

**ALASKA STATE LEGISLATURE  
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES  
STANDING COMMITTEE**

April 9, 2002  
3:00 p.m.

**MEMBERS PRESENT**

Representative Fred Dyson, Chair  
Representative Peggy Wilson, Vice Chair  
Representative John Coghill  
Representative Gary Stevens  
Representative Vic Kohring  
Representative Sharon Cissna  
Representative Reggie Joule

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 407

"An Act relating to the certificate of need program."

- HEARD AND HELD

HOUSE BILL NO. 408

"An Act relating to questionnaires and surveys administered in the public schools."

- MOVED CSHB 408(HES) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 23

Proposing amendments to Uniform Rule 20 of the Alaska State Legislature; and providing for an effective date for the amendments.

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 407

SHORT TITLE: CERTIFICATE OF NEED PROGRAM

SPONSOR(S): REPRESENTATIVE(S) COGHILL

Jrn-Date	Jrn-Page	Action
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HOUSE HES COMMITTEE

-1-

April 9, 2002

02/13/02	2232	(H)	READ THE FIRST TIME - REFERRALS
02/13/02	2232	(H)	CRA, HES
03/04/02	2469	(H)	COSPONSOR(S): JAMES
03/13/02	2530	(H)	COSPONSOR(S): SCALZI
03/14/02		(H)	CRA AT 8:00 AM CAPITOL 124
03/14/02		(H)	Scheduled But Not Heard
03/18/02	2593	(H)	COSPONSOR(S): DYSON
03/19/02		(H)	CRA AT 8:00 AM CAPITOL 124
03/19/02		(H)	Heard & Held
03/19/02		(H)	MINUTE(CRA)
03/21/02		(H)	CRA AT 8:00 AM CAPITOL 124
03/21/02		(H)	Moved Out of Committee
03/21/02		(H)	MINUTE(CRA)
03/22/02	2638	(H)	CRA RPT 2DP 2NR 3AM
03/22/02	2638	(H)	DP: SCALZI, MEYER; NR: GUESS, HALCRO;
03/22/02	2638	(H)	AM: KERTTULA, MURKOWSKI, MORGAN
03/22/02	2638	(H)	FN1: (HSS)
03/26/02		(H)	HES AT 3:00 PM CAPITOL 106
03/26/02		(H)	Heard & Held
03/26/02		(H)	MINUTE(HES)
03/28/02		(H)	HES AT 3:00 PM CAPITOL 106
03/28/02		(H)	Heard & Held
			MINUTE(HES)
04/02/02		(H)	HES AT 3:00 PM CAPITOL 106
04/02/02		(H)	Heard & Held
			MINUTE(HES)
04/04/02		(H)	HES AT 3:00 PM CAPITOL 106
04/04/02		(H)	-- Meeting Canceled --
04/09/02		(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 408

SHORT TITLE: STUDENT QUESTIONNAIRES AND SURVEYS

SPONSOR(S): EDUCATION

Jrn-Date	Jrn-Page		Action
02/13/02	2233	(H)	READ THE FIRST TIME - REFERRALS
02/13/02	2233	(H)	EDU, HES
02/20/02		(H)	EDU AT 8:00 AM CAPITOL 120
02/20/02		(H)	Moved Out of Committee
02/20/02		(H)	MINUTE(EDU)
02/20/02	2338	(H)	EDU RPT 6DP
02/20/02	2338	(H)	DP: PORTER, WILSON, GUESS, STEVENS,

02/20/02	2338	(H)	GREEN, BUNDE
02/20/02	2338	(H)	FN1: ZERO(EED)
03/26/02		(H)	HES AT 3:00 PM CAPITOL 106
03/26/02		(H)	Heard & Held
03/26/02		(H)	MINUTE(HES)
03/28/02		(H)	HES AT 3:00 PM CAPITOL 106
03/28/02		(H)	<Bill Canceled>
04/09/02		(H)	HES AT 3:00 PM CAPITOL 106

BILL: HCR 23

SHORT TITLE: LEGISLATIVE COMMITTEES: SPLIT HOUSE HESS  
 SPONSOR(S): EDUCATION

Jrn-Date	Jrn-Page		Action
02/11/02	2204	(H)	READ THE FIRST TIME - REFERRALS
02/11/02	2204	(H)	EDU, HES
02/13/02		(H)	EDU AT 8:00 AM CAPITOL 120
02/13/02		(H)	Moved Out of Committee
02/13/02		(H)	MINUTE(EDU)
02/13/02	2227	(H)	EDU RPT 6DP
02/13/02	2227	(H)	DP: GREEN, WILSON, JOULE, GUESS,
02/13/02	2227	(H)	STEVENS, BUNDE
02/13/02	2228	(H)	FN1: ZERO(H.EDU)
04/04/02		(H)	HES AT 3:00 PM CAPITOL 106
04/04/02		(H)	-- Meeting Canceled --
04/09/02		(H)	HES AT 3:00 PM CAPITOL 106

**WITNESS REGISTER**

RYNNIEVA MOSS, Staff  
 to Representative John Coghill  
 Alaska State Legislature  
 Capitol Building, Room 102  
 Juneau, Alaska 99801

POSITION STATEMENT: Presented the changes encompassed in  
 Version O of HB 407.

ELMER LINDSTROM, Deputy Commissioner  
 Office of the Commissioner  
 Department of Health & Social Services (DHSS)  
 PO Box 110601  
 Juneau, Alaska 99811-0601

POSITION STATEMENT: Testified on HB 407 and HB 408.

JOE FAULHABER

989 Senate Loop  
Fairbanks, Alaska 99712

POSITION STATEMENT: Indicated the need to maintain the CON process.

GEORGE LARSON

(No address provided)

POSITION STATEMENT: Expressed the need for the committee to consider the Matanuska-Susitna Borough's demography and geography in relation to the 55,000-population delimiter.

DEE SKRIPS, Registered Nurse  
Administrator

Health South Alaska  
(No address provided)

POSITION STATEMENT: Testified in support of HB 407.

JOSHUA JENSEN, Finance Director  
Heritage Place Nursing Home  
232 W. Rockwell Avenue  
Soldotna, Alaska 99669

POSITION STATEMENT: Testified in opposition to HB 407.

MICHAEL KELLY

1625 Wolverine Drive  
Fairbanks, Alaska 99709

POSITION STATEMENT: Testified in opposition to HB 407.

HARRY PORTER

3206 Riverview Drive  
Fairbanks, Alaska 99709

POSITION STATEMENT: Testified on HB 407.

SUSAN McLANE, Registered Nurse  
Fairbanks Memorial Hospital  
1650 Cowles

Fairbanks, Alaska 99701

POSITION STATEMENT: Testified in opposition to HB 407.

JENNIFER HOUSE, Employee  
Fairbanks Memorial Hospital  
1951 Gilmore Trail

Fairbanks, Alaska 99712

POSITION STATEMENT: Testified in opposition to HB 407.

DR. DAVID McGUIRE, Orthopedic Surgeon  
(No address provided)

POSITION STATEMENT: Testified in support of HB 407.

ROBERT GOULD

4820 Drake Street  
Fairbanks, Alaska 99709

POSITION STATEMENT: Testified in opposition to HB 407.

JIM LYNCH, Director  
Human Resources

Fairbanks Memorial Hospital  
105 Bentley Drive  
Fairbanks, Alaska 99701

POSITION STATEMENT: Testified in opposition to HB 407.

