ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 4, 2001
1:10 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair
Representative Ethan Berkowitz

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 111
"An Act relating to civil liability for injuries or death resulting from livestock activities."

- MOVED CSSSHB 111(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 82
"An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation."

- MOVED CSHB 82(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 193
"An Act relating to the primary election; and providing for an effective date."

- MOVED CSHB 193(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 120
"An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 111
SHORT TITLE:CIVIL LIABILITY AND LIVESTOCK
SPONSOR(S): REPRESENTATIVE(S)COGHILL

Jrn-Date	Jrn-Page		Action
02/05/01	0241	(H)	READ THE FIRST TIME - REFERRALS
02/05/01	0241	(H)	JUD
03/07/01	0501	(H)	COSPONSOR(S): JAMES
03/09/01	0514	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/09/01	0514	(H)	READ THE FIRST TIME - REFERRALS
03/09/01	0514	(H)	JUD
03/16/01	0635	(H)	COSPONSOR(S): DYSON
03/22/01	0697	(H)	COSPONSOR(S): SCALZI
03/28/01	0762	(H)	COSPONSOR(S): LANCASTER
03/30/01	0793	(H)	COSPONSOR(S): HUDSON
04/04/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 82
SHORT TITLE:FARM OPERATIONS:DISCLOSURE/NUISANCES
SPONSOR(S): REPRESENTATIVE(S)HARRIS

Jrn-Date	Jrn-Page		Action
01/19/01	0130	(H)	READ THE FIRST TIME - REFERRALS
01/19/01	0130	(H)	JUD, RES
01/22/01	0147	(H)	COSPONSOR(S): GREEN
02/07/01	0269	(H)	COSPONSOR(S): MEYER
03/20/01	0670	(H)	COSPONSOR(S): DYSON
04/04/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 193
SHORT TITLE:MODIFIED BLANKET PRIMARY ELECTION
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/19/01	0647	(H)	READ THE FIRST TIME - REFERRALS
03/19/01	0647	(H)	STA, JUD, FIN
03/19/01	0647	(H)	FN1: (GOV)
03/19/01	0647	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/03/01		(H)	STA AT 8:00 AM CAPITOL 102

04/03/01		(H)	Moved CSHB 193(STA) Out of Committee
04/03/01		(H)	MINUTE(STA)
04/04/01	0839	(H)	STA RPT CS(STA) 3DP 2DNP 2NR
04/04/01	0839	(H)	DP: JAMES, FATE, COGHILL; DNP: CRAWFORD
04/04/01	0839	(H)	HAYES; NR: WILSON, STEVENS
04/04/01	0839	(H)	FN1: (GOV)
04/04/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 120
SHORT TITLE:DISCLOSURE OF CRIMINAL HISTORY RECORDS
SPONSOR(S): REPRESENTATIVE(S)COGHILL

Jrn-Date	Jrn-Page		Action
02/09/01	0281	(H)	READ THE FIRST TIME - REFERRALS
02/09/01	0281	(H)	STA, JUD
03/14/01	0585	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/14/01	0585	(H)	READ THE FIRST TIME - REFERRALS
03/14/01	0585	(H)	JUD
04/04/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MIKE FORD, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
State Capitol
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182
POSITION STATEMENT: Testified as the drafter of SSHB 111.

JACKIE HELLER
HC 60, PO Box 3208
Delta Junction, Alaska 99737
POSITION STATEMENT: Testified in support of SSHB 111.

ABIGAIL CROYLE
(No address provided)
Kodiak, Alaska 99615
POSITION STATEMENT: Testified on SSHB 111.

JIM DOUGLAS, Extension Agent
Cooperative Extension Service

University of Alaska Fairbanks (UAF)
9579 Meadow Lane
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support SSHB 111.

KATE SCHOLLENBERG, President
Trail Blazers 4-H Club;
Peninsula Horseman's Association
Ninilchik Fair Association
25701 Sterling Highway
Anchor Point, Alaska 99556
POSITION STATEMENT: Testified in support of SSHB 111.

DARCY DAVIES, University of Alaska - Fairbanks
Fairbanks 4-H
1606 Roosevelt Street
Fairbanks, Alaska 99709
POSITION STATEMENT: Testified in support of SSHB 111.

ROBYN DAVIES, Co-leader
Tanana Whirlwinds 4-H Group
1606 Roosevelt Street
Fairbanks, Alaska 99709
POSITION STATEMENT: During discussion of SSHB 111, spoke on the topics of negligence and the exclusion of the word "spectator."

SANDY SHACKLETT, Publisher
Alaska Horse Journal
310 North Harriette Street
Wasilla, Alaska 99654
POSITION STATEMENT: Testified in support of SSHB 111.

MAIRIIS KILCHER
40904 Seaside Farm
Homer, Alaska 99603
POSITION STATEMENT: Testified in support of SSHB 111.

EVERETT BUYARSKI, Juneau 4-H Club
PO Box 33077
Juneau, Alaska 99803
POSITION STATEMENT: Testified in support of SSHB 111.

DEE THORNELL, Doctor of Veterinary Medicine (DVM)
4-H Group Leader
1 Mile South Peger Road
Fairbanks, Alaska 99701
POSITION STATEMENT: Testified in support of SSHB 111.

PETER FELLMAN, Staff
to Representative John Harris
Alaska State Legislature
Capitol Building, Room 513
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the sponsor of HB 82.

KATHRYN KURTZ, Attorney
Legislative Legal Counsel
Legal and Research Services
Legislative Affairs Agency
State Capitol
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182
POSITION STATEMENT: Testified as the drafter of HB 193 on all versions.

AVRUM GROSS, Chair
Primary Election Task Force
424 North Franklin Street
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the Task Force on all versions of HB 193, and responded to questions.

CHRISTIAN WARREN, Chairman
Election Committee
Libertarian Party
325 Eklutna Avenue, Number 3
Anchorage, Alaska 99504
POSITION STATEMENT: Testified on all versions of HB 193.

SARAH FELIX, Assistant Attorney General
Governmental Affairs Section
Civil Division (Juneau)
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: On behalf of the department, asked questions regarding Version J of HB 193, made comments, and responded to questions.

GAIL FENUMIAI, Election Program Specialist
Division of Elections
Office of the Lieutenant Governor
PO Box 110017

Juneau, Alaska 99811-0017
POSITION STATEMENT: During discussion on proposed Amendment 2 to HB 193, Version J, provided information on the Accu-Vote machine.

ACTION NARRATIVE

TAPE 01-55, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives Rokeberg, Coghill, Meyer, and Kookesh were present at the call to order. Representative James arrived as the meeting was in progress.

HB 111 - CIVIL LIABILITY AND LIVESTOCK

Number 0135

CHAIR ROKEBERG announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 111, "An Act relating to civil liability for injuries or death resulting from livestock activities."

Number 0143

REPRESENTATIVE COGHILL, as the sponsor, explained that a 4-H group from Fairbanks had brought the idea of SSHB 111 to him. He noted that the sponsor substitute no longer included hunting in the list of livestock activities on page 4 because that topic would engender a completely different debate. He also explained that SSHB 111 is primarily intended to help youngsters who are participating in activities at fairs, petting zoos, and other places where their livestock is being shown. For the occasional time when an animal might injure someone, either by accident or because that person was doing something foolish, SSHB 111 is intended to limit the liability of those individuals who make "reasonable efforts" to manage their livestock safely. He added that individuals who handle their livestock improperly are still liable for damage or injury.

