ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 30, 2001
1:16 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 177
"An Act placing certain special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 179
"An Act relating to underage drinking and drug offenses; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 4
"An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 132
"An Act relating to the possession or distribution of alcohol in a local option area; requiring liquor license applicants to submit fingerprints for the purpose of conducting a criminal history background check, and relating to the use of criminal justice information by the Alcoholic Beverage Control Board; providing for a review of alcohol server education courses by the Alcoholic Beverage Control Board every two years; and providing for an effective date."

- BILL HEARING POSTPONED

HOUSE BILL NO. 158
"An Act relating to the criteria for the adoption of regulations and to the relationship between a regulation and its enabling statute; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 177
SHORT TITLE:CAMPAIGN FINANCE: CONTRIB/DISCLOS/GROUPS
SPONSOR(S): RLS

Jrn-Date	Jrn-Page		Action
03/12/01	0543	(H)	READ THE FIRST TIME - REFERRALS
03/12/01	0543	(H)	STA, JUD
03/22/01	0683	(H)	STA RPT CS(STA) NT 5DP 2NR
03/22/01	0683	(H)	DP: WILSON, STEVENS, JAMES, FATE,
03/22/01	0683	(H)	COGHILL; NR: CRAWFORD, HAYES
03/22/01	0683	(H)	FN1: (ADM)
03/22/01	0695	(H)	FIN REFERRAL ADDED AFTER JUD
03/22/01		(H)	STA AT 8:00 AM CAPITOL 102
03/22/01		(H)	Moved CSHB 177(STA) Out of Committee
03/22/01		(H)	MINUTE(STA)
03/30/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 179
SHORT TITLE:OFFENSES RELATING TO UNDERAGE DRINKING
SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
03/13/01	0560	(H)	READ THE FIRST TIME - REFERRALS
03/13/01	0560	(H)	JUD, FIN
03/13/01	0560	(H)	REFERRED TO JUDICIARY
03/28/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/28/01		(H)	<Bill Postponed TO 3/30/01>
03/30/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

BROOKE MILES, Executive Director
Alaska Public Offices Commission
2221 East Northern Lights, Room 128
Anchorage, Alaska 99508-4149
POSITION STATEMENT: Testified on HB 177.

HEATHER M. NOBREGA, Staff
to Representative Norman Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 179 on behalf of the House Judiciary Standing Committee.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: During discussion of HB 179, presented the DOL's position, and answered questions.

STEVE MELTON, Fairbanks Alcohol Safety Action Program (FASAP)
911 Cushman Street, Suite 205
Fairbanks, Alaska 99701
POSITION STATEMENT: During discussion of HB 179, provided statistics about that pilot program and answered questions.

MARK T. MEW, Deputy Chief
Anchorage Police Department (APD)
4501 Bragaw
Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of HB 179 and answered questions.

LAURA J. GOSS, Community Outreach Coordinator
Adolescent Alcohol and other Drug Treatment Program
Volunteers of America - Alaska (VAA)
441 West 5th Avenue, Suite 301
Anchorage, Alaska 99501
POSITION STATEMENT: During discussion of HB 179, suggested changes and answered questions.

FRED KOPACZ, Southcentral Foundation
4501 Diplomacy Drive
Anchorage, Alaska 99508
POSITION STATEMENT: During discussion of HB 179, answered questions and explained that Southcentral Foundation would be submitting their concerns in writing, shortly.

REPRESENTATIVE PETE KOTT
Alaska State Legislature
Capitol Building, Room 204
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 177 on behalf of the House Rules Standing Committee, sponsor.

NOEL WOODS
PO Box 827
Palmer, Alaska 99645
POSITION STATEMENT: Testified in support of HB 177.

JEAN WOODS
PO Box 827
Palmer, Alaska 99645
POSITION STATEMENT: Testified in support of HB 177.

STEVE CONN, Executive Director
Alaska Public Interest Research Group
PO Box 101093
Anchorage, Alaska 99503
POSITION STATEMENT: During discussion of HB 177, testified in support of keeping the status quo.

ROD ARNO
Alaska Outdoor Council
PO Box 1410
Wasilla, Alaska 99687
POSITION STATEMENT: Testified in support of HB 177.

KATHRYN KURTZ, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182
POSITION STATEMENT: Provided legal opinions and answered questions on HB 177.

ACTION NARRATIVE

TAPE 01-47, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:16 p.m. Representatives Rokeberg, Coghill, and Meyer were present at the call to order. Representative Berkowitz arrived as the meeting was in progress.

HB 177 - CAMPAIGN FINANCE: CONTRIB/DISCLOS/GROUPS

Number 0078

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 177, "An Act placing certain special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date." [Before the committee was CSHB 177(STA).]

Number 0205

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), testified via teleconference. Ms. Miles informed the committee that this afternoon APOC would be reviewing HB 177, and therefore at this point she noted her testimony would be based on the staff's review only. She related her understanding that HB 177 would permit a proliferation of the non-group entities described by the Alaska Supreme Court in its decision on the campaign finance reform law. Current APOC regulations narrowly interpreted that area of

law and established a process through which nonprofit corporations could qualify to participate in candidate election activities. However, HB 177 would change that and permit entities that may not be nonprofit corporations, but still meet the three-point test identified by the Alaska Supreme Court, to qualify.

MS. MILES explained that the three-point test says that these entities do not participate in business activities, do not have shareholders who would have a claim on the earnings of the association, and are independent from the influence of business corporations. [The three-point test] makes these non-group entities subject to the same disclosure and filters as other groups in Alaska, including political parties. Therefore, their contributions can only be from individuals in the amount of $500 or less or in the amount of $1,000 or less from another political group. The disclosures would be identified per "**the true source of the funds**" [page 2, lines 2-3], which means that if one of these entities used a transfer of general account money, that transfer of money would need to be delineated as to what individual or permitted political groups the money came from.

