

**ALASKA STATE LEGISLATURE**  
**HOUSE TRANSPORTATION STANDING COMMITTEE**

February 19, 2002

1:37 p.m.

**MEMBERS PRESENT**

Representative Vic Kohring, Chair  
Representative Beverly Masek, Vice Chair  
Representative Scott Ogan  
Representative Drew Scalzi  
Representative Peggy Wilson  
Representative Mary Kapsner  
Representative Albert Kookesh

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 374

"An Act naming the David Douthit Veterans' Memorial Bridge."

- MOVED HB 374 OUT OF COMMITTEE

HOUSE BILL NO. 369

"An Act naming bridge number 1121, across the Knik River, the Sergeant James Bondsteel Bridge of Honor; and providing for an effective date."

- MOVED HB 369 OUT OF COMMITTEE

HOUSE BILL NO. 350

"An Act relating to criminal mischief and terroristic threatening."

- MOVED CS for HB 350(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 405

"An Act relating to the prosecution of criminal offenses committed on or against ferries and other watercraft owned or operated by the state; and providing for an effective date."

- MOVED HB 405 OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 374

SHORT TITLE:NAMING DOUTHIT VETERANS' MEMORIAL BRIDGE

SPONSOR(S): REPRESENTATIVE(S)LANCASTER

Jrn-Date	Jrn-Page		Action
02/01/02	2121	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2121	(H)	TRA
02/01/02	2121	(H)	REFERRED TO TRANSPORTATION
02/19/02		(H)	TRA RPT RECD AWAIT TRANSMITTAL NXT
02/19/02		(H)	TRA AT 1:15 PM CAPITOL 17

BILL: HB 369

SHORT TITLE:NAMING BONDSTEEL BRIDGE OF HONOR

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/01/02	2116	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2116	(H)	TRA
02/01/02	2116	(H)	FN1: ZERO(DOT)
02/01/02	2116	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/01/02	2116	(H)	REFERRED TO TRANSPORTATION
02/19/02		(H)	TRA RPT RECD AWAIT TRANSMITTAL NXT
02/19/02		(H)	TRA AT 1:15 PM CAPITOL 17

BILL: HB 350

SHORT TITLE:TERRORISTIC THREATS

SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
01/23/02	2040	(H)	READ THE FIRST TIME - REFERRALS
01/23/02	2040	(H)	TRA, JUD
02/19/02		(H)	TRA AT 1:15 PM CAPITOL 17

BILL: HB 405

SHORT TITLE:CRIMES COMMITTED ON STATE WATERCRAFT

SPONSOR(S): REPRESENTATIVE(S)MEYER

Jrn-Date	Jrn-Page		Action
02/11/02	2206	(H)	READ THE FIRST TIME - REFERRALS
02/11/02	2206	(H)	JUD

02/11/02        2207            (H)            TRA REFERRAL ADDED BEFORE JUD  
02/13/02        2258            (H)            COSPONSOR(S): DYSON  
02/19/02                    (H)            TRA AT 1:15 PM CAPITOL 17

**WITNESS REGISTER**

REPRESENTATIVE KEN LANCASTER  
Alaska State Legislature  
Capitol Building, Room 421  
Juneau, Alaska 99801  
POSITION STATEMENT: Sponsor of HB 374.

NITA DOUTHIT  
36975 Hakala  
Soldotna, Alaska 99669  
POSITION STATEMENT: Testified as the mother of David Douthit  
on HB 374.

TOM BOEDEKER, City Manager  
City of Soldotna  
177 North Birch Street  
Soldotna, Alaska 99669  
POSITION STATEMENT: Testified in support of HB 374.

DENNIS POSHARD, Legislative Liaison  
Office of the Commissioner  
Department of Transportation & Public Facilities  
3132 Channel Drive  
Juneau, Alaska 9981-7898  
POSITION STATEMENT: Testified in favor of HB 374 on behalf of  
the department.

LADDIE SHAW, Director  
Veterans Affairs  
Department of Military & Veterans' Affairs  
P.O. Box 5800  
Fort Richardson, Alaska 99505-0800  
POSITION STATEMENT: Testified in favor of HB 369 on behalf of  
the department.

REPRESENTATIVE LESIL MCGUIRE  
Alaska State Legislature  
Capitol Building, Room 418  
Juneau, Alaska 99801  
POSITION STATEMENT: Sponsor of HB 350.