REPRESENTATIVE COGHILL called attention to the definitions in SSHB 111 of "inherent risks", "livestock professional", and "participant", as well as to the list of livestock activities encompassed in SSHB 111. He noted that "the findings and intent section says simply that we want to encourage these types of

activities, and we want to make sure that they are done safely, and [that] with reasonable effort, ... [those showing the livestock] would be protected from ... liability.

CHAIR ROKEBERG expressed concern about the standards being applied. He questioned whether the basic "wrongful act or omissions" standard in current law was being applied, and he wanted to know what level of negligence would provide for a cause of action for personal injury or death. He called attention to the exclusion for gross, reckless, and intentional misconduct (on page 2, line 26), and said [that language] seemed to imply that conduct less than gross misconduct would be allowable.

REPRESENTATIVE COGHILL said he thought that [paragraph] (3) on page 3 spoke to the description of what reasonable efforts would [need to] be maintained in order to safely manage livestock involved in a livestock activity.

CHAIR ROKEBERG countered that [paragraph (3)] does not speak to the standards of liability or negligence, and those standards need to be clarified.

REPRESENTATIVE COGHILL noted that Mike Ford was present and could speak to those issues.

Number 0560

CHAIR ROKEBERG, on another point, asked if a spectator at a rodeo would be excluded from bringing a cause of action.

REPRESENTATIVE JAMES, in response to Chair Rokeberg's comments about standards, noted that [paragraphs] (1), (2), and (3) of [subsection] (b), Section 3, apply to the statement that [Section 3] "does not affect a civil action for damages resulting from ...." She said she thought that [paragraph] (1) contains "boilerplate" language, and that [paragraphs] (2) and (3) contain more specific language. She surmised that [Section 3] was more extensive than what Chair Rokeberg was recognizing.

CHAIR ROKEBERG said he thought that it was the House Judiciary Standing Committee's duty to make sure that those standards are clear.

REPRESENTATIVE JAMES alluded to previous committee discussion about inherent risk in relation to skiing and said she simply wanted to provide any information that might be useful.

CHAIR ROKEBERG said this legislation has appeared in various forms for a number of years and he has always supported the concept. He added that he just wanted to make sure it was properly put together. Chair Rokeberg asked Mr. Ford to talk about the standards that are implicit in SSHB 111; whether or not a spectator could have a cause of action; and if so, under what circumstances.

Number 0708

MIKE FORD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said the question of standards is raised in [subsection] (b), [paragraph] (1), on page 2. The effect of this provision is to exclude the immunity given here from basically everything but negligence. He went on to say:

> We're only talking negligence here. We're not talking about an act that's beyond that standard of negligence, that gets into some gross, reckless, or intentional misconduct. So, we've basically carved out those things and said we're not going to deal with those; we're only going to deal with those acts for which you might be liable, and the only acts left are negligent acts.

MR. FORD then addressed the issue of the spectator, and said that there was no provision in SSHB 111 that provides the spectator with special treatment. A spectator who is injured has to meet the same criteria; if it's an inherent risk and not "gross, reckless, or intentional" the spectator would not recover [damages]. For example, there would be no recovery if the spectator was watching and there was some kind of negligence on the part of the horse handler.

CHAIR ROKEBERG observed that "misconduct" and "negligence" are not synonymous, and asked Mr. Ford why he used the word "misconduct" rather than "negligence" in drafting SSHB 111.

MR. FORD explained that "misconduct" is the "term of art" - "intentional misconduct", for example.

CHAIR ROKEBERG said "gross misconduct" is used in only one other statute in Alaska, which he himself authored. He said that the "patient's bill of rights" pertained to gross misconduct as it relates to a duty codified in law or regulation, and would then

be a matter of misconduct, not negligence, because [the terms] are not synonymous.

MR. FORD said he was not sure he understood the point Chair Rokeberg wished to make. He offered his belief that the purpose of this section is similar to the skiing liability Act, which says that if it's an inherent risk, the person doesn't recover [damages].

Number 0944

CHAIR ROKEBERG referred to page 2, line 26, where the word "misconduct" appears, and asked if it would be possible to substitute the word "negligence".

MR. FORD said he did not think so, noting that the terms are not synonymous. He clarified that if there was gross negligence, there would be a cause of action. The exceptions to the rule are gross negligence, or reckless, or intentional misconduct. He said "reckless or intentional misconduct" is a term of art used to describe reckless or intentional bad acts.

CHAIR ROKEBERG said he thought SSHB 111 needed to be clearer. He said he thought SSHB 111 was implying that negligence per se would not be enough to bring a cause of action.

MR. FORD said negligence per se is typically something that the legislature creates, where there is liability for some typical act. In this case, there is no negligence per se because it is not illegal to do these things. Without SSHB 111, someone who was injured would have to go through the normal process, and would have to show that there was negligence or some worse act. He added that SSHB 111 is an effort to "raise the bar" so that simple negligence, as a result of an inherent risk, does not provide for recovery.

CHAIR ROKEBERG related his understanding that Mr. Ford was saying that "we" have a gross negligence standard allowing for a cause of action.

MR. FORD replied yes.

CHAIR ROKEBERG remarked that he would have to be convinced of that.

REPRESENTATIVE JAMES posed a situation in which an individual was walking beside or riding an animal that was sometimes

spirited and sometimes not. She inquired as to what would happen if the animal bolted and someone nearby was hurt. If what occurred with the animal was outside the limits of control of the individual, then the individual wouldn't be negligent. However, Representative James said that if she were the person who had been kicked or hurt in some way, she would take the position that the individual would be negligent because the individual couldn't manage their animal. She said that would have to go to court and would be "a crap shoot" in regard to the outcome. However, she added, [SSHB 111] says that if the individual managing that animal was not negligent in any way, and if it wasn't gross negligence, it would be exempt because it was an inherent risk of that animal. Therefore, such a case [under SSHB 111] would only proceed to court if gross negligence could be proven, because that has a different level of findings.

CHAIR ROKEBERG reiterated his concern that in his opinion, gross negligence is not included in the current drafting of the bill; only gross misconduct is included. He related his belief that there is a distinction between gross negligence and gross misconduct. He specified that he is concerned with the level at which the bar for bringing a cause of action will be established.

Number 1261

JACKIE HELLER testified via teleconference, and informed the committee that she is a horse owner who has participated in horse activities all her life. Ms. Heller said that she supports SSHB 111 because horses are unpredictable and are sometimes beyond the control of the person managing the animal. She said she [agreed] with [the concept] of limiting the civil liability for people involved in [livestock] activities.

Number 1318

ABIGAIL CROYLE testified via teleconference, and informed the committee that she is a horse owner. She said that many who would like to use horses or livestock have difficulty in moving their animals or allowing others to use [their animals] because without SSHB 111, the animal owner can be sued if someone hurts the animal or the animal hurts someone. Therefore, with the passage of SSHB 111, [livestock owners] would be able to let people use their horses without the fear of a lawsuit.

Number 1380

JIM DOUGLAS, Extension Agent, Cooperative Extension Service, University of Alaska Fairbanks (UAF), testified via teleconference, and informed the committee that he is the head of the state 4-H program. This legislation is not just a civics lesson for those in 4-H. Members of 4-H depend on their ability to show livestock. These animals are a rarity for many Alaskans, who, during a show, often want to be very close to the animals. Therefore, it is difficult to convince people to involve their animals in 4-H activities when animal owners discover that they could wind up in the middle of a lawsuit. This legislation will help protect livestock owners from people who place themselves in a dangerous situation, and that is why "we" are in favor of SSHB 111. Passage of SSHB 111 will help build the 4-H program as well as encourage those who like to sponsor and donate animals so that 4-H members can obtain experience.