BRIAN SLOCUM, Administrator

Tanana Valley Clinic  
1001 Noble St

Fairbanks, Alaska 99701

POSITION STATEMENT: Testified on HB 407.

MIKE POWERS

1283 View Pointe Drive  
Fairbanks, Alaska 99709

POSITION STATEMENT: Testified on HB 407.

APRIL HOTCHKISS, Substance Abuse Counselor

at Juneau-Douglas High School

Juneau Youth Services

1851 Patti Avenue

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 408.

JESSICA PARIS, High School Teacher

Juneau-Douglas High School

635 Main Street

Juneau, Alaska 99801

POSITION STATEMENT: Testified on HB 408.

ANDREE McLEOD

3721 Young Street  
Anchorage, Alaska 99508

POSITION STATEMENT: Mentioned other ways in which to obtain the information sought from [anonymous surveys].

BILL DIEBELS, JR., Parent

9342 Betty Court  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 408.

RICHARD BLOCK, Christian Science Committee on Publication  
for the State of Alaska  
360 W. Benson Boulevard, Suited 301  
Anchorage, Alaska 99503

POSITION STATEMENT: Proposed an amendment to tighten the notice  
provisions in HB 408.

KATHRYN ARLEN, Member  
Board of Directors  
Youth on the Streets Action Group;  
Member, Meeting the Challenge Advocacy Program;  
Volunteer, Detention, Johnson Youth Center  
127 S. Franklin Number 127  
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 408.

RIC IANNOLINO, Chair  
Youth on the Street  
PO Box 21892  
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 408.

MARY TONSMEIRE, Nurse  
Adolescent Health Care Coordinator  
Juneau-Douglas High School  
2204 North Douglas Highway  
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 408.

LISA TORKELSON, Full-time Parent  
(No address provided)

POSITION STATEMENT: Testified in opposition to HB 408.

BARBARA BONNER, Teacher  
CHOICE  
Juneau-Douglas High School;  
Member, Youth on the Streets  
2812 John Street  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 408.

DEE HUBBARD  
PO Box 88  
Sterling, Alaska 99672

POSITION STATEMENT: Highlighted the importance of parental consent [for surveys and questionnaires administered to students].

SAM TRIVETTE, Parent  
7870 Glacier Highway  
Juneau, Alaska

POSITION STATEMENT: Testified on HB 408.

KAREN McCARTHY, Staff  
to Representative Con Bunde  
Alaska State Legislature  
Capitol Building, Room 501  
Juneau, Alaska 99801

POSITION STATEMENT: As committee aide, testified on behalf of the sponsor of HB 408, the House Special Committee on Education.

KRISTEN BOMENGEN, Assistant Attorney General  
Human Services Section  
Civil Division (Juneau)  
Department of Law  
PO Box 110300  
Juneau, Alaska 99811-0300

POSITION STATEMENT: Answered questions regarding HB 408.

#### **ACTION NARRATIVE**

TAPE 02-28, SIDE A  
Number 0001

CHAIR FRED DYSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:00 p.m. Representatives Dyson, Wilson, Coghill, Stevens, Kohring, and Cissna were present at the call to order. Representative Joule arrived as the meeting was in progress.

#### **HB 407-CERTIFICATE OF NEED PROGRAM**

CHAIR DYSON announced that the first order of business would be HOUSE BILL NO. 407, "An Act relating to the certificate of need program." Chair Dyson announced his intention to move HB 407 from committee today.

Number 0335

REPRESENTATIVE COGHILL moved to adopt version 22-LS1389\0, Lauterbach, 4/4/02, as the working document.

REPRESENTATIVE COGHILL explained that on page 2, lines 30-31, through page 3, line 3, the inserted language clarifies that when a facility changes and transfers its certificate of need (CON), that it stay within the same use and bed type.

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, continued with the changes in Version 0. She explained that Version 0 clarifies that when a person replaces a facility or relocates a facility that was obtained under a CON, a new CON is not required, although the requirements of the CON must be followed. This change is on page 3, lines 6-7.

CHAIR DYSON related his understanding that all that is being required with the change on page 3, lines 6-7, is that the [CON] contract be followed.

Number 0495

ELMER LINDSTROM, Deputy Commissioner, Office of the Commissioner, Department of Health & Social Services (DHSS), thanked the sponsor's staff for the work on HB 407. Mr. Lindstrom recommended that the committee adopt Version 0.

REPRESENTATIVE COGHILL restated his motion to adopt version 22-LS1389\0, Lauterbach, 4/4/02, as the working document. There being no objection, Version 0 was before the committee.

Number 0590

REPRESENTATIVE CISSNA moved that the committee adopt Amendment 1, which read [original punctuation provided]:

Add new section under temporary law:

The State of Alaska Department of Health and Social Services shall develop a comprehensive health plan for the state, making use of, to the maximum extent, existing health care plans and processes employed by the Department of Health and Social Services, other state agencies and local community efforts. A focus of the plan shall be to develop community specific health information to assist the Certificate of Need program in evaluating applications for certificates of need. A report will be submitted to the legislature by January 1, 2004.

CHAIR DYSON objected.

REPRESENTATIVE CISSNA specified that Amendment 1 is basically a conceptual amendment requiring the department to develop a comprehensive health plan for the state that utilizes what already exists in every community. She noted that the January 1, 2004, date specified in the amendment could be an earlier date. She informed the committee that the state's current health care plan was developed in 1983. She said health care is one of the fastest growing industries in the state. Therefore, Amendment 1 provides the state the chance to review what is currently on the books and [decide] whether the state is going in the right direction.

CHAIR DYSON related his understanding that Representative Cissna didn't want the bill to pick up a fiscal note, which is why existing staff are being utilized under existing duties.

REPRESENTATIVE CISSNA confirmed that she didn't want a fiscal note.

REPRESENTATIVE COGHILL acknowledged that the title of HB 407 is fairly broad, as is [Amendment 1]. However, he indicated the need to ask whether there would be any legal ramifications with the adoption of Amendment 1. He said that the request to develop a plan is outside the scope of HB 407.

Number 0850

MR. LINDSTROM remarked that [Amendment 1] in regard to the title is probably a "close call." [Amendment 1] might well fit under HB 407 since one of the focuses of the amendment would be related to assisting the CON program. Mr. Lindstrom recalled his testimony in previous hearings regarding the lack of a comprehensive health care plan. He pointed out that during the course of the hearings, the committee has heard two very different views of what HB 407 will do. Mr. Lindstrom said that he hasn't been very helpful in deciding how to make sense of those arguments because DHSS doesn't have the data to make the determination as to which view is correct. "My guess is they could both well be true and even in the same community, although at different points in time," he said. Therefore, to the extent that a [comprehensive] health plan would provide the data to better evaluate these CONs, [the amendment] would be a good idea. Mr. Lindstrom said that he wasn't sure what the fiscal note would look like, although [there would be one].

Number 0982

REPRESENTATIVE COGHILL announced that he would be voting against the amendment, although he felt some plans should be made by the state. He noted his struggle with regard to whether the government always knows best. Representative Coghill said, "I know we already have comprehensive plans, except for we're asking this one to be a focus now to develop community specific health information that's going to assist the CON. And I'm trying to say we have people doing business plans that do that. I just struggle with it." He mentioned that perhaps it's different debate, which he didn't want to include in this bill.