LINDA WILSON, Deputy Director

Public Defender Agency  
Department of Administration  
900 West 5th Avenue, Suite 200  
Anchorage, Alaska 99501-2090

POSITION STATEMENT: Testified on HB 350 that Version F corrects her concerns about the broadness of the bill; testified that the agency neither supports nor recommends HB 405.

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature  
Capitol Building, Room 110  
Juneau, Alaska 99801

POSITION STATEMENT: Sponsor of HB 405.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section (Juneau)

Criminal Division

Department of Law

P.O. Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: Testified on behalf of the department on HB 405.

#### **ACTION NARRATIVE**

TAPE 02-2, SIDE A

Number 001

CHAIRMAN VIC KOHRING called the House Transportation Standing Committee meeting to order at 1:37 p.m. Committee members present at the call to order were Representatives Scalzi, Wilson, and Kohring. Representatives Ogan, Masek, Kapsner, and Kookesh joined the meeting as it was in progress.

#### HB 374-NAMING DOUTHIT VETERANS' MEMORIAL BRIDGE

CHAIRMAN KOHRING announced that the first matter before the committee was HOUSE BILL NO. 374, "An Act naming the David Douthit Veterans' Memorial Bridge."

Number 014

REPRESENTATIVE KEN LANCASTER, Alaska State Legislature, sponsor of HB 374, said that the Soldotna City Council asked him to bring HB 374 forward and characterized it as a fairly straightforward bill. He said the bill would name the bridge over the Kenai River the David Douthit Memorial Bridge.

Representative Lancaster said that the bill was widely supported by the community of Soldotna and within the military community throughout the state.

REPRESENTATIVE LANCASTER told the committee that David Douthit grew up in Soldotna next door to him. Mr. Douthit was killed February 27, 1991. Mr. Douthit served as a staff sergeant in the U.S. Army, and he was the only Alaskan killed in the Persian Gulf War. His wife Jesse, young daughter Rebecca, parents, and brothers and sisters.

Number 037

REPRESENTATIVE WILSON asked if there were plans to put names on the bridge.

REPRESENTATIVE LANCASTER said that to his knowledge, it was not.

Number 070

NITA DOUTHIT, mother of David Douthit, testified via teleconference. She said the Douthit family wanted to thank Representative Lancaster for sponsoring the bill, and she called him a good family friend. She said Mr. Douthit's daughter Rebecca would be honored by the bridge being named in his memory. She said it would honor all veterans, as David would have approved. She thanked the committee for its consideration and the time spent on the matter.

CHAIRMAN KOHRING said it was an honor to have the legislation before the committee, and he expressed his gratitude for Mr. Douthit's service to the country.

Number 090

TOM BOEDEKER, City Manager, City of Soldotna, testified via teleconference. He expressed the city's wholehearted support of the bill. He thanked the committee for its action.

Number 102

REPRESENTATIVE SCALZI moved to report HB 374 out of committee with individual recommendations and zero fiscal notes.

CHAIRMAN KOHRING asked if there would be signage put up on the bridge.

Number 105

DENNIS POSHARD, Legislative Liaison, Office of the Commissioner, Department of Transportation & Public Facilities, testified before the committee. He said that the department intends to put a sign on either end of the bridge with the new name.

Number 120

CHAIRMAN KOHRING asked if there was any objection to moving the bill. There being no objection, HB 374 was moved out of the House Transportation Standing Committee.

REPRESENTATIVE OGAN said that to his knowledge, there was no sign on a bridge that he had brought forth legislation to name [in a previous year].

HB 369-NAMING BONDSTEEL BRIDGE OF HONOR

CHAIRMAN KOHRING said the next matter before the committee was HOUSE BILL NO. 369, "An Act naming bridge number 1121, across the Knik River, the Sergeant James Bondsteel Bridge of Honor; and providing for an effective date." He said that the bill has been brought by request of the governor.

Number 144

LADDIE SHAW, Director, Veterans Affairs, Department of Military & Veterans Affairs (DMVA), testified via teleconference. He said the department appreciates the bill. He said there are about 68,000 veterans in the state, and that it is nice to see there is legislation honoring veterans. He told the committee that the department would like to see the bridge named after Mr. Bondsteel.