MS. MILES remarked that at this point, APOC has attached a fiscal note to HB 177. That fiscal note would address writing regulations to establish a process for these groups to register and ensure that these groups meet the test prescribed by the courts and codified by law. Furthermore, there would be some travel costs related to educating the group with regard to complying with the campaign disclosure law.

Number 0446

CHAIR ROKEBERG asked if Ms. Miles would interpret this as leveling the playing field in the sense that special interest groups already have the same standards as labor unions, business entities, and corporations.

MS. MILES answered, "This would permit the groups that were identified by the supreme court to continue to participate in activities, but would apply the same filters ... and the same disclosure as are on all other political groups in Alaska."

CHAIR ROKEBERG referred to Section 2 of the CS, which defines "contributor", in part, as "**the true source of the funds**".

MS. MILES interjected that candidates cannot accept anonymous contributions. Furthermore, all contributions over $100 are identified on the campaign disclosure report by the name, address, occupation, and employer of the contributor. Therefore, those rules would also apply to these groups, which is not the case under APOC's current regulations.

Number 0570

MS. MILES, in response to Chair Rokeberg, explained that a political action committee (PAC) does the same campaign disclosure report that a candidate would under the current law.

CHAIR ROKEBERG announced that the committee would return to HB 177 at about 2:15 p.m. today.

CHAIR ROKEBERG announced an at-ease from 1:24 p.m. to 1:25 p.m.

HB 179 - OFFENSES RELATING TO UNDERAGE DRINKING

[Contains brief reference to the treatment elements in HB 4.]

Number 0601

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 179, "An Act relating to underage drinking and drug offenses; and providing for an effective date."

Number 0726

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, presented HB 179 on behalf of the committee. She noted that the committee had heard a presentation by the Department of Law on the Niedermeyer decision (State v. Niedermeyer) that nullified the "Use It, Lose It" law (AS 28.15.183), which allowed a minor's driver's license to be administratively revoked if he/she has been caught using or possessing alcohol.

MS. NOBREGA explained that HB 179 is an attempt to create punishments for minors who are caught using and abusing alcohol. On a first offense, the fine imposed will be between $200 and $600, and the offender will be required to complete 24 hours of community work service (CWS). On a second offense, the offender will be guilty of "repeat minor consuming," the fine imposed will be between $500 and $1,000, and the offender will be required to complete 48 hour of CWS. On a third offense, the

offender will be guilty of "habitual minor consuming," a class B misdemeanor, which can carry a 90-day jail sentence and a $1,000 fine; the offender's driver's license will be revoked for six months; the offender will be required to complete 96 hours of CWS; and the offender will be required to receive alcoholism treatment.

MS. NOBREGA noted that there are other provisions in HB 179 that clean up the current administrative revocation [procedures], which the Niedermeyer decision determined were inappropriate for minors who are caught consuming [alcohol]. She referred to Section 10 on page 5 that sets forth the ages for substance abuse offenses (between 13 and 21) and the ages for the illegal use or possession of firearms offenses (between 13 and 18), which is a more definite age period [than current statute stipulates]. With regard to the juvenile justice system (JJS), she referred to the Section 12 [on page 6] and said that HB 179 is exempting offenders of habitual minor consuming from the regular court process and, instead, placing them into the JJS with the belief that those offenders will be treated better and will have a better chance of rehabilitation. She then explained that Section 13 [on page 7] further defines how offenders of habitual minor consuming (third-time offenders) are adjudicated, and what is required under that JJS adjudication.

Number 0940

MS. NOBREGA added that it has since been discovered that imposing CWS does entitle a minor to a jury trial, and therefore more work will be done to determine how, and at what level, CWS will be imposed, because one of the goals of HB 179 is to keep first-time offenders out of the court system. She also mentioned a forthcoming amendment that will require, when a minor does have a right to a jury trial and has a right to counsel, that the minor's parent's financial resources are also considered when determining whether an offender is eligible for court-appointed counsel. She noted that although this is already a court rule, there is a desire to place it in statute as well so that it applies specifically to minors who are in "this" situation. She also mentioned that the Department of Law (DOL) has some suggestions on how [HB 179] can avoid entitling minors to a court trial, and how to work with the CWS issues, which might again entitle minors to a court trial. She confirmed that fiscal notes had been placed in members' packets.

CHAIR ROKEBERG remarked that the Department of Corrections (DOC) has submitted a zero fiscal note; the Alaska Court System (ACS

or "the courts") has submitted a fiscal note of $145,000; the Department of Health and Social Services (DHSS) has submitted a fiscal note of approximately $1.5 million, and the Public Defender Agency (PDA) will be submitting a fiscal note of $379,900 for [fiscal year (FY) 2002].

REPRESENTATIVE MEYER reported that he was very familiar with the CWS program in the Anchorage area, and that it works well; juveniles help clean up the city, be it the parks or whatever needs to be done at the time. He said he was wondering how CWS programs work in the rural areas. If it is so hard to manage or control the CWS program in some areas, then maybe the [CWS] time does not need to get served, he suggested.

Number 1162

CHAIR ROKEBERG said his concern is that according to the Alaska Court of Appeals decision, CWS could not be mandated without a jury trial.

MS. NOBREGA confirmed that according to her understanding, only by mandating CWS is the right to a jury trial required. Thus, if CWS is discretionary, it would not necessarily follow that an offender has the right to a jury trial. She could not, however, confirm whether youth court could be chosen in place of regular court; she deferred that question to the administration. She also deferred the question of what the rational was behind changing the current age thresholds for substance abuse offenses and illegal use or possession of firearms offenses. In response to questions, she again said that a third-time offender becomes an habitual minor consuming offender and is required to attend an alcohol treatment program, but she was not sure if that also applied to a third-time substance abuse offender.

