ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
April 27, 2001
1:48 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 170(L&C)
"An Act relating to wage and hour protections for employees of the Alaska Railroad Corporation; and providing for an effective date."
MOVED CSSB 170 (L&C) OUT OF COMMITTEE

SENATE BILL NO. 177
"An Act relating to driving while intoxicated and to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."
HEARD AND HELD

CS FOR SENATE BILL NO. 66(L&C)
"An Act relating to the authorizations for certain state financial institutions of certain powers and limitations; relating to confidential records of depositors and customers of certain financial institutions; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; amending Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules; and providing for an effective date."
HEARD AND HELD

CS FOR HOUSE BILL NO. 193(FIN)
"An Act relating to the primary election and to the nomination of candidates for the general election; and providing for an effective date."
HEARD AND HELD

CS FOR HOUSE BILL NO. 172(FIN) am
"An Act relating to therapeutic courts for offenders and to the authorized number of superior court judges."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 170 - See Labor and Commerce minutes dated 4/12/01.

SB 66 - See Labor and Commerce minutes dated 2/20/01, 3/15/01, 3/29/01 and 4/3/01.

HB 193 - No previous action to consider.

HB 172 - No previous action to consider.

WITNESS REGISTER

Representative Lisa Murkowski
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Sponsor of HB 230.

Mr. Kevin Bergsrud
State Legislative Director
United Transportation Union
No address furnished
POSITION STATEMENT: Supported SB 170.

Mr. Steve Cain
6121 DeArmoun Road, #A
Anchorage, Alaska 99516
POSITION STATEMENT: Supported SB 170.

Ms. Loretta Brown
Staff to Senator Ward
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Introduced SB 177.

Mr. Loren Jones
Department of Health &
Social Services
PO Box 110601
Juneau, Alaska 99801-0601
POSITION STATEMENT: Supported SB 177.

Mr. Al Near
PO Box 80847
Fairbanks, Alaska 99708

POSITION STATEMENT: Supported SB 177.

Ms. Christi Rowinski
Friends of Tom
2358 Pruitt Lane
Fairbanks, Alaska 99709
POSITION STATEMENT: Supported SB 177.

Mr. Blaire McCune, Deputy Director
Alaska Public Defender Agency
900 West 5th, #200
Anchorage, Alaska 99501
POSITION STATEMENT: Opposed to SB 177.

Mr. Terry Elder, Director
Division of Banking, Securities & Corporations
Department of Community & Economic Development
PO Box 110807
Juneau, Alaska 99811-0807
POSITION STATEMENT: Testified on SB 66

Mr. Jerry Reinwand
Alaska Peddler
No address furnished
Juneau, Alaska 99801
POSITION STATEMENT: Supported SB 66.

Mr. Joe Schierhorn, Sr. Vice President
Northrim Bank
PO Box 241489
Anchorage, Alaska
POSITION STATEMENT: Supported SB 66.

Ms. Sarah Felix, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Testified on HB 193.

Representative John Coghill
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Testified on HB 193.

Ms. Gail Fenumiai, Election Program Specialist
Division of Elections
Office of the Lieutenant Governor
PO Box 110017
Juneau, Alaska 99811-0017
POSITION STATEMENT: Testified on HB 193.

Representative Brian Porter
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Sponsor of HB 172.

Ms. Janet McCabe
Partners for Downtown Progress
1326 K Street
Anchorage, Alaska 99501
POSITION STATEMENT: Supported HB 172.

Mr. Dean Guaneli, Chief Asst. Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Supported HB 172.

Mr. Tom Wright
Staff to Representative Porter
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Testified on HB 172.

ACTION NARRATIVE

TAPE 01-24, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:48 p.m. Senator Ellis, Senator Therriault, and Chairman Taylor were present. Senator Cowdery arrived at 2:13 p.m. and Senator Donley arrived at 4:00 p.m. Chairman Taylor announced the first order of business would be SB 170.

#SB 170

SB 170-RAILROAD EMPLOYEE SALARIES AND WAGES

CHAIRMAN TAYLOR announced SB 170 to be up for consideration.

