representative Reinbold that this is a confirmation hearing, and to ask Mr. Gordon a question he can answer.

[2:02:01 PM](#)

REPRESENTATIVE REINBOLD asked Mr. Gordon to be cognizant of "how they define recidivism" because she recently received the definition and "how they have defined recidivism," which causes her deep concern. She reiterated her request that Mr. Gordon keep in mind that this is something of utmost importance to Alaskans and to be aware that public safety is Alaska's number one concern.

CHAIR CLAMAN instructed Mr. Gordon not to respond to Representative Reinbold's comments.

[2:03:00 PM](#)

CHAIR CLAMAN commented that he previously served on the Board of Governor's of the Alaska Bar Association and had advised the public members that even though they appear to represent a minority on the board, he has been impressed that the public members were exceptionally capable of controlling the decisions and directing the direction of the Alaska Bar Association. He encouraged Mr. Gordon to continue to play a strong role as a public member, and that he was pleased to move Mr. Gordon's name forward.

[2:03:58 PM](#)

REPRESENTATIVE KREISS-TOMKINS said that the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointee and recommends that William Gordon's name be forwarded to a joint session of the House of Representatives and Senate for consideration. This action does not reflect intent by any of the members to vote for or against Mr. Gordon during any further sessions for the purposes of appointment.

HB 330-DNR: DISCLOSURE OF CONFIDENTIAL INFO

[2:04:45 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 330, "An Act authorizing the commissioner of natural resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and issue a protective order limiting the persons who have access to the confidential information."

CHAIR CLAMAN advised that this is the second hearing of the bill by the House Judiciary Standing Committee wherein the committee had heard a presentation from Ed King, Legislative Liaison to the Commissioner of the Department of Natural Resources (DNR). The committee had asked questions related to confidential processes within Department of Revenue (DOR), and Ken Alper and Jenny Rogers are available to testify, together with a representative from the oil industry, Michael Hurley, ConocoPhillips Alaska. He added that this committee received a

2/16/18 letter of opposition from Lorali Simon, Vice President of External Affairs, Usibelli Coal Mine.

[2:05:55 PM](#)

KEN ALPER, Director, Tax Division, Department of Revenue, advised that, generally, HB 330 is for the Department of Natural Resources (DNR) as it relates to its treatment of a private company's information in the context of a royalty audit. The manner in which DNR values royalties is based on the highest transaction of a given quantity of oil, he explained, and if one company is partners with a second company and the second company receives a higher price for its oil, the first company is charged a royalty based on what the second company received, "the highest of." Therein lays the problem, he remarked, DNR does not have the ability to tell that first company about the information DNR received from the second company due to taxpayer confidentiality, which this bill would remedy. The Department of Revenue Tax Division holds similar rights within its oil and gas production tax, wherein there are multiple partners, multiple working interest owners, and for various reasons, the Tax Division might use value or price information from one company to impact how it might be calculating tax in an audit on another company. He offered his understanding that his testimony today was simply to convey to the committee that this bill represents a similar authority currently existing within the Department of Revenue. He further offered that DNR requests this legislation for its internal housekeeping and auditing purposes.

[2:07:48 PM](#)

REPRESENTATIVE REINBOLD asked whether he was aware of any opposition to HB 330.

MR. ALPER answered that he was not aware of any opposition. He advised that he did read the letter from Usibelli Coal Mine and, he pointed out, he did not understand the letter in the context of DNR's purpose and intent regarding this bill. He stressed the importance of recognizing that DNR and DOR are not looking to divulge confidential information to the general public, it is simply about sharing one taxpayer's information with another related taxpayer, within a fairly narrow constrained purpose.

[2:08:50 PM](#)

REPRESENTATIVE REINBOLD noted that if tremendous investments had taken place on certain pieces of property, there could be concerns about the private sector's investments. She said she "is amazed" that Mr. Alper is not aware of any other opposition at all, with the exception of the Usibelli Coal Mine.

CHAIR CLAMAN injected that Mr. King is the better person to answer that question because it is a DNR bill; therefore, the objections would go to DNR and not to the Mr. Alper.

MR. ALPER answered that Mr. Hurley, ConocoPhillips Alaska, may also be able to provide some insight. From the Department of Revenue's (DOR) perspective, the key piece is that DOR already has this authority and, to his knowledge, it is not a controversial authority. He advised that Jenny Rogers, Department of Revenue (DOR) is available, and has been with DOR's production tax group for over 20-years and she may be able to provide historical reasons why it may have been done in the past. He described it as "a lightly used authority," and that it has not been used more than a handful of times for a specific need.