CHAIR ROKEBERG said he considers the provision in HB 179 requiring alcohol education on the third offense to be a defect in drafting because he was trying to find a way to send the proper message without incurring costs. He noted that there are many different courses to take in creating this legislation, and that it is his desire to craft HB 179 in the "public eye" rather than simply offering a committee substitute.

REPRESENTATIVE MEYER suggested that "minor in possession" might be like DWI (driving while intoxicated) in that an offender might commit the crime 80 or more times before being caught for a first offense. For this reason, he wondered whether waiting for a third offense to require alcohol treatment might be

waiting too long, but he also said he recognized the costs involved.

CHAIR ROKEBERG reminded members that in 1995 the legislature tried the experiment of the "Use It, Lose It" law. He referred to a study done by C & S Management Associates that revealed the incidence of underage drinking in Alaska has increased substantially, notwithstanding the "Use It, Lose It" law. Consequently, while the legislature could return to that option should it be willing to spend the money on court costs, he said he thought they would be better off taking a different tack entirely because testimony will illustrate that the "Use It, Lose It" law has not been that effective.

Number 1492

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), confirmed that five or six years ago minor consuming was a crime, and minors who were convicted got sent to jail and acquired a criminal record for that conviction. At that time, another tack - the "Use It, Lose It" law - was instituted in an attempt to use license revocation as another incentive to minors not to drink. Over the years, the perception was that this was reasonably successful, although perhaps it was not as successful as was believed. The Alaska Supreme Court has since said that the way in which licenses were being taken away did not comport with the constitution; minors had to be given the right to a jury trial and a right to counsel. Because of that decision, everyone is now looking at whether the state's limited resources should be spent on lawyers and courts or would be better spent on some other method.

MR. GUANELI acknowledged that license revocation did perhaps have a role in providing minors an incentive not to drink; however, based on a program in Fairbanks where license revocation was used in addition to screening and treatment of offenders, it was felt that this was a preferable way to go - to have treatment as a component for all offenders. Mr. Guaneli also referred to the notion that not all offenders should have the same potential penalty; there should be graduated sanctions the more often an offender drinks and is caught at it. In trying to bring all of the aforementioned ideas together, the administration proposed a series of graduated sanctions. A first offense would not subject the offender to jail time, loss of license, CWS, or anything else that would incur the expense of public defenders, prosecutors, jury trials, et cetera. But,

going along with that, the idea was that minors would be assessed for what kind of alcohol problem they had. It was expected that the vast majority of those offenders would need only a short alcohol education class.

Number 1657

MR. GUANELI explained that for the second offense, it was felt that perhaps some greater incentive ought to be provided, and that is where the idea - despite its cost for public defenders, et cetera - was applied that CWS and some sort of license action might be appropriate. So, moving up the scale on the second offense, those additional options would be available for the court to use; but, again, the minor would be subject to some sort of alcohol screening for his/her problem and perhaps a more extensive alcohol treatment regimen.

MR. GUANELI went on to explain that for a third offense, it was felt that for persons who were over 18, perhaps a criminal sanction was appropriate; perhaps jail time or the threat of jail time was the only thing to really encourage people who are at that level to "get with the program." For a person with a third offense who was under 18, it was felt that this was of serious concern and that that person ought to be sent to the JJS (where the greater resources of that system would be available), again, with the appropriate incentives to undergo treatment.

MR. GUANELI said these were the ideas that the administration put forward, and he acknowledged that some of these ideas are reflected in HB 179. He added that there is no doubt that there is a cost to all these provisions. Since coming forth with these ideas, [the DOL] has looked further at some of the law surrounding this issue, and has discovered that there are some additional limitations with regard to counting past convictions when the minor did not have the benefit of the right to a jury trial and right to counsel. To this end, [the DOL] has submitted proposed amendments that will [address this limitation]. And while there were a variety of options, he opined that [the DOL] was still pointed towards the original proposal of graduated sanctions, not undergoing the expense of jury trial and right to counsel - at least for first-time offenders - and incorporating treatment at all phases of the process. He added that the professionals will say that the most progress is going to be made via treatment, and although in HB 4 some of the treatment elements for adults are great, "more bang for our buck" can be achieved by treating juvenile offenders.

Number 1860

STEVE MELTON, Fairbanks Alcohol Safety Action Program (FASAP), testified via teleconference and said that the FASAP operates a minor consuming/possession pilot program, which has been operating since September 1999 with the help of the Division of Alcohol and Drug Abuse (DADA); that program got its start through a phone call from Ben Petersdorff, manager of the Fairbanks Division of Motor Vehicles (DMV) field office, asking what could be done to monitor the minor consuming/possession situation in Fairbanks. Mr. Melton went on to recount some statistics from the FASAP, which he also made available to the committee in the form of a handout. During FY 2000 (9/99-6/00), 317 cases were opened and 192 cases were completed. During most of FY 2001 (7/00-2/01), 319 cases were opened and 225 cases were completed. He added that most of these cases are generated from the DMV and youths wanting to get their licenses back.

MR. MELTON said these statistics also show that in FY 2000, 82 percent of the [defendants] had no prior convictions; 13 percent had one prior conviction; 3 percent had two prior convictions; and 2 percent had three or more prior convictions. And in FY 2001 - to date - 78 percent had no prior convictions; 13 percent had one prior conviction; 6 percent had two prior convictions; and 3 percent had three or more prior convictions. With regard to the completed cases in both FY 2000 and 2001, 78 percent of the cases completed alcohol information school (AIS); 21 percent and 20 percent (respectively) completed outpatient counseling; and 1 percent and 2 percent (respectively) completed residential treatment. Out of the total of 417 completed cases for both FY 2000 and FY 2001, which is a 66 to 70 percent completion rate, four [defendants] have re-offended for minor consuming, and two cases have re-offended for DWI. He stated that in his community, monitoring is helping to curb the minor-consuming problem.