REPRESENTATIVE LISA MURKOWSKI, sponsor of SB 170, explained that the bill clarifies that Alaska Railroad employees are subject to the Alaska Wage and Hour Act. There is an exemption, however, in that United Transportation Union (UTU) members can opt out of the Wage and Hour Act if they do so in mutual agreement with the railroad and the collective bargaining unit. She said that might raise concerns about whether or not this leaves employees of UTU open to problems with the Wage and Hour Act but "They are covered under the federal Hours of Service Act."

SENATOR THERRIAULT asked if SB 170 is the Senate version of HB 230.

REPRESENTATIVE MURKOWSKI responded that is correct.

CHAIRMAN TAYLOR said the House version hadn't been noticed yet, but he would waive it on Monday, since the committee was hearing it today. He then took public testimony.

MR. KEVIN BERGSRUD, State Legislative Director of the United Transportation Union, and a locomotive engineer with the Alaska Railroad Corporation, stated support for SB 170.

MR. STEVE CAIN, Anchorage, said he was a 20-year Alaska Railroad employee and locomotive engineer and is currently representing UGU at the negotiating table. He has been working with the gentlemen whose retirement would be helped by this bill. Mr. Cain stated:

> They are all 25 plus year employees. They were federal employees who opted to stay with the railroad and thus were left in the Civil Service Retirement system (CSR). Their basic day is not an eight-hour day and that in the current situation, only the earnings from those first eight hours are being considered for figuring their retirement. That's why we need this legislation.

SENATOR THERRIAULT moved to pass CSSB 170(L&C) from committee with individual recommendations and attached fiscal notes. There were no objections and it was so ordered.
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#SB177

SB 177-DRIVING WHILE INTOXICATED:BAC LEVEL/FINES

CHAIRMAN TAYLOR announced SB 177 to be up for consideration.

MS. LORETTA BROWN, staff to Senator Ward, said that SB 177 lowers the blood alcohol content from .10 to .08 and increases fines for first time offenders. It also goes one step further and lowers the legal limit of blood alcohol content to .04 for those with one prior driving under the influence (DUI) conviction. Anyone convicted of a second offense will lose his or her driving privileges for life and be subject to higher fines. Ms. Brown stated, "There is no second chance. This is basically a zero tolerance law for convicted drunk drivers making it illegal for them to drink at all after one conviction."

MS. BROWN said that federal penalties are being strengthened in 2004 if the state does not lower the blood alcohol level to .08.

Number 620

SENATOR ELLIS said that .08 legislation has been around for years but no public hearing was granted. He asked if there was a reason it was being brought forward now.

MS. BROWN replied that some of Senator Ward's constituents came to him who had a loved one hurt or killed by a first-time alcohol offender. In addition, he thought the timing to pass this legislation might be good since the federal legislation was being worked on, too.

SENATOR ELLIS said he appreciated the change of heart.

MR. LOREN JONES, Department of Health and Social Services, stated support for SB 177 and said he would answer questions on the fiscal note.

SENATOR THERRIAULT asked what the administration's position is on the lifetime revocation of driving privileges.

MR. JONES replied that he couldn't tell him.

Number 820

MR. AL NEAR, Fairbanks, stated support for SB 177. He thought it was a step in the right direction. He especially likes the part about the repeat offender, because those are the people who cause the fatalities. He said that in 1999, Alaska led the nation in highway accidents in which alcohol was a factor. Forty out of the 76 fatal accidents for that year involved alcohol, about 53 percent. It wasn't much better in the year before that. In 1998, people with blood alcohol concentrations above .08 were involved in 2,750 auto crashes in which 29 people died and 1,600 were injured. In accidents involving drivers with an alcohol content of less than .08, there were only 100 crashes killing 2 people and injuring 100.

MR. NEAR said he has found that a person, male or female, of average weight could have three to four drinks per hour before they reach the .08 level. He thought that social drinkers would not drink that much.

