

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 9, 2001

1:18 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair (via teleconference)
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Albert Kookesh

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 103(FIN)

"An Act relating to election campaigns and legislative ethics."

- MOVED HCS CSSB 103(JUD) OUT OF COMMITTEE; ADOPTED A HOUSE CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

HOUSE BILL NO. 210

"An Act relating to sexual assault and sexual abuse of a minor."

- MOVED CSHB 210(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 187

"An Act relating to the destruction, desecration, and vandalism of cemeteries and graves."

- MOVED CSHB 187(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 196

"An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil Procedure."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 82(STA)

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 67

"An Act requiring proof of motor vehicle insurance in order to register a motor vehicle; and relating to motor vehicle liability insurance for taxicabs."

- BILL HEARING POSTPONED

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 68

"An Act relating to civil liability for transporting an intoxicated person or for driving an intoxicated person's motor vehicle; and providing for an effective date."

- BILL HEARING POSTPONED

CS FOR SENATE BILL NO. 105(FIN)

"An Act relating to victims' rights; relating to establishing an office of victims' rights; relating to the authority of litigants and the court to comment on the crime victim's choice to appear or testify in a criminal case; relating to compensation of victims of violent crimes; relating to eligibility for a permanent fund dividend for persons convicted of and incarcerated for certain offenses; relating to notice of appropriations concerning victims' rights; amending Rules 16 and 30, Alaska Rules of Criminal Procedure, Rule 9, Alaska Delinquency Rules, and Rule 501, Alaska Rules of Evidence; and providing for an effective date."

- BILL HEARING POSTPONED

HOUSE BILL NO. 133

"An Act relating to restitution for criminal and delinquency acts; authorizing the state to collect restitution on behalf of victims of crime and delinquent acts and the release of certain information related to that collection; relating to the forfeiture of certain cash and other security for payment of other restitution; relating to access by the Violent Crimes Compensation Board to certain records regarding delinquency acts to award compensation to victims; relating to immunity for damages related to certain collections of restitution; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

- BILL HEARING POSTPONED

HOUSE BILL NO. 134

"An Act relating to the rights of crime victims, the crime of violating a protective injunction, mitigating factors in sentencing for an offense, and the return of certain seized property to victims; clarifying that a violation of certain protective orders is contempt of the authority of the court; expanding the scope of the prohibition of compromise based on civil remedy of misdemeanor crimes involving domestic violence; providing for protective relief for victims of stalking that is not domestic violence and for the crime of violating an order for that relief; providing for continuing education regarding domestic violence for certain persons appointed by the court; making certain conforming amendments; amending Rules 65.1 and 100(a), Alaska Rules of Civil Procedure; amending Rules 10, 11, 13, 16, and 17, Alaska District Court Rules of Civil Procedure; and amending Rule 9, Alaska Rules of Administration."

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: SB 103

SHORT TITLE: ELECTION CAMPAIGNS AND LEGISLATIVE ETHICS

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
02/20/01	0432	(S)	READ THE FIRST TIME - REFERRALS
02/20/01	0432	(S)	STA, JUD
02/22/01		(S)	STA AT 3:30 PM BELTZ 211
02/22/01		(S)	Heard & Held
02/22/01		(S)	MINUTE(STA)
02/27/01		(S)	STA AT 3:30 PM BELTZ 211
02/27/01		(S)	Moved CS(STA) Out of Committee
02/27/01		(S)	MINUTE(STA)
02/28/01	0534	(S)	STA RPT CS 2DP 3NR NEW TITLE
02/28/01	0534	(S)	DP: THERRIAULT, HALFORD; NR: PHILLIPS, PEARCE, DAVIS
02/28/01	0534	(S)	FN1: (ADM)
03/09/01		(S)	JUD AT 1:30 PM BELTZ 211
03/12/01		(S)	JUD AT 1:30 PM BELTZ 211
03/12/01		(S)	Moved CS(JUD) Out of Committee
			MINUTE(JUD)
03/13/01	0634	(S)	JUD RPT CS 2DP 1DNP 1NR NEW

			TITLE
03/13/01	0635	(S)	DP: TAYLOR, COWDERY; DNP: ELLIS
03/13/01	0635	(S)	NR: THERRIAULT
03/13/01	0635	(S)	FN1: (ADM)
03/13/01	0635	(S)	FIN REFERRAL ADDED AFTER JUD
03/22/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/22/01		(S)	MINUTE(FIN)
03/23/01	0783	(S)	FIN RPT CS 3DP 2NR NEW TITLE
03/23/01	0783	(S)	DP: DONLEY, KELLY, LEMAN;
03/23/01	0783	(S)	NR: HOFFMAN, OLSON
03/23/01	0783	(S)	FN2: (ADM)
03/23/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/23/01		(S)	MINUTE(FIN)
03/28/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
03/28/01		(S)	MINUTE(RLS)
03/29/01	0858	(S)	RULES TO CALENDAR 2OR 3/29/01
03/29/01	0863	(S)	READ THE SECOND TIME
03/29/01	0863	(S)	FIN CS ADOPTED UNAN CONSENT
03/29/01	0863	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/29/01	0863	(S)	READ THE THIRD TIME CSSB 103(FIN)
03/29/01	0864	(S)	PASSED Y17 N2 A1
03/29/01	0867	(S)	TRANSMITTED TO (H)
03/29/01	0867	(S)	VERSION: CSSB 103(FIN)
03/30/01	0782	(H)	READ THE FIRST TIME - REFERRALS
03/30/01	0782	(H)	STA, JUD, FIN
04/03/01	0825	(H)	STA RPT 4DP 2DNP 1NR
04/03/01	0825	(H)	DP: WILSON, FATE, JAMES, COGHILL;
04/03/01	0826	(H)	DNP: CRAWFORD, HAYES; NR: STEVENS
04/03/01	0826	(H)	FN2: (ADM)
04/03/01		(H)	STA AT 8:00 AM CAPITOL 102
04/03/01		(H)	Moved Out of Committee
04/03/01		(H)	MINUTE(STA)
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 210

SHORT TITLE:STAT. OF LIMITATIONS:SEXUAL ASSAULT/ABUSE
SPONSOR(S): REPRESENTATIVE(S)MEYER

Jrn-Date	Jrn-Page		Action
03/23/01	0706	(H)	READ THE FIRST TIME - REFERRALS
03/23/01	0706	(H)	JUD, FIN
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 187

SHORT TITLE: VANDALISM OF CEMETERIES & GRAVES
 SPONSOR(S): REPRESENTATIVE(S) WHITAKER

Jrn-Date	Jrn-Page		Action
03/15/01	0609	(H)	READ THE FIRST TIME - REFERRALS
03/15/01	0609	(H)	JUD, FIN
04/04/01	0848	(H)	COSPONSOR(S): WILSON
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JOE BALASH, Staff
 to Senator Gene Therriault
 Senate State Affairs Standing Committee
 Alaska State Legislature
 Capitol Building, Room 121
 Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 103 on behalf of the Senate State Affairs Standing Committee and answered questions.

BROOKE MILES, Executive Director
 Alaska Public Offices Commission
 2221 East Northern Lights, Room 128
 Anchorage, Alaska 99508-4149

POSITION STATEMENT: Answered questions on SB 103.

SUSIE BARNETT, Ethics Committee Administrator
 Select Committee on Legislative Ethics
 Legislative Agencies and Offices
 PO Box 101468

Anchorage, Alaska 99510-1468

POSITION STATEMENT: During discussion of SB 103, answered questions related to disclosure.

KAREN BITZER, Executive Director
 Standing Together Against Rape (STAR)
 1057 West Fireweed
 Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of HB 210 and answered questions.

TRISHA GENTLE, Executive Director
Council on Domestic Violence & Sexual Assault
PO Box 111200
Juneau, Alaska 99811-1200

POSITION STATEMENT: Testified in support of HB 210.

BLAIR McCUNE, Deputy Director
Public Defender Agency (PDA)
Department of Administration
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501-2090

POSITION STATEMENT: Testified in opposition to HB 210 and expressed concern about the difficulty in defending a case that is over ten years old. During discussion of HB 187, brought up the concern that youths should not have to have a class C felony on their records.

JERRY LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182

POSITION STATEMENT: Speaking as the drafter, answered questions on HB 210 and proposed amendments.

LORI L. BACKES, Staff
to Representative Jim Whitaker
Alaska State Legislature
Capitol Building, Room 411
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 187 on behalf of Representative Whitaker and answered questions.

ROBERT SAM, Cemetery Caretaker
PO Box 6113
Sitka, Alaska 99835

POSITION STATEMENT: Testified in support of HB 187 and answered questions.

ELMER MAKUA, Cemetery Caretaker
Tongass Tribe
1042 Woodland Avenue
Ketchikan, Alaska 99901

POSITION STATEMENT: Testified in support of HB 187.

DAVID JACOBY, Public Works Director
City of Fairbanks
2121 Peger Road
Fairbanks, Alaska 99709

POSITION STATEMENT: Testified in support of HB 187.

WENDY REDMAN, Vice President for University Relations
University of Alaska
PO Box 755000
Fairbanks, Alaska 99775

POSITION STATEMENT: During discussion on HB 178, answered questions related to proposed Amendment 1.

ACTION NARRATIVE

TAPE 01-59, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:18 p.m. Representatives Rokeberg, Ogan (via teleconference), James, Coghill, Meyer, and Berkowitz were present at the call to order.

SB 103 - ELECTION CAMPAIGNS AND LEGISLATIVE ETHICS

Number 0160

CHAIR ROKEBERG announced that the first order of business would be CS FOR SENATE BILL NO. 103(FIN), "An Act relating to election campaigns and legislative ethics."

Number 0185

JOE BALASH, Staff to Senator Gene Therriault, Senate State Affairs Standing Committee, Alaska State Legislature, presented SB 103 on behalf of the sponsor, the Senate State Affairs Standing Committee. Mr. Balash explained that SB 103 is largely a "cleanup bill" to address a couple of conflicts and "gray areas" in the Alaska Public Offices Commission (APOC) and legislative ethics statutes. He said that the APOC section of SB 103 further defines and clarifies that a single candidate can control multiple groups, but that a collection of groups is subject to the same limitations on contributions that would apply to one group. He added that SB 103 makes some changes to the public office expense term (POET) account and POET reserve

mechanism, which is eliminated, leaving just the single POET account; transitional language is included to facilitate this change. He also explained that under SB 103, the amount of personal property that's allowed to be carried forward is increased, and the types of property that are allowed to be carried forward are addressed.