MR. MELTON explained that for the first DWI offense, an eight-hour AIS class is required (this will be increased to twelve hours as of July 2001), and treatment evaluation is also a requirement if any drugs have been involved in the offense. He said this education process seems to be working. He did, however, caution that these aforementioned statistics do not represent the totality of the minor-consuming population in the Fairbanks area; these statistics only reflect the DMV referrals. Notwithstanding this, he said the FASAP does feel as though it is making some inroads into the minor-consuming problem. He noted that the FASAP charges the offender $50 for monitoring.

This is crucial, he explained, because the DMV requires offenders to receive some type of counseling or some type of AIS. Prior to FASAP, the DMV was getting sign-offs from preachers, school counselors, and anybody and everybody in the community; FASAP, however, requires that offenders go through a state-approved agency for a treatment evaluation or the AIS, and, in this way, it is assured that the youth are getting the proper type of information. He added that education can be beneficial to everyone, even the first-time offender who receives a minor-in-possession charge simply because he/she attended a party.

Number 2150

MR. MELTON, in response to questions, said that for the past two years the FASAP pilot program for minors has been funded only by the $50/case monitoring fee, which by his calculations has amounted to approximately $20,850 for the 417 completed cases. He added that this is "barely enough to keep the lights on," but through the hard work of fellow personnel and the generosity of [agencies in the community] the program has continued. He noted that he receives his salary from the FASAP's adult program, which is funded through the state. He also explained that the monitoring portion of the FASAP for youths is modeled after the adult FASAP program in that it ensures that the youths have completed the treatment evaluation and the AIS. After all the requirements have been met, the youths are given a cover letter to take to the DMV so that they can get their driver's licenses back, which he said he thinks is the main motivation youth have for completing the FASAP. Mr. Melton confirmed that the concept of "Use It, Lose It" has been good in that regard, although he acknowledged that it is somewhat flawed in that the FASAP is not getting all the youths that need it.

MR. MELTON, with regard to how the FASAP works, explained that youthful offenders show up at the DMV wanting to get their licenses back, and the DMV then refers these offenders to the FASAP office. Once an offender is referred to the FASAP office, FASAP requests a driving record from the DMV so that they will know how much prior involvement the offender has had with alcohol and/or controlled substances. First-time offenders are signed up for AIS; second-time (or more, or possession of controlled substance) offenders must also receive a treatment evaluation and complete any type of treatment that has been recommended. On the topic of the fines and treatment provisions in HB 179, Mr. Melton said he thought they were appropriate, and offered that some form of deferred prosecution such as

substituting treatment for the large fines would also provide incentive and be of great benefit.

TAPE 01-47, SIDE B
Number 2475

MR. MELTON, referring to other statistics, said that for FY 2001, the FASAP program had 15 cases in which the offenders were 14 to 15 years of age; 123 cases in which the offenders were 16 to 17 years of age; 154 cases in which the offenders were 18 to 21 years of age; and 8 cases that are listed as "other" with regard to age. He added that he had not seen any offenders in the 12-to-13-year group, but he acknowledged that most of the FASAP's cases have the motivating factor of driver's license reinstatement. With regard to the success of the pilot program, he said he is very encouraged by the results, as is the DMV. He remarked that a key to that success is monitoring and getting the youths into proper state-approved programs. He noted that in some instances, the parents of the offenders also attend the AIS free of charge, and in this way, the parents also get educated along with their children.

Number 2323

MARK T. MEW, Deputy Chief, Anchorage Police Department (APD), testified by teleconference and said that the APD's involvement and concern with this issue goes back further than the fallout from the Niedermeyer decision. He surmised that aspects of HB 179 will help the APD. Basically, he said, the minor consuming law in Anchorage is broken; there are currently no teeth in it. He explained that a few years ago it was a misdemeanor crime but this was scaled back to an infraction that was accompanied by the license revocation. However, there is a unique situation in Anchorage: they have difficulty prosecuting the infraction because the city prosecutor is reluctant to prosecute crimes involving persons under 18 years; those crimes fall under the jurisdiction of the state, while the state prosecutors would prefer to see these infractions prosecuted at the city level since the tickets are written by city police officers. Thus kids have learned that by pleading innocent they can request discovery, and because neither of the prosecuting agencies will provide it, the case will be dismissed and the kids can get their licenses back without any consequences.

MR. MEW explained that even though there are APD officers working overtime during the summer to issue citations, and even though there are grant-funded undercover operations going on

intermittently all year related to alcohol-juvenile-enforcement activities, [the APD] is losing all its tickets. He said that at one time, in an attempt to "shore this situation up," city officials created a diversion program whereby if the offender chose to go to, and complete, a treatment program, the driver's license would be returned without the offender's having to pay any fines associated with the conviction. The problem with this program is that the fine schedule is so low, and without the added incentive of license revocation, the treatment costs more than the fine; thus the kids will not take the option of going to treatment in place of paying the fine because it is cheaper, faster, and easier to simply pay the fine. Of course, the kids also know that there is no point in even doing that much, since if they plead innocent, no one will prosecute them.

MR. MEW offered that HB 179 would help the APD in a number of ways. One, it raises the fine, which gives the APD "a hammer" on first- and second-time offenses to convince the kids to go to treatment. He added that there were treatment providers putting together affordable, state-approved programs. Two, because some form of consequence for the behavior will still be applied for the first and second offense via the larger fines, and because statistics indicate that 80 percent of first-time offenders do not re-offend, the expense associated with prosecution of first-time offenders can be avoided. Third, since criminal penalties will be reinstated for third-time offenders, prosecutors will be willing to prosecute; thus the tickets issued by the APD will have an effect on the problem in comparison to the citations that had no practical consequences. Mr. Mew, in response to Representative Meyer, said it is easy to catch juvenile offenders - "they literally drop in your lap" - but because of a lack of prosecution, it oftentimes feels as if the APD is spinning its wheels, he added. In conclusion, he said he was in favor of HB 179.