SENATOR THERRIAULT said Mr. Near's testimony was on the .08 level, which he didn't have a problem with. He expressed concern about the lower level of .04 for those operating a piece of equipment that requires a chauffeur drivers license (CDL). A second offender would lose his or her license for life if he or she was pulled over for a

tail light being out and the officer smelled alcohol and gave them a breathalyzer test. He asked what the justification was for that.

MR. NEAR replied that it is actually written in the statutes that commercial drivers are considered to be impaired in their driving if they have a blood alcohol content of .04. He asked, "How could it be then, that you and I can drive with a blood alcohol content of .08, or as it stands right now .10, and be safe? How can we not have some impairment ourselves? ... We are indeed impaired at .04 and even lower than that."

MR. NEAR said that one important thing to remember is that repeat offenders cause 80 percent of the deaths.

SENATOR THERRIAULT responded:

> Mr. Chairman, I'm not sure it's equal protection or what, but you could have somebody that stops and plays pool or whatever after work and drives home every day at .044 - Every day he drives home that way. But somebody that had a conviction - language in section 8 talks about previous offenses - you could have somebody that had a previous offense - 10 years ago - and they drive home and get pulled over for a tail light or something and blow a .041 tomorrow and they lose their license for the rest of their life. I don't know how that gets applied and reviewed by the courts…

He asked for something that could be sensibly enforced and applied across our society.

MR. NEAR asked Senator Therriault what he thought about a second offense and an .08 level as a justification for a lifetime revocation.

SENATOR THERRIAULT replied that he thought that was much more defensible, but he thought Mr. Near's testimony sounded like he wanted the general DUI law to be down at .08.

Number 1444

MS. CHRISTI ROWENSKI, representing Friends of Tom, said the committee needs to think about what it means when the National Highway Transportation Safety Administration statistics say that reduction to .08 has the potential of saving hundreds of lives and reducing thousands of serious injuries on the highways if implemented by all states. She said that drunk driving laws, sustained public education, information efforts, and vigorous and consistent enforcement can save a whole lot of lives. She said they get asked if an experienced drinker gets as impaired, but she

assured them that experienced drinkers are significantly impaired at .08. She said that people are impaired in regard to critical driving tasks, such as divided attention, complex reaction times, steering and lane changing.

MR. BLAIR MCCUNE, Alaska Public Defender Agency, said his agency is mainly concerned with the permanent loss of license provision because people can be rehabilitated through alcohol treatment. He said:

> Permanent loss of license would go against people who were insured and licensed to be driving on the road. License revocations - now people have hope, go through treatment, demonstrate sobriety, they can get their license back. At that point they have to get special risk insurance. Having people insured rather than people who just give up hope and drive anyway is preferable. I don't think the deterrent effect, although I'm sure it would do some, would be strong enough to justify not having a chance to get your license back if you demonstrate sobriety and go through the programs that the Division of Motor Vehicles feels are appropriate. That is our main concern with the bill.

CHAIRMAN TAYLOR asked how long he had been involved in criminal litigation in the state.

MR. MCCUNE replied that he has been a public defender for 20 years.

CHAIRMAN TAYLOR asked if he personally tried DUI cases during that time.

MR. MCCUNE said he did.

CHAIRMAN TAYLOR asked for how long.

MR. MCCUNE replied that most of the DUI cases were in Fairbanks some time ago.

CHAIRMAN TAYLOR asked, during his experience with DUIs, at what level of intoxication he normally found that the arresting officer had probable cause to pull someone off the road.

MR. MCCUNE replied that most of his cases had to do with blood alcohol levels quite a bit over .10. "The police would take video tapes of those people. As people got higher levels, impairment on the video would become very obvious." He said he wasn't qualified to talk about probable cause because most of his experience had been with high blood alcohol levels.

CHAIRMAN TAYLOR said he asked because the committee has had hearings on the .08 level in the past and all officers who testified indicated that they would not pull over one additional person in the state if we went to .08 because the objective symptoms necessary to justify pulling someone over are not exhibited until a driver is in the .10 category. That is why the fiscal notes for .08 have been very small.