REPRESENTATIVE STEVENS related that he would be more comfortable if more people were involved in deciding on this matter. Representative Stevens turned to the timeline in Amendment 1 and asked why it couldn't be accomplished by January 1, 2003.

REPRESENTATIVE CISSNA responded, "I think that's better than ... what's happening now, personally." There is huge pressure to deliver affordable health care. In response to Chair Dyson, Representative Cissna said that she would accept Representative Stevens' suggestion to change the date in the amendment to January 1, 2003, as a friendly amendment.

Number 1175

CHAIR DYSON related that there is a lot of frustration in the provider community. Therefore, he felt there should be a specific task force with resources. Although HB 407 is fairly important, it will have a fairly tough time moving through this session. Amendment 1 will generate some support for HB 407, but will also contribute to HB 407 not passing this session. Chair Dyson announced that he would vote against Amendment 1.

A roll call vote was taken. Representatives Wilson, Stevens, Cissna, and Joule voted for Amendment 1 [as amended]. Representatives Coghill, Kohring, and Dyson voted against Amendment 1. Therefore, Amendment 1, as amended, passed by a vote of 4-3.

Number 1328

JOE FAULHABER testified via teleconference. He announced that he is an unpaid volunteer representing the people of Fairbanks, who own the local hospital. Mr. Faulhaber stated that HB 407 isn't about free enterprise and competition. He explained that

Fairbanks residents support the local hospital with hundreds of thousands of dollars of cash donations. Despite community support, [the hospital] enjoys nominal excess revenue of approximately a million dollars, which is scant in the context of a \$100-million budget. "As a practical matter, patients seldom choose where procedures are to be performed, doctors do," he said. Therefore, without CON protection, doctors could perform profitable procedures in their [office] while performing money-losing procedures in the community hospital. Furthermore, if there was a complication during a procedure performed in the doctor's office, where would that critically ill patient be taken? Mr. Faulhaber stated, "If our community loses CON protection, expect to see us in Juneau next year. We'll be asking for an increase in Medicaid rates and money for capital projects because you gave away our ability to self-fund."

Number 1453

GEORGE LARSON testified via teleconference. Mr. Larson turned to the population delimiter, which will impact only three communities in the state: Anchorage, Fairbanks, and the Matanuska-Susitna ("Mat-Su") Borough. Mr. Larson stressed the need for the committee to consider how vastly different the Mat-Su Borough is from Anchorage and Fairbanks, since it is a second-class borough that covers an area of 24,000 square miles, about the size of West Virginia. He further informed the committee that this size of borough, with an estimated population of 62,000, results in a population density of about 2.6 persons per square mile. The most heavily developed portion, the core area, encompasses Palmer and Wasilla and the developed areas between and around these two communities, which accounts for approximately 42,000 people. Therefore, the core area falls well under the 55,000-population delimiter in HB 407. However, most of the services provided in the borough are located within this core area. Mr. Larson pointed out that there is an acute-care facility in Palmer, an outpatient center in Wasilla, as well as a history of collaboration with the rural primary-care providers throughout the borough. This collaboration has assisted in the improvement of the quality of care and access to remote areas outside the core area. In summary, Mr. Larson requested that the committee consider the demography and geography of the Mat-Su Borough.

Number 1580

DEE SKRIPS, Registered Nurse; Administrator, Health South Alaska, testified via teleconference in support of HB 407. Ms.

Skrips said that Health South Alaska, as a provider of ambulatory services in all 50 states and internationally, is very aware of the rising costs of health care as well as the importance of getting a handle on these costs. As a national corporation, Health South has an extensive background working in this state with and without the CON. Ms. Skrips pointed out that to date, no states have been on record as seeing a negative effect as a result of the CON. If there have been no adverse effects to other states without the CON, then it would be difficult to imagine that it's different in Alaska. She informed the committee that there is no credible evidence that the CON has ever increased the cost of health care to those states without it.

MS. SKRIPS highlighted that ambulatory care, such as Health South Alaska, is not on a cost-reported schedule like that of the larger acute-care hospitals. Furthermore, ambulatory-care facilities don't have the ability to shift costs as acute-care facilities do. Ambulatory care facilities do have tax liabilities, and as a for-profit organization taxes are paid on all aspects of the business. However, nonprofit acute-care facilities don't pay taxes. "There is a great misunderstanding that the ambulatory or freestanding surgical centers cherry pick hand-picked surgical cases," she noted. In conclusion, Ms. Skrips reiterated her support of HB 407 due to the choice provided to the patients.

Number 1697

JOSHUA JENSEN, Finance Director, Heritage Place Nursing Home, testified via teleconference in opposition to HB 407 because the current CON requirements serve the state's best interest. He characterized the revisions of HB 407 as confusing. He related his belief that this issue deserves more review given the complexities and impact of the legislative action this year. Therefore, Mr. Jensen urged the committee to not pass HB 407 without careful and considerate review of all the impacts. Mr. Jensen relayed his knowledge that committee members and the House leadership are concerned with any legislation that requires a mandated increase in the cost of state government, which is illustrated in the fiscal note for HB 407.

Number 1750

MICHAEL KELLY testified via teleconference. Mr. Kelly announced that he strongly opposes HB 407 because it will harm the system in Fairbanks. Furthermore, elimination of the CON is risky

experimentation. Because of Fairbanks's size and location, it has a limited and fragile health care market. Thirty years ago the health care market in Fairbanks was an absolute mess, and thus the community organized to form a nonprofit health care foundation to provide the infrastructure that was necessary. That organization, under the rules of the CON, has worked superbly relative to access, cost, and the provision of a broad range of excellent health care services. Mr. Kelly said HB 407 is about a few doctors who make "six figures" and want to add a bit more to that. Although that doesn't make those doctors bad, "you owe a lot more to the 90,000 folks who live here in Interior Alaska than to be just listening to a few docs," he said. Furthermore, there is the [push] to build a surgery facility in order to take the more profitable procedures from the Fairbanks Memorial Campus. Although the current CON process isn't perfect, it helps to protect against cherry picking and profiteering in the limited health care market. Moreover, the CON process helps to continue the excellent service that has taken 30 years to build up in Fairbanks. Mr. Kelly concluded by saying HB 407 is bad law.

Number 1854

HARRY PORTER testified via teleconference. He informed the committee that he helped create the Fairbanks Memorial Hospital board. He noted that he has noticed Fairbanks's failure to change even though there was open competition; he related this comment to all types of business. (Indiscernible.) He remarked that in the minutes that it will take to vote on HB 407, "you could put the skids under the hospital that it took 30 years to create."

Number 1935

SUSAN McLANE, Registered Nurse, Fairbanks Memorial Hospital, testified via teleconference in opposition to HB 407. Although she said she understood the many concerns with the existing CON program, she agreed it could be difficult. However, she said she didn't understand the sizable leap from problems with the process to its complete elimination in three areas of the state. She indicated the need to double the tax (indisc.) in order to evaluate the effectiveness of the program and make recommendations for improvement. She mentioned nationwide and statewide shortage of nurses, and that the emergence of new surgery centers in Alaska would further dilute the labor pool. Ms. McLane closed by suggesting that a task force be appointed to review this important issue.