MR. BALASH further explained that contribution definitions are modified, particularly in the areas of exclusions, professional services, mass mailings by parties, certain poll results, and newsletters to constituents. With regard to the ethics portions of SB 103, he said that the ethics statute breaks down in two places: use of public assets for non-legislative purposes, and use of public assets for political purposes. Under the non-legislative purposes portion, allowances are made for seasonal greeting cards to be prepared and mailed out by legislative staff; transportation of personal computers used primarily for state business; use of photographs; reasonable use of the Internet; solicitation and acceptance of donations for nonpolitical charities; and newsletters on any subject. In addition, the use of offices before and after session is extended to ten days at either end. Under the political purposes portion, allowances are made for legislators to use their photographs and to support or oppose constitutional amendments, although there is a limitation on the use of legislative offices and staff for solicitation of contributions regarding the amendment; it also addresses the use of Juneau legislative offices and provides for an exception to the gift of transportation from one legislator to another.

Number 0443

REPRESENTATIVE BERKOWITZ asked whether the change regarding candidates' registering of multiple groups is necessary.

MR. BALASH responded that the APOC currently treats multiple groups in this manner, and the legislation is simply codifying that interpretation. As to the necessity of this change, he said it is up to the legislators' preference whether to include it.

CHAIR ROKEBERG, with regard to the elimination of the POET reserve account, asked whether the amounts would stay the same.

MR. BALASH confirmed that the amounts would stay the same.

CHAIR ROKEBERG said:

Right now, ... a House member can receive \$10,000 of campaign funds, then has to disburse it to a reserve and an operating account - ... [though] only \$5,000 per annum - so that's why the reserve account was established. So, this bill does away with that so we only have to have one account over a two-year cycle. Is that [correct]?

MR. BALASH said that is correct. He added that all of the reporting requirements are still in place as to how the funds are used and accounted for, as are the limitations on use of the funds.

REPRESENTATIVE BERKOWITZ asked for clarification on the types of accounts and the amounts allowed as addressed by SB 103.

REPRESENTATIVE JAMES responded that SB 103 is doing away with the POET reserve account, leaving in place the operating POET account as well as the campaign account. With this change, the entire \$10,000 can be placed in the operational POET account, although those funds have to last for two years.

CHAIR ROKEBERG noted that he has set up a savings account for the funds in his POET reserve account, and is now at a loss as to what to do with the interest earned by that account, since interest earned is not specifically addressed in statute. He added that he does report that amount of interest earned as income to the Internal Revenue Service (IRS), but is constrained by current statute from using it as personal income.

REPRESENTATIVE JAMES opined that interest earned from these accounts is considered a political donation to the legislator's own campaign and needs to be reported as such.

CHAIR ROKEBERG asked what becomes of the funds in the POET accounts upon the death of a legislator while in office. He said his interpretation is that the disposition of the accounts would have to follow the statute.

Number 0732

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), testified via teleconference and confirmed that this is also the interpretation held the APOC staff.

CHAIR ROKEBERG surmised this meant that the surviving spouse would have to go through the process of disposing of those funds via donations to charities and/or political parties.

MS MILES confirmed this and added that the surviving spouse could also choose to donate the funds to state or municipal government agencies.

MR. BALASH added that the language regarding the limitation on the disposal of funds from the POET account at the end the term of office, page 3, lines 25-26, is consistent with the current limitations on the POET reserve account mechanism. He noted that one of the limitations is that these funds cannot be pocketed as personal income.

Number 0882

SUSIE BARNETT, Ethics Committee Administrator, Select Committee on Legislative Ethics ("Ethics Committee"), Legislative Agencies and Offices, testified via teleconference. Referring to Section 8 on page 11, lines 8-12, she said that she and the chair of the Ethics Committee, Skip Cook, have discussed this section; they recommend that when the gift of transportation from one legislator to another exceeds \$250, there should be public disclosure, as is the case with all other gifts. She explained that this public disclosure would follow the same stipulations as the public disclosure of other gifts.

MR. BALASH, as background for this provision, explained that this language was added in the Senate Finance Committee (SFIN) by Senator Olson, who had spoke to the difficulties a legislator can have getting around in his particular district. "You can, virtually, only get by with an airplane," Mr. Balash said, and added that Senator Olson found that under the current ethics requirements, even though he owns his own plane, he could not invite somebody to his home and provide the type of hospitality similar to what two legislators from the urban areas of the state could provide to each other. On the topic of including the disclosure requirements as suggested by Ms. Barnett, Mr. Balash said that according to his understanding, there are three options available to the legislature. One is to not require any disclosure; the second would be to disclose to the [Ethics Committee] only; and the third option would be full public disclosure whereby the gift is reported to the [Ethics Committee] and in turn entered into the legislative journal for each body. Mr. Balash noted that disclosure of the gift of

travel referred to in Section 8 was not discussed, either during committee hearings or during Senate floor debate.

MS. BARNETT added that currently, the sharing of travel expenses between legislators would not have to be disclosed under SB 103 as written; under her suggested change, it would only have to be disclosed if the value exceeds \$250.

MS. MILES explained that the APOC, at its recent meeting, reviewed SB 103 and identified some areas that will result in administrative costs. With regard to Section 4 on page 5, lines [6-11], she said that this provision makes an amendment to the campaign disclosure law in conformance with a proposed amendment to the legislative ethics law found later in SB 103. The effect of this provision is to permit legislators and legislative staff to use public resources to support or oppose ballot questions regarding constitutional amendments. She pointed out that under current law, public funds can be used to support or oppose ballot questions only if they are specifically appropriated for that purpose by state law or municipal ordinance. She added that administrative regulations allow public officials to communicate on ballot question issues, as long as the communication is made in the usual and customary performance of the official's duties. She noted that this has been interpreted to mean that legislators can include commentary about proposed constitutional amendment ballot propositions in their constituent mailings, in their discussions before a Rotary Club or chamber of commerce, and so forth.

Number 1224

MS. MILES continued, saying that the revision proposed by SB 103 is likely to attract public inquiries and complaints, because the persons on the opposing side of constitutional amendment ballot questions will probably have concerns about the activities of legislators and legislative employees conducting constitutional-amendment ballot-question campaign activities with public funds. She said her overarching comment on this proposed change is that none of the legislators' or legislative employees' activities, with respect to the work done on constitutional amendments, are currently regulated. She added, however, that that could change once [legislators or legislative employees] start actually expending public funds that have not been specifically appropriated for the purpose of supporting or opposing a ballot question issue.

REPRESENTATIVE JAMES suggested that the intent of this proposed change is not necessarily to be utilizing a lot of public funds, but rather to allow legislative staff to do some of the activities during their regular workday (as opposed to during their personal time) that are currently done by legislators on ballot propositions.

MS. MILES said she believed that under the legislative ethics provision of SB 103, the latter function would be allowed, but under the campaign disclosure section, it simply permits campaign activities. She clarified that [AS 15.13.145] subsection (a)(1)-(3) is referring to state, municipal [and university entities], and that one of the major provisions of campaign finance reform was to restrict public money being spent in campaigns. She added that when public money is spent, it requires some additional public process; for example, when a municipality wishes to spend money to support or oppose building a new school, it must specifically appropriate that money by ordinance. And while SB 103 would not allow legislators to solicit funds for campaign activities, it would allow the legislators and legislative employees to conduct campaign activities related to a ballot proposition question that affects the constitution, and allow for the use of general funds in that campaign.

REPRESENTATIVE JAMES reiterated her comments regarding her interpretation of the intent of SB 103. She asked what the current procedure is when legislators and staff want to work on constitutional amendment ballot questions, and where the funding for those activities currently comes from.

MS. MILES explained that the legislature works on these issues in its routine and normal way, up until the point where they actually become ballot issues; once the question is placed on the ballot, anyone can form a valid proposition group, which is the least regulated of any group. Such a group can take unlimited contributions from unlimited areas; the group simply has to disclose everything.

REPRESENTATIVE JAMES said she never believed that it was ethical for legislators to be a part of that, or able to spend any money on that at all.

MS. MILES mentioned constitutional amendments relating to the permanent fund dividend (PFD) and wolf hunting that became ballot questions, as examples.

Number 1502

REPRESENTATIVE BERKOWITZ, with regard to the way SB 103 is currently written, asked whether it is correct to say that a legislator is permitted to use his/her office, for example, to set up a phone bank to make calls in opposition or support of a constitutional amendment.

MR. BALASH said that is correct, although he added that this did not extend to initiatives because the use has to be permitted under AS 24.60.030(a)(5)(G), which speaks directly to constitutional amendments only.

REPRESENTATIVE BERKOWITZ, for the record, said:

I'm going to be offering an amendment to delete this section of the bill; it is very troubling to me that we cross that line. I see a very sharp division between our role as legislators in putting constitutional amendments on the ballot - or opposing constitutional amendments - and then once that amendment has, in effect, passed the legislature, our role is done. We should be done with that amendment. We can talk about it in the normal context that we talk about bills with constituents, but I think for us to be actively out soliciting support or opposition for a proposition crosses a line that we ought not cross.

CHAIR ROKEBERG asked whether legislators are allowed to use state resources to campaign for or against ballot initiatives.

MS. MILES said no, and added that [activity regarding] other ballot questions that are not about a constitutional amendment would not be permitted.

CHAIR ROKEBERG remarked that he found this to be incongruous because the citizens' right to change or amend a law via ballot initiative is similar to the actions taken by the legislature in its normal course of business. He added, "That's the nature of a change of the law, and therefore I think the legislature deserves and has the right to be intimately involved in that discussion, using everything that they have [in] their power"

Number 1628

REPRESENTATIVE BERKOWITZ, on a prior point, surmised that the resources the legislature has at its disposal include telephones; printing offices; and for some legislators, such as those in the majority, the ability to travel. There also are other advantages whereby state funds can be expended in support or opposition of a proposition. To be clear, he continued:

We have a very distinct constitutional role in advancing or opposing constitutional amendments, and it is entirely appropriate for us, as long as we're within the process of acting as legislators on that constitutional amendment, to agitate for or against that proposition. But once it passes the legislature, our role as legislators is finished. I think we have every ability and every right as independent citizens to speak to or against a constitutional amendment, but that's very distinct [from] us bringing the power of government that we have through our offices to bear on an amendment.