Number 1504

KATE SCHOLLENBERG, President, Trail Blazers 4-H Club, testified via teleconference and specified that she is speaking on behalf of her club, the Peninsula Horseman's Association, and the Ninilchik Fair Association, all of which support [SSHB 111] because it will eliminate most, if not all, of the fear of a lawsuit when people lend their animals to organizations such as 4-H. Therefore, people will have less fear of getting involved, and both the children and the general public will benefit from the education gained [through livestock activities]. She urged legislators to keep an open mind because the youth that SSHB 111 will affect will have on a large impact on Alaska's future.

Number 1554

DARCY DAVIES, University of Alaska Fairbanks (UAF); Fairbanks 4-H, testified via teleconference. She informed the committee that she is in the 10th grade at West Valley and that she had met a few of the legislators when she visited Juneau with other 4-H members last week. Ms. Davies thanked everyone for meeting with them and learning about the current UAF for Youth project. Because the motto of 4-H is "Learn by doing," it was thought that promoting SSHB 111 would be a good way to learn about Alaska's government, particularly since SSHB 111 directly impacts 4-H members and the 4-H program.

MS. DAVIES informed the committee that currently 44 other states have a limited liability statute for at least horse activities. The Oklahoma statute was used to help draft SSHB 111 because the

scope of the Oklahoma statute was not limited to horses only. As part of the project, [4-H members] did presentations in the community regarding the [4-H] project and SSHB 111. At these meetings, no one expressed any concerns with the passage of SSHB 111. Horse owners feel that SSHB 111 would help make people responsible for their own actions. With the passage of SSHB 111, the hope is that the inherent risk of livestock activities will be recognized as the major cause of any accident. In conclusion, Ms. Davies mentioned that [the 4-H] project has been a great learning experience.

Number 1662

ROBYN DAVIES, Co-leader, Tanana Whirlwinds 4-H Group, testified via teleconference, and mentioned that she is a member of many of the horse groups around Fairbanks. Ms. Davies explained that during the process [of creating SSHB 111], Jamo Parrish (ph), University of Alaska - Fairbanks, spoke to the children [in the 4-H group] regarding the different levels of negligence. Mr. Parrish explained that Alaska [statute] already covers the first two levels, which means that [no liability is incurred in practical terms] if an accident happens. However, current statute doesn't cover negligence, gross negligence, reckless negligence, or intentional misconduct. Therefore, it was decided that negligence must be addressed in order for SSHB 111 to mean anything. She pointed out that some negligence is an inherent risk with livestock activity. She posed a hypothetical situation in which a kid is walking a steer as he talks with his friends, and therefore the kid is not paying attention to his surroundings, and someone quickly approaches the steer's rear and is then kicked. She acknowledged that some would consider that [the kid] was negligent, yet, in reality, there would be no horse activities without negligence.

MS. ROBYN DAVIES pointed out that spectators also were excluded [from bringing a cause of action for negligence] because spectators often place themselves in a position to get hurt. If the word "spectator" were used, she questioned how it would be defined. Therefore, it was decided that if an individual attends a rodeo, for example, that individual assumes some responsibility for accidents that may occur.

Number 1781

SANDY SHACKLETT, Publisher, Alaska Horse Journal, testified via teleconference. She described the Alaska Horse Journal as a statewide monthly magazine that is distributed to approximately

5,000 people. She stated that she wanted to share some facts and figures regarding the horse population in Alaska and some of the horse activities that take place. She said that according to the United States Equestrian Marketing Association, Alaska's estimated total horse population in 1996 was 16,935 horses. There was an average of 98 horses in 11 specific shows during the 1999 show season, in the Matanuska-Susitna area alone. And there are shows all over the state. According to a poll done by the Horse Industry Alliance, one out of three people would like to ride a horse. She went on to say, "A bill such as this would help the horse industry as a whole to share their animals, their enthusiasm, and these activities with others."

CHAIR ROKEBERG said he would appreciate it if Ms. Shacklett could forward those statistics to the House Judiciary Standing Committee.

Number 1843

MAIRIIS KILCHER testified via teleconference and said that she supports SSHB 111 very strongly and that "it's time to have a bill like this in Alaska." She explained that she owns a farm in Homer and enjoys sharing it with visitors. She noted that SSHB 111 would make it "less scary" to own animals, share animals, and have people ride her animals. She mentioned that she also owns cattle and other farm animals.

Number 1891

EVERETT BUYARSKI, Juneau 4-H Club, informed the committee that he is a student at Juneau Douglas High School and is representing specifically the large animal and horse club. He reiterated that the 4-H club initially brought this bill forward to Representative Coghill. The Juneau 4-H Club believes that SSHB 111 will help them a lot, especially in Juneau, where there are relatively few animals. He said that many owners worry about sharing their animals with the 4-H Club due to liability problems. The passage of SSHB 111 would reduce that worry and allow owners to more comfortably share their animals [with the 4-H club]. It would also provide more opportunities for people to learn about these animals, which many people want to do. He referred to Mr. Douglas's testimony and indicated that SSHB 111 will assist animal owners as they deal with people who don't understand that these animals are livestock, not pets, and that the animals are not fully tame or domesticated. Passage of SSHB 111 will limit the liability of livestock owners from injuries

or damages caused by other people's actions, however good their intentions might be.

Number 1981

DEE THORNELL, Doctor of Veterinary Medicine (DVM), 4-H Group Leader, testified via teleconference. She explained that she had been sued by somebody because of an incident that took place at the Tanana Valley Fair in August of 1997. She described the situation wherein she had been leading her horse into the arena while it was being ridden by a member of her 4-H group, and a member of the audience startled her horse - causing it to bolt - by simultaneously shouting and slapping it on the hind quarters in an attempt to get the rider's attention. The audience member, who was wearing open-toed sandals at the time, then made the claim that the horse had injured her foot, and proceeded to bring suit against Ms. Thornell, the fairgrounds, and the 16-year-old rider. Ms. Thornell reported that the case against her had been dismissed but only after she had expended approximately 200 hours of her own time and $15,000 of university funding, which was provided because she was a 4-H group leader.

MS. THORNELL, on another point, explained that currently, veterinarians cannot let owners of large animals hold their own animals while veterinary services are being performed because of liability issues. The only recourse veterinarians have is to bring along one of their own employees when treating large animals. In conclusion, she noted that 44 other states already had legislation similar to SSHB 111 in place, and she encouraged the committee to pass SSHB 111 in order to limit liability for livestock activities in Alaska.

CHAIR ROKEBERG remarked that it would be helpful if her testimony could be submitted in writing as a formal part of the bill package. He then closed the public hearing on SSHB 111.

REPRESENTATIVE COGHILL suggested inserting "negligence" after "gross" on page 2, line 26.

CHAIR ROKEBERG noted that that insertion would cover his concerns regarding a lack of clear negligence standards. He added that from his research of the Alaska Statutes, neither was there a "fully articulated misconduct standard." He restated that he had only found one reference to the term "gross misconduct" in statute.

Number 2271

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, as follows:

Page 2, line 26:
Following "gross"
Insert: "negligence"

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE COGHILL noted that even without [Amendment 1], he thought that "we would have been safe because of number three, as I said, that they would have to show a failure to keep reasonable efforts, and to manage the activity safely." He said he still thought that was a very strong standard.