Number 170

REPRESENTATIVE MASEK thanked Laddie Shaw, Carol Carrol, General Oates [all of the DMVA], and the governor for putting the bill forward. She said it would be a great thing for the state to honor Mr. Bondsteel since he was a Congressional Medal of Honor winner. She said it was a well-deserved request, and that she was putting her whole support behind its passage.

Number 183

REPRESENTATIVE MASEK made a motion to move HB 369 from committee with individual recommendations and zero fiscal notes with unanimous consent. There being no objections, HB 369 was moved out of the House Transportation Standing Committee.

HB 350-TERRORISTIC THREATS

CHAIRMAN KOHRING announced that the next matter before the committee would be HOUSE BILL NO. 350, "An Act relating to terroristic threatening." [In committee packets was a proposed committee substitute (CS), Version F.]

Number 197

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, sponsor of HB 350, testified before the committee. She said that the bill is the result of an incident in the Sitka airport. An individual was frustrated over his bags' being searched. He made a verbal threat to an Alaska Airlines employee that he would return to the airport as an assassin. Representative McGuire said it was her understanding that the witnesses who testified to what occurred said it was a frightening and disruptive situation. Representative McGuire said it did not cause an evacuation or bodily harm, but she expressed her belief that situations like this will become more common as a result of the terrorist attacks of September 11, 2001. She said she had looked at the statutes pertaining to terroristic threatening to make sure that prosecutors had "all of the tools available" to prosecutors. She said upon looking at the statutes, she discovered those dealing with terroristic threatening could be strengthened.

REPRESENTATIVE McGUIRE said that the case ended in the individual "walking away" without state or federal prosecution. She said one of the reasons was a question of jurisdiction. The federal government did not prosecute because the threat was not made by telephone or on the plane itself. The State of Alaska decided not to prosecute the individual. Representative McGuire said that decision was a controversial one. She said that the prosecution had "tools available" such as fourth degree assault. Representative McGuire said she would like this legislation to make it painfully clear that life has changed since September 11. She said air travel has become a very serious matter. She said her intent is to "add some tools to the prosecutor's tool belt."

Number 254

REPRESENTATIVE McGUIRE said she was aware that some of the committee members were uncomfortable with the language in the original House bill. She referred to [paragraph] (2), beginning on line 15. She said it stated that:

A person would commit a crime of terroristic threatening if they knowingly threatened a person actually engaged in providing transportation services or transportation [support] services with physical injury, regardless of whether the person had the ability to carry out the threat or intended to carry out the threat, and [the person] threatened [actually was] placed in fear of physical injury.

She said it was not her intent to debate that deletion, but she wished to explain what her thought was in introducing the language. She offered the "fire in a crowded theatre" analogy from law school. She said in the analogy the individual does not have matches, but the harm is evident immediately because of the fear instilled in the people in the theatre. She said she wanted to capture the notion because of the possibility of a similar situation in an airport due to the terrorist attacks of September 11. She said after September 11, a claim to return as an assassin, or the assertion of one's having a bomb, would cause panic and fear. She wanted the bill to make people realize that there are consequences to the words people use. She said she was willing to accept the proposed (CS).

CHAIRMAN KOHRING asked if there was a motion to adopt the CS.

Number 292

REPRESENTATIVE KOOKESH asked if Chairman Kohring was the one who had proposed the CS.

CHAIRMAN KOHRING said that it was initiated by him, and said that his aide had gone around to as many committee members as possible to see if there was a concurrence on making the modifications.

REPRESENTATIVE McGUIRE told Representative Kookesh that she was comfortable with the language and said she would be working with the Department of Law, as well as Representative Rokeberg, to pursue the same idea without the language being so broad.

Number 301

REPRESENTATIVE OGAN asked if the "fire in a crowded theatre" analogy was a First Amendment issue or an assault issue.

REPRESENTATIVE McGUIRE said it was an assault issue.

REPRESENTATIVE OGAN asked why the person was not charged with and prosecuted for fourth degree assault. He said an action that puts someone in fear of physical harm is fourth degree assault. He said unless the person was not taken seriously, there were clearly grounds to charge and prosecute.