REPRESENTATIVE REINBOLD said that Mr. Alper did not answer the question because she had asked ...

CHAIR CLAMAN reiterated that the better person to ask is Mr. King.

[2:10:24 PM](#)

REPRESENTATIVE LEDOUX asked that if the department already has authority, why is the bill necessary.

MR. ALPER replied that this is a Department of Natural Resources (DNR) bill that is seeking a similar authority for royalty audits that the Department of Revenue (DOR) currently holds for its tax audits.

[2:11:06 PM](#)

REPRESENTATIVE LEDOUX surmised that this authority allows DOR to share one taxpayer's information with another taxpayer.

MR. ALPER explained that DOR's authorities are not changed by this bill, DNR's authority is being changed wherein DNR would hold the authority to share confidential information within the narrow context of an audit or an investigation, specifically

where one taxpayer's information is being used to change the royalties paid by another taxpayer. For example, the companies may be affiliated in some manner, and the sharing taxpayer received a higher price for its oil than the other taxpayer, and that price is being used to set the royalties owed by the second taxpayer.

CHAIR CLAMAN suggested that some of the questions should be directed to Mr. King.

[2:12:22 PM](#)

REPRESENTATIVE KOPP surmised that the weighted average of the three highest prices in any one field comes into play when a producer contests a royalty owed. Under the audit rules, DNR establishes the going price point that sets the dollar amount owed, which is the average of the three highest field prices. He explained that that is the reason everyone must be able to see what the highest three prices were because that is the process in determining the amount actually owed.

MR. ALPER opined that he believed that was correct and deferred to Mr. King.

CHAIR CLAMAN noted that when this process occurs, it occurs within the context of a protective order and it is not publicly available, this process is only within the narrow confines of the audit proceeding.

[2:13:50 PM](#)

REPRESENTATIVE EASTMAN asked whether questions about protective orders would more appropriate for "this speaker or the next one."

CHAIR CLAMAN advised that questions about the context of a protective order should be directed to the Department of Law, and a representative is available.

MR. ALPER offered that there is a similar protective order structure within DNR's authorities under AS 43.55.040 as to what is contemplated here in this change in DNR statutes.

CONFIRMATION
Violent Crimes Compensation Board

CHAIR CLAMAN announced that the next order of business would be a confirmation hearing for the Violent Crimes Compensation Board.

[2:14:52 PM](#)

JEFFREY STUBBLEFIELD, Appointee, advised that he is a physician at the Alaska Native Medical Center (ANMC) and he has been on the Violent Crimes Compensation Board for the past couple of years. He said he prefers being on this board because he is able to offer a greater impact statewide versus simply within his local area.

[2:15:47 PM](#)

REPRESENTATIVE REINBOLD asked whether Dr. Stubblefield had any feelings about Senate Bill 91, and ...

CHAIR CLAMAN stressed that he would not allow questions about Senate Bill 91 or the whole process, this hearing is with regard to the Violent Crimes Compensation Board and her questions must relate to that board.

REPRESENTATIVE REINBOLD argued that the Violent Crimes Compensation Board is about violent crimes compensation and has everything to do with Senate Bill 91 ...

CHAIR CLAMAN interjected that he had clearly advised Representative Reinbold that the committee members would not ask Dr. Stubblefield his opinion about Senate Bill 91, but they could ask him about the work he would perform on this board.

[2:16:33 PM](#)

REPRESENTATIVE REINBOLD asked Dr. Stubblefield to explain why he is interested in continuing to serve on this board.

DR. STUBBLEFIELD offered that he brings a valuable piece to the board because he has been in the field of medicine for 30-years, and he can make a determination based on the medical information provided to the board and, thereby, add to a complete group decision to best adjudicate the decisions for victims.

REPRESENTATIVE REINBOLD referred to the permanent fund dividend (PFD) and the violent crimes compensations and asked whether Dr. Stubblefield had any concern with regard to those issues while serving on the board.

DR. STUBBLEFIELD answered that he does not have any current issues or concerns.

[2:17:26 PM](#)

REPRESENTATIVE REINBOLD asked whether "that is fully funded to the best of your knowledge, and you have no concerns in regards to that?"

DR. STUBBLEFIELD advised that he had not read anything new that was concerning to him.