Number 2000

JENNIFER HOUSE, Employee, Fairbanks Memorial Hospital, testified via teleconference in opposition to HB 407. Ms. House began by saying that HB 407 is based on the erroneous assumption that health care is a free market and that this legislation will lead to increased competition and thus result in lower costs to consumers. However, consumers of health care aren't informed consumers and have little or no control over the services they receive. Physicians have the control, which is why there won't be a decrease in the cost of outpatient services to consumers. She charged that there are no incentives for physicians to provide these services at lower prices. However, she suggested that physicians are likely to charge more than the hospital because the physician is in a unique position to influence the patient. Cost is rarely an important factor for a patient determining where to obtain health care services. Furthermore, Ms. House said that this competition won't cause the hospital to lower its prices. She charged that it would have little to no impact in retaining patient volume, but would most likely result in increased charges that will impact consumers across the state. Ms. House explained that the CON process is critical in ensuring that under- and over-capacity in our communities (indisc.). [Elimination] of the CON process will only benefit physicians and specialty providers, not the majority of the population "you" represent.

Number 2090

DR. DAVID MCGUIRE, Orthopedic Surgeon, testified via teleconference in support of HB 407. He said, "The problem with change is always that everybody who has to suffer change is opposed to it." Dr. McGuire remarked that the CON was a bad law to begin with, which the federal government realized in 1987 when it eliminated it. The CON hasn't controlled costs, but rather has created another bureaucracy and the opportunity to maintain a monopoly. Dr. McGuire said Fairbanks is an example of how a good law is applied badly. He pointed out that the Fairbanks Memorial Hospital was given permission to build its oncology center without a CON. Dr. McGuire stated that if the CON process is to work, everyone should have to apply [and be treated equally under the process].

DR. MCGUIRE turned to the assertion that patients are uninformed health care consumers. He said those aren't the patients that he sees. "I think, if the hospitals are as good as they say

they are, then a surgery center comes to town, nobody's going to use it because they recognize the hospitals are better. There really shouldn't be a problem," he said. Dr. McGuire reiterated that the CON process is a bad law that hasn't worked in Alaska and hasn't amounted to anything positive. Furthermore, the way in which the CON process is applied is unfair. In conclusion, Dr. McGuire urged the committee to vote for HB 407.

Number 2204

ROBERT GOULD testified via teleconference in opposition to HB 407. Mr. Gould informed the committee that in 2001 the gross patient revenue of Fairbanks Memorial Hospital was approximately \$147 million and that the net income was approximately \$1.4 million, about 1 percent. Mr. Gould said he would begin by reviewing two reasons why competition won't decrease costs in Alaska. He recalled that three years ago when the CON discussions began, Fairbanks Memorial Hospital had the lowest charges for the most common outpatient surgery. In those three years, those charges haven't changed. However, during that same three years, charges [for the most common outpatient surgery] has increased 22 percent. Mr. Gould noted that Anchorage has three [ambulatory] surgery centers and thus is the most competitive market in the state, and yet the prices are higher than in Fairbanks.

MR. GOULD turned to MRI (magnetic resonance imaging) charges. Recently in Fairbanks a clinic has opened a good clinic MRI, although it isn't a hospital-quality MRI. Those clinic MRIs don't produce the same images nor are those images as clear or similar quality to that of the hospital MRI. However, the clinic's charges are 43 percent higher than the hospital charges. Therefore, it's an example of when physicians control patient referrals and thus it doesn't matter what is charged.

MR. GOULD suggested that if HB 407 passes, the hospital should immediately raise its prices 22 percent plus the cost of a plane ticket to Anchorage in order to compete with Anchorage. "We won't need to compete with the physicians if they have their own surgery center because all you're going to do is divide the market between who does their surgeries at which facility," he explained. Patients will choose which physician not which facility. "Immediately, my prices don't matter because the surgeon that has the share in their own surgery center is not going to send the profitable surgeries, the ones where we still get fair reimbursement, over to the hospital; they're going to do them in their own shop. That's the problem with this bill,"

he said. Mr. Gould concluded by urging the committee to not throw away 30 years of community planning all for the sake of increasing revenue to a few individual shareholders. "The reimbursement system is what's broken, and you're trying to fix it by eliminating the CON legislation," he stated.

Number 2333

JIM LYNCH, Director, Human Resources, Fairbanks Memorial Hospital, testified via teleconference in opposition to HB 407. Mr. Lynch urged the committee to take time to study this issue thoroughly. He turned to the workforce challenges in geographically remote locations such as those in Alaska, specifically, the nursing shortage.

TAPE 02-28, SIDE B

MR. LYNCH stated that individuals such as nurses and radiologists are hard to find, and their salaries are increasing. If additional institutions are created without being able to apply the in-state labor that is necessary, [the state] will fail miserably at meeting its health care needs at any reasonable cost. He requested that the committee consider that factor when considering HB 407.

Number 2330

BRIAN SLOCUM, Administrator, Tanana Valley Clinic, began by informing the committee that the Tanana Valley Clinic is the largest entity in the state, with 36 health care providers. Tanana Valley Clinic has been providing patient care since 1959, which is ten years prior to the existence of Fairbanks Memorial Hospital. Mr. Slocum said that there have been some very concerning claims. The hospitals across the state have been raising the issue of cherry picking. With respect to the Tanana Valley Clinic, everyone who shows up for care is served. Due to that [policy], the clinic has lost 11 of its 28 doctors in less than two years. Those physicians have left, in part, because they can't make the living at the clinic that they could at the hospital.

MR. SLOCUM said 24 percent of the clinic's patients are Medicare/Medicaid patients, and 9 percent have no insurance at all; combined, this is one-third of the patients. He mentioned that over the past three years, the clinic has provided over \$17.7 million in charity care. "To the extent that the other docs in the community are doing the same thing, then I'll think

you'll find that the charity care provided ... by the doctors exceeds the free care provided by the hospital, if you add it up," he said. The clinic can't continue to provide that much free care and remain a taxpaying for profit business. Furthermore, such free care can't continue in the face of the 4.5 percent Medicare reduction that occurred in January.

MR. SLOCUM turned to the charge that in those states without the CON, the patients receive worse care. The only study that he recalled from testimony was a Florida study that dealt with cardiac surgery. Mr. Slocum said there is probably some legitimacy to that because cardiac surgery shouldn't be done by centers that only do a few each year. Therefore, Mr. Slocum announced that no cardiac surgery would be performed in [the clinic's] ambulatory care center. The center only performs those procedures on the federal government's approved list. Mr. Slocum informed the committee that there are studies that [refute the notion] of higher mortality rates in non-CON states. He noted that the committee packet should include three such studies illustrating that those states with CON laws or other regulations limiting the care delivered have significantly higher mortality and morbidity rates.

MR. SLOCUM pointed out that one of the letters sent to the [committee] says, "If the CON law is modified, this could very likely lead to catastrophic increases in cost statewide, and perhaps even to the closure of some Alaska's most vulnerable hospitals." However, Mr. Slocum said that he has provided the committee with two studies proving that there is no increase in statewide health care costs and no decrease in hospital profits in all of the states that have eliminated the CON laws. In regard to the assertion that the elimination of the CON will result in hospitals being unable to provide charity care, the studies prove that there is no decrease in hospital profits and no discernible decrease in the amount of charity care provided in the 15 states which have eliminated the CON. Therefore, Mr. Slocum urged the committee to support and pass HB 407.

Number 2054

REPRESENTATIVE WILSON inquired as to the number of doctors and nurses that the Tanana Valley Clinic employees. She also asked whether the clinic intends to employ more.