REPRESENTATIVE McGUIRE said she could not know the mind of the particular prosecutor, but said she understood there was a jurisdictional issue, and perhaps a political issue. She said that there was a question of whether the person fit the elements of the crime. The ultimate decision rested on the person's inability to meet the elements of the crime. She said the district attorney characterized the incident as one of poor taste and bad judgment. Representative McGuire expressed her belief that it was more than that. She said that she would have prosecuted the case.

Number 336

REPRESENTATIVE SCALZI moved to adopt the proposed CS, version 22-LS1300\F, Luckhaupt, 2/13/02. There being no objection, Version F was before the committee as the working document.

REPRESENTATIVE OGAN surmised that this crime would be a class C felony. He said that the House Judiciary Standing Committee had been looking at several bills relating to classification as felonies. He said the results of being a convicted felon were serious, such as the loss of the right to vote or own a gun. He asked if a felony conviction would be appropriate when no one was caused fear by what amounted to an idle threat.

REPRESENTATIVE OGAN then raised the issue of someone using bad judgment by going through security, forgetting something, and bolting back through security in the other direction. Representative Ogan asked if in this scenario, would the fact that a whole wing of an airport had to be shut down would make the individual a felon. He asked how that theoretical person would be affected by the bill.

Number 367

REPRESENTATIVE McGUIRE said that under Version F, the crime of terroristic threatening already exists as a class c felony in statute. She said Version F adds "public area", "mode of public transportation", "disruption of the schedule of an entity providing transportation services", and threats to oil transportation, water, and sewer facilities. She said it is considered more serious because the potential for harm is greater. She expressed her belief that it is appropriate to place the threat of public facilities within the realm of a class C felony.

REPRESENTATIVE McGUIRE addressed Representative Ogan's second point. She said that the scenario of the person returning back through security would be a question for the prosecution. The prosecution would "have that tool in their tool belt" and would have to argue the elements of the crime. She said that times had changed since September 11. She said terroristic threatening is already a class C felony.

Number 410

REPRESENTATIVE SCALZI drew the inference that since this is a subjective law, if the bill were passed, the prosecutor could take the same action as was taken in the Sitka case and say it was bad judgment. He asked if they could not use the same subjectivity under Version F.

REPRESENTATIVE McGUIRE said under Version F, the Sitka situation would not even be addressed. She said all it adds to the existing terroristic threatening law is if it concerns a public area as well as a regular building; if the schedule of a transportation-providing entity is disrupted; or there is an assertion that a false threat exists or is about to exist that is dangerous to an oil or gas pipeline [or] supporting facility, utility, or water pipe. She said the committee chose to remove the language that would have included the incident in Sitka in terroristic threatening.

REPRESENTATIVE SCALZI said he does not like "hate crime legislation." He said that the prosecution could make the determination of whether someone is a threat or not. He asked if either the proposed CS or the original bill would make a difference in whether or not the prosecution would have to proceed.

REPRESENTATIVE McGUIRE said that the prosecution would not have to proceed under the new legislation. The elements would have to be proven just the same.

Number 444

LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration, testified via teleconference. She said that her comments were initially to address what she saw as the broadness of the language in the original bill. She said that Version F corrects that.

REPRESENTATIVE MASEK asked if she would be detained if she were talking about a bomb or spoke about a bomb in an airport. She asked if she would have to say she was going to "blow the airport up" to be detained. She asked for a clarification of the "fine line."

REPRESENTATIVE McGUIRE referred to [page 2, beginning at line 8]. She said that the person must knowingly make a false report of a circumstance that disrupts the schedule of an entity providing transportation services for persons or property, or causes an evacuation. She said that under the current statutes, one could already be convicted of terroristic threatening if one caused the evacuation of "the building itself." All that is added to the language is, "public area or mode of public transportation", and onto the false-report language, "disrupts the schedule of an entity providing transportation".

REPRESENTATIVE McGUIRE said "it is like any other crime": there is a mental state and the actual fact of whether a false report was made, and public defenders would probably argue something different than the prosecution.

Number 478

REPRESENTATIVE MASEK asked what would happen if she were to just talk about a bomb at an airport.

REPRESENTATIVE McGUIRE said that the prosecution would have to assess, via witnesses or security cameras, whether an individual knowingly made a threat or not. They would then have to assess if the report was false, and then there would have to be an action such as an evacuation. She said there were several checks and balances in Version F. She said the language being removed from the original bill has made the new version very tight and specific. Representative McGuire expressed her

belief that sitting in an airport chatting about a bomb would not rise to the level of terroristic threatening.

