

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 26, 2001

1:03 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative John Coghill
Representative Kevin Meyer
Representative Albert Kookesh

MEMBERS ABSENT

Representative Jeannette James
Representative Ethan Berkowitz

COMMITTEE CALENDAR

HOUSE BILL NO. 27

"An Act relating to the licensure and registration of individuals who perform home inspections; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors; and providing for an effective date."

- MOVED CSHB 27(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 40

"An Act providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 119

"An Act exempting joint action agencies from regulation by the state or municipalities; relating to the relationship between a joint action agency and the public utilities that form the joint action agency; relating to powers and immunities of a joint action agency; requiring filing of the joint action agency agreement; relating to the financial affairs of a joint action

agency; declaring certain joint action agencies to be political subdivisions for certain purposes; relating to liability and indemnification of officers, employees, and agents of joint action agencies; and defining 'agency agreement' as used with reference to joint action agencies."

- MOVED CSHB 119(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 27

SHORT TITLE: LICENSE HOME INSPECTORS

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

Jrn-Date	Jrn-Page		Action
01/08/01	0031	(H)	PREFILE RELEASED 1/5/01
01/08/01	0031	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0031	(H)	L&C, JUD, FIN
01/31/01		(H)	L&C AT 3:15 PM CAPITOL 17
01/31/01		(H)	Heard & Held MINUTE(L&C)
02/02/01		(H)	L&C AT 3:15 PM CAPITOL 17
02/02/01		(H)	Heard & Held
02/02/01		(H)	MINUTE(L&C)
02/12/01		(H)	L&C AT 3:15 PM CAPITOL 17
02/12/01		(H)	Moved CSHB 27(L&C) Out of Committee MINUTE(L&C)
02/14/01	0311	(H)	L&C RPT CS(L&C) 4DP 3NR
02/14/01	0311	(H)	DP: CRAWFORD, HAYES, MEYER, ROKEBERG;
02/14/01	0311	(H)	NR: HALCRO, KOTT, MURKOWSKI
02/14/01	0311	(H)	FN1: ZERO(REV)
02/14/01	0311	(H)	FN2: (CED)
02/23/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/23/01		(H)	Heard & Held MINUTE(JUD)
02/26/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 40

SHORT TITLE: REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/10/01	0045	(H)	READ THE FIRST TIME - REFERRALS

01/10/01	0045	(H)	JUD, FIN
01/10/01	0045	(H)	FN1: (ADM)
01/10/01	0045	(H)	FN2: ZERO(ADM)
01/10/01	0045	(H)	FN3: ZERO(LAW)
01/10/01	0045	(H)	GOVERNOR'S TRANSMITTAL LETTER
01/10/01	0045	(H)	REFERRED TO JUDICIARY
02/26/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 119

SHORT TITLE: PUBLIC UTILITY JOINT ACTION AGENCIES

SPONSOR(S): REPRESENTATIVE(S) WILSON

Jrn-Date	Jrn-Page		Action
02/09/01	0281	(H)	READ THE FIRST TIME - REFERRALS
02/09/01	0281	(H)	L&C, JUD
02/12/01		(H)	L&C AT 3:15 PM CAPITOL 17
02/12/01		(H)	Heard & Held MINUTE(L&C)
02/14/01	0328	(H)	COSPONSOR REMOVED: MORGAN
02/21/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/21/01		(H)	<Bill Canceled>
02/21/01		(H)	L&C AT 3:15 PM CAPITOL 17
02/21/01		(H)	Moved CSHB 119(L&C) Out of Committee MINUTE(L&C)
02/23/01	0403	(H)	L&C RPT CS(L&C) NT 5DP 2NR
02/23/01	0404	(H)	DP: KOTT, CRAWFORD, HAYES, MEYER,
02/23/01	0404	(H)	MURKOWSKI; NR: HALCRO, ROKEBERG
02/23/01	0404	(H)	FN1: ZERO(CED)
02/23/01	0404	(H)	FN2: ZERO(CED)
02/26/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JANET SEITZ, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: Assisted with presentation of the proposed CS for HB 27 and answered questions.

GAYLE HORETSKI, Assistant Attorney General
Commercial Section

Civil Division (Juneau)
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Answered questions regarding the proposed
CS for HB 27.

JOHN BITNEY, Legislative Liaison
Alaska Housing Finance Corporation
Department of Revenue
PO Box 101020
Anchorage, Alaska 99510
POSITION STATEMENT: Testified in support of Amendment 1 to the
proposed CS for HB 27.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Presented HB 40 on behalf of the
administration and answered questions.

DAVID S. CARTER
1920 Shore Drive
Anchorage, Alaska 99515
POSITION STATEMENT: Testified in support of HB 40, suggested an
amendment, and answered questions.

ALBERT TAYLOR
(Address not provided)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 40.

MARY MARSHBURN, Director
Division of Motor Vehicles
Department of Administration
3300B Fairbanks Street
Anchorage, Alaska 99503
POSITION STATEMENT: Answered questions on HB 40.

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Capitol Building, Room 409
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 119.

BRIAN BJORKQUIST, Assistant Attorney General
Governmental Affairs Section
Civil Division (Anchorage)
Department of Law

1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

POSITION STATEMENT: Explained the proposed amendment to HB 119
and answered questions.

MICHAEL E. SCHRADER, Attorney at Law
AterWynne LLP

Counsel to Four Dam Pool Project Management Committee
222 South West Columbia, Suite 1800
Portland, Oregon 97201-1191

POSITION STATEMENT: Assisted with presentation of HB 119 and
answered questions.