REPRESENTATIVE JAMES agreed that [legislators] only have one responsibility for using state funds: to do their job as legislators. She therefore surmised that this legislation is an attempt to expand that responsibility. She said she found that troubling because no matter how [legislators] proceed, it is going to be misunderstood by the public. To counter the point that the legislator's job is done once an issue is placed on the ballot, she said that her constituents look to her for guidance, and because she has the obligation to provide assistance, she offers them her outlook on the issue. She added that one of the things she has found regarding constitutional amendments and ballot issues is that from her perspective, it's a free-for-all: there are no rules regarding honesty in advertising, and so the public becomes victimized in this whole process, which can result in wrong decisions being made for the long term.

REPRESENTATIVE JAMES said she disagreed with the practice of using state resources for anything other than their legislative responsibility, and that she did not believe that legislators should lean on staff to gather votes. But, she added, it is certainly appropriate for a legislator to defend the position that he/she took on a constitutional amendment question. For example, if she were to travel on state business and give a presentation to people, if someone asked her for her opinion on a constitutional amendment, she would freely speak to it. She opined, however, that it would not be ethical for legislators to

join groups that raise funds to support or oppose constitutional amendments.

MS. MILES, after acknowledging that it is the legislature that sets policy and that the APOC merely administers the laws it is given, said that the APOC did not want to interfere with the legislature's deliberation of this proposed policy change.

Number 1897

CHAIR ROKEBERG recalled that during the time period surrounding the "advisory vote," the standards put forth by the APOC were very limiting regarding legislators' ability to speak out on that issue. He opined that legislators who were opposed to the issue "didn't feel constrained to abide by those guidelines," whereas legislators in support of the issue did abide by the guidelines.

MS. MILES referred to Section 5 [sub-subparagraph (iv)] on page 6 [lines 6-9], and said that this amends the definition of contribution to exclude polls that are limited to issues and do not name a candidate, unless the poll was requested by or designed primarily to benefit the candidate or was provided by a person required to register as a lobbyist. She explained that under current law, when a campaign pays for a poll, the expenditure is disclosed as a campaign expense. If someone else pays for a poll, she continued, and gives the results to a campaign without recompense, then the polling information is currently considered a contribution if the information is intended to influence the outcome of that candidate's election.

MS. MILES went on to explain that under the language proposed in SB 103, any person other than lobbyists - including any entities such as associations, corporations, and limited partnerships currently prohibited from masking contributions - could conduct a poll and give the results to a campaign. Even if the information has benefited the campaign, no contribution results if the two conditions exist: one, the poll is about issues and doesn't mention a candidate; and, two, the poll mentions a candidate but wasn't requested by or designed primarily to benefit the candidate. She remarked that this provision of SB 103 will result in administrative costs because the APOC will be required to make judgment calls on the content and basis of polls. She added that polls can be paid for by any person (except lobbyists) or entity, and neither the cost nor the identity would be disclosed to the public.

MR. BALASH explained that the language regarding polls was part of the original bill and was included in an attempt to "get our hands around those things" that may or may not have value, and things that may or may not necessarily need to be disclosed. With regard to a poll provided by somebody other than an allowable individual, he asked how value is assigned to that. For example, he asked, if going strictly by the cost of the poll - one that is an issue-based poll and not designed to benefit one candidate or another - and the poll is given to candidate A, who reports it at the full value of its cost, and then the donor also provides it to candidate B in separate race, should candidate B report the donation at the full cost, or half the cost? So, he continued, if the reporting requirement is going to include the value of the poll, one would have to figure out how many individuals were given the poll, divide the cost among those individuals, and then have each of them report it. He added that should the poll then be given to someone else, the reporting problem would be compounded, and could lead to reporting inconsistencies. Hence, rather than include in the definition of what needs to be reported specific formulas to determine the value of polls, he said it was simply decided to exclude [polls] altogether - except those types described in SB 103.

MS. MILES, on another point, referred to Section 6 on page 7, lines 1-[5], and said this provides that communications with a value of \$500 or less from corporations, labor organizations, or business or trade associations are not expenditures. She explained that under current administrative regulations, it is not considered a contribution for these entities to communicate with their members, employees, or families on any subject, as long as it is in a format that the entity has used in the past to communicate with those people, and as long as it does not solicit contributions on behalf of a candidate or ballot question. For this reason, she relayed that the APOC is unclear as to why this provision of SB 103 is rewriting current law. She asked if the intent is to limit the communication to \$500 a year, or per election, or per communication. She also commented that since no reporting is required regarding "these non-expenditures," either under current law or under SB 103, the public would have no way of knowing about them; if the intent of [limiting] these non-expenditures is to allow these groups to actually solicit funds on behalf of candidates, however, it is likely to result in public inquiries.

MR. BALASH explained that this provision was added by the Senate Judiciary Standing Committee; as he understood it, the intention was to extend to corporations, nonprofits, labor organizations, and so forth the same right to communicate freely, and to make independent expenditures, as any other individual in Alaska has, and also to subject these entities to the same limitations as individual Alaskans have regarding contributions made during a campaign.

Number 2283

REPRESENTATIVE OGAN surmised that the intent is to place a limit of \$500 a year on these entities.

REPRESENTATIVE BERKOWITZ, on valuation, asked: Assuming that a ten-page "mail-out" costs \$5,000 and one column is devoted to a recommended candidate or slate, what is the value of that one column?

REPRESENTATIVE OGAN suggested it could be calculated by using a percentage of the column inches.

MR. BALASH acknowledged that there are difficulties in approaching the topic of valuation, but he said he believes that the APOC has the regulatory ability to set standards for determining value.

MS. MILES explained that this provision of SB 103 would overwrite the current APOC regulation that permits these various kinds of communications (as long as they don't solicit) in unlimited amounts, and will result in a \$500 limit to these communications. She also pointed out that nothing in this provision speaks to independent expenditure activity such as when a candidate calls up ARCO and says, "Can you please send out a communication to your people." It also could be a coordinated activity because there is nothing that says it must be independent. This provision of SB 103, she said, would overwrite the ability of all these organizations to communicate freely with their members, and the provision relates to expenditures, which, as she understands, could raise constitutional issues. She added that the APOC would rather the current situation prevail with regard to communications, instead of imposing limits.

Number 2419

MR. BALASH, in response to a question, said that Senator Donley proposed this language.

REPRESENTATIVE BERKOWITZ noted that he would be offering an amendment later in the meeting to delete this language from SB 103.

REPRESENTATIVE JAMES commented that she did not understand what this language is trying to do.

CHAIR ROKEBERG noted also that he did not understand what the purpose of this language is. "If it's already allowed, why are we trying to put a value on it," he added.

REPRESENTATIVE JAMES noted that the groups listed in this [sub-subparagraph (ii)] cannot currently make any contributions, period.

CHAIR ROKEBERG explained that these communications are considered expenditures for the purpose of these entities' own records.

REPRESENTATIVE JAMES surmised that there is no difference; they are spending money via the communications and thus making a contribution.

CHAIR ROKEBERG noted, however, that currently these entities can endorse candidates in their newsletters.

TAPE 01-59, SIDE B
Number 2475

REPRESENTATIVE JAMES suggested that if these entities endorse a list of candidates in their newsletter, then she considers it to be a campaign contribution. She offered that since entities are already allowed unlimited communications, the language is attempting to restrict communications to \$500 only; thus, no communications could occur that cost more than that.

REPRESENTATIVE BERKOWITZ said his interpretation is that as long as it is a regular company mail-out (and, for example, in the November mail-out it says "here's our recommended list of candidates or propositions that we support") this is permissible under current regulation, but anything in excess of that would not be permissible.

MS. MILES clarified that it would be permissible for the organization to talk to its membership on any subject, including advocating on behalf of candidates, so long as it didn't solicit contributions. She noted that communications wouldn't even have to be in the form of a newsletter; they could instead be in the form of e-mail or "telephone trees." She also confirmed that there are some First Amendment issues involved. Furthermore, in response to questions, she said that the language in this provision of SB 103 does confuse the APOC's responsibilities and in fact may even overwrite the existing regulation.

REPRESENTATIVE BERKOWITZ then surmised that this language would lead to more regulations, more confusion, possibly more APOC complaints, and more difficulties for candidates who are trying to comply but for reasons beyond their control are unable to.

MS. MILES said that Representative Berkowitz's comments express the APOC's concerns very well.

CHAIR ROKEBERG, on another point, asked why a candidate's filing fee is not a deductible expenditure.

Number 2364

MS. MILES said she has always understood that a filing fee can be listed as a campaign expenditure since it is certainly reasonably related to a person's campaign. She clarified that the language on page 6, lines 29-30, is simply stating that a filing fee cannot be considered an expenditure before filing for office. Paying the filing fee out of campaign funds and then reporting it is not considered a violation, she added.

REPRESENTATIVE JAMES noted that she did not believe that the filing fee should be paid for with campaign funds.

CHAIR ROKEBERG offered that there is a lot of confusion [surrounding the issue of campaign expenditures], and that the statutes should clarify these points. Chair Rokeberg then asked Ms. Miles to comment on Amendment 1 [22-LS0148\G.1, Cramer, 4/4/01], which read:

Page 1, line 1, following "campaigns":
Insert ", **financial disclosure statements of public officials and legislators,**"

Page 1, following line 2:
Insert a new bill section to read:

"* **Section 1.** AS 15.13.030 is amended to read:

Sec. 15.13.030. Duties of the commission. The commission shall

(1) develop and provide all forms for the reports and statements required to be made under this chapter, AS 24.45, and AS 39.50; the commission shall develop and provide a single form to be used for filings of financial disclosure statements by public officials under AS 39.50 and filings of financial disclosure statements by legislators under AS 24.60.200 - 24.60.260;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act)."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Number 2228

MS. MILES said that she has seen Amendment 1, and went on to explain that the legislative financial disclosure and the public officials financial disclosure vary in only three ways: income, loans, and gifts. Under legislative financial disclosure, [legislators and staff] aren't required to file disclosure of any gift with the APOC; instead, these disclosures are filed with the Legislative Ethics Committee. With respect to income and loans, she continued, legislators (only) have to report the amount of income if the source of the income or loan has a substantial interest in legislative action. She added that there are only 66 people who file legislative disclosure forms, whereas there are 3,000 people who file the public officials' disclosure statements. She relayed that the changes proposed by Amendment 1 could be instituted without a change to statute, but if the legislature still wishes to institute Amendment 1, the APOC staff suggests that the language should be inserted into AS 39.50 and AS 24.60, instead of the financial disclosure statute - AS 15.13 - as is proposed currently by Amendment 1.