[2:17:56 PM](#)

REPRESENTATIVE KOPP commented that Dr. Stubblefield's impressive history includes: his long-standing service of more than 20-years in the United States Air Force as a medical officer, he is a veteran of Kuwait, and Dr. Stubblefield's medical resume is impeccable. He said it is a privilege to have people such as Dr. Stubblefield on this board.

CHAIR CLAMAN commented that it is always good to have physicians on a board when reviewing injuries people may have suffered.

[2:18:45 PM](#)

REPRESENTATIVE KREISS-TOMKINS advised that the House Judiciary Standing Committee reviewed the qualifications of Dr. Jeffrey Stubblefield, the governor's appointee, and recommends that his name be forwarded to a joint session of the House of Representatives and Senate for the purpose of appointment. This does not reflect intent by any members of this committee to vote for or against Dr. Stubblefield during any further sessions for the purposes of appointment.

HB 330-DNR: DISCLOSURE OF CONFIDENTIAL INFO

[2:19:09 PM](#)

CHAIR CLAMAN returned the committee to HB 330, and asked Michael Hurley, ConocoPhillips Alaska, to come forward and testify.

[2:19:49 PM](#)

MICHAEL HURLEY, Director of Government Relations, ConocoPhillips Alaska, Inc., advised he was available to testify.

CHAIR CLAMAN noted that Mr. Hurley will answers questions as to how ConocoPhillips Alaska participates in the protective order process and its perspective on the protective orders. He stressed that Mr. Hurley is not here to offer an official position of ConocoPhillips Alaska, as to this bill.

[2:20:18 PM](#)

REPRESENTATIVE EASTMAN asked whether ConocoPhillips Alaska did not have a position on this bill because it had analyzed all of the information and decided to not take a position, or because the company is still analyzing the bill and has not had enough time to calculate a position.

MR. HURLEY responded that the bill has some good aspects to it with some mildly concerning aspects for the company, and it decided to "let it take its course."

[2:21:03 PM](#)

REPRESENTATIVE LEDOUX requested an explanation of the good aspects to the bill, and the aspects that gives the company pause.

MR. HURLEY responded that this authority, given to the Department of Natural Resources (DNR) to provide these protective orders themselves, is helpful because ConocoPhillips Alaska's goal is to try and pay its royalties when they become due. He related that the authority is important to ConocoPhillips Alaska because, although the legislature made changes last year in terms of the interest rate charged in taxes, DNR still has an 11 percent interest rate that accrues on unpaid royalties. Therefore, he explained, if DNR goes six-years before auditing the royalty, or ten-years before "some of that stuff is resolved," there is a consequential situation of 11 percent interest over ten-years. That situation could triple the amount owed, yet the company's goal is to try and pay its royalties as close to the correct amount as possible as soon as they are due. This legislation is another tool for the department to share confidential information with other producers to determine that average price, thereby allowing ConocoPhillips Alaska to pay its royalties as accurately as possible when they are due.

[2:23:13 PM](#)

MR. HURLEY offered concern with the section of the bill regarding the protective orders because "other things could be included in that kind of proprietary bucket of things," such as the geological and geophysical information. He explained that the geological and geophysical information, within a competitive industry business such as ConocoPhillips Alaska, is "very confidential" for the companies. Mr. Hurley pointed out that, as Mr. King had previously testified, DNR uses that authority solely in obscure situations, and he is not aware of any of those situations (audio difficulties). On the whole, he opined, the legislation is positive due to the benefits it brings forward with the existing protective orders and, "it should be okay."

[2:24:54 PM](#)

REPRESENTATIVE LEDOUX noted that the purpose of the bill, as has been explained, is for royalty audits. She referred to HB 330, [AS 38.05.020(b)(15), page 3, lines 25-30] and noted that it appears to be broader than simply royalty audits and suggested limiting the language to simply read "royalty." She asked whether that narrowed language would allay some of the concerns he had voiced.

MR. HURLEY answered in the affirmative.

[2:25:51 PM](#)

[CHAIR CLAMAN and Representative Reinbold discussed the appropriateness of certain questions.]

[2:27:09 PM](#)

REPRESENTATIVE REINBOLD asked whether Mr. Hurley was aware of any pushback, other than Usibelli Coal Mine, on this bill.

MR. HURLEY answered, "No."

[2:27:25 PM](#)

REPRESENTATIVE EASTMAN asked whether the protective order process could be misused where confidential information was somehow leaked to the public. He further asked whether that was a concern to Mr. Hurley and whether instances in that manner had taken place in the past.