ACTION NARRATIVE

TAPE 01-25, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing
Committee meeting to order at 1:03 p.m. Representatives
Rokeberg, Ogan, Coghill, and Meyer were present at the call to
order. Representative Kookesh arrived as the meeting was in
progress.

HB 27 - LICENSE HOME INSPECTORS

Number 0108

CHAIR ROKEBERG announced that the first order of business would
be HOUSE BILL NO. 27, "An Act relating to the licensure and
registration of individuals who perform home inspections;
relating to home inspection requirements for residential loans
purchased or approved by the Alaska Housing Finance Corporation;
relating to civil actions by and against home inspectors; and
providing for an effective date." [Adopted as a work draft at
the previous hearing was version 22-LS0136\S, Lauterbach,
2/20/01.]

CHAIR ROKEBERG, speaking as the sponsor of HB 27, referred to
the provision regarding legal actions against a home inspector
on page 8, and said the original version limited the liability
to the length of the validity of the written home inspection

report, which was 180 days. He said it was never his intention to limit the liability of the home inspector. He noted that he sponsored this legislation in response to attempts by home inspectors to limit their liability, by contract, to the amount of the fee paid for the home inspection. Typically, a fee for a home inspection is in the \$350 range. He added that according to his understanding of common law, that type of liability limitation was unenforceable. He said he was of the opinion that when a causative action has been brought against a home inspector due to an error or omission, the court has found the home inspector fully culpable for resulting damages.

Number 0305

Chair Rokeberg added that while he did not want liability limited to such a small amount as the typical fee, neither did he wish to make liability open-ended. He pointed out that the proposed CS has a time frame of 180 days during which the written home inspection report has validity, and (referring to language beginning on page 8, line 13) liability is limited to causative action commenced within two years of the date of the home inspection or home inspection report. Chair Rokeberg expressed confusion at that particular language and asked Ms. Seitz to explain.

Number 0420

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that the drafter thought that by including language referring to both the date of the inspection and the date of the report, it would encourage more people to do what is required by law, which is to submit the written home inspection report to the client. She further clarified that the two years begins running either on the date of the home inspection, if the action is based on the home inspection, or on the date of the home inspection report, if the action is based on the report.

Number 0540

GAYLE HORETSKI, Assistant Attorney General, Commercial Section, Civil Division (Juneau), Department of Law, said that that was also her interpretation of when the two years begins. [The language] provided for "either/or". She added that the committee could instead choose to make [the two years begin] at the later time, although she acknowledged that it was a given that the report would happen after the inspection. She said she

was not sure why anyone would want to start the two-year period with the date of the inspection rather than the report.

CHAIR ROKEBERG said that he felt the language should reflect that the two-year period starts on the date of the written report in order to avoid confusion. He added that this liability limitation language provided an exception to the state's statute of limitation on contracts, which is three years.

Number 0637

MS. HORETSKI clarified that instead, the statutes of limitation vary quite a bit: two, three, six, and ten years. She added that the "fall-back" statute of limitation is ten years if nothing has been expressly provided for in statute. She also explained that a statute of limitation runs from a given time forward and is a set limit, whereas a statute of repose focuses on the time that a defect is discovered. Further, the statute of repose, found in [AS 09.10.55], pertains largely to architectural/engineering defects that are not immediately apparent.

CHAIR ROKEBERG noted that when the appropriate time came, he would offer a conceptual amendment. He went on to say that the main point of the preceding discussion was to explain that the proposed CS allowed the consumer an opportunity to bring action against a home inspector for an omission or error.

CHAIR ROKEBERG also explained that the proposed CS, on page 14, line 1, repealed the portion of the Alaska Housing Finance Corporation (AHFC) statute that allowed for limitation of liability of home inspectors who were performing under the AHFC statute. He added that this change to [AS 18.56.300] was for the purpose of maintaining consistency with the intent of the proposed CS.

Number 0800

REPRESENTATIVE OGAN referred to page 10, line 10, and asked if a registered engineer or architect who affixes his or her seal to a written home inspection report or signs the report with his or her registration number on it could be held liable.

CHAIR ROKEBERG said that a registered engineer or architect would not be held liable because that person would not be a licensed home inspector. To further his explanation, he said

that there was controversy surrounding the issue of whether registered engineers and architects who perform home inspections should be licensed [as home inspectors]. He said he believed that these individuals should be licensed [as home inspectors] but added that as a matter of public policy, it would not be prudent. He added that these individuals could perform home inspections but could not portray to the public that they were licensed home inspectors; thus, by signing/sealing any home inspection reports, they could become liable by virtue of being a registered engineer or architect. The recourse for an aggrieved consumer, then, would be to complain to the board of architects/engineers.

Number 0921

CHAIR ROKEBERG noted that currently, there is not any avenue of redress for consumers who have complaints against home inspectors. He also noted that currently, home inspectors do not have any regulations to comply with. Another point he made was that Juneau, Anchorage, Matanuska-Susitna (Mat-Su), and Fairbanks have different standards of practice from each other. For instance, the main inspectors in Juneau have been engineers, and when the legislature has called a document a home inspection report, the inspectors in Juneau have had a different document in mind. Representative Rokeberg said he found that the first hurdle to overcome for this type of legislation was to define terms so that all parties, in all areas of the state, could work from a common base.

REPRESENTATIVE OGAN also referred to language on pages 10 and 11 and asked if that meant that a licensed heating subcontractor (or a licensed electrician) could not come in and do an inspection on a heating system (or electrical system) unless he or she were also a licensed home inspector.