MS. MILES also relayed that Nancy Freeman has said that she is willing to work on combining the forms.

CHAIR ROKEBERG said that is not correct; according to his information, Ms. Freeman said the law needed to be changed.

MS. MILES said, "I don't believe that's true, and she understands that that's not true." Ms. Miles opined that when Ms. Freeman said that the law would need to be changed, she meant that public officials would be required to disclose the amount of income. However, Ms Miles added, that word doesn't really apply to public officials because they're not allowed to work for an outside entity that would have a substantial interest in legislative action. When "you" work for the state, it's very limited what "you" can do, she noted. On the point of instituting Amendment 1, she explained that it would just be a matter of combining forms, particularly since the reporting thresholds are now same for both legislative financial disclosure and public officials.

CHAIR ROKEBERG relayed that he found it very inconvenient when he sent in his form to the APOC and it was rejected for being the wrong form.

MS. MILES, as the new director of the APOC, said that she disapproved of that type of action; the person handling the form should have simply requested any additional information that was needed in order to finish filling out the correct form.

CHAIR ROKEBERG announce that the hearing on SB 103 would be recessed until later in this same meeting.

CHAIR ROKEBERG called an at-ease from 2:17 p.m. to 2:18 p.m.

HB 210 - STAT. OF LIMITATIONS:SEXUAL ASSAULT/ABUSE

[Contains discussion of the testimony heard for HB 143 regarding evidence collection and preservation, and the statistical correlation between burglary and sexual assault.]

Number 2047

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 210, "An Act relating to sexual assault and sexual abuse of a minor."

Number 2028

REPRESENTATIVE MEYER made a motion to adopt the proposed committee substitute (CS) for HB 210, version 22-LS0782\C, Luckhaupt, 4/3/01, as a work draft. There being no objection, Version C was before the committee.

REPRESENTATIVE MEYER, speaking as the sponsor, explained that the intention with Version C was to remove the statute of limitations on felony sexual assault. The original version of HB 210 included all sexual assault crimes, of which there are four different degrees, with the fourth degree being a class A misdemeanor. He clarified that currently there is no statute of limitations for sexual abuse of a minor, and Version C would not alter that; sexual abuse of a minor is only mentioned in Version C because the drafter was attempting to group together all of the time limitations that pertain to sexual assault. He said that in his mind, sexual assault is second only to murder.

REPRESENTATIVE MEYER added that studies now show that incriminating evidence can prove sexual assault no matter how much time has passed. He said that it was his opinion that prosecution of sexual assault should not be limited by the passage of time because the effects of sexual assault will be with the victim for the rest of his/her life. He noted that

according to testimony heard regarding HB 143, technological advances now allow for better preservation of evidence, and this evidence shows a correlation between offenders who commit [burglary] and offenders who commit [sexual assault]. He proffered that if sexual assault can be proven [beyond] a reasonable doubt, even 20 years after it occurred, then it should be prosecuted.

REPRESENTATIVE MEYER noted that in addition to applying to offenses committed on or after the effective date, Version C also applies to offenses committed prior to the effective date as long as the current statute of limitations for those offenses has not expired. He mentioned that the members' packets contain additional information on deoxyribonucleic acid (DNA) collection, and he also mentioned that Version C has two zero fiscal notes and one undetermined fiscal note.

Number 1851

KAREN BITZER, Executive Director, Standing Together Against Rape (STAR), testified via teleconference in support of HB 210. She said that sexual assault is a crime of fear and of power, and merely because of the trauma involved, it is an underreported crime. She added that STAR has found that although a victim may go through the evidence-collection process, at that point he/she can become even more fearful and decide not to pursue prosecution. Yet, years later, the victim will come forward and say that he/she wishes that he/she had had the courage to continue. She said STAR believes with the expansion of the concept of SART - Sexual Assault Response Team - and of child advocacy centers, along with telemedicine, there will be more collection of DNA, and therefore, there would be more opportunities to link more crimes genetically. To illustrate, she said STAR has found that in the last five years in the United States, through the use of the DNA database, over 200 ex-convicts have been linked to more recent crimes. And in Britain, since 1985, over 30,000 suspects have been linked to crime scene evidence through the use of DNA databases. Therefore, Star believes that removing the statute of limitations [for sexual assault] protects the victim's right to justice.

REPRESENTATIVE JAMES asked, if someone were loath to go through the evidence collection process, whether there is a way to go forward with prosecution anyway. And if not, she wanted to know how a case could be pursued years after the fact.

MS. BITZER responded that STAR would love to see more evidentiary prosecution occurring in cases of sexual assault, but the proper mechanisms need to be in place in order to do that. Currently, a person still has the right to stand before his/her accuser. For this reason, evidentiary collection and prosecution - whereby a person can be prosecuted on the evidence alone - would be a wonderful thing for sexual assault cases. She noted, however, that the legal question is whether the mechanism is in place in order for later prosecutions to take place.

REPRESENTATIVE JAMES said that she viewed the question as one of finding ways in which to allow cases to go through on the basis of evidence, rather than waiting several years for a victim to come forward again.

Number 1665

REPRESENTATIVE BERKOWITZ said that if HB 210 passes, there would be no statute of limitations for a criminal action, but there still would be a statute for limitations for civil action. He asked if the door should be opened in order to remove the statute of limitations for civil actions as well.

MS. BITZER said that was certainly something to be considered, although she was not exactly sure what the impact would be. She explained that unlike victims of domestic violence and family members of murder victims, sexual assault victims do not usually seek restitution in civil processes. She added that this was not to say that allowing them the opportunity would not be a good thing, just that, as a standard rule of thumb, sexual assault victims are the least likely of all victims to go forward with a civil case.

REPRESENTATIVE JAMES asked whether contraction of a sexually transmitted disease (STD) increases the likelihood that a sexual assault victim will file a civil action.

MS. BITZER reiterated that statistically, sexual assault victims are the least likely of all victims to go forward with a civil case, regardless of STDs.

Number 1574

TRISHA GENTLE, Executive Director, Council on Domestic Violence and Sexual Assault, spoke in support of HB 210, and she thanked Representative Meyer for his ongoing work in bringing the issues

of sexual assault to the forefront in Alaska. She explained that the way in which HB 210 could be the most supportive of a victim of sexual assault is if the victim goes through the rape exam at the time of the assault. In this way, physical evidence - both DNA and other kinds of physical evidence - can be collected and maintained. She reported that there are a lot of situations in which victims do not want to go forth through the trial process. They have been sexually abused, they sit through hours of police reporting, they go through hours of exams (spoken of in detail last year), and, as the case moves forward, they simply want to put the whole experience behind them. Hence victims feel that they can't go forth with prosecution; they do not want to go through the additional trauma of the trial.

MS. GENTLE offered that by having physical evidence on file and by removing the statute of limitations, it would provide a victim the opportunity, at a later date when he/she felt more healed and stronger, to go forth with prosecution. For example, there may be a perpetrator being charged on a rape case, and a victim who had been raped ten years ago and who had gotten an exam but at the time there was not enough evidence to forth on the case; then a connection might be made between the two cases and that perpetrator could be retried on the second assault because of matching evidence including matching DNA. In addressing the issue of a statute of limitations for a civil action, she said she thought it would be wonderful to open up the door because immediately after the crime is not the best time for a victim to be making the decision whether to go forth with a civil case. She has seen that victims - for instance, victims of child abuse or incest - do go forth with civil cases.

Number 1420

BLAIR McCUNE, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference. He said [the PDA's] main concern relates to the difficulties in defending a case that is over ten years old. Trying to find alibis and witnesses becomes extremely difficult, and he opined that as being the main reason for having a statute of limitations for offenses. He said that the PDA feels that the recent increase to ten years in the statute of limitations pertaining to sexual assault and other crimes against a person is appropriate. He added that one of the obvious purposes of a statute of limitations is to allow a person to defend himself/herself when charged with a crime. He concluded by saying that the PDA was not in favor of HB 210.

REPRESENTATIVE OGAN noted that that logic works both ways: prosecutors would have just as difficult a time finding witnesses - both defense and prosecution are yoked with that burden. He added, therefore, that he would not have any difficulty passing HB 210 on that basis.

Number 1279

JERRY LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, explained that the reason he had added "sexual abuse of a minor" to Section 1 was for clarity's sake; the current statute pertaining to crimes against children, which is located elsewhere, already stipulates that there is no statute of limitations. He affirmed for Chair Rokeberg that sexual abuse of a minor in the fourth degree, which is a misdemeanor, is already included in that statute.

CHAIR ROKEBERG added that the crime of incest has a ten-year statute of limitation, and that "Satch Carlson doesn't have a statute of [limitations]."

REPRESENTATIVE BERKOWITZ asked, "How many cases do we have that are more than five years old."

REPRESENTATIVE MEYER responded that according to a news interview with Juneau's chief of police, there are very few cases that go past the ten-year period, but there are some; the police chief's opinion was that those cases should still be prosecuted whenever possible. Representative Meyer said that based on the fact that there were a few such cases in Juneau, he assumed there were even more in Anchorage and Fairbanks, although he did not have a specific number.

CHAIR ROKEBERG referred to Amendment 1 [22-LS0782\C.1, Luckhaupt, 4/9/01], which read as follows:

Page 1, line 4, following "murder₁":
Insert "**felony**"

Page 1, line 7, following "murder₁":
Insert "**felony**"

Page 2, line 1:
Delete "**AS 11.41.427 - 11.41.458**"
Insert "**AS 11.41.427 - 11.41.438 and 11.41.450 - 11.41.458**"

He asked if Amendment 1 is intended to exclude removal of the statute of limitations for the crime of sexual abuse of a minor in the fourth degree (a class A misdemeanor), thereby keeping the statute of limitations for that crime at five years.

Number 1128

MR. LUCKHAUPT said that was correct; that was the effect of Amendment 1. He explained that there are two ways in which sexual abuse of a minor in the fourth degree is committed. The first involves a person under the age of 16 who engages in sexual penetration - consensual or otherwise - with a victim who is under the age of 13 and is at least three years younger than the offender; if the sexual penetration is not consensual, then an assault charge could also be filed. The second involves sexual contact between a [person who is at least 18 years of age and occupies a position of authority in relation to the victim] and a victim who is 16 or 17 years old and at least three years younger than the offender. He noted that the reference in statute to an offender who occupies a position of authority in relation to the victim is the result of [an incident involving] Satch Carlson.