Number 2050

LAURA J. GOSS, Community Outreach Coordinator, Adolescent Alcohol and other Drug Treatment Program, Volunteers of America - Alaska (VAA), testified via teleconference. She noted that the VAA offers a youth intervention program for first-time offenders; outpatient and intensive outpatient treatment programs in Anchorage; and a residential treatment center, which serves adolescents statewide. She opined that HB 179 does not go far enough; it tries to get tougher on underage drinking, but it fails to address the issues that lead to that behavior. Youths who are misusing alcohol and other substances need to be

screened for dependency and educated about the choices they are making, early on, before they develop into problem drinkers, and before their behaviors escalate and they become a danger to those around them, both on the roads and in their homes.

MS. GOSS said that it is imperative for the well-being of each individual of the community to intervene with youth who are engaging in high-risk behavior. To allow a known substance abuser to continue in life without the benefit of learning the consequences of his/her actions is nothing but irresponsible. Not only is it irresponsible to the alcohol/substance abuser, it is also irresponsible to the entire community. Ms. Goss said the VAA would like to see a provision added to HB 197 that would allow the courts the flexibility of offering first- and second-time offenders an incentive to participate in alcohol screening and any education or treatment that may be recommended from that screening. Incentives could include fine reductions to offset screening costs, and citation dismissal, if appropriate. Such a provision would allow the courts to respond to the problem of underage drinking in a more flexible manner, and would help to ensure that offenders receive appropriate intervention at an earlier, more treatable stage.

MS. GOSS also proposed that for youth charged with driving under the influence/driving while intoxicated (DUI/DWI), the privilege to drive should not be reinstated until the offender complies with the assessment process and follows through with subsequent recommendations. In addition, she asked the committee to consider the impact of the community work service (CWS) component on first- and second-time offenders; as written [in HB 197], it is an unenforceable consequence. There is little or no recourse in those instances when youths fail to comply. This sends the wrong message to youths who have already shown a disregard for the law. Should the CWS provision remain in HB 179, the VAA encourages the creation of a juvenile monitoring program, similar to the adult monitoring program, which would track compliance and report back to the courts.

Number 1927

MS. GOSS said that the importance of consistent imposition of sanctions and adequate monitoring cannot be emphasized enough. As a community, "we" have the responsibility to clearly and consistently convey the message that [alcohol and] substance abuse is a high-risk behavior that has potentially deadly consequences, and that it will not be tolerated as simply a matter of "kids will be kids." We want kids to be kids, but

also want them to grow up to be happy, functional, and productive adults. We certainly do not want our children's behavior to be a factor in the loss of anyone's life. In summary, she said the VAA believes that intervention and education, because they are of paramount importance in combating the problem of underage drinking, should be included at an earlier stage. She again urged the committee to include a diversion program in HB 179.

CHAIR ROKEBERG expressed the belief that the committee would, in part, be accepting a number of her recommendations. He then asked why she thought the CWS provision was unenforceable.

MS GOSS said currently there is no one monitoring for compliance of CWS requirements, and the kids know this. She also explained, in response to further questions, that the VAA's outpatient center can serve up to 36 clients at one time, and that the residential center holds 16 clients at one time. She added that residential treatment is between four and six months, and that outpatient treatment is approximately six months. She noted that they have a two-month waiting list for the residential treatment program, and that the outpatient treatment program does not have a waiting list at this time. With regard to funding, she said that they are state-grant-funded, and that they also receive private donations. In addition, she explained that they do bill insurance, Medicaid, and Denali Kid Care; because they are nonprofit, they also offer a sliding-fee scale and do not turn anyone away for inability to pay for services.

Number 1818

FRED KOPACZ, Southcentral Foundation, testified via teleconference and said that they had recently opened up a residential treatment facility for substance abusing youth. He explained that Southcentral Foundation has a number of concerns regarding HB 179 that they would be submitting in writing in the near future. In response to questions, he explained that Southcentral Foundation currently has 16 beds, and that over the summer they will be moving to a new facility, which will have 36 beds. He added that they are estimating a length of stay of between six and eighteen months due to the type of program they provide; it is a very comprehensive program, he offered, involving education, vocational education, and social skills development. He noted that currently they are funded through a grant from the federal agency, the Center for Substance Abuse Treatment, which means that there is no cost to the recipient of

the services. For purposes of budgeting costs, however, the Southcentral Foundation is figuring between $335 and $350 a day.

CHAIR ROKEBERG announced that they would recess the hearing on HB 179 to 3/31/01. [HB 179 was held over.]

HB 177 - CAMPAIGN FINANCE: CONTRIB/DISCLOS/GROUPS

[Contains some discussion of SB 136.]

Number 1700

CHAIR ROKEBERG announced that the committee would return to the discussion on HOUSE BILL NO. 177, "An Act placing certain special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date." [Before the committee was CSHB 177(STA).]

CHAIR ROKEBERG announced an at-ease from 2:23 p.m. to 2:24 p.m.

Number 1688

REPRESENTATIVE PETE KOTT, Alaska State Legislature, testified as chair of the House Rules Standing Committee, which is the sponsor of HB 177. Representative Kott remarked that HB 177 is a fairly simple piece of legislation that does two things. First, on page 2, lines 7-8, the definition of "contributor" is found. This definition was taken from the U.S. v. Hsia case. Second, certain non-group entities or special interest organizations are being included in the group definition, which is found on page 2, lines 11-15. This language was also extracted from federal case law. Therefore, Representative Kott said he believes that [the state] is conforming to what has already been established.