MR. HURLEY responded that he is unaware of any instances of that nature. Especially, he offered, with the type of data being discussed in computing the royalty amounts wherein the average of the three highest prices determine the amount owed for royalty. He related that he does not have any particular concern about the other pieces of it, and as Representative LeDoux suggested, if it were limited solely to royalties, he would be happier but "it's okay."

[2:28:51 PM](#)

REPRESENTATIVE KOPP surmised that currently, if there is an appeal based on a tax audit and ConocoPhillips Alaska disagrees, the information is necessary to be disclosed in order to come to the correct valuation in the law. He asked whether that means (audio difficulties) now.

MR. HURLEY answered yes, and he explained that currently, there have been situations where ConocoPhillips Alaska received some of the information through a court protective order. This bill allows a simpler process of going through the commissioner's office rather than going to court with an actual dispute before "you get there." He reiterated that the company's goal is to make sure it can pay its royalties in a timely manner at the correct amount and not incur those interest charges. He pointed out that having the protective order process go through the commissioner's office, ConocoPhillips Alaska is hoping that process will allow DNR to make those averages calculations on a timelier basis so the company can pay the correct amount as it becomes due.

[2:31:10 PM](#)

PETER CALTAGIRONE, Assistant Attorney General, Natural Resources Section, Department of Law (DOL), was available for questions.

[2:31:19 PM](#)

REPRESENTATIVE EASTMAN asked the severity of the penalties if a protective order, in this context, is violated.

MR. CALTAGIRONE asked, "The penalties to whom?"

REPRESENTATIVE EASTMAN responded that to whomever violated the structure of a protective order.

MR. CALTAGIRONE asked whether Representative Eastman was asking about a producer misusing otherwise confidential information that was contrary to the terms set forth in the protective order, and what happens next.

REPRESENTATIVE EASTMAN answered yes, and he asked what happens when the confidential information is misused or is disclosed to an unauthorized party."

MR. CALTAGIRONE advised that a protective order should be set up in the same manner as the confidentiality agreements are currently set up. This, he offered, would provide specific rules for handling the information as to who, within the receiving party can handle the information, what purpose the information can be used for, and is extremely limiting in both of those respects. There is also language that protects the state from liability if that information is misused by the receiving party. In theory, he said, for the company whose information is being disclosed, the remedy is that it would have to pursue against the receiving party if the receiving party misused that information somehow.

CHAIR CLAMAN explained that all royalty and other proceedings are confidential proceedings, at least until such time as someone starts appealing it up through the court system. The administrative proceedings within DNR are all confidential for all parties, he reiterated.

[2:33:59 PM](#)

REPRESENTATIVE EASTMAN noted a concern raised by at least one company, that through this bill, the confidential information under a protective order could become available to an adversarial party. He asked Mr. Caltagirone whether that concern was unfounded.

MR. CALTAGIRONE surmised that Representative Eastman's question was whether there was a possibility that that could happen. He responded that it certainly could happen, except that DNR, in issuing its protective order, lays out specific and narrowing circumstances under which the information could be used. In the event DNR had reason to believe the terms of its protective order had been violated, it could go to the superior court and seek the appropriate sanctions (audio difficulties).

[2:35:05 PM](#)

REPRESENTATIVE EASTMAN surmised that the discussion is about civil sanctions and a lawsuit setting, except, he said that he envisioned a situation where an anti-mining group might have access to this information, misuse it in some manner, declare bankruptcy relatively quickly and have no funds. Therefore, that party would not have much in the way of a penalty in the type of civil suit setting being discussed. He asked to what extent that anti-coal mining group receiving the information in the first place could happen through HB 330, and whether Mr. Caltagirone had considered that possibility.

CHAIR CLAMAN asked whether Mr. Caltagirone had read the 2/14/18 letter from Usibelli Coal Mine that Representative Eastman is referencing.

MR. CALTAGIRONE advised that he has seen that letter and asked Representative Eastman to repeat his compound question.

[2:36:37 PM](#)

REPRESENTATIVE EASTMAN asked whether there is a mechanism under HB 330 for that anti-mining group to obtain access to this information and a lawsuit would be the remedy. He asked whether there was a manner in which "they could get access to the information," and if not, his question is moot.

MR. CALTAGIRONE answered that he is not fully versed in mining law as it is not his area of practice. However, he said, he did speak with a mining attorney prior to this hearing and his understanding is that in Representative Eastman's scenario, this is information the group may be able to obtain anyway, outside of HB 330. Although, he said that he may be incorrect, and he would like the opportunity to file a written response after researching the question because he did not want to speak out of school.