Number 1016

CHAIR ROKEBERG made a motion to adopt Amendment 1. To clarify, he said that there was no intention behind HB 210 to include misdemeanor sexual abuse of a minor; the only intent behind HB 210 was to remove the statute of limitations for felony sexual assaults.

REPRESENTATIVE MEYER confirmed that intention.

Number 0938

REPRESENTATIVE BERKOWITZ objected for the purpose of a possible amendment to Amendment 1. He noted that HB 210 would completely remove the statute of limitations on a crime, which has only been done previously for the crime of murder. He said he had concern over the removal of the statute of limitations for class C felony sexual assaults. He suggested - in seeking a balance with the law - that the existing ten-year statute of limitations suffices for that class of offense. And, with every sensitivity towards how horrific sexual assault is, he stated that "we" have differing degrees of sexual assault in statute purposely to express that there are different levels of concern, and,

therefore, he was troubled by entirely lifting the statute of limitations.

REPRESENTATIVE JAMES said she agreed with Representative Berkowitz.

REPRESENTATIVE MEYER said: "What you're saying is that it would probably be OK to limit the statute of limitations on first degree [sexual assault] and second degree [sexual assault], which is [respectively, an] unclassified felony and [a] class B felony." But, he argued, a class C felony still involves sexual penetration and sexual contact, and in his mind, still [warrants being included in HB 210].

CHAIR ROKEBERG asked if "the old statutory rape" was considered third degree [sexual assault].

MR. LUCKHAUPT explained that the old statutory rape [crime] exists in all four of the sexual-abuse-of-a-minor statutes because "consent" was removed as a factor. He noted that the legislature has made the age of 13 the dividing line at which a victim can never consent to have sex; the legislature has decided there can never be an occasion when it is right for a 12-year-old to have sex.

REPRESENTATIVE BERKOWITZ withdrew his objection to Amendment 1.

Number 0688

CHAIR ROKEBERG asked if there were further objections to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 0672

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 2, "the statute of limitations be lifted for unclassified [felony] sexual assault and [unclassified felony sexual assault of a minor], A felony, and B [felony] of the same, ... which would leave the C felonies with the ten-year [statute of limitations] that exists."

Number 0620

REPRESENTATIVE MEYER objected for the purpose of discussion. He asked for a definition of third degree. He added that it was his understanding that a third-degree - or class C - felony still involved penetration and [sexual] contact.

Number 0603

MR. LUCKHAUPT explained that third-degree sexual abuse of a minor does involve sexual penetration, and that third-degree sexual assault, which is also a class C felony, has three forms. One form involves a guard at a correctional facility engaging in sexual penetration with a prisoner. A second form involves an offender who engages in sexual contact with a person whom the offender knows to be mentally incapable, incapacitated, or unaware that a sexual act is being committed. A third form involves a person, such as a counselor or a guard at a juvenile correctional facility, who engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services (DHSS) [or the offender is the legal guardian of the person].

Number 0512

REPRESENTATIVE BERKOWITZ noted that one of the cornerstones of criminal law is proportionality, wherein there has to be a proportional punishment to the crime. And the legislature has set up a statutory scheme whereby unclassified, class A, class B, and class C felonies, and class A and B misdemeanors exist. He said he thought that removing the statute of limitations for class C felonies was being disproportionate. He clarified that Conceptual Amendment 2 would remove the inclusion of class C felonies for the crimes of sexual assault and sexual assault of a minor from HB 210, which would then only remove the statute of limitations for unclassified felonies, class A felonies, and class B felonies of both sexual assault and sexual assault of a minor.

MR. LUCKHAUPT noted that the crime of incest is a class C felony, as is the crime of indecent exposure in the first degree.

CHAIR ROKEBERG remarked that HB 210 does not affect the current statute of limitations for the crimes of incest or indecent exposure.

MR. LUCKHAUPT agreed but questioned whether Conceptual Amendment 2 would involve the statutes pertaining to crimes committed against children beyond what is listed in HB 210.

REPRESENTATIVE BERKOWITZ noted that in his experience, children sometimes don't want to confront [the crime] until they are

older, and so a longer statute of limitations is, and can be appropriate. But forgetting the crime, he said, and just looking at the classification of crimes, there is a hierarchy of unclassified, [class] A, B, and C felonies; it seems that the statute of limitations ought not to be entirely lifted on lower-level crimes, regardless of how offensive those crimes are thought to be. The legislature has made a determination that there are different categories.

REPRESENTATIVE MEYER said that in his opinion, rape is rape, whether it involves a prison guard with a prisoner, or a caregiver at an old folks home or mental institution. He likened it to [the crime of] murder in that there are different levels, but all have [the statute of limitations removed].

REPRESENTATIVE BERKOWITZ countered that such was not the case [with the crime of murder].

REPRESENTATIVE OGAN requested clarification on the effects of Conceptual Amendment 2.

Number 0270

CHAIR ROKEBERG explained the effects to be such that the removal of the statute of limitations for felony sexual assault and felony sexual abuse of a minor would not include the class C felonies of those crimes. Thus unclassified, class A, and B felonies for the crimes of sexual assault and sexual abuse of a minor would have no statute of limitations, and class C felonies and misdemeanors of those same crimes would retain the current ten-year statute of limitations. He clarified that [the crime of] indecent exposure in the first degree was also a class C felony.

REPRESENTATIVE OGAN requested an explanation of the difference between indecent exposure in the first degree and indecent exposure in the second degree.

REPRESENTATIVE MEYER asked if [the crime of] indecent exposure is considered a sexual assault.

CHAIR ROKEBERG noted that [the crime of] indecent exposure already has a ten-year statute of limitations.

MR. LUCKHAUPT clarified that he had posed his questions regarding [the crime of] indecent exposure because he was not sure if Representative Berkowitz intended with Conceptual

Amendment 2 to affect all of the existing statute of limitations pertaining to children. He said that if Conceptual Amendment 2 only applies to [the crime of] class C sexual assault as it pertains to adults, then he did understand it.

REPRESENTATIVE BERKOWITZ commented that committee staff has pointed out that there is a section that says: "even if the general time limit has expired, a prosecution for sexual assault for an offense committed against a person under the age of 18 may be commenced at anytime." Therefore, he noted, his concern regarding minors is already addressed in current statute.

REPRESENTATIVE MEYER further clarified that Conceptual Amendment 2 would only apply to [adult victims of] sexual assault.

CHAIR ROKEBERG agreed that Conceptual Amendment 2 would not repeal the current law regarding [victims] 18 and under. He added that Amendment 1 was nothing more than a clarification of an existing statute.

REPRESENTATIVE JAMES questioned what would happen if, 20 years after a crime, it was prosecuted as a class B felony, but resulted in a class C felony.

REPRESENTATIVE BERKOWITZ, "That's the way it goes."

REPRESENTATIVE OGAN offered that it would be considered a lesser included offense.

TAPE 01-60, SIDE A
Number 0001

REPRESENTATIVE JAMES remarked that if all [the aforementioned felonies] were included in [HB 210], then that problem would not exist.

REPRESENTATIVE MEYER indicated that that was the standard he was using: penetration is what separates felony from misdemeanor.

REPRESENTATIVE JAMES inquired whether a class C felony involved penetration.

REPRESENTATIVE MEYER said it did.

REPRESENTATIVE BERKOWITZ said it did not [necessarily]. A class C [felony sexual assault] can be contact, he added.

REPRESENTATIVE JAMES asked if there was a dividing line between [class B felony and class C felony sexual assaults], and if so, what it consisted of.

REPRESENTATIVE MEYER said he thought a class C felony sexual assault involved penetration.

Number 0061

MR. LUCKHAUPT, to clarify, said:

Involving the same age groups, and the same factors in regards to whether someone's a prison guard or something like that, sexual contact is always one step below sexual penetration. ... Sexual assault in the first degree always involves penetration. You've got a form of sexual contact involving the same actors that is the second-degree offense. There are also forms of sexual penetration with new elements, involving new actors and new conditions on their relationship vis-a-vis each other; that is also classified as a second-degree offense. But ... sexual contact, which is mere touching, is always one step below sexual penetration involving the same actors - the same victim and the same offender.

REPRESENTATIVE JAMES said it seems to her that [prosecution of the crime of sexual contact] ought not to be open forever.

REPRESENTATIVE MEYER said he agreed.

CHAIR ROKEBERG suggested that the committee adopt Conceptual Amendment 2.

REPRESENTATIVE BERKOWITZ noted that one of the forms of [a class C felony sexual assault] says "engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services ... and the offender is the legal guardian of the person."

CHAIR ROKEBERG suggested, then, that [the forms of class C felony sexual assault which involve sexual penetration] be exempted from Conceptual Amendment 2.

REPRESENTATIVE BERKOWITZ acknowledged the difficulty in drafting such an exemption within Conceptual Amendment 2.

CHAIR ROKEBERG expressed confidence that Mr. Luckhaupt could accomplish it.

MR. LUCKHAUPT suggested that Conceptual Amendment 2 could say that class C [felonies] that involve sexual penetration are included in the unlimited statute of limitations. If such were agreed upon, he confirmed that he could develop language to that effect. He then described the agreed-upon Conceptual Amendment 2 as being "unclassified, class A, and class B sexual assaults involving adult victims are all unlimited statute of limitations; class C felonies ... involving adult victims where sexual penetration is involved are also unlimited statute of limitations." He added that the other class C felony sexual assault crimes retain the ten-year statute of limitations under current law.

Number 0330

CHAIR ROKEBERG asked if there were any objections to Conceptual Amendment 2. There being no objection, Conceptual Amendment 2 was adopted.

Number 0340

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 3, "to erase the differences between the criminal code and the civil code." He explained that since the statute of limitations is being removed from the criminal code, the statute of limitations should also be removed from the civil code.

Number 0356

CHAIR ROKEBERG objected, and noted that Conceptual Amendment 3 would constitute tort reform.

Number 0391

A roll call vote was taken. Representative Berkowitz voted for Conceptual Amendment 3. Representatives Meyer, James, Ogan, Coghill, and Rokeberg voted against it. Therefore, Conceptual Amendment 3 failed by a vote of 1-5.