CHAIR ROKEBERG said that that was not the meaning; the proposed CS would not in any way inhibit or prohibit someone during the normal scope of his or her work. He pointed out that the home inspector's duties are more "all-encompassing," and with the proposed CS, those duties and procedures would be embellished and defined to a greater degree by the board [of home inspectors]. He also said that in his opinion, specific exemptions for people with specialty subcontractor licenses were not needed because they were not performing home inspections; those individuals would be focusing on specific components instead of writing inspection reports on the multiple components of a home. Chair Rokeberg said, for the record, that the

proposed CS was not intended to be for those people with specialty subcontractor licenses who were doing their normal scope of work.

Number 1173

CHAIR ROKEBERG brought attention to amendment 22-LS0136\S.1, Lauterbach, 2/26/01 [called Amendment 1], which reads as follows:

Page 12, following line 6:

Insert a new bill section to read:

*** Sec. 4.** AS 08.57.010(a) is amended to read:

(a) There is created the Board of Home Inspectors consisting of five voting members and one nonvoting member. Three voting members shall be licensed under this chapter and shall have been engaged in the practice of home inspection in the state for three years immediately preceding appointment, one voting member shall be a licensed real estate broker, associate broker, or certified real estate appraiser, and one voting member shall be a public member. [THE EXECUTIVE DIRECTOR EMPLOYED BY THE ALASKA HOUSING FINANCE CORPORATION UNDER AS 18.56.052, OR A DESIGNEE OF THE EXECUTIVE DIRECTOR, SHALL SERVE EX OFFICIO AS A NONVOTING MEMBER OF THE BOARD.]"

Renumber the following bill sections accordingly.

Page 14, following line 1:

Insert a new bill section to read:

***Sec. 10.** AS 18.57.010(b) is repealed."

Renumber the following bill sections accordingly.

Page 14, line 4:

Delete "sec. 8"

Insert "sec. 9"

Page 15, following line 26:

Insert a new bill section to read:

***Sec. 15.** Sections 4 and 10 of this Act take effect July 1, 2005."

Renumber the following bill sections accordingly.

Page 15, line 28:
Delete "sec. 4"
Insert "sec. 5"

Page 15, line 30:
Delete "Section 5"
Insert "Section 6"

Page 15, line 31:
Delete "Sections 8 and 9"
Insert "Sections 9 and 11"

Page 16, line 1:
Delete "secs. 13 - 15"
Insert "secs. 15 - 18"

CHAIR ROKEBERG said that Amendment 1 resulted in the AHFC ex officio member being removed from the board effective July 1, 2005. This would ensure that the AHFC is involved in the startup process of the board, and then allow the AHFC representative to drop off the board.

Number 1276

JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation, Department of Revenue, testified via teleconference and simply expressed satisfaction with Amendment 1.

Number 1292

CHAIR ROKEBERG made a motion to adopt Amendment 1. There being no objection, it was so ordered.

Number 1317

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 2, on [page 8,] line 15, to delete "a home inspection or"; on line 16, to delete "respectively"; and on line 17, to delete "home inspection or", "respectively" and the comma.

CHAIR ROKEBERG explained that without the amendment, the liability period could start on either the date of the inspection or the date of the report. He said his intention [with Conceptual Amendment 2] was to have the two-year liability period start on a single date - the date of the written home inspection report. He said he thought [Conceptual Amendment 2] would help avoid confusion on the part of the public.

Number 1466

REPRESENTATIVE COGHILL asked whether [Conceptual Amendment 2] would encourage a home inspector to delay the written home inspection report.

REPRESENTATIVE ROKEBERG said that as a practical matter, a home inspector is not paid until the written home inspection report is delivered.

REPRESENTATIVE MEYER added that he thought [Conceptual Amendment 2] was an important feature of the proposed CS, and he supported it.

Number 1517

CHAIR ROKEBERG asked whether there was any objection to the adoption of Conceptual Amendment 2. There being no objection, it was so ordered.

Number 1527

CHAIR ROKEBERG made a motion to adopt Amendment 3, which reads as follows:

Page 4, line 1:
After: "or"
Insert: "an unresolved"

Page 4, line 13:
After: "or"
Insert: "an unresolved"

Number 1546

MS. SEITZ explained that current language in the proposed CS reflects that an unresolved criminal complaint or disciplinary action was sufficient to disqualify a person from obtaining his or her home inspection license or registering as an associate home inspector. With Amendment 3, the language would reflect that the disciplinary action must be unresolved in order to disqualify a person from obtaining a license or registering as an associate home inspector.

Number 1614

CHAIR ROKEBERG asked whether there was any objection to the adoption of Conceptual Amendment 3. There being no objection, it was so ordered.

REPRESENTATIVE OGAN commented that he had not received any complaints about home inspectors; therefore, he did not see an overriding need to create another level of bureaucracy in the state.

CHAIR ROKEBERG responded that he had been shown a need for the proposed CS. Currently there is a complete void of regulatory controls or avenues of complaint for the public. He said he was surprised that Representative Ogan had not received any complaints, given the area that Representative Ogan represents. He himself had received many complaints, particularly from the Mat-Su area, which is completely unregulated and without building code enforcement. In addition, the standards of practice and construction [in the Mat-Su area] verge on "almost the unbankable." He pointed out that [the Mat-Su area] does have International Conference of Building Officials (ICBO) inspection activity because some homes do qualify for AHFC loans. He said he was sure that other lending institutions are also demanding home inspections in [the Mat-Su] area, but because there is not any building code enforcement, there is a tendency for shoddy building practices. He reiterated that currently, when people are financially injured by an unregulated home inspection industry, they are without recourse.