CHAIR ROKEBERG remarked that [Amendment 1] enables an average person reading the law to understand it. He said he objects to a lot of Alaska's statutes because they are not clear to the average person.

Number 2317

REPRESENTATIVE JAMES moved to report SSHB 111, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSSHB 111(JUD) was reported from the House Judiciary Standing Committee.

HB 82 - FARM OPERATIONS:DISCLOSURE/NUISANCES

Number 2330

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 82, "An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation."

Number 2339

PETER FELLMAN, Staff to Representative John Harris, Alaska State Legislature, testified on behalf of the sponsor of HB 82, Representative Harris. He explained that HB 82 clarifies existing statute; offers protection against nuisance lawsuits in Alaska; allows for disclosure, which has stood up to the court's test in New York; and requires that a soil conservation plan,

which shows that farms are operated in both a productive and environmentally safe manner, be on file with the local soil and water conservation district (SWCD). He added that by coupling the disclosure provisions with the soil conservation plan, HB 82 will offer protection from nuisance lawsuits. He noted that the Alaska Association of Realtors (AAR) has endorsed [HB 82], although he did not have anything in writing to that effect. Mr. Fellman added that in working with the ARR, [the sponsor had changed] HB 82 so that disclosure, which falls under "Megan's Law" relating to convicted sexual offenders, will be required by the purchaser. [Mr. Fellman was referring to a proposed committee substitute (CS) for HB 82, Version P, 22-LS0348\P, Kurtz, 3/23/01, which had not yet been offered as a work draft.]

REPRESENTATIVE JAMES said that the realtors to whom she had spoken to expressed satisfaction with the language currently in HB 82.

CHAIR ROKEBERG said that inasmuch as he had drafted AS 34.70.050, he was very interested in the language that was to be inserted [by Version P of HB 82]. He added that he had concerns about the litany of items that had to be on a disclosure statement, including odors, fumes, dust, smoke, burning, vibrations, insects, rodents, operations of machinery including aircraft, and other inconveniences. He said he thought that if those items were listed in statute, then they would also have to be recited on the [disclosure] statement.

MR. FELLMAN clarified that under Version P (page 3, line 24), it is the person who is purchasing the property - the transferee - who is responsible for determining whether an agricultural facility/operation is in the vicinity. The disclosure statement must simply notify the purchaser of this responsibility and outline where such information is available.

TAPE 01-55, SIDE B
Number 2473

CHAIR ROKEBERG acknowledged that he now understood that the disclosure [provision] applied to the purchaser, and also why [that provision] fell under Megan's Law.

Number 2450

REPRESENTATIVE JAMES made a motion to adopt the proposed committee substitute (CS) for HB 82, version 22-LS0348\P, Kurtz,

3/23/01, as a work draft. There being no objection, Version P was before the committee.

MR. FELLMAN again clarified that Version P places the liability on the purchaser to find out what the circumstances are as they relate to any agricultural facilities/operations being in the vicinity of property that he/she intends to purchase.

CHAIR ROKEBERG again noted that he understood [the disclosure provision] to mean that if any of the aforementioned items relating to an agricultural facility/operation existed in the vicinity, it was up to the buyer to find them. Chair Rokeberg referred to the term "one mile" in the title. He asked if that was to be the definition of "vicinity", or if it was a mistake.

MR. FELLMAN explained that in a prior draft of the proposed CS, "one mile" was used as a part of the description pertaining to disclosure.

CHAIR ROKEBERG asked if the title needed to be amended, or if the standard of the vicinity of the property had been changed from one mile.

REPRESENTATIVE JAMES commented that she did not think [the standard had been changed].

CHAIR ROKEBERG asked if there was a definition [included in Version P] that he was unaware of. He asked why there had to be a one-mile standard if the burden was on the buyer. The buyer could object; whether [the agricultural facility's/operation's conditions] were within 100 yards or 5 miles, it would still be [his or her] own problem. He clarified that he was referring to Section 5 regarding the applicability of the uncodified law. He added that while [the use of the term] "one mile" did establish a standard, he did not think it was necessary.

MR. FELLMAN acknowledged that the standard of one mile was to be used when the burden of disclosure was on the seller.

CHAIR ROKEBERG said he would prefer to take out Section 5, and modify the title.

Number 2299

REPRESENTATIVE JAMES asked if there were any other references in Version P regarding having the soil conservation plan approved by the SWCD.

MR. FELLMAN responded yes, and noted that another reference was located on page 2.

CHAIR ROKEBERG remarked that the title did not seem to be consistent. He asked if [the term] "agricultural facility" was adequate to describe Section 1.

MR. FELLMAN said [Version P] contained definitions of agricultural facilities and agricultural operations.

REPRESENTATIVE JAMES requested clarification regarding whether the one-mile [standard] applied to [agricultural facilities/operations] located less than one mile away, more than one mile away, or just someplace around the [one-mile range]. She offered that it was possible that someone might be unhappy with [agricultural facilities/operations] that were located more than one mile away.

REPRESENTATIVE MEYER commented that there had to be some limits. He noted that the term "one mile" was also used on page 4, [line 2], and, therefore, if it was used in [the body of] the bill, then it also needed to be in the title.

REPRESENTATIVE JAMES agreed that there should be some limit, depending on what that limit was. She clarified that the language on page 4 was simply applicability language relating to uncodified law, and therefore [the term] did not need to be included in the title because it was not actually in the bill.

CHAIR ROKEBERG suggested leaving [the term of "one mile"] in the applicability [section], and taking it out of the title.

MR. FELLMAN reminded the committee that the parameter of one mile was set when the burden of disclosure was on the seller; now that the burden of disclosure is on the buyer, that one-mile parameter is no longer applicable. He added that regardless of whether the agricultural facility/operation is 15 feet or 2 miles away, it is the buyer's choice whether to continue with the real estate transaction.

REPRESENTATIVE JAMES commented that it would be better to remove the one-mile [parameter] because the responsibility of identifying any existing [agricultural facility/operation] is on the purchaser.

Number 2137

CHAIR ROKEBERG made a motion to adopt Amendment 1, as follows:

Page 1, line 2
Delete: "within one mile"
Insert: "in the vicinity"

REPRESENTATIVE JAMES said she thought that Amendment 1 should also apply to [Section 5, page 4, line 2].

Number 2115

CHAIR ROKEBERG expressed his willingness to include that suggestion, and restated his motion to adopt Amendment 1, as follows:

Page 1, line 2
Delete: "within one mile"
Insert: "in the vicinity"

Page 4, line 2
Delete: "within one mile"
Insert: "in the vicinity"

There being no objection, Amendment 1 was adopted.

Number 2088

REPRESENTATIVE JAMES moved to report CSHB 82, version 22-LS0348\P, Kurtz, 3/23/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 82(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 2:07 p.m. to 2:13 p.m.

HB 193 - MODIFIED BLANKET PRIMARY ELECTION

Number 2078

CHAIR ROKEBERG announced that the next order of business before the committee would be HOUSE BILL NO. 193, "An Act relating to the primary election; and providing for an effective date." [Before the committee was CSHB 193(STA).]

CHAIR ROKEBERG said he had prepared a proposed committee substitute (CS), version 22-GH1089\J, Kurtz, 4/4/01 (Version J),

which has substantive differences, and that Representative Kookesh had prepared two amendments.