REPRESENTATIVE BERKOWITZ added that he thought [that failure to pass Conceptual Amendment 3] leads to a very bizarre result whereby the state is allowed to go after offenders [indefinitely] but the victims will not have the same ability.

CHAIR ROKEBERG noted that Conceptual Amendment 3 was an interesting concept; because it was such a major issue, he suggested that Representative Berkowitz create other legislation to accomplish such a goal.

REPRESENTATIVE BERKOWITZ remarked that [such a change to the civil code] did fit under the title of HB 210.

Number 0425

REPRESENTATIVE JAMES moved to report HB 210, version 22-LS0782\C, Luckhaupt, 4/3/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 210(JUD) was reported from the House Judiciary Standing Committee.

HB 187 - VANDALISM OF CEMETERIES & GRAVES

Number 0440

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 187, "An Act relating to the destruction, desecration, and vandalism of cemeteries and graves."

Number 0480

LORI L. BACKES, Staff to Representative Jim Whitaker, Alaska State Legislature, presented HB 187 on behalf of the sponsor, Representative Whitaker. She explained that under current Alaska statutes, there are no provisions relating specifically to the vandalism or desecration of modern cemeteries and memorials. One legal opinion is that they are protected under the Alaska Historic Preservation Act; however, persons who are charged with the maintenance and care of cemeteries are unconvinced that AS 41.35.200 provides for the penalties necessary to protect the safety and dignity of Alaska's cemeteries and memorials from theft, vandalism, and other forms of desecration. Acts of vandalism are currently punishable under statutes that relate to criminal mischief, but the degree of crime centers around the monetary value of the damage and does not recognize the personal insult and emotional injury that is suffered by a family, community, or tribe when cemeteries, burial sites, or memorials are vandalized. Ms. Backes conveyed that HB 187 clearly states that it is a crime of criminal mischief in the second degree if a person "defaces, damages, or desecrates a cemetery or the contents of a cemetery or a tomb,

grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or ... appears to be abandoned, lost, or neglected".

REPRESENTATIVE BERKOWITZ noted that language in HB 187 makes an exception for defacing, damaging, desecrating, or removing contents, if the action is consistent with law. He envisioned that law enforcement may need to engage in these types of acts, or that damage might be done during the course of an archeological exhibition.

MS BACKES explained that those activities are already protected by federal law, as well as by the Alaska Historic Preservation Act. However, she added, if, for example, a state worker or a cemetery worker needs to excavate a grave, remove a headstone, or perform some other act that's within his/her duty, HB 187 adds an affirmative defense.

CHAIR ROKEBERG noted that he has concerns about archeological "digs," and that the university has suggested an amendment to add "or state permit" in order to address that point. He then asked whether "headstone or marker rubbings" caused damage or if they would be considered a violation.

MS. BACKES acknowledged that this point had not been considered when the research on HB 187 was being done. She said that she would find it difficult to think that "headstone rubbings" would cause damage to the site or cause insult to the family, but she noted that some people might find it offensive. She added that HB 187 does not specifically address this issue.

Number 0770

ROBERT SAM, Cemetery Caretaker, explained that he has been involved with the restoration, preservation, and protection of cemeteries, sacred sites, historic sites, and cultural heritage sites in different parts of Alaska for the last 15 years, since 1986. He added that in 1988 he received the "Alaska Volunteer of the Year" award; he also has received national and international recognition over the years for performing these services. He said that over the years he has dealt with vandalism, desecration, and grave robbing. He added that even headstone rubbing can cause damage. He provided the committee with photographs of desecrated sites. Cemeteries are popular places for people to hold parties and drink alcohol, he informed the committee. Mr. Sam went on to explain that marble headstones featuring angels are used primarily for children's

graves, and that it is very popular among youth to knock the heads and wings off these [angel headstones].

MR. SAM noted that it is only a few people who do damage to these sites. He recounted a recent incident of vandalism: the perpetrators pushed the headstones over and then chipped out the names of the deceased, and in some cases actually smashed many of the older headstones into little pieces. Mr. Sam noted that the hardest part of his job as a caretaker is calling the families and informing them that their family plots have been desecrated; many families become victims of this type of abuse. On another point, Mr. Sam explained that there is a growing market for headstones, particularly the ones with Alaskan Native symbols on them. He remarked that in Alaska, it is very apparent that some people still believe it is OK to desecrate a cemetery. He added that there is very little law that addresses this type of desecration; hence the general public feels that it's OK to continue this type of behavior. Even when incidents of vandalism are reported to the police, the law is so vague that nothing is done.

Number 1156

MR. SAM reported that cemeteries in Alaska are disappearing on a daily basis because they are not protected. He said that the time has come for the State of Alaska to address this issue and provide protection of these sacred sites. All cemeteries are being vandalized, he said, not just Native sites; many are simply disappearing, and it is very important to protect those that are left. A lot of families feel that they are at a loss and that they have no one to turn to, he added. Mr. Sam informed the committee that he has taken the preservation and protection of these sites on as a lifelong project. He also mentioned that he had recently finished up a project for the Department of Transportation and Public Facilities (DOT&PF) to restore a mausoleum in Sitka; he'd identified and returned 138 bodies back to their home communities and helped re-inter them. However, the problem with doing this, he said, is that these bodies have been placed in unprotected sites, so there is great potential that these sites will be vandalized and destroyed. Again, he said that the time has come to protect "our" burial sites. He concluded by saying that he is in support of HB 187.

MR. SAM, in response to questions, explained that rubbing headstones for genealogical purposes can do damage; if rubbed too hard, the stone - even marble - can deteriorate, and in some cases the headstones can topple easily if care isn't taken.

CHAIR ROKEBERG asked if places such as the memorial house in Eklutna Village would be included under the definition of "memorial" or "tomb" in HB 187.

MR. SAM explained that they are considered to be "memorials," and the one in Eklutna Village is a Russian Orthodox cemetery that has blended the best of both worlds: the people have placed traditional [Native] memorials there as well as church-related memorials. He said that a lot of families have yearly ceremonies at these places, and they will bring the deceased his/her favorite food or a much-cherished object such as a sewing machine, hunting rifle, or rocking chair and place it on the gravesite. He offered that "memorial" can have a rather broad definition.

MR. SAM, in response to a question, said that he did not think rubbing should be illegal. He said he feels that more good people need to be attracted to cemeteries in order to cultivate the desire to preserve and protect these sites. Offering tours and allowing rubbings are ways to educate the public. One of the methods he uses is to take the youth in his community to the cemetery and show them the burial sites of their relatives, and in this way encourage them to protect and restore these places; they now have picnics there, and people come and pick up the trash, and in many other ways the community of Sitka has "taken ownership" of the cemetery. He said that to him, a sign of a healthy community is a well-maintained and clean cemetery.

Number 1620

REPRESENTATIVE OGAN inquired whether Mr. Sam knew the outcome of the situation in the Barrow cemetery, where ocean erosion had exposed some old graves with well-preserved remains. He noted that there is a section in HB 187 that says "authorized by law to engage in the conduct"; he asked whether there is anything in law that authorizes the type of research engendered by the Barrow situation.

CHAIR ROKEBERG again mentioned the forthcoming amendment intended to expand authorizations to include state permits.

MR. SAM remarked that with the federal Native American Graves Protection and Repatriation Act, if there is a gravesite that needs to be moved, and if even one family member objects, then federal law will back the family member's decision. He added, however, that over the years he has had the opportunity to work

with state and federal agencies in moving graves in a respectful and dignified manner.

Number 1767

ELMER MAKUA, Cemetery Caretaker, Tongass Tribe, noted that he has been actively managing and repairing damage to the gravesites on the north point of Pennock [Island] in addition to other gravesite areas. He added that he faces problems similar to those spoken of by Mr. Sam, and that one of the gravesite areas that he manages is located on an island that has been subdivided by the local [Ketchikan] government. He explained that the desecration to these sites comes in the form of encroachments from developments; folks store their lumber at these sites, build fences across them, or keep their equipment in those areas. These acts of desecration are being done "knowingly," he added, and when the perpetrators are confronted, they become very defensive. When the State Troopers are approached for assistance, they are not able to provide any help; they don't know what to do, and neither do the FBI officials when they are asked to help.

MR. MAKUA said that his organization has contemplated putting up fences to protect these areas, but he added that it would be preferable to keep the areas open so that, as Mr. Sam suggested, people could be encouraged to take an interest in the historical significance of the sites. He remarked that although many sites are protected under the federal laws, there is still great concern for those sites that are located close to Ketchikan and which are being desecrated and searched for artifacts. He opined that the laws in place are not as strong as they need to be in order to deter people from this behavior.

CHAIR ROKEBERG noted that inclusion of the language in HB 187 that refers to sites that appear to be abandoned should help motivate law enforcement officers to protect these sites.

Number 1957

DAVID JACOBY, Public Works Director, City of Fairbanks, testified via teleconference and said in his area, they also face the problem of desecration caused by people with "4-wheelers" using the cemetery as "part of their playground" - taking out headstones, digging holes in graves, or removing funerary objects such as the angels that Mr. Sam referred to. Vandalism of this sort creates problems for him and his employees, he explained, not the least of which includes having

to inform the family members that they must come to the cemetery and catalogue their losses. These families experience a lot of emotional distress because of this type of crime, particularly when the gravesite belongs to a child. The law needs to be in place, he stated, not so much as a prosecution tool, but as protection and deterrence against this type of behavior. On another point, he said that during the winter in Fairbanks, a crypt is used to store deceased people until the ground thaws, and some people try to break in (one person actually got the doors off) to remove the caskets as a joke. This also is quite an emotional strain on the family, he added, as well as being costly for the city to try to maintain a cemetery that is not a "perpetual care cemetery." He closed by offering support for HB 187.

Number 2083

BLAIR McCUNE, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference and said that [the PDA's] concern about HB 187 is that it is invariably a class C felony for doing any amount of damage, desecration, or defacement. In light of the testimony, he added, this behavior is certainly a serious problem, but [the PDA] has hope that there would be some way to draft HB 187 so that if there is only minor defacement, or minor damage, the younger people who are misguided and do this type of thing don't end up, invariably, with a felony.