[2:38:43 PM](#)

REPRESENTATIVE LEDOUX asked Mr. Caltagirone that if the committee limited the new section [AS 38.05.020(b)(15)] to "royalty," whether that would take care of the situation presented by Ms. Simon, Usibelli Coal Mine.

MR. CALTAGIRONE opined that amendments were recently submitted regarding page 3, line 25, clarifying that this bill is related to oil and gas, which would alleviate any concerns presented by Osibelli Coal Mine.

[2:40:27 PM](#)

ED KING, Special Assistant, Commissioners Office, Department of Natural Resources, advised that after receiving the 2/16/18 letter from Usibelli Coal Mine, DNR contemplated an amendment to rectify its concerns and he offered to share that amendment with the committee.

CHAIR CLAMAN advised Mr. King that there are deadlines for amendments so the committee members would have an opportunity to review the amendments in advance. He pointed out that Mr. King is coming to the committee now, in the midst of the hearing, with a potential amendment that the committee may want to review. He advised Mr. King that offering amendments in this manner is not consistent with the manner in which the committee operates, and because every member of the committee would like to review the amendment, it would not be taken up today.

[2:41:59 PM](#)

REPRESENTATIVE LEDOUX asked whether members would have a chance to offer amendments.

CHAIR CLAMAN answered, "Absolutely."

[HB 330 was held over.]

HB 307-MILITARY JUSTICE & MILITIA CIVIL RELIEF

[2:42:58 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 307, "An Act requiring a person who commits certain offenses under the code of military justice to register as a sex offender or child kidnapper; relating to the Servicemembers Civil Relief Act; relating to contracts made by a member of the organized militia; relating to nonjudicial punishment of members of the organized militia; relating to offenses subject to court-martial proceedings; and providing for an effective date."

[2:43:51 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, Version 30-LS1099\D.1, Glover, 2/20/18, which read as follows:

Page 11, following line 31:

Insert new bill sections to read:

"* **Sec. 21.** AS 26.05.855(b) is amended to read:

(b) A member of the militia who (1) operates or physically controls a nonmilitary vehicle, aircraft, or vessel while impaired by a controlled substance [DESCRIBED IN AS 26.05.870(c)], or (2) operates or is in actual physical control of a nonmilitary vehicle, aircraft, or vessel while under the influence of alcohol or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under (d) of this section may be punished by up to one year of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct, or under (e) of this section if the member is not in active duty status at the time of the offense, or by up to five years of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct if the member is in active duty status at the time of the offense.

* **Sec. 22.** AS 26.05.855(c) is amended to read:

(c) A member of the militia who (1) operates or physically controls a vehicle, aircraft, or vessel of the armed forces of the United States or the militia of a state in a negligent or reckless manner or while impaired by a controlled substance [DESCRIBED IN AS 26.05.870(c)], or (2) operates or is in actual physical control of a vehicle, aircraft, or vessel of the armed forces of the United States or the militia of a state while under the influence of alcohol or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under (d) of this section may be punished by up to five years of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct."

Renumber the following bill sections accordingly.

Page 12, line 4:

Delete "drug"

Insert "controlled substance"

Page 12, line 5:

Delete "indulgence in"

Insert "the use of"

Page 12, lines 12 - 13:

Delete "In this subsection, "controlled substance" has the meaning given in AS 26.05.870."

Page 12, lines 14 - 23:

Delete all material and insert:

"* **Sec. 25.** AS 26.05.865 is amended to read:

Sec. 26.05.865. Misbehavior of sentinel. A sentinel or lookout who (1) as a result of the use of any alcoholic beverage or drug, is unable to properly perform the sentinel's or lookout's duties, (2) is found [UNDER THE INFLUENCE OF ALCOHOL OR] sleeping on the sentinel's or lookout's post, (3) [OR] leaves the sentinel's or lookout's post before being regularly relieved, or (4) loiters or wrongfully sits down on post may be punished, if the offense is committed in time of war or emergency as described in AS 26.05.070, by confinement of not more than 10 years, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct, but if the offense is committed at any other time, by up to one year of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct."