REPRESENTATIVE COGHILL commented that the fiscal note assumes that the board consists of members from the following locations: two each from Anchorage and Juneau, and one from Fairbanks. He suggested that instead, one of those members should come from the Mat-Su area.

CHAIR ROKEBERG agreed with Representative Coghill's reasoning but counseled against being geographically specific due to a limited recruitment pool. He acknowledged, however, that there was a tendency on the part of the governor and the legislature to take into account geographic distribution with regard to board compositions during appointments and confirmations.

Number 1807

REPRESENTATIVE MEYER spoke in favor of the proposed CS. He added that his district had experienced a lot of growth, and the proposed CS would assure both homebuyers and homebuilders that legitimate home inspectors were inspecting houses. He said that

although he agreed with Representative Ogan's opinions regarding another layer of bureaucracy, he believed that sometimes [another layer of bureaucracy] was necessary in order to ensure the protection and safety of the people.

CHAIR ROKEBERG noted that during his tenure with the legislature, this was the first time he had attempted to create another board or commission, and he was still looking for ways to cut the board's costs. He added that it is constitutionally mandated to provide [legislative] oversight for boards and commissions once they are created. Thus, if public policy demands that a board or commission be created, then the legislature is required to regulate its activities. He also said that he did not like creating more bureaucracy, but [the proposed CS] was a self-financed way to protect the public without affecting the budget.

Number 1920

REPRESENTATIVE MEYER moved to report CSHB 27(L&C), version 22-LS0136\S, Lauterbach, 02/20/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 27(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 1:35 p.m. to 1:45 p.m.

HB 40 - REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

Number 1962

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 40, "An Act providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

Number 1977

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, presented HB 40 on behalf of the administration. He began by acknowledging that the legislature is focusing a lot of attention this year on drunk driving and the problems drunk drivers cause on Alaska's highways. The ultimate tragic event

that is caused by a drunk driver is the death of someone. He added, however, that a lot of other types of traffic accidents result in death, and the impact on the victims is just as great as if the other driver were driving drunk. Yet, because no alcohol is involved in these types of incidents, there is very little that happens to the other driver with regard to penalties. He said that most of these incidents occur when someone, either because of inattentiveness or by falling asleep at the wheel, drives off the road, crosses the median, or crosses the centerline, and thus crashes into a person or another car and kills someone.

MR. GUANELI went on to say HB 40 was introduced as a result of complaints that in cases resulting in death without the contributing factor of alcohol, nothing was being done. He added that there was not a large volume of these incidents, just a half-dozen or so, per year. He said that HB 40 would take away, for a year, the driver's license of a driver who, as a result of violating a law, is found by a court to have caused the death of someone. Mr. Guaneli clarified that "violating a law" could mean driving off the road, driving across the centerline, or simple driving too fast for conditions. He said that in circumstances where there is a true nexus between violating a law and contributing to the death of someone, it would be appropriate to take away a driver's license for a year.

Number 2098

MR. GUANELI pointed out that in cases of license revocation due to drunk driving, there is a period of time when the person cannot drive at all, and then during the last 30 days [of the revocation period] the person may be issued a limited license for the purpose of earning a livelihood. In contrast, HB 40 proposes that a person could get a limited license for the entire period [of one year] if he or she can convince the courts that his or her livelihood depends on [the limited license]. This provision would allow a person to use a limited license at work, or to get to and from work, but not at any other time. He said this provision of HB 40 would limit the economic hardship placed on a person whose license has been revoked, while contributing to the protection of the public.

MR. GUANELI explained that current law sets out a continuum of mental states, which are used to convict people of crimes, and thus the department is prevented from acting on these types of cases. For instance, if a person is acting recklessly, as defined by law, and that person kills someone while driving a

car, the offense is manslaughter. If a person is acting with criminal negligence, the offense is criminal negligent homicide. However, most of these instances, as described in HB 40, do not rise to the level whereby a criminal prosecution can occur. All the department is left with to prosecute are violations such as speeding or going over the centerline. Regardless of the fact that these offenses appear innocuous, someone has died, and the impact on the families is just as severe as if it were an offense involving alcohol.

Number 2182

REPRESENTATIVE OGAN commented that he was glad to see HB 40 because he had introduced similar legislation four years ago. At that time, the department had argued that the "lesser-included-offense issue" would hinder felony convictions of manslaughter associated with drinking while intoxicated (DWI). Representative Ogan inquired whether the same issue would be a problem in HB 40.

MR. GUANELI responded that HB 40 was simply a license revocation provision. To the extent that current law already covers some conduct, such as going over the centerline, the problem of instructing the jury on lesser-included offenses always exists. He said he thought that because these were simply violations, if the jury were given a choice between manslaughter and driving over the centerline, and the circumstances were such that they fit manslaughter, the jury would choose manslaughter. He said he had very little concern that the jury would opt for the lesser violation. He added that HB 40 does not create new offenses; instead, it just addresses penalties or the remedial action the state wants to take, as a result of an offense that is already under existing law.

Number 2287

REPRESENTATIVE OGAN confirmed that his own legislation [from a previous session] would have created a new offense. He added that he thought HB 40 was very important legislation. He described a situation that he was familiar with, in which a person caused the death of two people and only received a fine of \$300. He also knew of another situation in which the person, while in the course of running a red light, killed someone, and received only a \$50 fine.

CHAIR ROKEBERG expressed concern over the issue of criminal conduct caused by a lack of sleep. He asked Representative Ogan to further describe his legislation from four years ago.