REPRESENTATIVE KOTT said he would illustrate the current situation. He clarified that [this legislation] refers to individuals and not the initiative process. He posed a situation in which a large corporation had an agenda such that it would "go after" people who didn't support drilling and exploration of the Arctic National Wildlife Refuge (ANWR).

Currently, that corporation could contribute an unlimited amount of money, which would remain the case under this bill. For example, that corporation could contribute money to the Alaska Oil & Gas Association (AOGA), which could in turn establish a political action committee (PAC), which would disburse the money. Under this bill, AOGA can still receive [an unlimited] amount of money, but it would be treated as a special interest group or non-group entity and thus [AOGA] would be limited in regard to what could be contributed to that PAC, as is the case with any other group that is currently limited. Therefore, the limitation would be $1,000 to the PAC. Currently, there is no limitation and there is no reporting requirement.

REPRESENTATIVE KOTT related his belief that this legislation closes what he saw as a loophole in Alaska's campaign finance law. Furthermore, this legislation seems to address the discussion relating to "soft money" that is occurring at the federal level.

Number 1437

CHAIR ROKEBERG asked if this legislation could be referred to as the "Feingold-McCain Bill of the Alaska Legislature."

REPRESENTATIVE KOTT indicated agreement.

CHAIR ROKEBERG related his understanding that HB 177 attempts to "bring the light of day" on soft money contributions that are not currently reported to the public.

REPRESENTATIVE KOTT agreed with Chair Rokeberg's understanding. He added that HB 177 levels the playing field among all participants. He reiterated that this legislation doesn't deal with the initiative process.

REPRESENTATIVE COGHILL asked if the PAC would report the true source of the money to APOC.

REPRESENTATIVE KOTT answered yes. He returned to his prior example and posed a situation in which the large corporation requests that its employees contribute $500 to AOGA and the corporation will reimburse its employees.

CHAIR ROKEBERG interjected that such a scenario is prohibited currently.

REPRESENTATIVE KOTT clarified that [this legislation] attempts to identify the true source of the contributions [the individual, and would be a matter of the public record].

REPRESENTATIVE COGHILL related his understanding, then, that this legislation would not hinder the input into campaigns, but would merely be a matter of reporting at the same level as for everyone else.

REPRESENTATIVE KOTT agreed.

Number 1283

NOEL WOODS testified via teleconference. He informed the committee that he is in support of HB 177, and that he is a member of the [Mat-Su Valley] Sportsman group that has been under attack from people who have used this as a cover-up for some of their expenditures.

JEAN WOODS testified via teleconference. She noted her support of HB 177 because she believes that nonprofits should follow the same rules as everyone else if they intend to become involved with political campaigns. The public has a right to know who is funding a campaign.

Number 1221

STEVE CONN, Executive Director, Alaska Public Interest Research Group (AkPIRG) testified via teleconference. He noted that he had reviewed the 1990 State v. Alaska Civil Liberties Union case, which dealt with politically protected free speech. He said, "This bill is quite obviously an attempt to rewrite that decision." Mr. Conn pointed out that there is a good reason why the Alaska Supreme Court drew a distinction between the groups that are independent from the influence of business and everyone else. Furthermore, the case is backed by sound evidence that will not disappear no matter how hard one tries. The court found a large [portion] of business in the community [to be influencing] the political process. The court cited studies by Larry Makinson of The Center for Responsive Politics in Washington, D.C., which pointed out that of the top 50 contributors, 21 were corporations, 9 were unions, and 8 were PACs or trade associations. The case also cited an AkPIRG report in the early 1990s, which showed that more than half of all contributions were connected to business interests. Furthermore, the study pointed out that there was no danger of quid pro quo arrangements for those excluded organizations. He

clarified, "That is to say, the ability of business interests ... could amass massive wealth and drown out the individual who is not associated with business." However, "the exception is a sound one if one believes that all ideas, however unpopular, should find their way into the political process," he said. He noted that to his knowledge, only the Alaska Conservation Alliance has taken advantage of this exception.

MR. CONN directed attention to SB 136 as an example of the kind of quid pro quo that the court feared would occur. He noted that SB 136 purports to develop a resource development board made up of persons in the timber, mining, and oil industries who would be able to allocate millions of dollars in state funds to groups promoting their industrial interests. Therefore, he believes the danger posited by the court was real. Mr. Conn said, "The reality is that those members of those industrial organizations who would like to promote conservation causes do have a real fear of retaliation in their jobs, if they were forced to disclose." Therefore, Mr. Conn encouraged the committee, "in the name of free speech and protected free speech," to not add a new restriction on an entity that is not related to business. He encouraged the committee to leave things as they are, which is a level playing field "given the reality of the influence of business on our political life."

CHAIR ROKEBERG asked if Mr. Conn was saying that AkPIRG had never engaged in any political activity.

MR. CONN replied, "No, my testimony is that we didn't seek to [go to] court to make use of the exception carved out by the supreme court in ... this process." However, Mr. Conn assured the committee that many of AkPIRG's members, when promoting causes that are not popular in today's political climate, would be afraid if their names and occupations were publicized. He characterized today's political climate as a "rabidly pro-development climate" that is evidenced by SB 136, which explicitly excludes an organization such as AkPIRG. In response to Chair Rokeberg, Mr. Conn explained:

> Senate Bill 136 sets up a resource development board that would award "grants" to be determined by a named representative of the major development industry, taking state money, more than $2 million, and parceling it out amongst various industrial groups to allow them to pay for their advertising under the rubric "public education." In other words, this goes beyond what a private individual chooses to do vis-a-

vis the political process. This actually takes draw-ups of state money and passes it over to industry to do with as it may choose.