MR. SLOCUM answered that the clinic has a total of 28 doctors and 10 mid-level providers who are nurse practitioners or physicians assistances. The clinic is losing two doctors next

week who will be replaced. The clinic recruited four doctors last year and will recruit five more this year. He informed the committee that it costs about \$50,000 per new doctor brought into the community. Without the clinic providing these costs, the state would be faced with them. He explained that there are about 1.5 to 2 nurses per physician. Those nurses are often brought in through out-of-state recruitment and nursing magazines, and locals who come as part of the Fort Wainwright or Eielson Air Force Base contingent. In further response to Representative Wilson, Mr. Slocum said, "We continue to grow ... because we seem to be the only entity other than the hospital in Fairbanks that continues to be able to step up to the plate and deal with these issues." He mentioned that nurses assistants, medical assistants, LPNs, RNs, et cetera are utilized as well.

REPRESENTATIVE WILSON pointed out that the nursing shortage is the biggest workforce shortage in the state now. Therefore, [the nursing shortage] might dilute the situation as well. Representative Wilson indicated that she is conflicted on this issue.

MR. SLOCUM acknowledged that he has often heard that the [clinic] shouldn't offer new services to the patient population in the community because of a lack of technical clinical people. At its simplest the [question] becomes whether doctors should be brought in to provide health care services to the community [even though there is a] struggle to find nurses. To that question, the answer is yes; the doctors need to be brought in to serve the needs of those leaving doctors.

Number 1930

MIKE POWERS, Fairbanks Memorial Hospital, testified via teleconference. Mr. Powers commented on the difficulty with this issue in that professional friends are on opposite sides of this economic issue. This is tearing apart the community, he said. Mr. Powers acknowledged that the Tanana Valley Clinic is a good neighbor in that it takes Medicare and Medicaid patients, which not every physician in Fairbanks does. However, the Tanana Valley Clinic isn't the largest property taxpayer but rather the Greater Fairbanks Community Hospital Foundation is with its physician office building. He stressed that there is no profit in the foundation as there are considerable capital costs associated.

MR. POWERS turned to the testimony regarding the Tanana Valley Clinic's mention of a 4.5-percent reduction in Medicare, while

the hospital faces a 17-percent reduction this year. In regard to the Florida study, Mr. Powers explained that the study is important relative to the CON because in states that with CONs there is higher efficiency, efficacy, and equality. With regard to unreimbursed care, Fairbanks Memorial Hospital provided \$34.5 million in unreimbursed care. He pointed out that of the 37 states that have CONs, two of those states that have repealed the CONs brought them back due to a proliferation of ambulatory surgery centers and cherry picking.

MR. POWERS concluded by saying that this is a very divisive issue and that the community needs to work together to develop a health plan and recruit physicians. This is all an effort to eliminate barriers so that physicians can do what they do best while [allowing] hospitals to provide technical components of services that no one else provides. Mr. Powers stressed that [Alaska] is in a fragile state because every community, save Anchorage, has one hospital. The numbers alone don't substantiate the need for fundamental changes to the CON law. Therefore, Mr. Powers urged the committee give this much study in order to develop a CON law that addresses the needs of a rural state.

Number 1757

MR. LINDSTROM commented that Version 0 is an improvement over the previous [versions]. Mr. Lindstrom noted his appreciation of the changes in Section 1 relative to conversion. However, he continued to express reservations about the basic notion of dividing the state into communities larger than 55,000 or smaller. There is no data to determine whether such makes sense. He referred to page 2, lines 3-10, subsection (e), and said he didn't understand the language. He related his belief that subsection (e) appears to be contradictory or subsumed within subsection (d). Section 2 regarding the ability to replace a facility without going through a CON is still cause for concern, particularly in smaller communities.

MR. LINDSTROM indicated he also didn't understand the language on page 2, lines 30-31, and page 3, lines 1-2. Although he wasn't sure it would allay all of the [department's] concerns, Mr. Lindstrom suggested that the language could say that nursing home or psychiatric beds couldn't be replaced without a CON. That language would get at the department's issue with the department being the primary payer of those two types of facilities.

MR. LINDSTROM informed the committee that he had a draft fiscal note to Version J, which he believes remains relevant to Version O. He noted that some of the verbiage would require change, and thus those changes would be made and the fiscal note resubmitted. The estimated costs are significant. He directed attention to page 3 of the fiscal note, which identifies those facilities that the department believes might generate those additional costs. Mr. Lindstrom said, "I cannot stand before you and say that I have any high degree of confidence that this is the exact number for a fiscal note, because on all of these, it assumes that we know what a Providence or a Fairbanks Memorial ... are ultimately going to do as their own business decisions." However, Mr. Lindstrom related his belief that HB 407 will have a significant impact as has been related throughout the testimony.

Number 1555

REPRESENTATIVE WILSON asked if the bill will proceed to the House Finance Committee since a fiscal note has been attached.

CHAIR DYSON informed the committee that the committee can accept the department's fiscal note or zero it out, or can forward the bill with several fiscal notes. In regard to the latter case, the Speaker of the House has the authority to decide which fiscal note the legislation has. Chair Dyson related his understanding that legislation with a fiscal note mandates a Finance Committee referral.

The committee took an at-ease from 4:10 p.m. to 4:12 p.m.

CHAIR DYSON announced that the vote on HB 407 would be delayed until Thursday, per the request of the bill sponsor. He further informed the committee that there will be discussions with those carrying the companion bill to HB 407, in order to develop some congruence between the bills. [HB 407 was held over.]

The committee took an at-ease from 4:13 p.m. to 4:18 p.m.

#### HB 408-STUDENT QUESTIONNAIRES AND SURVEYS

CHAIR DYSON announced that the next order of business would be HOUSE BILL NO. 408, "An Act relating to questionnaires and surveys administered in the public schools."

Number 1397

APRIL HOTCHKISS, Substance Abuse Counselor at Juneau-Douglas High School (JDHS), Juneau Youth Services, informed the committee that although she usually doesn't become politically involved, this legislation impacts how well she can do her job. Ms. Hotchkiss announced her support of HB 408 because it allows the Youth Risk Behavior Survey (YRBS) to be done. She explained that she attends many meetings with parents, teachers, and the community. At [those meetings], one of the major questions is in regard to the drug situation at [Juneau-Douglas High School]. She said she couldn't comfortably answer that question because she would be guessing the answer, since there is no proof with regard to how JDHS is doing with the drug problem. Also, this is problematic because it leaves Ms. Hotchkiss, as a professional, guessing what [the students] need. For example, she informed the committee that she has heard a rumor that cocaine is "big" at JDHS now. With that information, she redirected her focus on cocaine awareness education. She reiterated that she is just guessing.

MS. HOTCHKISS informed the committee that many kids she sees aren't drug users, but only look like them. Therefore, many assumptions are being made. She said, "People tend to assume a lot. And without an anonymous test to know where we stand and what we do need to focus on, we tend to be spinning our wheels." In summary, Ms. Hotchkiss said, "Without identifying what the problem is, it is hard to be able to work the solution out."