REPRESENTATIVE OGAN, on a different point, brought attention to the language on page 2, lines 7 and 11, which refers to abandoned, lost, or neglected sites. He asked how a person would be able to "knowingly" commit a felony against a gravesite that is lost; the culpability question comes to mind, he added, when the gravesite is lost and a person buys the property. He remarked that he has concern with creating a felony for something that is lost.

CHAIR ROKEBERG said he is assuming that "lost" means a loss of title or domain over the actual real property or grounds.

REPRESENTATIVE JAMES pointed out that the language says "or memorial appears to be abandoned, lost, or neglected"; she offered if a site is covered over with weeds and trees and it looks as though no one has been there recently, then it would be easy to deduce that the site could be an "abandoned, lost, or neglected" site.

REPRESENTATIVE OGAN commented that given Alaska's history, there are probably people buried all over Alaska and no one really knows where the remains are. If a person buys a piece of property with no visible sign that a "cemetery, tomb, grave, or memorial" is located on it, and the owner, during the course of construction or development, uncovers the site, then it becomes a felony to continue work on the area. Representative Ogan opined that it could result in a situation of "regulatory taking."

MS. BACKES, with regard to Representative Ogan's point, said that the key words in HB 187 are "appears to be", because this phrase has been used as a defense in the past - that it looked as though it were neglected and no one cared anymore, and thus it was all right to remove things from the site or damage things at the site. To address Representative Ogan's point further, she explained that when someone buys a piece of property and then later finds a grave on that property that appears to be abandoned, lost, or neglected, the person can obtain a permit from the state to deal with that situation if, for example, the site needs to be moved or protected. Therefore, although a person does need to go through the state's permitting process, there is statutory recourse for the homeowner or construction company if the property purchased contains a burial/memorial site. She added that there are also federal laws that deal with, particularly, historic and archeological types of burial sites.

Number 2310

CHAIR ROKEBERG, returning to Mr. McCune's point, asked what other statutes are available for police with regard to those people who desecrate cemeteries, if the crime is not criminal mischief in the second degree and [the amount of damage] is less than \$500.

MR. McCUNE responded that the trespass laws are always available, and that generally, according to [statutory] valuations, [damage] over \$500 is a felony; [damage] between \$500 and \$50 is a class A misdemeanor; and [damage] under \$50 is a class B misdemeanor.

REPRESENTATIVE BERKOWITZ added that charging someone for "an attempt" to commit the crime is one way of lowering the charge one level.

REPRESENTATIVE JAMES, although she acknowledged that some types of damage to these sites could be considered insignificant, surmised that the main focus of HB 187 is to address the cases of severe damage, as was recounted by the testifiers, most of which would amount to more than \$500 worth of damage.

REPRESENTATIVE BERKOWITZ mentioned that the monetary limits should be revisited.

MS. BACKES added that a monetary value cannot be determined for the emotional damage done to a family and the insult done to a person's memory through these acts of vandalism and desecration.

REPRESENTATIVE OGAN suggested that perhaps the \$500 limit could be removed from HB 187 and the offense kept at a misdemeanor level.

CHAIR ROKEBERG opined that this would be a problem because HB 187 is drafted to fit within the criminal mischief statute, and these acts are simply being added to what constitutes criminal mischief in the second degree.

Number 2448

REPRESENTATIVE OGAN suggested that some sort of penalty should be considered for those people who do less than \$500 worth of damage because even seemingly insignificant acts of damage can do emotional harm to the family.

REPRESENTATIVE JAMES opined that the purpose of HB 187 is to stop people from committing these acts of vandalism and desecration to begin with, not necessarily to collect money from perpetrators or put them in jail after the damage has been done. For this reason, if the penalty is too small, she added, it won't make any difference at all - the behavior will continue.

REPRESENTATIVE OGAN commented that most of the people doing the damage probably won't know that [this type of behavior] is against the law.

CHAIR ROKEBERG mentioned that there might also be the possibility of dropping the level of offense down to the "third and fourth degree," if the committee wishes.

TAPE 01-60, SIDE B
Number 2486

MS. BACKES remarked that she had not specifically considered the penalties when drafting HB 187, but she added that applying the penalties associated with a class C felony - up to five years in jail and a \$50,000 fine - is not unheard of for similar situations in other states.

REPRESENTATIVE BERKOWITZ remarked that he understood the concern about being too harsh on youth who are simply doing "dumb things," and he raised the point that there is always suspended imposition of sentence (SIS) available for first-time offenders. But, he added, it seems to him that a felony is appropriate in this area, and he opined that the \$500 threshold is low enough that it will be reached in most instances. In addition, he said he has confidence that prosecutors will exercise discretion when the conduct is de minimis, and not charge as a felony but charge as a misdemeanor instead. He went on to explain that just because a prosecutor has the charge of felony desecration of cemetery available, it does not preclude the prosecutor from, for example, charging as criminal mischief in the fourth degree for stealing the park bench that's next to the gravestone.

CHAIR ROKEBERG said the committee believes that prosecutors can use the "lesser included forms of mischief."

REPRESENTATIVE BERKOWITZ confirmed this interpretation of the statute.

Number 2371

CHAIR ROKEBERG, after closing public testimony on HB 187, made a motion to adopt Amendment 1, which would insert "or state permit" after "law" on page 2, line 18, such that it would then read "authorized by law or state permit to engage in the conduct." He explained that this change has been recommended by the University of Alaska, and would expand the affirmative defense provision to include activity at "archeological digs."

REPRESENTATIVE BERKOWITZ asked what authority the state has to engage in this conduct.

Number 2320

WENDY REDMAN, Vice President for University Relations, University of Alaska, explained that federal law requires that the state issue permits for any kind of activity relating to excavation, identification, and reclamation of any kind of gravesites. Thus, when roads are being laid or erosion is

taking place in certain areas, the archeological department of the university is contacted and permits are issued for university people to work with local authorities on preservation and repatriation activities. She said that although local tribal authorities could object to the activities and put a stop to the permit, there have not been any conflicts or disagreements with tribal entities or communities for many, many years.

MS. BACKES added that the Department of Natural Resources (DNR) is responsible for issuing these permits.

Number 2230

CHAIR ROKEBERG asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 2218

REPRESENTATIVE JAMES moved to report HB 187, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 187(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 3:48 p.m. to 3:49 p.m.

SB 103 - ELECTION CAMPAIGNS AND LEGISLATIVE ETHICS

Number 2190

CHAIR ROKEBERG announced that the committee would continue the hearing on CS FOR SENATE BILL NO. 103(FIN), "An Act relating to election campaigns and legislative ethics."

Number 2183

CHAIR ROKEBERG made a motion to adopt Amendment 1 [text previously provided], which would provide for combining the financial disclosure statements of public officials and legislators into one form. He reminded members that it has been suggested by the Alaska Public Offices Commission (APOC) that the language in Amendment 1 would be more suitably placed in AS 39.50 and AS 24.60, rather than AS 15.13.030.

REPRESENTATIVE JAMES said she is not convinced that it is possible to create a single form for everybody - there will still have to be two forms to accommodate both legislators and

public officials. But, she suggested, everything requested only of legislators could be placed on one form.

CHAIR ROKEBERG said he thinks that the three sections specific to legislators could be placed on a single form along with the instructions that these sections need only be filled out by legislators.

Number 2100

REPRESENTATIVE JAMES, with regard to the APOC's suggested change, made a motion to conceptually amend Amendment 1 "to move it where it belongs." There being no objection, the conceptual amendment to Amendment 1 was adopted.

Number 2078

CHAIR ROKEBERG asked whether there were any objections to Amendment 1, as amended. There being no objection, Amendment 1, as amended, was adopted.

Number 2071

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 2, which read [original punctuation provided]:

Page 5, lines 3-5,
Delete all materials

Number 2056

CHAIR ROKEBERG objected.

REPRESENTATIVE BERKOWITZ explained that Amendment 2 deletes language which states that campaign signs for elections that have already taken place have no monetary value.

CHAIR ROKEBERG, in defense of his objection to Amendment 2, said placing value on campaign signs from elections that have already taken place is a meaningless valuation.

REPRESENTATIVE JAMES noted that some signs, particularly the big signs, do have quite a bit of residual value. She added that as a bankruptcy trustee, she herself has sold some of the larger, used signs - from a bankrupt real estate firm - for a considerable amount of money.

REPRESENTATIVE BERKOWITZ, in defense of Amendment 2, added that some of the larger Corex signs (the 4x8 size) can cost \$100. He said it is important to acknowledge that campaign signs do have value; he advocated that the status quo be maintained with regard to the treatment and valuation of campaign signs via the adoption of Amendment 2.

Number 1920

A roll call vote was taken. Representative Berkowitz voted for Amendment 2. Representatives James, Ogan, Coghill, Meyer, and Rokeberg voted against it. Therefore, Amendment 2 failed by a vote of 1-5.

Number 1912

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 3, which read [original punctuation provided]:

Page 6, lines 2-9,
Delete all materials

CHAIR ROKEBERG objected.

REPRESENTATIVE BERKOWITZ explained that Amendment 3 strikes language that states a contribution does not include two or fewer mass mailings before each election by each political party describing the slate of candidates for election, which may include photographs, biographies, and information about the parties candidates; he opined that this exception to the definition of contribution presents a lot of opportunities to "cook up mischief." It could be a slate of candidates particular to, for example, a House district where there is one Senate candidate and one House candidate, or it could be areawide; the term mass mailings "opens the door" to exceed the contribution limits imposed by campaign finance reform.

REPRESENTATIVE JAMES offered that the language regarding mass mailings could simply be made more specific rather than deleting it altogether as is proposed via Amendment 2. She noted that the problem exists in both parties; if they wished to send out something with a slate of their candidates in the general election, then the cost would have to be divided among all the candidates and be counted as a contribution, and if the party had already given the maximum to any individual candidate, then the mass mailing could not be done because the party would not be able to leave that individual candidate out. She said she

thinks parties ought to be allowed to send out mass mailings of this sort without the candidates listed having to claim it as a campaign contribution from the party.

REPRESENTATIVE BERKOWITZ remarked that retention of the language in SB 103 regarding mass mailings would be moving away from the campaign limits imposed on parties. He went on to say: "It looks like 'two or fewer mass mailings' doesn't describe when those mailings can occur. I have been the subject of mass mailings from the other party and, frankly, it seems to me that it's an underhanded way for the opposing candidate to evade responsibility for a message."

REPRESENTATIVE JAMES said that she would be perfectly willing to limit it to one mass mailing prior to the general election.