REPRESENTATIVE OGAN said he shared some of Representative Masek's concerns. He gave the example of a child running through airport security to see his father. He said someone might "hit the panic button" and shut down the whole wing of an airport in such a case. He said that some things happen and people are not always intending to be terroristic. He expressed his concern that "somebody is going to slip through the cracks." He paraphrased Benjamin Franklin, saying; "Those who compromise their liberty to gain security deserve neither." He said he supports Representative McGuire's intention in the legislation but expressed concern about the potential for dire consequences and misunderstandings.

REPRESENTATIVE MCGUIRE said she empathized with Representative Ogan's concerns, but as with any crime, the elements must be proven. She made clear that it would not be as simple as an evacuation being caused, and someone automatically being convicted of a class C felony. Once again, she said that a mental state must be met for the crime to be committed. She said this would prevent Representative Ogan's example from being an example of terroristic threatening. She said the language is narrow, and a mere accident would not lead to a class C felony.

REPRESENTATIVE OGAN thanked Representative McGuire for putting it on the record so that people defending those charged with terroristic threatening can research the bill in the future if need be. He asked what the lesser-included offense for the crime would be.

REPRESENTATIVE MCGUIRE said she did not know. She said the lesser-included offense is another "way out." She said if the elements of the case are not met, they are not met. After Representative Wilson expressed confusion about some of her references to Version F, Representative McGuire explained that the confusion was the result of her having a written addendum instead of the new draft. She said that the only difference between her draft and those held by the committee members was line 20. She said "when referencing Section 2 on your draft, it is lines 18 through 21."

CHAIRMAN KOHRING voiced his concern that there may already be a law adopted at the federal level that would address the same issues as Version F.

Representative McGUIRE said she did not know if there was, but added that it did not matter because of the jurisdictional issue. She said there is a fine line between the federal and state jurisdiction. She said that this bill aims at shoring up holes in the federal jurisdiction that require threats to be either made via a telephone or on an airplane. She followed up on Representative Ogan's question about the lesser-included offense. She said that it would be a class A misdemeanor.

Number 590

CHAIRMAN KOHRING said that it would be prudent to exercise restraint in the process of improving security. He said he shared Representative Ogan's concern of prosecuting those who did not intend to commit a serious crime. He said he also understood Representative McGuire's position that there are a lot of "hoops" to "jump through."

TAPE 02-2, SIDE B

Number 593

CHAIRMAN KOHRING said that it is a fine line between safety and freedom.

REPRESENTATIVE McGUIRE said she agreed, and said it is a good thing to acknowledge that line. She said she appreciates the comments of everyone on the committee. She said it is the job of policymakers to be aware of the fine line between overprotection and freedom. She expressed her hope that the bill is a good "middle ground."

Number 582

REPRESENTATIVE KOOKESH said that the legislation is good, but added that what leads to people making remarks that are "out of line" is the frustration of passengers. He said that he did not want to see people punished for frustration. He said he travels frequently and that he could understand why the individual in Sitka was frustrated with his luggage being lost. He said he identified with Representative Ogan, and that he wanted to make sure that there is some discretion in determining whether a particular activity is terroristic threatening, or if it is frustration.

REPRESENTATIVE McGUIRE agreed with Representative Kookesh's concerns, but said it was important to remember that as policy

makers, [legislators] are in the business of protecting public transportation. She listed some of the resources and public facilities that must protected, and said the bill was broader than just applying to airports. Representative McGuire said the bill is making the statement that Alaska's public facilities deserve protection.

Number 549

REPRESENTATIVE WILSON said that some of the issues that members were concerned and frustrated with in Version F, would be taken care of in the House Judiciary Standing Committee.

REPRESENTATIVE WILSON made a motion to move the CS for HB 350, version 22-LS1300\F, Luckhaupt, 2/13/02 out of committee. There being no objection, CSHB 350(TRA) was moved out of the House Transportation Standing Committee.

REPRESENTATIVE OGAN introduced Daria Siromaha, a Ukrainian exchange student at JDHS, who had been "shadowing" him and learning about the American system of government.