Number 1290

JESSICA PARIS, High School Teacher, Juneau-Douglas High School, testified in support of HB 408. Ms. Paris said she felt that society is often naive about the problems youth are facing and the risky behaviors in which they choose to participate. Without the 1999 YRBS, Ms. Paris said that she would've never thought that about half of the juniors and seniors and about one in four freshmen at JDHS are having sex. She expressed the need to do a better job of educating [students] how to say "No." Although there are programs that attempt to confront these issues, there need to be accurate statistics in order to evaluate the need and effectiveness of the programs. The current law has hampered the [school's] ability to administer a survey that will judge whether these programs are effective. Under HB 408, parents will still be able to refuse permission for their child to participate in an anonymous survey and students will maintain the right to refuse to participate. Under the current law, parents of students and students who want to participate in an anonymous survey can't if the student

doesn't remember to return the consent form, which is a large problem.

Number 1145

ANDREE McLEOD, testifying via teleconference, began by saying that committee members have asked her ways, other than the YRBS, that this information could be obtained from students. Ms. McLeod said that although she didn't have the wherewithal to answer [this question], the Department of Health & Social Services (DHSS) and EED both have the financial and human resources to answer this question. She suggested using a key informant survey or a random stratified sampling to find out [more accurate results]. Ms. McLeod felt that a 10 percent [response] from surveys isn't so bad; the [current response] is at 30 percent. Ms. McLeod related her belief that surveying minors without written parental consent is a form of abuse, which is unacceptable. Ms. McLeod requested that DHSS and EED find other ways to gather this information. She charged the departments with negligence in not doing so before now.

Number 0897

BILL DIEBELS, JR., Parent, informed the committee that he is moderately involved in support activities at school. Mr. Diebels noted that he recently learned how difficult it is to gather statistically valid data on drug, alcohol, and sex problems due to the logistical nightmare of obtaining parental consent before conducting anonymous surveys. Without this information, Mr. Diebels related that one can't be sure that resources are being targeted where they're most needed. Furthermore, the effectiveness of the programs can't be measured. Mr. Diebels announced his support of HB 408 and urged the adoption of its intent. However, Mr. Diebels pointed out that Section 2 says in part, "the school district shall provide each student's parent or legal guardian the opportunity to submit to the school principal a written denial of permission to take the questionnaire or survey."

MR. DIEBELS said it would be a shame for future arguments regarding what constitutes "opportunity" to diminish the intent of this legislation. Therefore, he suggested the following language:

If a school district administers an anonymous questionnaire or survey, written permission from a student's parent or legal guardian is not required,

but the school district shall not ask any student to participate in such a survey if that student's parent or legal guardian has submitted to the school principal a written denial of permission to take the questionnaire or survey.

Number 0785

RICHARD BLOCK, Christian Science Committee on Publication for the State of Alaska, testified via teleconference. He informed the committee that the federal law [20 U.S.C. Section 1832 and 20 U.S.C. 1232h] has a direct bearing on [HB 408]. He characterized the thrust of those laws as the parental right to be informed with regard to what's going on in school with respect to the curriculum, surveys, and questionnaires, as well as the right of parents to prevent their children from participating in these surveys. Therefore, he found it curious that there have been grants that were denied on the basis of failing to provide information [obtained through these questionnaires and surveys].

MR. BLOCK reported that in researching this claim, he discovered that one of the grants that was applied for was denied not by the federal government but rather by EED, because of the failure to provide data supporting [the need for the grant]. In his discussion with the department, any data substantiating the [grant] request would've been satisfactory; the data didn't necessarily have to result from a questionnaire. He recalled Ms. McLeod's testimony that this data could be gathered from police reports, absentee reports, and disciplinary reports from the schools. He informed the committee that through his inquiry of these surveys as they relate to grant requests he could see that there is probably a value to these surveys. Therefore, an absolute barring of these surveys may not be in the best interest of the schools. However, he recognized why there is a great deal of concern with regard to the content of these surveys, including the YRBS.

MR. BLOCK turned to his view as a parent, and related his concern that the content of the survey may be inappropriate in the eyes of some parents because the questions seem to propose that there's a certain amount of propriety to the things being asked. In conclusion, Mr. Block specified that his concern is not in regard to whether surveys should be given or not given but rather that parents be adequately informed in order to provide sound judgment. Therefore, he proposed an amendment to tighten the notice provisions by requiring that the notice be

mailed directly to the parent. The amendment specifies that the notice be mailed two weeks in advance via First Class mail.

Number 0456

KATHRYN ARLEN, Member, Board of Directors, Youth on the Streets Action Group; Member, Meeting the Challenge Advocacy Program; Volunteer, Detention, Johnson Youth Center, noted [that the committee packet should include] her written testimony. Ms. Arlen also noted her agreement with Mr. Block's suggestion to provide parental notification via the mail. She highlighted her agreement that every parent should be informed. However, she noted her concern with regard to "active" versus "passive" parental consent.

MS. ARLEN turned to her experiences through volunteering. She informed the committee that a great deal of young people come from "fractured, rearranged, repartnered families." Therefore, she questioned who the parent would be [that would be charged] with signing and returning the parental consent notification. Ms. Arlen related her experiences with young people who are suffering the consequences of risky behavior. She noted that the young people with whom she works requested that she relay the following message: "We need to get things off our chests. We need to have the right to answer questions just like our parents do and a lot of times ... our parents don't care or they don't want everyone else to know what's really going on." Ms. Arlen said that she strongly urged the passage of HB 408.

Number 0146

RIC IANNOLINO, Chair, Youth on the Street, testified in support of HB 408. He commented that any survey that is anonymous and voluntary does not violate either the protection of people's rights, known as the Buckley Amendment, or family education rights and the Privacy Act of 1974.

TAPE 02-29, SIDE A  
Number 0001

MARY TONSMEIRE, Nurse, Adolescent Health Care Coordinator, Juneau-Douglas High School, began by saying that there are many angles she could take in supporting HB 408. Although she expressed the importance of parent notification, she [conveyed the need for passage of HB 408] in order to obtain a true cross-section of the population that would afford the ability to determine the trends in JDHS as well as the state. Ms.

Tonsmeire informed the committee that last year the high school started the Postponing Sexual Involvement (PSI) program in which peer educators are trained. This program comes out of Emory University in Atlanta, Georgia. The statistics from Atlanta illustrate that there should be some significant reductions in attitudes toward becoming sexually involved at an early age. At this point, there is no mechanism by which to evaluate whether that is true. Therefore, Ms. Tonsmeire expressed the need to see whether the youth hold the lessons that their peers taught them a year or two earlier. Ms. Tonsmeire concluded by saying that is merely one of many issues.

Number 0177

LISA TORKELSON, Full-time Parent, testified via teleconference in opposition to HB 408. Ms. Torkelson emphasized that passive consent isn't consent at the bank, school, or the grocery store. "Only our signatures are consent," she highlighted. Therefore, surveys shouldn't be treated any differently. Ms. Torkelson pointed out that students can't go on a field trip or obtain aspirin without parental permission and surveys shouldn't be any different. She informed the committee that there are sources of documented evidence that anonymity doesn't exist when surveying students in school. Furthermore, she said there is a list of places where reliable data can be obtained without surveying students. Ms. Torkelson related that the federal government doesn't make money contingent upon the provisions of specific survey data. Moreover, federal law also prohibits making the sharing of personal data mandatory when tied to grants. She stressed that self-reported data isn't reliable.