Number 0861

ROD ARNO, Alaska Outdoor Council (AOC), urged the passage of HB 177 out of committee. He noted his past experience with initiatives and AOC's PAC. Mr. Arno related his belief that HB 177 is necessary. He informed the committee that according to APOC reports, a gentleman named Kevin Harron (ph) contributes to House District 23. Mr. Harron lists his occupation as a consultant for Kay Brown Communications. However, Mr. Harron is a former director of the Alaska Center for the Environment and is now the director of the Conservation Strategies, which received money from Paul Bernard (ph), who is from outside of Alaska. Mr. Bernard gave $400,000 to get [Conservation Strategies] started and then another $150,000 for individual political campaigns during the last election period. However, the APOC report doesn't mention Mr. Bernard's name. That is the type of thing that AOC [would like to have an honest reporting of].

CHAIR ROKEBERG asked if Mr. Arno's testimony is that Mr. Harron was a conduit for $550,000.

MR. ARNO said that $550,000 was spent, but Mr. Bernard's name is not mentioned in any APOC report nor is the name Conservation Strategies. He noted that he was aware of these contributions due to an Anchorage Daily News article. Mr. Arno informed the committee of a meeting of the Alaska Wilderness Recreation Tourist Association during which the director of Alaska Conservation Foundation, Deborah Williams (ph), told the audience she was hired to replace the [members of the] Alaska State Legislature with [members of] the new party called the Alaska Conservation Majority. Ms. Williams also noted that she was two years into this ten-year project. Mr. Arno pointed out that the Alaska Conservation Foundation is the umbrella organization for the Alaska Conservation Alliance and the Alaska Conservation Voters, which also include the Alaska Center for the Environment. Therefore, Mr. Arno feared nonresident influence in Alaska's election process and thus would like that exposed. Mr. Arno noted that as a brown bear hunting guide, he should be fearful of having his name listed, but that is not of concern to him because participating in this process is important.

Number 0607

REPRESENTATIVE MEYER related his understanding of Mr. Conn's testimony that expressed concern of retaliation if the public knew who people were giving money to because their position would be unfavorable with the majority. However, he understood Mr. Arno to say that he represents a minority, brown bear hunters, and that he is not afraid of people knowing his position or whom he gives money to.

MR. ARNO replied, "That is correct."

REPRESENTATIVE BERKOWITZ asked if Mr. Arno's organization is subject to APOC disclosures.

MR. ARNO replied yes. In further response to Representative Berkowitz, Mr. Arno said that AOC reports all of its donors.

REPRESENTATIVE BERKOWITZ surmised, then, that when AOC sends out literature endorsing individuals, all the donors have been disclosed.

MR. ARNO replied, "I'm not going to answer that question because I don't know."

REPRESENTATIVE BERKOWITZ surmised, then, that Mr. Arno's organization may be included under this legislation.

MR. ARNO said that would be fine.

Number 0471

CHAIR ROKEBERG suggested that Representative Berkowitz may be referring to the possibility that AOC has a periodic publication that endorses particular candidates. If such an endorsement occurred in a general membership mailing, then it may qualify as a political communication and thus the organization would have to provide APOC with the dues-paying membership list. He asked if such a situation would be problematic for Mr. Arno.

MR. ARNO pointed out that AOC's newsletter does not [endorse particular candidates] since it is separate from AOC's PAC. Therefore, he indicated that AOC wouldn't have any problems with that.

REPRESENTATIVE BERKOWITZ asked if the AOC's PAC prints full disclosure of all its contributors.

MR. ARNO replied yes.

REPRESENTATIVE BERKOWITZ asked if the AOC's PAC makes full disclosure on issues.

CHAIR ROKEBERG asked if [Representative Berkowitz was referring] to initiatives. He related his understanding that there are separate statutory requirements for that.

MR. ARNO replied yes and also agreed that [AOC's PAC] would be willing to continue such. In response to Chair Rokeberg, Mr. Arno agreed that would include inside and outside money.

REPRESENTATIVE BERKOWITZ asked if [AOC's PAC] accepted outside money "last time."

MR. ARNO replied yes and agreed with Representative Berkowitz that it would be in the range of the hundreds of thousands of dollars.

REPRESENTATIVE BERKOWITZ commented, "And there was one organization that opposed you, and that's why we're here today. They must be very effective."

MR. ARNO remarked, "They're extremely effective. They grant out now $3 million a year to the state to advocacy groups to do nothing but to replace the face of the legislature. So, yes."

REPRESENTATIVE BERKOWITZ commented that they haven't been too effective.

Number 0281

CHAIR ROKEBERG referred to Mr. Conn's earlier testimony regarding the Alaska Supreme Court's finding that certain requirements should be imposed on business and union organizations due to their large influence on the body politic and the electoral process in Alaska. He asked if Mr. Arno would say that $3 million is a substantial sum that would have an impact regardless of whether the organization is successful.

MR. ARNO agreed.

REPRESENTATIVE BERKOWITZ pondered how much Phillips' and BP's and the other advertisements [amounted to].

CHAIR ROKEBERG pointed out that because of the enactment of the campaign reform legislation a few years ago, the petroleum industry is a minor part of the elections in Alaska.

REPRESENTATIVE BERKOWITZ expressed his personal concern with campaign finance that has more to do with what is happening with initiatives. He related his belief that there should be individual restrictions on initiatives as well.

CHAIR ROKEBERG pointed out that initiatives are not the issue before the committee. He asked if Representative Berkowitz believes that openness is a central tenet of the democratic process.

REPRESENTATIVE BERKOWITZ indicated agreement.

CHAIR ROKEBERG referred to Mr. Conn's earlier testimony regarding the Alaska Supreme Court decision [in the 1990 State v. Alaska Civil Liberties Union case] and asked Ms. Kurtz to comment.