#### HB 405-CRIMES COMMITTED ON STATE WATERCRAFT

CHAIRMAN KOHRING announced that the next matter before the committee would be HOUSE BILL NO. 405, "An Act relating to the prosecution of criminal offenses committed on or against ferries and other watercraft owned or operated by the state; and providing for an effective date."

Number 526

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor of HB 405, testified before the committee. He said the bill gives the state jurisdiction over state owned watercraft, including watercraft outside of state waters. He told the committee that a superior court judge dismissed the prosecution for a sexual assault that occurred on an Alaska ferry in Canadian waters. The court found no statutory authority to prosecute the crime, even though the defendant and the victim were both Alaskans. He said that the federal government has jurisdiction over U.S. vessels in Canadian waters under federal maritime law. He said the dismissal is a concern because it is unlikely to be prosecuted by either the federal or Canadian governments. Representative Meyer said that the federal government rarely prosecutes sexual assault cases, and Canada has little interest in prosecuting such a case. He said it is prudent to pass a law that will protect and defend passengers on Alaskan vessels. He

said HB 405 would eliminate a loophole that would prevent the state from prosecuting such crimes in the future.

REPRESENTATIVE MEYER introduced Anne Carpeneti from the Department of Law and told the committee that she was responsible for bringing the case to his attention. He said that she told him of a 16-year-old girl who was sexually assaulted on the MV Matanuska in Canadian waters. Upon reaching Ketchikan, the girl reported the crime to police authorities. The district attorney in Ketchikan presented the case to a grand jury, which then returned an indictment for one count of sexual assault in the first degree, one count of sexual assault in the second degree, and multiple counts of misdemeanor assault. Without a statute authorizing the state to prosecute in these circumstances, Alaska had no jurisdiction, said Representative Meyer. He said if the federal government will not protect and defend Alaskans, "then we must."

Number 501

REPRESENTATIVE SCALZI said the bill speaks for itself. He said there is a jurisdictional problem in federal waters. He posited that the state should look out for its property and the people onboard.

Number 496

REPRESENTATIVE WILSON said it was "very scary" to her and added that if "we were in other waters, there would be no one that would be able to do anything." She said she would like to co-sponsor the bill.

Number 492

REPRESENTATIVE OGAN said the bill raises interesting legal questions. He asked that Annie Carpeneti join the sponsor at the table.

Number 489

REPRESENTATIVE OGAN asked Ms. Carpeneti if there are "dicey legal issues" when a crime is committed in the sovereign waters of another country when "it is on our boat." He asked if there is case law that speaks to the issue.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section (Juneau), Criminal Division, Department of Law, answered

that she has looked up federal jurisdiction, and the federal government does have the right to prosecute in this case. She said that she has not researched Canadian jurisdiction and added that the Canadians have not filed charges. She said that they would not likely do so.

REPRESENTATIVE OGAN put forward the possibility that the Canadian government did not file charges because the ship had not stopped in a Canadian port to file charges with the Canadian police authorities. He said he did not want to see sex offenders getting away, but he wondered what authority the state had in the matter.

Number 480

MS. CARPENETI said there are three possible jurisdictions in the case. She said the federal government can prosecute under maritime jurisdiction, and it has statutes prohibiting sexual assault. The Canadian government can prosecute, and Alaska can prosecute. She said the ferries are [State of] Alaska-owned property and they carry Alaskan crewmembers as well as Alaskan passengers and tourists. Ms. Carpeneti said the case law speaks to whether or not there is enough connection to a jurisdiction "for it to satisfy concerns of due process." She said it is clearly fair for Alaska to prosecute this case.

REPRESENTATIVE OGAN said he would be interested to see some case law research on the matter.

MS. CARPENETI said she could share some of the research she has on the issue.

Number 442

REPRESENTATIVE WILSON asked about the letter from the Inlandboatmen's Union of the Pacific that was in the bill packet. She pointed out the question from line 4 that asked, "Why should we have to resort to the feds at all?" she asked Ms. Carpeneti to address the question.

MS. CARPENETI said it seemed the idea of the question was, "Even though the federal government could prosecute this crime, why shouldn't Alaska be able to do so too?" She said the state is prohibited from pursuing prosecution if another jurisdiction has already done so. She said Alaska is not trying to stack a second criminal prosecution; at this point no one has prosecuted.