Page 17, following line 18:

Insert new bill sections to read:

"* **Sec. 37.** AS 26.05.990 is amended by adding a new paragraph to read:

(22) "controlled substance" means

(A) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana;

(B) a compound or derivative of a substance specified in (A) of this paragraph;

(C) a substance not specified in (A) or (B) of this paragraph that is listed on a schedule of controlled substances prescribed by the President of the United States for the purposes of the armed forces of the United States under 10 U.S.C. 801 - 946 (Uniform Code of Military Justice);

(D) a substance not specified in (A) or (B) of this paragraph or on a list prescribed by the

President under (C) of this paragraph that is listed in 21 U.S.C. 812, schedules I through V;

(E) an illicit synthetic drug identified in AS 17.21.010.

*** Sec. 38.** AS 26.05.870(c) is repealed."

Renumber the following bill sections accordingly.

Page 17, line 26:

Delete "sec. 26"

Insert "sec. 28"

Delete "sec. 27"

Insert "sec. 29"

Page 17, line 27:

Delete "sec. 31"

Insert "sec. 33"

Delete "sec. 33"

Insert "sec. 35"

Page 17, line 29:

Delete "26, 27, 31, and 33"

Insert "28, 29, 33, and 35"

Page 18, line 7, following the second occurrence of "Act,":

Insert "AS 26.05.855(b), as amended by sec. 21 of this Act, AS 26.05.855(c), as amended by sec. 22 of this Act"

Page 18, line 8:

Delete "sec. 21"

Insert "sec. 23"

Delete "sec. 22"

Insert "sec. 24"

Page 18, line 9:

Delete "sec. 23"

Insert "sec. 25"

Delete "sec. 24"

Insert "sec. 26"

Page 18, line 10:

Delete "sec. 25"

Insert "sec. 27"

Delete "sec. 26"

Insert "sec. 28"

Page 18, line 11:
Delete "sec. 27"
Insert "sec. 29"

Page 18, line 12:
Delete "28"
Insert "30"
Delete "sec. 29"
Insert "sec. 31"

Page 18, line 13:
Delete "sec. 30"
Insert "sec. 32"
Delete "sec. 32"
Insert "sec. 34"
Delete the first occurrence of "and"

Page 18, line 14:
Delete "sec. 34"
Insert "sec. 36"
Following "Act,":
Insert "and AS 26.05.990(22), enacted by sec. 37
of this Act,"

Page 18, line 15:
Delete "9 - 30, 32, and 34"
Insert "9 - 32, 34, 36, and 37"

Page 18, line 27:
Delete "8 - 34, and 35(b) - (d) "
Insert "8 - 38, and 39(b) - (d) "

Page 18, line 29:
Delete "sec. 36"
Insert "sec. 40"

Page 19, line 3:
Delete "8 - 34, and 35(b) - (d) "
Insert "8 - 38, and 39(b) - (d) "

Page 19, line 5:
Delete "sec. 38"
Insert "sec. 42"

REPRESENTATIVE KREISS-TOMKINS objected.

[2:44:08 PM](#)

REPRESENTATIVE LEDOUX deferred to Kendra Kloster.

[2:44:16 PM](#)

KENDRA KLOSTER, Staff, Representative Chris Tuck, Alaska State Legislature, referred to HB 307, [Sec. 21, AS 26.05.860], page 12, lines 1-8, and advised that Sec. 21 is the crux of Amendment 1. She noted that a discussion ensued during a House Special Committee on Military and Veterans' Affairs regarding the difference between a drug and a controlled substance, and that Amendment 1 is a continuing effort to make certain that section is clarified.

MS. KLOSTER turned to Amendment 1, new sections, Secs. 21-22, and advised that these are conforming changes because the definition of "a controlled substance" is moved from AS 26.05.870 to the definition section, AS 26.05.990. She explained that this is simply conforming and nothing is changed.

[2:45:13 PM](#)

MS. KLOSTER turned to HB 307, [Sec. 21, AS 26.05.860], page 12, lines 4-6, which read as follows:

... found under the influence of alcohol or a drug while on duty, or (2) as a result of indulgence in any alcoholic beverage or drug, is unable to properly perform the member's duty

MS. KLOSTER explained that the amendment deletes the word "drug" and inserts "a controlled substance," on line 4, and explained that the word "drug" could be anything, such as cough medicine. She turned to lines 5-6 and noted that the word "indulgence" is deleted and it inserts "the use of."

MS. KLOSTER turned to HB 307, [Sec. 22, AS 26.05.860(b)], page 12, lines 12-13, which read as follows:

(b) ... accordance with a valid prescription shall be punished as a court-martial may direct. In this subsection, "controlled substance" has the meaning given in AS 26.05.870.

MS. KLOSTER advised that part of the conforming change is removing the "controlled substance" definition and moving it to the definition section, [AS 26.05.870].