TAPE 01-48, SIDE A
Number 0001

KATHRYN KURTZ, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, explained that HB 177 incorporates the three-part test that is put forth in the Alaska Civil Liberties Union (AkCLU) decision, and in fact, is almost verbatim the same in terms of what HB 177 puts into the definition of "group."

CHAIR ROKEBERG asked Ms. Kurtz to comment on the claim that there is a need to keep concealed the identities of some contributors because of fear of retribution.

MS. KURTZ said that that concept has been argued in various cases, not within Alaska but in other jurisdictions; thus there is state and federal case law available. She said that according to her understanding, there is one case in particular, National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, in which the court did recognize an important interest in keeping membership lists confidential, but only because there was a very significant danger to people through disclosure. She added that there are also cases that have said the threat of getting less money in contributions does not justify concealing names; that [issue], too, has been litigated. There really has to be a problem of serious

magnitude before it is a situation in which disclosure cannot be required.

Number 0200

MS. KURTZ, in response to questions posed by Representative Berkowitz, said that the "chilling effect" is always a concern with the First Amendment, and it is a balancing issue. One has to look at the degree that the state's interest is being advanced versus the burden on [free] speech. She again said she thought what HB 177 does is consistent with the AkCLU case. She explained that in the case of HB 177, the Alaska Supreme Court has already assessed the degree of state interest as opposed to the burden on [free] speech by putting out the [three-part] test. She acknowledged, however, that she was not sure what to say in terms of a specific analysis of the burden. She also responded that HB 177 was not altering the balance; instead, HB 177 would put into statute what the AkCLU decision says, at least as far as the definition of group goes. The AkCLU decision upheld the state law with regard to the prohibition on contributions by corporations and unions, but the decision also said that a certain category of "non-group" entities had to be permitted to participate if they met the three-part criterion.

REPRESENTATIVE BERKOWITZ said that one of the problems in running campaigns is that there are candidates and issues that frequently run side by side. He referred to the "same-sex marriage proposal" from a couple of years ago, which became a hot issue. He said it was his opinion that the proposal was put forth in the legislative format in order to make it a campaign issue for individuals. And when an issue is then tied to individual candidates, Representative Berkowitz said he wondered how the campaign limits addressed in HB 177, [and] the group limits placed on individuals, are balanced against the absence of group limits on an issue.

MS. KURTZ responded that issue advocacy is something that is extremely difficult to regulate consistent with the First Amendment. What the state campaign law can do, however, is limit "express advocacy," for example, "Vote for candidate X." What the state campaign law cannot do is set a dollar limit on individuals expressing views on issues.

REPRESENTATIVE BERKOWITZ asked if it were possible to reach into the issues, based on the reality that issues and candidates are linked.

MS. KURTZ answered that currently there is a lot of discussion about that at the federal level, but she had not yet seen anything that changes the basic structure, which lets "express advocacy" be regulated but not issue advocacy. That seems to be a line, however difficult to interpret, that is fairly well established at this point in federal law. She confirmed that that was from the point in time of the Buckley case (Buckley v. Valeo) on.

Number 0438

REPRESENTATIVE COGHILL said that from the point of the candidate, he has certainly felt the chilling effect of disclosure. He asked if there had been case law with regard to the chilling effect on free speech for candidates.

MS. KURTZ answered that there has been case law [resulting after] someone came forward and said, "Hey, I'm being damaged by this law requiring disclosure because there are people who don't want to give me money now," and the court responded that the law would be upheld regardless.

REPRESENTATIVE COGHILL said he could see that might very well be the case here, because he does not think the dollar limit necessarily limits the ability to contribute, and disclosure certainly would not either.

REPRESENTATIVE BERKOWITZ asked Ms. Kurtz if she had looked into what was going on in Arizona with regard to state-funded races.

MS. KURTZ said she was not familiar with that particular aspect. She added, however, that she had some familiarity with the public-financing-of-campaigns law.

REPRESENTATIVE BERKOWITZ said it seemed having state funding or public funding could circumvent the entire problem of any contributions to individuals.

MS. KURTZ noted that there were a number of states that had public funding.

REPRESENTATIVE BERKOWITZ, in response to comments regarding the fiscal gap, said that it would not really create a big fiscal-gap problem, and further, that the title of HB 177 invited discussion.

Number 0613

REPRESENTATIVE KOTT commented with regard to Buckley v. Valeo, saying the express advocacy versus issue advocacy was addressed; restrictions can be placed on express advocacy but not on issue advocacy. Specifically, issue advocacy can neither be prohibited nor regulated. He added that the First Amendment concerns were addressed by Ms. Kurtz, and that there was also case law regarding that issue. He also said that disclosure cannot always be demanded. However, non-disclosure has to be justified in the affirmative. The contributors trying to justify non-disclosure would have to show that there was a threat, harassment, or fear of reprisal. At that point, APOC could make the determination whether those names would still have to be disclosed; if one of those conditions existed, then the group should be able to make a pretty good argument for non-disclosure.

REPRESENTATIVE KOTT noted that there was also case law to support this, both at the federal level and in Veco International v. APOC. Recognizing that there was no longer a quorum, Representative Kott asked that the committee advance HB 177 at the next available opportunity. He added that the provisions encompassed in HB 177 should have been included in the last campaign finance reform bill, which addressed corporations and unions. Representative Kott concluded by saying that there was additional legislation regarding campaign finance law en route.

CHAIR ROKEBERG noted that there was a technical problem with the legislative financial disclosure forms. He then announced that the [hearings on HB 177, HB 179, HB 40, and HB 4] would be recessed to 3/31/01. [HB 177 was held over.]

ADJOURNMENT

Number 0815

There being no further business before the committee, the House Judiciary Standing Committee meeting was recessed at 3:04 p.m. until 11:00 a.m., 3/31/01.