REPRESENTATIVE OGAN explained that he had endeavored to create a new type of crime for vehicular manslaughter.

Number 2369

MR. GUANELI further explained that Representative Ogan's legislation [would have] created a new crime for what is now considered civil negligence. He added that another problem with that piece of legislation was that every car accident that might result in a civil lawsuit would be preceded by some form of criminal prosecution. In addition, civil litigation involving car accidents is complicated, and as part of the criminal prosecution process would become problematic.

REPRESENTATIVE COGHILL returned to the issue of license revocation. He inquired whether a person with a revoked license [under the provisions of HB 40] could, at some point after the original hearing, ask for a limited license. He also asked if it would involve another court hearing.

MR. GUANELI replied that he did not see any provision [in HB 40] that would prohibit the defendant from coming back to the judge in order to demonstrate a need for a limited license. There were not any deadlines by which to demonstrate the need, but it would involve another court hearing. He also explained that it would have to be the court that originally revoked the license.

REPRESENTATIVE COGHILL commented on the issue of arraignment proceedings. He said he had witnessed situations in which people who had had their license revoked had an additional revocation period imposed on them, but the additional penalty seemed inconsequential. He asked how additional penalties would be handled under HB 40.

MR. GUANELI responded that under HB 40, revocations would run concurrently, rather than consecutively. He supposed that this was simply a policy question for the legislature. He had heard concerns from members of the legislature about cases of repeated license revocation; he had also noted skepticism from members of the legislature regarding the appropriateness of repeated license revocation as a course of action. As a result, the department has been recommending concurrent penalties. He added that he thought that with regard to problem drivers, multiple

license revocations have little deterrent effect, and other steps need to be taken. [Tape changed sides mid-sentence.]

TAPE 01-25, SIDE B
Number 2526

REPRESENTATIVE COGHILL [on the point of arranging for the limited license] asked, "Is that going to be incumbent upon the person charged to bring that in?" He noted that it would be required but wondered how it would be overseen.

MR. GUANELI explained that a person can come in [to court] with a certificate of employment, or testify that for purposes of employment, he or she needs a limited license. He said this is a standard court proceeding, which happens frequently; the burden is on the driver to come forward and present evidence that will convince the judge that a limited license is necessary. He added that for the purposes of HB 40, there are no additional aggravators; it is a "stand-alone" type of situation, and [the department] already considers it to be aggravated because the fatality has occurred.

Number 2480

REPRESENTATIVE OGAN inquired whether HB 40 could be expanded to include permanent disability. He commented that oftentimes there are very serious consequences of these types of accidents even though a death does not occur. He added that in some ways, becoming a paraplegic/quadruplegic or suffering a severe brain injury is considered to be as bad as, or worse than, death.

MR. GUANELI said that the inclusion of permanent disability had not yet been considered. The complaints that had arisen were in cases of fatalities. He acknowledged it was a good point to raise. He noted that there is a definition of serious physical injury under the criminal code (AS 11.81.900(b)) that speaks to prolonged impairment of bodily functions and fairly serious injuries. He said he thought that perhaps there should be some sort of assessment regarding how many such cases there were, and what kind of impact there would be. He agreed that cases involving [permanent disabilities] present concerns similar to those in cases involving fatalities.

REPRESENTATIVE COGHILL noted that he had more questions but would wait until another time to ask them in order that more public testimony could be heard. He commented that he was curious about [Section 1, subsection] (e) and the application of

the court rule change [Section 4]. He said he wondered if it was adding the death of a person to the traffic laws.

Number 2380

DAVID S. CARTER testified via teleconference and said he was an attorney practicing in the field of personal injury; however, he was speaking as a private citizen. He said he wanted to speak in favor of HB 40; he believed the concept, in general, was appropriate. As he understands HB 40, it does not really focus on the egregious conduct of drunk drivers, which is already covered under another statute, but instead, is an effort to provide some penalty to people who are involved in accidents that cause death. He said that typically, if a person violated a traffic regulation or was held legally responsible for the accident, his or her insurance company would settle claims arising out of the accident. He noted, however, that sometimes people do not have insurance coverage, and HB 40 would fill that gap and ensure that they feel the impact of their actions.

MR. CARTER suggested that HB 40 should include language indicating that a determination of whether something did or did not contribute to an accident would not be admissible in a civil action arising out of the accident. In other words, relatives of a decedent should not be foreclosed, in a later civil action, by a court determination that the violation did not contribute to the accident. Conversely, if, during a license revocation proceeding, the traffic violation was determined to have contributed to the accident, that information should not be admissible in a later civil action because it is a somewhat vague finding. Both sides should be entitled to the present civil system while stating their claims.

CHAIR ROKEBERG asked for further explanation from Mr. Carter on the point of determination of causation.

MR. CARTER clarified that current Alaska law, based on an Alaska Supreme Court case called Scott v. Robertson, says that unless a violation is punishable by jail time, the fact that a citation is issued at an accident is not admissible in a civil action. This also applies to cases in which a fine is paid or a ticket is contested and upheld. He said it would be hard to anticipate what would happen during a license revocation hearing with regard to protections offered or thoroughness of traffic-law-violation analysis. He said he did not want to have something found during a license revocation hearing to be binding on either party.

Number 2140

CHAIR ROKEBERG said he interpreted Mr. Carter's explanation to mean that the Alaska Supreme Court has determined, for example, that should a person run a red light, cause the death of another person, and be convicted of running the red light, the fact that the person had run a red light would be admissible, but the fact that he or she had been ticketed for running the red light would not be admissible.