[2:46:01 PM](#)

MS. KOSTER turned to HB 307, [Sec. 23, AS 26.05.865], page 12, lines 14-23 and advised that that language is deleted, but only to put it back into Sec. 25.

MS. KOSTER noted that line 23 read: "Misbehavior of sentinel," and this case, the sponsor is using similar language under Sec. 21, and putting it into Sec. 23 in order to conform. She referred to Amendment 1, [Sec. 25, page 2, lines 22-31, and page 3, line 1], and advised that the amendment language read as follows:

Sec. 26.05.865. Misbehavior of sentinel. A sentinel or lookout who (1) as a result of the use of any alcoholic beverage or drug, is unable to properly perform the sentinel's or lookout's duties, (2) is found [UNDER THE INFLUENCE OF ALCOHOL OR] sleeping on the sentinel's or lookout's post, (3) [OR] leaves the sentinel's or lookout's post before being regularly relieved, or (4) loiters or wrongfully sits down on post may be punished, if the offense is committed in time of war or emergency as described in AS 26.05.070, by confinement of not more than 10 years, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct, but if the offense is committed at any other time, by up to one year of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

MS. KOSTER explained that the sponsor duplicated the language in Sec. 21 and inserted it into Sec. 23. The remaining portions of the amendment deletes different sections, and conforms all of the sections and numbers, because Amendment 1 includes new sections in the bill and renumbering.

[2:47:10 PM](#)

REPRESENTATIVE LEDOUX advised that after numerous struggles and discussions, she believes "this finally does the trick."

[2:47:33 PM](#)

REPRESENTATIVE CHRIS TUCK, in response to Chair Claman advised that he supports Amendment 1.

REPRESENTATIVE REINBOLD commented to the sponsor that she was pleased with the discussions in the House Special Committee on Military and Veterans' Affairs, and with Amendment 1. She asked whether the sponsor believes all of the members' concerns have been addressed.

REPRESENTATIVE TUCK advised that it does address the voiced concerns, and that Sec. 21 was the tough section. When looking at "or a drug," the sponsor looked at illegal/legal, prescribed/non-prescribed drugs and they were finally able to put those sidebars down. He advised that his office went through two different attorneys at Legislative Legal and Research Services to determine how to frame the language and added that the language was framed in the House Special Committee on Military and Veterans' Affairs as far as prescribed drugs used illegally.

[2:49:20 PM](#)

REPRESENTATIVE REINBOLD commented that the word "drug" was too broad and the sponsors office worked hard "with all of us," and she supports Amendment 1.

[2:49:47 PM](#)

REPRESENTATIVE EASTMAN acknowledged that the word "drug" was changed to "a controlled substance" in a number of situations. Except, he pointed out, within Amendment 1, Sec. 25, AS 26.05.865, page 2, lines 22-31, and page 3, line 1, the sponsor chose not to make that change. He asked why the sponsor made that choice, what drove the language from "alcohol" to this more expansive "alcoholic beverage or drug," which could include cough syrup. He requested examples, if any, of sentinels who took non-controlled substances that impaired their duty.

REPRESENTATIVE TUCK explained that when looking at the role of a sentinel or lookout, he wanted to encompass a sentinel taking aspirin, but not impairing their ability to perform their work. In that regard, the sponsor used the same conforming language under Sec. 21, "the last half of that." Representative Tuck explained that they also wanted to "throw that in there by changing the definition and then throwing that section section

[sic] in there that, if perhaps, they have taken too much cold medicine, or something else, that does make them unable to perform -- properly perform their duty, then some action can be taken." The goal was to not have action taken for simply taking any drug, such as an aspirin, he explained.

[2:51:31 PM](#)

REPRESENTATIVE EASTMAN asked what was driving Sec. 25, because if someone was taking a lawful drug, such as aspirin, are there occasions where aspirin has caused people "to do things they shouldn't be doing," and that there must be a way to capture that as an offense.

REPRESENTATIVE TUCK replied that Representative Eastman was correct, except probably it would not be aspirin but possibly cough medicine instead. This language encompasses everything, and in this case, he pointed out, taking too many aspirin, and not following the directions on the bottle may not get someone in trouble, but if it made them unable to properly perform their work, it would get them into trouble. He explained that this is the language previously contained under Sec. 21 and was then added into the new Sec. 25.

CHAIR CLAMAN suggested that someone taking over-the-counter Benadryl could doze off under its sleep inducing effects.