REPRESENTATIVE COGHILL spoke in favor of CSHB 193(STA). [Although HB 193 was originally sponsored by the House Rules Standing Committee by request of the Governor, Representative Coghill had done extensive work in creating CSHB 193(STA), and had therefore provided additional background material for members packets.] He called the committee's attention to page 2, Section 3, [subsections] (a) and (b). He explained that under CSHB 193(STA), primary elections will be held through the parties. The parties will each have a ballot, and if they choose to allow anybody in addition to party members to vote on their ballot, then they can, but they must submit their bylaws in a timely fashion. He described CSHB 193(STA) as very similar to what the governor had produced [with the original HB 193] except for the following:

> They presumed that they would have to exclude people, and then they would have an open ballot, which I maintain is going in the wrong direction, and so I said ... I think the parties should be able to choose their candidate and ... [each party's primary would be presumed closed to nonmembers] until such time as they chose to open it to allow other people; and I think that's being more consistent with what the [U.S.] Supreme Court [ruled].

REPRESENTATIVE COGHILL said he had a few quotations he would like to put on the record. He noted that he believed the Supreme Court was trying to give the parties the primary responsibility for selecting their candidates and also to give them the choice of who is able to vote within their primary elections. He said he thought that CSHB 193(STA) would align best with that thinking.

Number 1936

REPRESENTATIVE COGHILL paraphrased from California Democratic Party v. Jones [Syllabus]:

> In no area is the political association's right to exclude more important than in its candidate-selection process. That process often determines the party's positions on significant public policy issues, and it is the nominee who is the party's ambassador charged with winning the general electorate over to its views.

REPRESENTATIVE COGHILL also paraphrased from California Democratic Party v. Jones [Opinion of the Court]:

> There is simply no substitute for a party's selecting its own candidates.

REPRESENTATIVE COGHILL explained that with CSHB 193(STA), he was trying to say that parties are assumed to have that right of association. If they choose to invite others in, then they can do so by way of petition. Whether or not to include others would be a decision within the party. He said:

> I think it would be wrong for us as a state to say you must have an open ballot, and then exclude people. I think it would be going directly against what the Supreme Court said on the right to that free association, [because] we would be forcing them to open, rather than close, their primary. But if we allowed them the legal opportunity to open their primary election, then we're well within our limits, and the party then makes that decision. And I think we should let it rest at the party [level].

REPRESENTATIVE COGHILL noted that CSHB 193(STA) included the September 1 deadline recommended by the [Primary Election Task Force ("Task Force")]. He summarized the main points of CSHB 193(STA) as: normally closed [party primaries], a ballot for each party, and inclusion of those not registered with that party. He said he thought that CSHB 193(STA) was good policy and in keeping with what the U.S. Supreme Court said. He quoted from California Democratic Party v. Jones [Opinion of the Court]:

> ... the Court has recognized that the First Amendment protects "the freedom to join together in furtherance of common political beliefs," [Tashjian, supra, at 214-215], which "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only" [La Follette, 450 U.S., at 122].

Number 1805

REPRESENTATIVE COGHILL said he thought it would be contrary to that [statement from the court opinion] for the state to force an open [primary] ballot upon [the political parties]. He also

paraphrased from California Democratic Party v. Jones [Opinion of the Court]:

> ... a corollary of the right to association is the right not to associate.

Thus, if parties are given the right to include people, it follows that parties also have the right to stay closed. He again paraphrased from California Democratic Party v. Jones [Opinion of the Court]:

> There is simply no substitute for a party's selecting its own candidates.

REPRESENTATIVE COGHILL said that the whole idea of a primary election is to let parties put forward their own candidates. He acknowledged that in Alaska, many people have chosen not to affiliate with a party, but he said he thought that was partly because the state allows [undeclared and nonpartisan voters] to participate in determining a party's nominee. "We've got the cart before the horse here in Alaska," he said. And while he acknowledged that if parties stay closed, members would become "purists," he said he believed that at that point, the parties would be enlivened and thus bring forth a better mix [of candidates] for Alaska.

Number 1737

REPRESENTATIVE COGHILL recommended reading the U.S. Supreme Court ruling that struck down California's Proposition 198, which changed California's partisan primary from a closed primary to a blanket primary. The CSHB 193(STA) version is more consistent with [the U.S. Supreme Court] decision than is the governor's original HB 193, he said.

CHAIR ROKEBERG clarified that Version J actually agrees in very large part with Representative Coghill in terms of approach, with one major exception. That exception is found in Section 2; Version J would have an "opt out" provision for nonpartisan and undeclared voters, whereas CSHB 193(STA) has an "opt in" provision. He said at issue was the default mechanism. He said he believes that all political parties should, via statute, be able to invite the undeclared and independent voters of the state to participate in their primary without taking an active step. By contrast, CSHB 193(STA) requires that a party take an active step to invite people in. "I think we should be

inclusive to start with and not exclusive, and that's the distinction," he concluded.

REPRESENTATIVE JAMES agreed with Representative Coghill. She summarized his position as: the U.S. Supreme Court decision says parties have a right to choose who can vote for them, so the parties should have that choice and make that choice. By contrast, she said, Chair Rokeberg is saying that the legislature is going to make the choice that every voter is included in the primary, and then the parties have to take action if they do not want everyone included. She said she thought the latter course was automatically making a choice for the parties.

Number 1574

CHAIR ROKEBERG disagreed with that analysis. "I think it still gives the party the right to make the choice," he said. "It's just where we start from, and what is the default ...." He suggested that the parties in Alaska should be forced to take overt action to exclude people, rather than to take overt action to include them.

REPRESENTATIVE JAMES responded, "I believe that the Supreme Court decision said that we as ... parties have the right to choose our own candidates. If we want to let other people in, we have a right to do that. You're taking the other approach that ... a state ...[has] a right to include people and so therefore ... [the parties] have to do something to exclude them." She offered that her interpretation of the U.S. Supreme Court's decision was that [parties] had to so something if [parties] wanted to include more than [party members].

REPRESENTATIVE COGHILL, to clarify a point, quoted from California Democratic Party v. Jones, Kennedy, J., concurring:

> A political party might be better served by allowing blanket primaries as a means of nominating candidates with a broader appeal. Under the First Amendment's guarantee of speech through free association, however, this is an issue for the party to resolve, not for the State.

Number 1472

KATHRYN KURTZ, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said

she thinks both versions solve the big problem that is identified in the Jones decision, which is that parties cannot be forced to associate with people who don't share the parties' political beliefs. These two drafts take different approaches to getting parties out of that situation of forced association, but she does not think the Supreme Court's decision prescribes a particular solution to the problem. "I think you have options," she said. "I think both of these address the constitutional problem that we currently have in the statute."

REPRESENTATIVE COGHILL said the difference between prescription and direction is obvious.

REPRESENTATIVE KOOKESH asked Ms. Kurtz to clarify what she meant by the two different versions.

MS. KURTZ said the ones she was talking about were CSHB 193(STA) and [Version J]. The governor's [original HB 193] takes yet a different approach. She said she thought that all three [versions] provide ways in which a party can choose not to associate with people who don't share its political beliefs, and all three of them get at the major problem.

REPRESENTATIVE KOOKESH said he had brought it up because Ms. Kurtz had not mentioned the governor's [original HB 193] and he wanted to make sure that that was included in the group of alternatives she thought were acceptable.