MS. TORKELSON said that if HB 408 passes, [Alaska school districts] will be open to potential lawsuits. Currently, New Jersey is facing this issue in court. Lawsuits are much more expensive than most grants. Ms. Torkelson pointed out that HB 408 doesn't limit questions to those in the YRBS. "There's documented evidence that any topic is and has been open for discussion within the confines of the survey," she charged. Although she acknowledged that those in support of HB 408 speak of the importance of parental notification, she said she hasn't found where [parental notification] would occur under HB 408. She concluded by urging the committee to protect the right to privacy and thus she suggested not passing HB 408.

Number 0385

BARBARA BONNER, Teacher, CHOICE, Juneau-Douglas High School; Member, Youth on the Streets, informed the committee that CHOICE is a program for at-risk students. Ms. Bonner announced her support of HB 408. Ms. Bonner informed the committee that JDHS conducted a survey last year for which parental permission forms were sent home for the parents to sign. Only those students returning the permission forms were able to take the survey. In her classroom of 27 sophomores, there was one student who could take the survey. That one student doesn't represent the other students in the classroom, which included some of the neediest students in the district. If surveys are conducted in this manner, it's not representative of what is really happening with the youth. Therefore, she urged the committee to support HB 408.

Number 0468

DEE HUBBARD testified via teleconference. She pointed out that HB 70 didn't say that surveys couldn't be done; rather, it specified that parents must be asked first. Ms. Hubbard related a quote from Carol Nunn (ph) in North Carolina regarding a New Jersey statute that "married" 20 U.S.C. Section 1232h:

A parent's silence should never constitute consent. A school district should never second-guess why a parent has not sent back a consent form. Passive consent is an oxymoron, and only a moron would rely on passive consent when surveying minor children without their parent's informed, active, and written consent.

Number 0579

SAM TRIVETTE, Parent, informed the committee that his son took these surveys when they were still permitted. His son related to him that he and his friends were fairly thoughtful when taking the survey and, in fact, answered the questions truthfully because the survey was anonymous. Therefore, Mr. Trivette related that he didn't believe these surveys were problematic if they are anonymous. He noted that he worked for the Department of Corrections for 33 years and was involved with surveys, and therefore he said he understood the need to have good information to make good decisions on educational issues. It is critical to obtain this information. Mr. Trivette related that the parents who attended a parent group meeting [at JDHS] were all supportive of these surveys.

Number 0708

KAREN McCARTHY, Staff to Representative Con Bunde, Alaska State Legislature, speaking as the committee aide for the House Special Committee on Education, sponsor of HB 408, reiterated that this is a voluntary, anonymous survey, which is in sharp contrast to the New Jersey court case and the federal law. Ms. McCarthy pointed out that 20 U.S.C. Section 1232h [protects the rights of parents and students] because it says that "schools and contractors have to obtain written parental consent before the minor students are required to participate." However, the survey in HB 408 is completely voluntary. As the law is written, school districts and social service agencies are losing grants that are meant to help prevent and combat risky behavior in young people. That situation needs to be changed, she said. The students who are at most risk for such behavior are those whose parents aren't involved in their children's lives, and those parents don't return active-consent forms. Ms. McCarthy concluded by relating Representative Bunde's hope that HB 408 would move from this committee today.

REPRESENTATIVE STEVENS recalled hearing that school districts can decide whether to conduct these surveys via questionnaire.

MS. McCARTHY answered that such was her understanding, and added that it's completely voluntary. In further response to Representative Stevens, she agreed that taking the survey is also voluntary with regard to the child. She specified that a child may review the survey in total and refuse to take it or the child may decide not to answer a particular question.

REPRESENTATIVE JOULE inquired as to the penalties for breach of confidentiality.

Number 0899

KRISTEN BOMENGEN, Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law, answered that she didn't know what the specific penalty would be. However, she said that a number of methods for recovery would be available for individuals if [breach of confidentiality] resulted in individual privacy issues. She surmised that using confidential information would be in violation of an employment contract. She noted that there may other specific penalties in federal education law and state law of which she is not aware.

Number 0954

ELMER LINDSTROM, Deputy Commissioner, Office of the Commissioner, Department of Health & Social Services (DHSS), related his belief that EED and DHSS both have clear statutory obligations relative to the preservation of confidentiality. He deferred to Tammy Green, Epidemiology Section, who agreed with Ms. Bomengen's comments. Mr. Lindstrom said that he could provide the committee with a written response tomorrow.

MS. MCCARTHY, in regard to the penalties for breach of confidentiality, informed the committee that a complaint can be filed with the Professional Teaching Practices Commission (PTPC). Furthermore, federal law [20 U.S.C. Section 1232h] says:

(d) Enforcement

The Secretary shall take such action as the Secretary determines appropriate to enforce this section, except that action to terminate assistance provided under an applicable program determines that

(1) there has been a failure to comply with such section; and

(2) compliance with such section cannot be secured by voluntary means.

MS. MCCARTHY summarized that per federal law the U.S. Secretary of Education could cut off funding to the school district.

CHAIR DYSON, upon determining that no one else wished to testify, closed the public hearing on HB 408.

Number 1071

REPRESENTATIVE WILSON recalled her nine-and-a-half years teaching in a school system of 4,000 students, and remarked on how few of the permission slips are returned [for various things]. Therefore, [the school district] went to passive permission. She emphasized the importance of having proof [of the effectiveness] in regard to what is taught. Representative Wilson urged everyone to vote for HB 408.

REPRESENTATIVE STEVENS recalled testimony that the denial of grants isn't really an issue because one of the grants that was denied was denied by EED. However, the testimony from the professionals is that there are numerous grants that have been lost due to the lack of information.

REPRESENTATIVE CISSNA, as a parent and foster parent, remarked that one can only find out what teenagers are thinking by asking

them. Furthermore, [the school districts/the state] can't afford to pay for programs unless there is knowledge with regard to what and how those programs are doing.

CHAIR DYSON recalled that Version C [22-LS1458\C, Ford, 3/21/02] was adopted [March 26, 2002].

Number 1238

REPRESENTATIVE JOULE said that he would like an answer to his question regarding the penalties for breach of contract, even if that answer comes after HB 408 has moved to the next committee of referral. Representative Joule related the importance of obtaining a snapshot of what students are facing [in order] to make adjustments and review [those adjustments that have already been made]. However, Representative Joule remained concern with regard to anonymity. He related his belief that the penalties for breach of confidentiality would be fairly severe.

REPRESENTATIVE COGHILL remarked that in the smaller communities, anonymity would be even more important. Representative Coghill said although he understands the need to know, he struggles with the societal question of whether the school should [have to] fix [problems related] to family struggles. He didn't view the school as fixing these problems. Representative Coghill questioned whether [HB 408] is about dollars or families. That is, when is it more important for the parents to acquiesce so that the survey can be done in order to obtain grants to do social engineering. "At what point does the government [public schools] have to fix it all," he asked. He noted his refusal to believe that the school is the only place to fix these problems. Therefore, Representative Coghill informed the committee that he wouldn't be supporting HB 408. He stressed the need to obtain active permission.

REPRESENTATIVE JOULE said he didn't necessarily view this as [something] the government should fix. Once the information is obtained by the school districts, the schools should be able to review the information in order to inform the community of the results. Therefore, [there would be] the type of community involvement to which Representative Coghill alluded. Representative Joule said he didn't view HB 408 as a way in which to obtain grant money. He encouraged the local school districts to bring [the information obtained from questionnaires] back to their local school councils.