MR. CARTER agreed with that interpretation and added that the person running the red light would also be found negligent per se, in other words, automatically negligible for violating a red light, in a civil action. He noted that anything having to do with a citation in a [traffic] light situation would not be admissible in a later civil trial, whether it was a red light or a yellow light.

CHAIR ROKEBERG asked if Mr. Carter was suggesting that HB 40 was drafted to allow culpability of license revocation to enter into civil action, and thus would negate the ruling of the Alaska Supreme Court.

MR. CARTER replied that it was perhaps just an abundance of caution, based on what he does for a living. He saw a possibility that someone, during a civil action, could argue that due to a license revocation determination, a particular issue had already been determined. He added that a higher court or judge might not agree with that argument. He noted that current statute specifically excludes admission of police reports in determining civil cases arising out of an accident, and along that line, he suggested including similar language in HB 40. He used the following as an example of such language: "The determination under this section shall not be admissible in any civil action arising out of the accident."

Number 2029

ALBERT TAYLOR testified via teleconference. He said that his only son was killed by a driver who had negligently crossed the centerline and struck the car his son was in. He said that he was led to believe that driving is a privilege; if a motor vehicle operator chooses to drive irresponsibly, breaking traffic laws and killing others, then his or her driving privileges should be taken away. There are too many deaths on Alaska's roads and highways brought on by negligence due to the

actions of careless and irresponsible drivers. He said that HB 40 would be a step towards holding such drivers accountable for their actions. Also, HB 40 would encourage other drivers to be more responsible. He asked that the committee pass HB 40 so that Alaska's roads could be made safer for everyone.

CHAIR ROKEBERG expressed condolences on behalf of the committee for the loss of Mr. Taylor's son. He went on to ask if the driver that had crossed the centerline had been drinking, or if there were other contributing factors.

MR. TAYLOR said that according to the accident report, the testimony of witnesses, and the individual's own statement, the driver was just in hurry - driving too fast - and lost control of the vehicle. He was cited for careless driving and fined \$300.

Number 1892

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, testified via teleconference. She said that HB 40 had no appreciable effect on the DMV because the volume of incidents is relatively small. Under HB 40, the revocation would be court-ordered and would not have a fiscal impact on the DMV. Ms. Marshburn explained that it normally takes approximately 30-45 days to receive a court's determination of revocation; the delay is due to the fact that there is not an electronic notification system set up.

REPRESENTATIVE MEYER inquired how a person got his or her license back after the revocation period had ended.

MS. MARSHBURN responded that according to her interpretation of HB 40, when the revocation period has expired, and if the individual is eligible for "re-licensing", he or she would pay a reinstatement fee; obtain special risk premium insurance (SR22), which has to remain in effect for three years; take a vision test; take a knowledge test; and pay a limited license fee. She added that with regard to the limited license, the court could impose any restrictions it deemed necessary for re-licensing of the individual.

REPRESENTATIVE MEYER asked if a driver's test was also a requirement for re-licensure.

MS. MARSHBURN said it would depend on the circumstances surrounding the revocation. For instance, if someone suffered a

seizure, or had another medical condition, which was determined to have contributed to the revocation, then more than just the standard revocation process would be brought to bear, and that could include the administration of a skills test. She added that everyone, at one time or another, has driven a little faster than was safe for the conditions, but that was not necessarily something that could be remedied by a skills test. She said the foregoing was the long answer; the short answer to Representative Meyer's question was, "It would depend on what led to the incident."

Number 1706

REPRESENTATIVE MEYER said he supported HB 40 because if someone dies because of careless driving, there should be punishment. He added, however, that if there is an underlying driving problem, then license revocation might not correct that problem; at the end of the revocation period, the person would be back causing the same mistakes again. He said that he would like to see a little more attention given to correcting a driving deficiency, if possible. He also questioned what the penalty would be if someone with a revoked license continues to drive, as he has seen happen with DWI offenders.

MS. MARSHBURN responded that it depends on what the individual was picked up for originally. Normally, if the charge is driving with a revoked or suspended license, an additional revocation period is administered in addition to any court penalties. She noted that Mr. Guaneli would have more specifics on the court penalties.

REPRESENTATIVE COGHILL sought assurance that any underlying driving problems would be corrected before a license is returned to someone who caused a death.

MS. MARSHBURN said she thought it would be taken care of. First, the state has the latitude to examine a specific situation if there is any indication in the officer's report or the court record that that kind of a problem exists. And Second, when there is a traffic fatality, both the investigating officer and the court take a thorough look at all the details during the investigation and the court case. Ultimately, a reason has to be found which contributed to the fatality. She again said that the court has the latitude to do whatever it deems necessary in these types of situations.

Number 1531

MS. MARSHBURN, at the request of Chair Rokeberg, explained the difference between a suspension and a revocation. She said that the difference usually relates back to the offense and the time period in which it occurred. Minor point violations can result in suspension, but if too many point violations occur within a certain amount of time, then a revocation could be imposed. In cases of serious offenses - for example, in all instances involving DWI - it is a revocation, not just a suspension.

CHAIR ROKEBERG commented that Representative Ogan had raised an interesting point regarding serious physical injuries. On another point, Chair Rokeberg asked Mr. Guaneli if, when considering HB 40 and the issues it raised, the department had also considered the concept of a criminal definition of falling asleep while driving.

MR. GUANELI said that the department had not considered creating a criminal definition of falling asleep while driving.

CHAIR ROKEBERG noted his interest was due to the growing amount of fatalities caused by driving while fatigued. He added that he thought it was becoming as rampant a problem as DWI.