Number 1313

AVRUM GROSS, Chair, Primary Election Task Force ("Task Force"), explained that the Task Force was asked by the Lieutenant Governor to give the legislature something to work on. The Task Force was made up of all the living lieutenant governors and former attorneys general. The intent was to reduce some of the debate. He also explained that the Task Force had tried to adhere as closely as possible to present law, which provides for a blanket primary. In a blanket primary, all of the candidates are listed on the ballot and anyone can vote for anyone regardless of party affiliation. The U.S. Supreme Court in the Jones case decided that a state that imposed that kind of a ballot on parties was interfering with political parties' rights of association. The court said that if a political party wished to limit the people who could participate in its primary, it had the right to do so.

MR. GROSS said the first reason [the Task Force] started with the blanket primary was because that was in Alaska law, and the Task Force was trying to vary it as little as possible. The second reason is a public policy reason. It's one thing for parties to close the ballot; it's another thing for the state, which has set up a primary election system as the means of producing candidates for a general election, to close the system. If parties decide that they want to exclude people from voting in their primaries, they have every right to do that. But, he said, it seemed to him that it would require some sort of an affirmative act by the party, rather than the state's saying nobody but party members can participate in a primary election.

Number 1135

MR. GROSS said that is the fundamental difference between CSHB 193(STA) and the recommendations of the Task Force. Both get to the same point, but [the original HB 193] ensures that if a party takes no action, the maximum number of people may participate, thereby encouraging maximum voter participation in elections. Mr. Gross observed that there doesn't seem to be much discussion over the deadlines for parties to notify the lieutenant governor of their choices, or for individuals to indicate their party affiliation.

REPRESENTATIVE JAMES said she would prefer a system in which the political parties had to say, "I want to include," or "I want to exclude." Beyond that, she would rather not have primaries at all and just leave it to the parties to figure out how they are going to choose their candidates; however, she didn't think that option was available. She asked Mr. Gross to comment on her position.

MR. GROSS noted that in the only known instance, a major party (the Republican Party) last year, by allowing only party members and independents to participate in its primary, had not shown any reluctance to exclude people. The Task Force had heard testimony from all of the political parties, and almost every one of them made it clear that they would choose to exclude members of other parties, particularly if those parties excluded them. Small parties were inclined to let only party members participate because they were afraid of being completely overwhelmed. However, he said, no one who testified before the Task Force raised the argument that Representative Coghill is making - which is not to say that it is not a good argument, simply that it was not raised - that having to rule out some

people would put the parties under some pressure. Mr. Gross said he had seen no evidence to indicate that anyone would be uncomfortable or would find it difficult to "opt out." That being the case, the Task Force decided to leave the primaries open and let the parties limit participation as they saw fit.

Number 0839

REPRESENTATIVE MEYER noted that voter turnout in last summer's primary election was "pathetic," and said people had told him, "It's because of your [Republican] party, Kevin, that we didn't participate." He asked Mr. Gross which, version [CSHB 193(STA) or Version J] would maximize voter participation.

MR. GROSS replied:

> Let me answer that by suggesting there are three levels. The first [level] was the original [HB 193], ... which started off with everybody having a blanket primary ballot, and the parties reducing it as they saw fit. The second level is [Version J], in which ... party candidates run on a ballot for which members of that party and independents may vote ... (unless parties open it further ....) The third level down is ... CSHB 193(STA), which says that the only people who can vote in primary elections for a party's candidates are ... registered members [of that party], and then the parties can open it up beyond that ... [to independents, or beyond, to members of other parties].... All [versions] satisfy the Jones case because they allow the parties to make decisions .... The question [is] of whether parties have to take affirmative actions to open, or close.

REPRESENTATIVE MEYER asked if [the procedure outlined in CSHB 193(STA)] was the same as what occurred last summer.

MR. GROSS said no. Last summer, Independents and Republicans were allowed to vote in the Republican primary. The CSHB 193(STA) version says that only party members would get that party's ballot automatically, and then the party would have to affirmatively act to open it up to Independents.

CHAIR ROKEBERG pointed out that both [CSHB 193(STA) and Version J] would differ from last year's primary in that there would not be an open or "other" ballot; there would just be a party ballot.

MR. GROSS said the Task Force also had been concerned about last year's voter participation's being so dismal, "and I think that's another thing that motivated us to start with a blanket primary."

REPRESENTATIVE COGHILL noted that there were several circumstances around the last primary that could have contributed to the dismal turnout. He mentioned the emergency regulations, a great deal of press coverage, a court case, and many uncontested races, saying there were too many dynamics involved to interpret the cause.

Number 0588

REPRESENTATIVE JAMES said although she believes there should not be primary elections for all races, there is an entirely different dynamic operating in the gubernatorial race. "You have a statewide vote and a limited amount of time for those candidates to get around to the entire state to be chosen, and so if you were to have any other kind of a system such as a convention or a caucus (which is the one I would prefer), you'd never be able to get a good feel, it would be easy to stack it," she said. She asked if it would be legal to have primaries just for gubernatorial candidates.

MR. GROSS said he guessed [the state] probably could do that.

REPRESENTATIVE JAMES continued, "So, we'd only be having a primary every four years."

MR. GROSS said the reason the Task Force tried to stick as close as it could to existing law was because everybody has a different view about how to nominate candidates. In recognition of that and the fact that there is an election coming up next year, the Task Force was trying to narrow the choices. But it would be possible to do an infinite variety of things as long as they were reasonable and fair to all candidates.

REPRESENTATIVE JAMES said her experience indicates that intensive efforts within a precinct will get more people out to vote, and that is what caucuses would do.

CHAIR ROKEBERG asked Mr. Gross to take off his "Task Force hat" and give his personal opinion as a long-time observer of the Alaskan political milieu.

MR. GROSS said:

> I was perfectly content with the blanket primary. I realize that there are people who feel quite strongly that the parties were not nominating people who were pure enough for them, ... but I always could tell the difference. It seemed to me that the Republicans nominated people [whom] I could pretty well identify as Republicans, and the Democrats always seemed to nominate the people [whom] I could reasonably identify as Democrats, and whereas I may have disagreed with the voters' choice from time to time, I thought the system worked reasonably well in terms of getting different views in front of the voters. So [I think] a lot of the fears that people have ... about this are exaggerated. So to the extent that the Supreme Court ruled that parties could have a greater control over the election process than they had had in the past - because this is ... a state election process we're talking about ... - I believe we should recognize [the U.S. Supreme Court ruling], ... but at the same time, I would not vary the existing system any more than we had to. That's my own personal view.

Number 0264

CHRISTIAN WARREN, Chairman, Election Committee, Libertarian Party, testified by teleconference. He agreed with Representative Coghill that the open ballot is going in the wrong direction. He also agreed that the salient point is that the parties have the right to exclude. He asked if the [Alaska State] Constitution mandates a primary, and asked the committee to consider that Alaska was recognized as a state through the agency of a constitutional convention. Mr. Warren said the mainline parties select their presidential aspirants through a straw poll, going from caucus to state convention, and selecting candidates via convention is a faithful application of the principles of republican government and follows Mr. Gross's advice about adhering as closely as possible to present law. Mr. Warren also agreed with Representative James about eliminating primaries.

MR. WARREN noted that Washington State is in a similar dilemma is attempting to restructure its primaries, and he also noted a recent Associated Press story reporting that Washington's House Select Committee on Elections had written a bill providing for state conventions for major parties. At those conventions,

endorsements would be made for partisan offices, and the endorsed candidates' names placed on the ballot automatically, with no need for declaration. He spoke in favor of choosing candidates through conventions, with participation limited to party members only, saying he thinks that upholds the principles of the Jones decision and is congruent with republican government.

TAPE 01-56, SIDE A
Number 0001

CHAIR ROKEBERG asked Mr. Warren if he understood the proposed CS, Version J.