[2:52:58 PM](#)

REPRESENTATIVE EASTMAN advised that a sentinel not properly performing their duty is an offense in and of itself. He asked why the need to create this new scenario where someone is using a lawful drug and having the same effect, and how is that a different offense. He pointed out that the amendment did not necessarily say that the person willfully used the substance, it seems to be a strict liability type of situation because they ate something and it was a drug, and whether they even knew what they were doing is not even part of this issue.

REPRESENTATIVE TUCK responded that most of this bill is conforming language to the United States Code of Military Justice (USMJ), and the language updates Alaska Title 26 to conform to the USMJ model language for all states. The legislation was modified a small bit to include the sidebars, but basically the model legislation asked that this language for the alcoholic beverages and for drugs is included.

[2:54:18 PM](#)

REPRESENTATIVE EASTMAN offered his thought that the model legislation was HB 307, and Amendment 1 was more of a sidebar. He asked whether the idea of making it expansive to simply drugs of any kind, was intended to be part of the model legislation, or was it part of a discussion that resulted in Amendment 1.

REPRESENTATIVE TUCK answered that the model legislation was basically "a drug," and the question was raised that if someone needed to take a cold medicine or an aspirin for the performance of their work, should they be in trouble for those actions. Not necessarily, he said, unless they are unable to perform their work, and that section is added within Amendment 1. This is similar to the same conditions under Sec. 21, where drunkenness and other incapacitating offenses are listed. They looked at the second half of that provision and the two conditions: "were found under the influence of alcohol or a controlled substance while on duty; or (2) as a result of use of any alcoholic beverages or drug, is unable to properly perform the member's duty," and they added "that section to this one as well." There should be more responsibility put on a lookout or sentinel than on the average member performing their work, which is the reason it read: "or loiters or wrongly sits down on their post," because these people need to watch out for everyone, he said.

[2:56:06 PM](#)

REPRESENTATIVE KREISS-TOMKINS withdrew his objection. There being no objection, Amendment 1 was adopted.

[2:56:46 PM](#)

REPRESENTATIVE EASTMAN referred to HB 307, Sec. 10, page 8, lines 16-21, and noted that the language discussed a "serious offense," and asked whether that is defined elsewhere in the bill, and the interpretation of a "serious offense."

REPRESENTATIVE TUCK deferred to Lieutenant Colonel Weaver.

[2:57:21 PM](#)

LIEUTENANT COLONEL CHRIS WEAVER, Alaska National Guard, asked that the question be repeated.

CHAIR CLAMAN asked the definition of "a serious offense" in Sec. 10 of HB 307, page 8, line 18.

LIEUTENANT COLONEL WEAVER responded that "a serious offense" is any offense punishable under the UCMJ by death or by confinement for a term exceeding one year.

CHAIR CLAMAN explained that in modern terms it would be called a felony under state jurisdiction.

[2:58:04 PM](#)

REPRESENTATIVE REINBOLD offered her appreciation for the sponsor's office working with the majority and minority, and that she supports the bill.

REPRESENTATIVE LEDOUX reiterated Representative Reinbold's comments and added that this bill is an example of how the committee process is supposed to work. She pointed out that and when the House Judiciary Standing Committee worked on the entire military justice process legislation a few years ago, that was also an example of how the committee process is supposed to work.

[2:59:19 PM](#)

REPRESENTATIVE EASTMAN noted a comment made in the previous hearing that there should be regular updates to the USCMJ due to the changes "in other places and whatnot." While he understands the reason for the updates in this case, he mentioned that uniform codes are not actually designed to be updated on a regular basis or every couple of years. The idea is that there is a code that is known and understood and passed on through tradition as far as instruction. There are non-lawyer servicemembers who are not only held by the code but are applying the code, and in some cases presiding over courts martial with little to no formal legal training. He encouraged judicious use of amendments to the code and to hopefully capture all of the needful amendments now and not come back for at least a few years.

[3:00:40 PM](#)

REPRESENTATIVE KOPP thanked the sponsor and his staff because this is a critically needed piece of legislation. The criminal justice system is always evolving, both on the civilian end and the military end because there are many moving pieces in criminal law. Also, he pointed out, as technology changes and the ability to access information changes, criminal justice

matters will continually come before this committee. He said he does expect to see amendments in the future, and he appreciates moving this bill.

[3:01:29 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report CSHB 307(MLV), Version 30-LS1099\D, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 307(JUD) passed out of the House Judiciary Standing Committee.

[3:02:53 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.