REPRESENTATIVE OGAN commented that the use of cell phones while driving was also becoming a contributing factor in traffic fatalities.

Number 1389

CHAIR ROKEBERG announced that the public hearing on HB 40 would be kept open, and he encouraged Representative Ogan to investigate some of the aforementioned issues. [HB 40 was held over.]

The committee was at-ease from 2:25 p.m. to 2:29 p.m.

HB 119 - PUBLIC UTILITY JOINT ACTION AGENCIES

Number 1315

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 119, "An Act exempting joint action agencies from regulation by the state or municipalities; relating to the relationship between a joint action agency and the public utilities that form the joint action agency; relating to powers and immunities of a joint action agency; requiring filing of the

joint action agency agreement; relating to the financial affairs of a joint action agency; declaring certain joint action agencies to be political subdivisions for certain purposes; relating to liability and indemnification of officers, employees, and agents of joint action agencies; and defining 'agency agreement' as used with reference to joint action agencies." [Before the committee was CSHB 119(L&C).]

Number 1298

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor, explained that HB 119 was a technical cleanup of last year's legislation that created the Power Cost Equalization (PCE) Endowment and authorized the sale of the Four Dam Pool project. She submitted an amendment that contained changes recommended by the Department of Law.

Number 1178

BRIAN BJORKQUIST, Assistant Attorney General, Governmental Affairs Section, Civil Division (Anchorage), Department of Law (DOL), testified via teleconference and explained the proposed amendment. He mentioned that his primary client agency was the Alaska Energy Authority (AEA). The proposed amendment [later adopted as Amendment 1] read as follows [original punctuation provided]:

Page 3, line 15:

Following "utility" insert "or the state"

Page 3, line 18:

Following "utility" insert "or the state"

Page 3, line 30:

Following "(5)" insert "in addition to the powers of eminent domain in AS 42.05.631,"

Page 3, line 31:

Following "materials" insert "within the boundaries of the power project purchased by the agency from the Alaska Energy Authority"

Page 4, line 1:

Following "agency" delete "within the boundaries of the power project purchased by the agency from the Alaska Energy Authority"

MR. BJORKQUIST went on to say that the changes encompassed in the amendment consisted of two different categories. The first category of changes, found on page 3, lines 15 and 18, would clarify the purpose of [Section 6], which stipulated that the Joint Action Agency (JAA) was a separate legal entity responsible for its own debt and liability. Current language expressly excludes public utilities from being responsible for liabilities, and the proposed amendment would include the state in the exclusion. He added that though the amendment was perhaps excessively cautious, [the DOL] wanted it clarified that the state would not be responsible for the liabilities of the JAA. He pointed out that Section 6, subsection (c), paragraph (4), expressly referred to the state with regard to a debt obligation of the JAA, and said that the concern was that the language would be construed to mean the legislature intended to obligate the state in earlier text.

Number 1010

MR. BJORKQUIST explained that the second category of changes found on page 3, lines 30 and 31, and continuing on through page 4, line 1, would clarify the powers of eminent domain and declaration of taking for the JAA. Currently the JAA has the powers of eminent domain but lacks the power of the declaration of taking. The Four Dam Pool public utilities had requested an express provision for the declaration of taking because it would help convince the Internal Revenue Service (IRS) that [the JAA] was a tax-exempt entity. Mr. Bjorkquist also explained that declaration of taking was a subset of eminent domain powers; declaration of taking allowed the party to the taking to take possession of the property prior to the end of the eminent domain litigation process. He added that the amendment intended to limit the power of declaration of taking, but not the power of eminent domain, to the boundaries of the power project. He clarified that the amendment would not affect the powers of eminent domain of the JAA already provided for in AS 42.05.631.

MR. BJORKQUIST, in response to questions from Chair Rokeberg, said that the boundaries of the power project referred to the physical, geographic boundaries of the project. These boundaries would primarily be defined by the Federal Energy Regulatory Commission (FERC) license. The one transmission line that may fall outside of the FERC license would be defined by the purchase-and-sale agreement between the AEA and the JAA. He confirmed that all rights-of-way and premises were defined by those documents. He also agreed that the right of eminent domain in taking within the boundaries would be expanded to

create the taking power for tax purposes in addition to maintaining the right of eminent domain to acquire rights-of-way, if needed. One of DOL's intentions with the amendment was to maintain the existing law that enabled JAA to have the power of eminent domain outside the boundaries of the power project.

Number 0585

MICHAEL E. SCHRADER, Attorney at Law, AterWynne LLP, Counsel to Four Dam Pool Project Management Committee, testified via teleconference. He said that HB 119 was the result of extensive work by the member utilities, the project management committee, the Attorney General's office, and other interested parties who are working to complete the sale of the Four Dam Pool. With the enactment of the enabling legislation, the JAA was formed to take the place of the state as the owner of the Four Dam Pool Project. The JAA will sell power from the project, pursuant to the existing sales agreement, to each of the five member utilities.

MR. SCHRADER went on to say that during the course of the negotiation and execution of the JAA agreement, a number of issues arose. Many of those issues were resolved within the terms and provisions of the JAA agreement, which is the document that creates the JAA and defines the relationship of the member utilities. However, some issues still needed to be addressed through other means. He said that HB 119 was designed to address all of those issues.

MR. SCHRADER said that the corrections and additions contained in HB 119 would do essentially four things: first, provide a basis from which to obtain clarification from the IRS on the federal tax status of the JAA; second, confirm the tax status of the JAA under state law; third, confirm the relationship between the member utilities and the JAA as well as the liability of the JAA; and last, define the scope of regulation by the Regulatory Commission of Alaska (RCA) on the JAA.