MR. WARREN explained that he was working from the premise that the U.S. Supreme Court decision was not a prescriptive [solution] but a proscriptive [solution], with the intention being to limit the interference of the state. He said that he thought the place to start was with the principle that parties have the right to exclude, and then take it from there.

CHAIR ROKEBERG responded that there was no question that either of the alternatives being discussed provides that right.

MR. WARREN countered that the question was one of the starting point. One alternative assumes that the parties are active participants in their own affairs, and that they can take it upon themselves to find out what suits them best. The other alternative assumes that [the parties] are passive agents that need to be directed by a "higher source," because [the parties] are in flux and need intermittent, if not constant, intervention by the state to provide guidance in their decisions. He added that [the Libertarian Party] thought the latter was a paternalistic way of viewing the situation.

CHAIR ROKEBERG asked Mr. Warren if he was an official of the Libertarian Party.

MR. WARREN explained that he was chair of the election committee, and that [any solution] that is worked out is of great interest to [the Libertarian Party]. He also explained that he was speaking as a representative of the [the Libertarian] Party; the executive committee had instructed him to attempt to convince [the House Judiciary Standing Committee] of the desirability of having caucuses and conventions in lieu of primaries. He added that because of the special rules regarding the election of the governor, he would accept the

proposal voiced by Representative James to have a primary every four years exclusively for governor, and the rest of the time candidates could be managed through a convention. Mr. Warren concluded his remarks with the following observation: although Mr. Gross argued that his approach for blanket primaries would encourage greater [voter] turnout, that rational was explicitly rejected by the [U.S. Supreme] Court, which said that neither in the interest of privacy, increased turnout, greater choice, greater fairness, voter alienation, expansion beyond partisan thresholds, nor better representation was there a valid rational for blanket primaries.

Number 0355

SARAH FELIX, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law (DOL), noted that she had just received Version J. She said she wondered if the committee - via Version J - intended that the "nominating petition candidates" (the candidates who are not affiliated with a political party) would appear on the primary ballot of the political parties. She added that she did not see that issue addressed in Version J, and she needed to know if that was the intent in order to implement that type of provision. She noted that under current law, nominating petition candidates appear on the primary election ballot.

CHAIR ROKEBERG said that if Ms. Felix meant individuals who file for office as nonpartisan or undeclared candidates, he did not intend for the names of those individuals to appear if they did not "draw a party."

REPRESENTATIVE JAMES added that she did not see any reason [to have those names appear].

REPRESENTATIVE COGHILL asked if, historically, nonpartisan candidates have appeared on primary [ballots].

MS. FELIX responded that this had occurred, and was in fact required by existing law.

CHAIR ROKEBERG commented that he thought that same question should be applicable to both Version J and CSHB 193(STA).

MS. FELIX said that she had assumed from her reading of [CSHB 193(STA)] that those candidates would appear on the ballots provided for in that bill version.

REPRESENTATIVE COGHILL added that he thought [CSHB 193(STA)] was very clear; those names would not appear unless included in a partisan ballot.

MS. FELIX said it seemed to her that [CSHB 193(STA)] included a provision to place those names on the ballot, and that [Version J] seemed different to her in that it precluded placing those names on the ballot. [She referenced language in Version J, Section 4, page 3, lines 6-7, which is identical to language in CSHB 193(STA), Section 4, page 2, line 31, and page 3, line 1.] She added that it was a technical point that she thought could be fixed.

Number 0560

MS. KURTZ agreed with Ms. Felix that that point could be fixed, and she added that it should be fixed for clarity.

REPRESENTATIVE JAMES reiterated that she did not see any reason to have the [names of nominating petition candidates] on the primary ballot.

REPRESENTATIVE KOOKESH offered that the suggestion was to clarify in the legislation whether those names would be included.

REPRESENTATIVE COGHILL said he agreed that it should be clarified that those names would not be included on the ballot. He paraphrased again from [California Democratic Party v. Jones, Opinion of the Court]:

> The voter who feels himself disenfranchised should simply join the party. That may put him to a hard choice, but it is not a state-imposed restriction upon his freedom of association, whereas compelling party members to accept his selection of their nominee is a state-imposed restriction upon theirs.

He added that he thought the parties should have the right to say [who is on their ballots], and it is wrong [for the state] to impose any restrictions upon parties unless those restrictions are self-imposed.

Number 0698

CHAIR ROKEBERG announced that public testimony was closed. After noting that Representative Kookesh had two amendments,

Chair Rokeberg inquired if both amendments were applicable to Version J.

REPRESENTATIVE KOOKESH said that he thought they were.

REPRESENTATIVE JAMES noted that the committee should decide whether to adopt Version J as a work draft before taking up any amendments.

Number 0772

CHAIR ROKEBERG made a motion to adopt the proposed CS for HB 193, version 22-GH1089\J, Kurtz, 4/4/01, as a work draft.

Number 0786

REPRESENTATIVE COGHILL objected. He said that in his view, Version J went in the wrong direction. He added that he thought the committee should go in the direction of having parties allow the inclusion of other candidates on their primary ballots via an affirmative action. He opined that to do otherwise would be bad political policy, bad public policy, and bad legal policy, and would go in the wrong direction from the [U.S.] Supreme Court ruling.

REPRESENTATIVE JAMES added that while she agreed with Representative Coghill, she could accept either Version J or CSHB 193(STA), but would not accept the original HB 193.

CHAIR ROKEBERG, in defense of Version J, suggested that the poor turnout in last year's primary election was a direct result of the [U.S. Supreme Court decision] that raised this particular issue. Speaking as a candidate in the 1992 primary election, he surmised that the vast majority of people in the state resented closure of the primary. He added that as a new candidate he was reluctant to knock on many doors because of poor reception due to the closure of the primary. He also said that he thought the "body politic" of Alaska rejected the concept [of closed primaries]. He noted that he was putting himself on the side of the Primary Election Task Force by offering [with Version J] a position of openness as the default with regard to primary election ballots. He said that because he believed that both case law and the U.S. Supreme Court allowed it, he wanted primary ballots to be inclusive for nonpartisan and undeclared voters, which make up in excess of 50 percent of registered Alaskan voters.

REPRESENTATIVE JAMES said she understood Chair Rokeberg's position on that issue and she agreed that that was the attitude of the public. She suggested, however, "If that's a direction we want to go in, then maybe we should file as 'N's or use our 'I's and let all those people support us, that are in our group."

CHAIR ROKEBERG noted further that both Version J and CSHB 193(STA) allow the party to be completely exclusive. The nuance is the point at which exclusion starts. He said he did not disagree with the opinion of either the [U.S. Supreme] Court, the Republican Party, or most other political parties, that parties shall have the right to exclude if they so desire; both Version J and CSHB 193(STA) embody the right to exclude.

Number 1045

REPRESENTATIVE MEYER commented that he agreed with the statements made by Chair Rokeberg. He added that during his own primary race, many undeclared [voters], Independents, and conservative Democrats would have voted for him if not for the closed primary. He also said that with so many Independents and undeclared [voters] in the state (and certainly in his district), there was a need for a "user friendly" system. Further, he said that he thought it would be easier for the parties to adjust rather than ask the voters to adjust to the parties.

REPRESENTATIVE COGHILL concluded that [Version J] would force "inclusion" on the party - that is, the party would be presumed open - unless the party specifically chooses to exclude. He opined that that was backward; he said that instead, he wanted to be able to say to a party that it had a right to be "purist" if it wished, or to be inclusive if so stated in the party's rules. With Version J, the state would be compelling a party to include voters who had not had anything to do with building that party.