REPRESENTATIVE OGAN noted that the language specifies a party's slate of candidates.

Number 1771

REPRESENTATIVE BERKOWITZ countered that describing a slate of candidates doesn't prohibit mention of the other party's opposing candidate. "You can say 'Vote for Joe Smith; he's a much better guy than Jane Doe, who's a terrible human being and has done all these atrocious things,'" he added.

REPRESENTATIVE JAMES commented that although she is willing to offer an amendment to Amendment 3 that would limit the mass mailings to one, she observed that it would not have the votes to carry. She also noted that she had originally thought the language specified unlimited mass mailings, and since this is not the case, she finds the current language acceptable.

REPRESENTATIVE BERKOWITZ, on a technical point, said that the language regarding mass mailings says, "by each political party"; since there are more than two political parties, he suggested that the language should read "by a political party". He then asked how this provision affects nonpartisan candidates.

CHAIR ROKEBERG, on Representative Berkowitz's technical point, opined that the language used is simply a choice of grammar.

REPRESENTATIVE JAMES, in response to Representative Berkowitz's question, offered that the language would have no effect on nonpartisan candidates because they don't belong to any party

that would include them on a slate of candidates in a mass mailing.

Number 1630

A roll call vote was taken. Representative Berkowitz voted for Amendment 3. Representatives James, Ogan, Coghill, Meyer, and Rokeberg voted against it. Therefore, Amendment 3 failed by a vote of 1-5.

Number 1623

REPRESENTATIVE BERKOWITZ made a motion to adopt [Amendment 4A], which read [original punctuation provided]:

Page 7, lines 1-5,
Delete all materials

CHAIR ROKEBERG objected for purposes of discussion.

REPRESENTATIVE BERKOWITZ explained that the provision regarding communications of \$500 or less, which would be deleted by [Amendment 4A], is confusing, expensive, and unnecessary.

CHAIR ROKEBERG noted that he did not understand [the purpose of] this provision.

REPRESENTATIVE MEYER commented that it would be difficult to determine a value for these communications.

Number 1473

A roll call vote was taken. Representatives James, Berkowitz, and Rokeberg voted for [Amendment 4A]. Representatives Ogan, Coghill, and Meyer voted against it. Therefore, [Amendment 4A] failed by a vote of 3-3.

Number 1462

REPRESENTATIVE OGAN made a motion to adopt Conceptual Amendment 4B, such that "per year" would be inserted after "\$500 or less" on page 7, line 1. The end result would read: "communications with a value of \$500 or less per year". He explained that this would place this allowance for communications on the same par with individuals who are allowed to give \$500 or less per year.

REPRESENTATIVE JAMES, for the record, said:

When we passed campaign finance reform, one of the main purposes of the campaign reform was to eliminate the contributions by corporations, labor organizations, unincorporated business and trade associations, and nonprofit corporations. Now we're adding it back in - up to \$500 a year.

REPRESENTATIVE MEYER mentioned that he thinks it is fine to allow these entities to contribute something with a little monetary value, and that it's to be expected.

REPRESENTATIVE BERKOWITZ requested clarification that with the provision regarding communications, it would be OK for labor unions, should they so choose, to place 4x8 signs (that cost less than \$500) in front of their halls saying, "Dear Members, We Love Ethan Berkowitz!" If so, he said, he sees [this allowance] as being a little bit problematic.

REPRESENTATIVE JAMES agreed.

CHAIR ROKEBERG offered that if it were simply a matter of issuing an endorsement slate in a newsletter, it would be acceptable; he reminded members that [the APOC] has indicated that this is already permissible under current law. He then indicated that the entire provision in SB 103 regarding communications would get further scrutiny in the House Finance Committee.

Number 1299

CHAIR ROKEBERG asked whether there were any objections to Conceptual Amendment 4B. There being no objection, Conceptual Amendment 4B was adopted

Number 1286

REPRESENTATIVE BERKOWITZ made a motion to adopt [Amendment 5A], which read [original punctuation provided]:

Page 9, line 31,
Delete all materials
Page 10, lines 1-5,
Delete all materials

REPRESENTATIVE BERKOWITZ explained that [Amendment 5A] deletes the ability of legislators or legislative staff to work on

behalf of a state or federal constitutional amendment. Notwithstanding the previously heard argument that the legislature should continue to be involved in proposed constitutional amendments that originate as legislative resolutions, he pointed out that the language he is attempting to delete also allows involvement in proposed federal constitutional amendments, which, he observed, the legislature has nothing to do with.

REPRESENTATIVE JAMES said she believed that as legislators, they had an obligation to explain their position on issues, whenever possible, to the public. She added, however, that she has a problem with the concept of utilizing governmental resource towards this end. If any governmental resources are used, she continued, they should be very limited. She went on to say that if she were to spend a small portion of her workday in support or opposition of a proposed constitutional amendment, it would be difficult to sort out which portion of her salary, which she indicated was often quite small, is to be cataloged towards that activity. She opined that the allowance for this kind of activity should be a little broader for legislators, but not as broad as this provision of SB 103 is proposing; she said she did not think that legislators should be out campaigning either in support of or opposition to proposed constitutional amendments. On the point brought up by Ms. Miles that legislators are allowed to become part of a group working for or against proposed constitutional amendments, Representative James said she disagrees with the concept and thinks this activity would be "purely unethical."

Number 1148

REPRESENTATIVE OGAN asked whether Representative Berkowitz would consider a friendly amendment [in place of Amendment 5A] to insert "incidental" in front of "use of governmental resources" on page 9, line 31. This would eliminate the appearance and possibility that large amounts of governmental resources could be expended in support of or opposition to proposed constitutional amendments, he explained.

REPRESENTATIVE BERKOWITZ agreed that the addition of "incidental" to this provision would alleviate some of his concerns, but he cautioned that although he has no qualms that any current legislators will take advantage of this provision in SB 103, he still has concerns that future legislators could misuse this provision. He posited that this is one of the worst provisions in SB 103.

Number 0975

A roll call vote was taken. Representatives Meyer and Berkowitz voted for [Amendment 5A]. Representatives Coghill, James, Ogan, and Rokeberg voted against it. Therefore, [Amendment 5A] failed by a vote of 2-4.

Number 0960

REPRESENTATIVE OGAN made a motion to adopt Amendment 5B, to insert "incidental" in front of "use of governmental resources" on page 9, line 31.

REPRESENTATIVE BERKOWITZ made a motion to amend Amendment 5B, such that "or federal" would be removed from page 10, line 2.

REPRESENTATIVE JAMES indicated she is in favor of the amendment to Amendment 5B.

CHAIR ROKEBERG objected to the amendment to Amendment 5B.

REPRESENTATIVE BERKOWITZ withdrew the amendment to Amendment 5B and indicated that he would offer it again, separate from Amendment 5B.

Number 0900

CHAIR ROKEBERG asked whether there were any objections to Amendment 5B. There being no objection, Amendment 5B was adopted.

Number 0895

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 5C, which would strike "or federal" from page 10, line 2.

REPRESENTATIVE OGAN objected. He remarked that with the addition of the term "incidental", he did not have a problem with activity related to federal constitutional amendments.

CHAIR ROKEBERG reminded members that federal constitutional amendments come before the legislature for ratification or rejection; because this is the process, he thinks it is entirely appropriate that legislators gather feedback from their constituents regarding any proposed federal constitutional amendments.

REPRESENTATIVE BERKOWITZ withdrew Amendment 5C.

Number 0821

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 6, which read [original punctuation provided]:

Page 5, lines 6-11,
Delete all materials

CHAIR ROKEBERG commented that this addresses language that Ms. Miles previously expressed concerns over.

REPRESENTATIVE BERKOWITZ then noted that the language deleted by Amendment 6 was tied to the language regarding the use of governmental resources, and was dependent upon the adoption of Amendment 5A; for this reason, Representative Berkowitz withdrew Amendment 6.

Number 0766

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 7, "in the event that a member of the legislature passes away, that his surviving spouse can claim the proceeds of the POET [public office expense term] account, rather than have to dispose of it."

REPRESENTATIVE OGAN said that as the legislator with the most recent brush with mortality, he has to declare a conflict.

REPRESENTATIVE JAMES said she opposes Conceptual Amendment 7 because she thinks that the whole concept of putting aside money in the POET account is that it be used for legislative purposes. She added that it seems to her that if the money is not used for legislative purposes, the law already requires that the money be given away. Therefore, in the event of a legislator's death, the surviving spouse should comply with this requirement and give away any money remaining in the POET account.

Number 0618

A roll call vote was taken. Representatives Meyer and Rokeberg voted for Conceptual Amendment 7. Representatives Berkowitz, James, Coghill, and Ogan voted against it. Therefore, Conceptual Amendment 7 failed by a vote of 2-3.

Number 0615

REPRESENTATIVE JAMES moved to report CSSB 103(FIN), as amended, out of committee with individual recommendations and the accompanying fiscal note.

Number 0607

REPRESENTATIVE BERKOWITZ objected, and for the record said, "We are retreating from the campaign finance reform with this; there are some important cleanups that are part of it, but I think we've gone too far, and I think we've opened ourselves up for undue criticism by some of the measures we've taken."

Number 0600

A roll call vote was taken. Representatives James, Coghill, Meyer, and Rokeberg voted to report CSSB 103(FIN), as amended, out of committee. Representative Berkowitz voted against it. [Representative Ogan was unable to vote on the motion because he attended via teleconference.] Therefore, HCS CSSB 103(JUD) was reported from the House Judiciary Standing Committee by a vote of 4-1.

Number 0570

CHAIR ROKEBERG announced that the committee needed to adopt a House Concurrent Resolution to change the title of SB 103.

Number 0560

REPRESENTATIVE JAMES made a motion to adopt the proposed House Concurrent Resolution, version 22-LS0875\A, Cramer, 4/4/01, as a work draft. There being no objection, it was so ordered.

Number 0550

REPRESENTATIVE JAMES moved to report the proposed House Concurrent Resolution, version 22-LS0875\A, Cramer, 4/4/01, out of committee with individual recommendations. There being no objection, the House Concurrent Resolution [which later became HCR 15] was reported from the House Judiciary Standing Committee.

[HCS CSSB 103(JUD) was reported from committee.]

ADJOURNMENT

Number 0547

There being no further business before the committee, the House Judiciary Standing Committee meeting was recessed at 4:21 p.m. until 5 p.m. on 4/10/01.