MR. SCHRADER clarified that the provisions in HB 119 regarding eminent domain or condemnation powers of the JAA pursuant to the declaration of taking procedures were driven entirely by the need to have the JAA characterized for federal tax purposes as either a governmental unit or a political subdivision. He explained that the IRS looks to see if an entity has the ability to exercise a sovereign power when determining if that entity is governmental in nature. The power of condemnation is deemed to be a sovereign power; therefore, giving the JAA the appropriate

level of condemnation power is essential for treatment as a governmental unit by the IRS. This treatment is also essential to the success of the divestiture because it would enable the JAA to operate on a tax-exempt basis. Another advantage would be that the future sale or transfer of individual projects to participating member utilities would not be subject to federal tax laws.

Number 0080

MR. SCHRADER said, with respect to the state tax status of the JAA, that the provisions in HB 119 confirmed that the JAA would be exempt from state and local taxation, with the exception of the electric cooperative tax, should the JAA engage in retail sales of power in the future. He added that under the current power sales agreement there are not any provisions for sale of retail power, and the JAA currently does not intend [sell retail power] upon becoming the owner of the project. He recapped that the objective was to maintain the status quo in terms of the treatment towards the JAA with regard to federal and state tax purposes when the JAA replaces the state as the owner of the project. A couple of other points Mr. Schrader wanted to touch on were.... [Tape ends mid-sentence.]

TAPE 01-26, SIDE A
Number 0001

MR. SCHRADER continued, "... that obligations, debts, and liabilities of the joint action agency [JAA] are solely those of the joint action agency, that it is a separate and distinct legal entity from the member utility which formed the agency." He noted that this language is consistent with other limited liability entities created under Alaska law, from public entities, such as port authorities, to private entities, such as corporations and limited liability companies. The language in Section 6 makes it clear that "the joint action agency is a separate and distinct legal entity" and, therefore, any claim would only be against the JAA, not the member utilities.

Number 0127

MR. SCHRADER turned to the scope of regulation by the RCA of the JAA. Under current Alaska law, the Power Sales Agreement defines the rights of the member utilities and the price at which power will be sold from the Four Dam Pool project to the member utilities. The Power Sales Agreement is exempt from review and approval by the RCA. He explained that in accordance

with HB 446, which was adopted last year, the exemption of the Power Sales Agreement from the review and regulation of RCA was extended to cover the assignment of the Power Sales Agreement to the JAA upon the closing of the sale of the project by the state to the JAA. However, that exemption only continues so long as the JAA is indebted to the state for the purchase price of the project.

MR. SCHRADER noted that as "we" went through AS 42 and worked with the representative of RCA, it was determined that there was an inconsistency in terms of the scope of regulation; it wasn't clear where the JAA fits in the regulatory scheme. Therefore, HB 119 creates consistency in the scope of the RCA's regulation. In other words, the provision in HB 119 now provides that the JAA is exempt from all RCA regulations with respect to the JAA's ownership and operation of the Four Dam Pool project until the indebtedness is paid in full. Once the indebtedness is paid in full, the JAA would be subject to regulation by the RCA.

Number 416

MR. SCHRADER said that this was an overview of the provisions of HB 119. Although these [corrections] are technical in nature, these are essential corrections and additions to the enabling legislation that was enacted last year. These [provisions] are essential to the member utilities and their ability to proceed with divestiture, as well as closure of the sale by the state to the Four Dam Pool JAA. The proceeds from the sale of those projects fund the PCE endowment. In response to Chair Rokeberg, Mr. Schrader said that he has seen Assistant Attorney General Brian Bjorkquist's suggested amendments, and he believes they are appropriate.

CHAIR ROKEBERG reviewed the provisions of HB 119. He related his understanding that HB 119 ensures that potential liabilities are limited to the assets, which he surmised to be similar to a limited liability [company] (LLC).

MR. SCHRADER agreed that [a JAA is similar to an LLC] in that it is treated as a separate and distinct legal entity with both the power to sue and be sued. He reiterated that any claim against the entity would be limited to the assets of the entity, which is also the case for an LLC, corporation, port authority, or other entity authorized to be created under Alaska law.

Number 0433

CHAIR ROKEBERG continued his review of the provisions of HB 119 by saying that HB 119 speaks to the liability of the agency, its tax-exempt bonding authority, and a clarification of the exemptions of RCA regulations. Therefore, Chair Rokeberg understood HB 119 to be an expansion of the powers of eminent domain in order to clarify the safe harbor rules under federal tax status. He asked if that is the primary thrust of HB 119.

MR. SCHRADER answered that is correct.

CHAIR ROKEBERG referred to Industrial Development Bonds (IDBs) and asked if there is anything in HB 119 that would allow the JAA to expand the scope of, or have any influence on, the allocation for IDB bonds in Alaska. He related his understanding that the JAA would have to compete with everyone else.

MR. SCHRADER agreed with Chair Rokeberg's understanding.

The committee was at-ease from 2:57 p.m. to 2:58 p.m.

CHAIR ROKEBERG closed the public testimony on HB 119.

Number 0649

REPRESENTATIVE MEYER moved that the committee adopt Amendment 1 [text provided previously]. There being no objection, it was so ordered.

Number 0682

REPRESENTATIVE MEYER moved to report CSHB 119(L&C) as amended out of committee with the accompanying fiscal notes. There being no objection, CSHB 119(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0690

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.