CHAIR ROKEBERG declared, "Absolutely not. I disagree with you entirely. The party has every right to close the primary under both versions."

REPRESENTATIVE JAMES called for the question.

Number 1170

A roll call vote was taken. Representatives Kookesh, Meyer, and Rokeberg voted for the adoption of proposed CS for HB 193, version 22-GH1089\J, Kurtz, 4/4/01, as a work draft. Representatives James and Coghill voted against it. Therefore, Version J was adopted as a work draft by a vote of 3-2.

Number 1188

REPRESENTATIVE KOOKESH made a motion to adopt Amendment 1, which, after being altered to conform to Version J, read as follows [original punctuation provided]:

> Page 3, line 3,
> Add a new subsection "**(d) If a political party's bylaws do not permit voters not registered with a political party or registered with another political party to participate in that political party's primary ballot, all costs incurred by the state to administer that political party's primary election shall be reimbursed by that political party**"

REPRESENTATIVE KOOKESH explained that while he suspected that Amendment 1 would not pass, he wanted to have it on record. He went on to say, "There is only, in reality, one political party [the Republican Party] that is asking for a closed primary in the state; I have not seen anybody else step up and ask for one. And it is my opinion that if you want a closed primary, then you ought to pay for it." He also noted that in this legislature, many individuals have said that costs to the state will continue to be cut; thus, when looking at [the issue] of a closed primary, which is only being requested by one political party, the cost alone (last year's closed primary cost $270,000) would cover the cost of 4.5 Village Public Safety Officers (VPSOs) in rural Alaska. He said his intention in offering Amendment 1 was to have on record his recognition that funds for a closed primary could be better spent on other purposes (such as VPSOs).

Number 1320

REPRESENTATIVE JAMES objected.

Number 1375

A roll call vote was taken. Representative Kookesh voted for Amendment 1. Representatives James, Coghill, Meyer, and Rokeberg voted against it. Therefore, Amendment 1 failed by a vote of 1-4.

Number 1390

REPRESENTATIVE KOOKESH made a motion to adopt Amendment 2, which, after being altered to conform to Version J, read as follows:

Page 3, line 12
Delete "not"

Page 3, line 12, following "writing"
Delete "or pasting in"

Number 1392

REPRESENTATIVE JAMES objected.

REPRESENTATIVE KOOKESH explained that the reason for deleting "not" was because he would like the ability to have write-in blanks for the primary election, and the deletion of "or pasting in" was in recognition that pasting names on a ballot would have adverse effects on the "Accu-Vote" machine.

Number 1448

GAIL FENUMIAI, Election Program Specialist, Division of Elections, Office of the Lieutenant Governor, confirmed that sticking or pasting names on the ballot would gum up the "reader heads" of the Accu-Vote machine.

REPRESENTATIVE KOOKESH further explained that Version J currently says, "Blank spaces may not be provided", and Amendment 2 would allow names to be written (or stamped) in, although not pasted in, on the ballot.

REPRESENTATIVE MEYER asked Chair Rokeberg why blank spaces were precluded from ballots in Version J.

CHAIR ROKEBERG suggested directing the question to Representative Coghill because that language in Version J was taken directly from CSHB 193(STA) [which, in turn, was taken from HB 193].

MS. KURTZ explained that current statutes do not allow write-in names on ballots in the primary election, just in the general election.

REPRESENTATIVE JAMES asked if it says somewhere else in the election laws that write-in [candidates] are not allowed in primaries.

MS. KURTZ said she was not sure if it appears elsewhere or only in the section that is being repealed and re-enacted by [Version J]. It is complicated because there are a lot of references to write-ins throughout the statutes, so she did not want to answer off the top of her head. "The way this is would maintain the status quo on write-ins," she said.

Number 1615

REPRESENTATIVE JAMES said she thought the only way a person can get on the primary ballot now is by filing as a party member or coming forward with a petition signed by a certain number of voters. The latter route is only for non-party members. But for the general election, she said she thought anyone, including a party member, can get on the ballot by petition.

MS. KURTZ said currently, if a person qualifies by petition, his or her name goes on the primary election ballot. A person who does not succeed in the primary can also file as a write-in candidate in the general election. It used to be the case that all the names of candidates by petition just went straight to the general election ballot, rather than being in the primary. That is no longer the case. Now they go in the primary. In response to a question by Representative James, she said she did not know why that change had been made.

CHAIR ROKEBERG asked if they would still be allowed on the primary ballot under this [Version J].

MS. KURTZ said that is the question that came up earlier because it was unclear.

CHAIR ROKEBERG remembered that was to be Conceptual Amendment 3, and the committee would address that issue next. [Still before the committee was the question of Amendment 2.]

REPRESENTATIVE KOOKESH expressed continuing concern about the paste-in part [that Amendment 2 would address].

CHAIR ROKEBERG said by leaving [that portion of Version J] alone, the committee was prohibiting it.

REPRESENTATIVE JAMES said she thought it might be necessary to come back and fix it again if Amendment 2 were adopted. She said, "I see absolutely no reason to have any candidates on a primary election [ballot] if they're not competing with anybody."

CHAIR ROKEBERG observed that Version J reads, "Blank spaces may not be provided on the ballot for the writing or pasting in of names." Thus it was prohibited.

REPRESENTATIVE KOOKESH indicated he did not want to withdraw Amendment 2.

Number 1765

A roll call vote was taken. Representatives Kookesh and James voted for Amendment 2. Representatives Coghill, Meyer, and Rokeberg voted against it. Therefore, Amendment 2 failed by a vote of 2-3.

CHAIR ROKEBERG concluded, "So we have the status quo, where we're prohibiting the writing in of names and 'paste-ons,' on the primary ballot only."

MS. KURTZ confirmed, "This is only about primary election ballots, so here we're saying you can't leave spaces to write in or paste in names on the primary ballot."

Number 1778

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 3, "which would exclude from any party's ballot the names of any nonpartisan or undeclared candidates," who he surmised were those who had qualified by petition.

REPRESENTATIVE JAMES questioned whether [those names] would go directly to the general election ballot.

MS. KURTZ said that used to be the case, but now [names of nominating petition candidates] go on the primary election ballot.

CHAIR ROKEBERG said this committee wants to exclude [those names] entirely.

MS. KURTZ asked, "Is your wish to exclude them by putting them on the general [election ballot]?"

Number 1831

CHAIR ROKEBERG said yes, that the committee wanted to prohibit their names appearing on any primary ballots. He asked if that was the sense of the committee. After noting there was no objection, Chair Rokeberg announced that Conceptual Amendment 3 was adopted.

Number 1841

REPRESENTATIVE JAMES moved to report CSHB 193, version 22-GH1089\J, Kurtz, 4/4/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KOOKESH objected.

Number 1850

A roll call vote was taken. Representatives Coghill, Meyer, James, and Rokeberg voted in favor of moving CSHB 193, version 22-GH1089\J, Kurtz, 4/4/01, as amended. Representative Kookesh voted against it. Therefore, CSHB 193(JUD) was reported out of the House Judiciary Standing Committee by vote of 4-1.

HB 120 - DISCLOSURE OF CRIMINAL HISTORY RECORDS

Number 1870

CHAIR ROKEBERG announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 120, "An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date." [With the reading of the title, SSHB 120 was held over.]

ADJOURNMENT

Number 1878

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:20 p.m.