REPRESENTATIVE KOOKESH said the way he looked at it, this bill would offer a third option to the state. He said if the federal government or Canadian government pursues prosecution, it would be fine. If neither does, Alaska should have the ability to do it. He said that is the intent of the bill and it makes sense.

Number 420

REPRESENTATIVE SCALZI said his knowledge of maritime law is that the state can write law as long as it does not supersede the federal law. He said just because a ship enters another country's waters, federal maritime law does not fall away onboard ship. He said he does not believe that maritime law and state law would be conflicting.

MS. CARPENETI said Representative Scalzi's summation was correct, but she said the state and federal government could exercise concurrent jurisdiction in an area like the one in question. She said this is dependent on the fact that the federal government has not preempted and taken charge of the case. She said that in this case, it has not.

Number 406

LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration, testified via teleconference. She said the agency does not support or recommend HB 405. She said jurisdiction over crimes allegedly committed on U.S. documented or registered vessels in foreign waters already exists. That jurisdiction exists in federal courts or in the courts of foreign nations. She said crimes allegedly committed in waters of other states fall under the jurisdiction of that state. She gave a scenario of a crime committed by a Washington State resident, upon a Washington State resident, on an Alaskan ferry tied to the dock in Bellingham, Washington. She told the committee that under HB 405, the crime would come under the jurisdictions of the federal, Washington State, and Alaska courts.

MS. WILSON said there are questions in the Bellingham scenario of whether or not it was a constitutional exercise of jurisdiction, and she added that perhaps it could be challenged. She said legislation proposed for one particular case often is not the best approach. She said the bill is overly broad and the agency does not support it.

Number 388

REPRESENTATIVE WILSON asked Ms. Wilson what she would suggest Alaska do in the sexual assault case in question.

MS. WILSON said Alaska should promote that either the federal or Canadian government prosecute the case.

REPRESENTATIVE WILSON asked Ms. Wilson if she was saying that Alaska should try to talk another country or the federal government into doing something, instead of doing something itself.

MS. WILSON said, "Under that circumstance, yes."

CHAIRMAN KOHRING said he identified with Representative Wilson's concerns and told the committee that there was a loophole in the law. He said Alaska should have a statute to be able to take action in these types of circumstances. He said another similar incident might get thrown out of court without this legislation.

REPRESENTATIVE WILSON raised the question of "Where would we be if this was our wife or daughter?"

Number 368

REPRESENTATIVE OGAN said his concern was that the appropriate jurisdictional questions be answered so that if this were to happen, the case would not be thrown out. He asked Ms. Wilson if there are jurisdictional conflicts if a ferry is tied up in a Washington State port and a crime is committed and reported to Washington authorities.

MS. WILSON said she could see the potential for a jurisdictional struggle.

REPRESENTATIVE OGAN said that it is inconvenient for a ferry to pull into a port to report a crime, even though that might be the proper jurisdiction.

Number 345

REPRESENTATIVE KOOKESH said jurisdictional fights are good. In that way, at least someone will prosecute.

REPRESENTATIVE OGAN asked what would happen if Alaska did not like the punishment handed down by one of the other jurisdictional courts.

REPRESENTATIVE KOOKESH said that it does not matter. He said that with HB 405, if there was no jurisdictional fight, and no other court were to step in, Alaska would be able to prosecute.

MS. CARPENETI responded to one of Ms. Wilson's comments. She said that Alaska has prosecuted under similar circumstances before, and the jurisdictional issues had not arisen until recently. She told of a similar case where a crewman was assaulted in Canadian waters. She said that she expects the jurisdictional issue to be raised in that case. She said that there were no jurisdictional issues raised before recently, but she expects more to be raised in the future.

Number 320

REPRESENTATIVE WILSON moved to report HB 405 out of committee with individual recommendations and zero fiscal notes.

REPRESENTATIVE MASEK asked if the bill had been referred to the House Judiciary Standing Committee, since she did not feel comfortable releasing legislation without some of the questions being fully resolved.

CHAIRMAN KOHRING said Ms. Wilson cast some doubt over the bill, but said that a serious crime has gone unpunished. He said that he felt the bill could address the issue and called it a "potential tool."

Number 302

CHAIRMAN KOHRING asked if there were any objections to moving the bill from committee. There being no objection, HB 405 was moved out of House Transportation Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:45 p.m.