REPRESENTATIVE STEVENS remarked that he would agree with Representative Coghill if this were a perfect world and every child had two supportive and active parents in their lives. However, there are children that are falling through the cracks, and [the state] has an obligation to those children as well as those with active parents. He reiterated earlier testimony that these [surveys] are voluntary.

REPRESENTATIVE COGHILL agreed that there are "some broken places in society." However, he charged that just because there are parents who don't participate, "we" are going to turn a "blind eye" to those parents who are involved. In so many areas of law, everyone pays the price for the broken portions of society. The voluntariness is being taken out of the hands of the parents [under HB 408].

Number 1610

REPRESENTATIVE KOHRING noted his agreement with Representative Coghill's remarks. Representative Kohring related the following from Lisa Torkelson's e-mail: "In conclusion, House Bill 408 when it comes up for a vote, please retain parental rights and vote 'Do Not Pass.' After all, isn't it the school districts who say they desperately want parental involvement?" With regard to funding, Representative Kohring said he wasn't convinced [the legislature] should be concerned with the passage of measures tied to the funding of grants.

REPRESENTATIVE WILSON echoed earlier testimony that [HB 408] isn't just about obtaining grants, but is about the school system's trying to determine whether its [programs] are working.

Number 1672

CHAIR DYSON informed the committee that a few years ago the legislature passed HB 70 with a 39-0 vote in the House and a 19-1 vote in the Senate, and was immediately signed by the governor. That legislation was viewed as a major strengthening of parental rights with regard to the invasive and private questions that a school can ask. He said that some of the questions [that are asked] are outrageous, and there isn't anything in HB 408 that limits the scope of the outrageous questions that might be asked. When the Anchorage School District came forward because it couldn't obtain enough active parental permission to obtain the data necessary to know what is happening with the students and to evaluate the efforts to remediate, he agreed to hear the bill.

CHAIR DYSON noted that he has a letter from the president of the Anchorage Parent Teacher Association (PTA), which says they never even heard about [HB 408]. In the past, the Council of PTAs has been opposed to passive parental permission. Furthermore, the Anchorage School District's web site doesn't mention the problem either.

CHAIR DYSON emphasized that passage of HB 408 merely requires notification of anonymous surveys. There is no specification as to how the notification will occur. Therefore, a student could still be given a form to take home and return to the school. Chair Dyson noted his strong objection to that. Furthermore, Chair Dyson noted his belief that by-and-large HB 408 is about money. He echoed earlier testimony that federal law prohibits disqualification from grants if there is a problem with parental consent. Therefore, he didn't view that as a problem. Furthermore, the federal law says that questions violating a child's Fourth and Fourteenth Amendment [rights] can't be asked. Children can't be asked to incriminate themselves.

CHAIR DYSON said he interpreted the New Jersey case to mean that it's not voluntary when a voluntary survey is given to the students and [those administering the survey] stress the need [for the students to take the survey] and everyone else is doing it. Such a situation is compelled speech in violation of the First Amendment. He informed the committee that under the federal law [individuals] may not be asked [questions regarding] their political affiliation; mental and psychological problems; sex behavior and attitudes; illegal, antisocial, and self-incriminating or demeaning behavior; critical appraisals of other individuals; legally recognized privileged or analogous relationships; and income. Furthermore, the New Jersey Third Circuit Court of Appeals decision dated December 10, 2001, seems to mean that if [HB 408] passes as written, it will be in violation of federal law.

CHAIR DYSON turned to the issue of anonymity. He said that very experienced teachers have related to him that there is no such thing as anonymity with a survey conducted in a classroom. He expressed his hope that these surveys would be conducted in large groups in order to minimize the loss of anonymity. Chair Dyson pointed out that information pertaining to specific children won't be available because of the anonymity, and furthermore street kids don't take surveys. Although he agreed that "we" want to know what is going on in society, he stressed that those willing to vote in favor of HB 408 are willing to

sacrifice the parents' rights in order to obtain more data. Chair Dyson informed the committee that he has had some high-ranking educators come into his office and tell him that their districts are in favor of HB 408, but they, as parents, weren't. Chair Dyson announced that he would be voting against HB 408.

Number 2008

REPRESENTATIVE CISSNA asked, "Did I understand you to say that if I don't vote the way you think, I am violating someone's rights because that's the way you think?"

CHAIR DYSON replied no, and said that if he'd said that, he didn't mean it. He clarified that from his reading of the New Jersey decision, the law would be in violation of the federal law and that passage of HB 408 will result in no good definition of notification. Furthermore, HB 408 guts many protections put in place by HB 70.

REPRESENTATIVE WILSON related her understanding that currently parents can inform the school that their children cannot take a survey without the parents' permission, and that this would continue under HB 408.

CHAIR DYSON said he believes that is true. He recalled that during the passage of HB 70, it was clear that [the schools] could obtain blanket permission, perhaps with an additional box on an existing form that is vital to enrollment. This has not been done.

REPRESENTATIVE WILSON specified that such is done in some school [districts].

CHAIR DYSON clarified that it isn't done in the school [district] in his area.

Number 2151

REPRESENTATIVE CISSNA related her understanding that a child could choose, as he/she is taking the survey, not to answer specific questions. She asked whether being forced to respond is different from having a paper full of questions.

CHAIR DYSON said he wasn't the best person to ask the question, but reminded everyone that the public testimony had been closed. However, he clarified that the argument in New Jersey is [that

being forced to respond isn't different than having a paper full of questions].

REPRESENTATIVE CISSNA related the following [information] from Mr. Iannolino: "First, the situation in New Jersey was entirely different. The New Jersey school district used federal funds for a survey in which at least some students believed participation was mandatory. However, the order to remand the case back to the district court was based on the plaintiff's inability to conduct discovery, and that the main parties in the suit could be sued." Therefore, the New Jersey case seems to be a different situation from that in Alaska, were HB 408 to pass and perhaps even before.

CHAIR DYSON said that in the New Jersey case they argued that due to the manner in which the survey was conducted, some students felt compelled. Although the defense argued that the survey was voluntary and the students were informed as such, it was determined that it wasn't adequate. Therefore, he understood the ruling to have been that there was compelled speech. Therefore, HB 408 relies upon the school district to ensure that every student understands that they have the right to refuse to take the survey/questionnaire.

REPRESENTATIVE CISSNA said, "I'm assuming that ... our votes: we can feel as if they're not mandatory and that we have the freedom to answer in the way we feel."

CHAIR DYSON replied yes.

REPRESENTATIVE COGHILL remarked that it comes down to the convenience of the schools [over] parental rights, to which he objected.

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REPRESENTATIVE JOULE moved to report CSHB 408, Version C [22-LS1458\C, Ford, 3/21/02], out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE COGHILL objected.

A roll call vote was taken. Representatives Stevens, Cissna, Joule, and Wilson voted to report CSHB 408, Version C, out of committee. Representatives Coghill, Kohring, and Dyson voted against it. Therefore, CSHB 408(HES) was reported out of the

House Health, Education and Social Services Standing Committee  
by a vote of 4-3.

HCR 23-LEGISLATIVE COMMITTEES:SPLIT HOUSE HESS

CHAIR DYSON announced that HOUSE CONCURRENT RESOLUTION NO. 23, Proposing amendments to Uniform Rule 20 of the Alaska State Legislature; and providing for an effective date for the amendments, would be taken up on Thursday, April 11, 2002.

**ADJOURNMENT**

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 5:28 p.m.