CHAIRMAN TAYLOR assured the committee that they would pass a .08 bill out this year, primarily because of the National Highway Transportation Safety Act, which would withhold millions of dollars in the future from the State of Alaska for highways if Alaska does not adopt this standard. He said he did not want to preclude the House bill which had other remedies and would hold the bill to see what other amendments are submitted.
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#SB66

SB 66-FINANCIAL INSTITUTIONS

CHAIRMAN TAYLOR announced SB 66 to be up for consideration.

MR. TERRY ELDER, director of the Division of Banking, Securities and Corporations, noted that HB 106, the companion bill to SB 66, just passed out of the House Labor and Commerce Committee. He hoped it would be scheduled for a floor vote shortly. He said the main issue surrounding SB 66 seems to be privacy but the bill makes other changes that are non-controversial. He explained:

> Right now, in current law there's a requirement for banks to publish their quarterly statements of condition in newspapers. There's a provision in this bill that will allow them to also publish that electronically as an alternative. It's much cheaper; they'll still make the same information available to customers on request instead of just in newspapers.
>
> For mutual savings banks, right now in current chapter, the directors, whom they call trustees, are treated different from directors of banks in terms of arms length dealing that they would have with the mutual savings banks and in borrowing from the mutual savings bank. That's making it much more difficult for the mutual savings bank to find people who are willing to be trustees and who are knowledgeable in business activities. So, there's provisions in this bill that would essentially put the trustees of a mutual savings bank on the same level as the directors of the commercial banks.

There's also currently a requirement for the automatic teller machines to be approved by our division. And what we're putting in here is a provision that will allow a notice filing rather than approval so we'll know where the services are. We don't feel that there's any public benefit from our making an approval of whether or not an ATM is placed on one corner versus another corner.

Also, in the credit union chapter, there's no provision for ATMs. So, this includes a provision there. It also equalizes the legal lending limits in Alaska with the federal limits. It, therefore, removes a barrier for institutions to decide to take the state charter rather than the national charter.

Those are all things we think are good for the industry. It also makes sense from a regulatory standpoint, but of course they get overshadowed by the big policy issue on policy.

SENATOR ELLIS asked if there was language that affects the legislature's future ability to cap fees in any way.

MR. ELDER replied no; it only applies to location. He added from the division's standpoint, current law (changed in 1994) limits where staff can borrow money. Previously, it said they couldn't borrow from state chartered institutions, obviously because they examine them. In 1994, that was changed to any institution that receives a certificate of authority. Mr. Elder noted:

The problem with that is that we currently also issue permits and certificates to national banks that branch into Alaska. So, if you had enough branching and enough purchasing of state charter banks, our staff would have difficulty banking anywhere in Alaska. This also takes us back to the original language that we had before us saying that our staff can't borrow from state chartered institutions.

MR. ELDER explained further:

Obviously, the big issue is privacy. Everyone knows, but I'll state it briefly, what the issue is and that is Gramm-Leach-Blighly, a federal law, passed and allows - the term is sharing, but it also covers selling of information with non-affiliated third parties which is anybody who is not an affiliate. So, it's a lot of folks. That requires them to offer the public the ability to opt out of that kind of sharing. We have been on record and

very forcefully so in both the Senate and the House that we don't think opt out is sufficient. We have opt in in the current banking code and we were proposing in SB 66 that the opt in be maintained. The opt in was maintained in the House Labor and Commerce Committee, but not in the Senate.

So, therefore, when it came over here, we sent you a letter, Mr. Chairman, that indicated our desire for you to delete the reference to Gramm-Leach-Blighly that would remove the opt out language and would make it, therefore, opt in.

CHAIRMAN TAYLOR said he had an amendment prepared to do that.

MR. ELDER said that was good to hear. He believes that as long as the dialogue between his division and industry was about sharing everything in one's file with everybody in the world, the two would always be at each end of the spectrum. There would be no compromise and it would be the legislature's call for one of the extremes. He thought there was still some middle ground but said, "We just had to find it."

He said they met with representatives of the banker's association and developed reasonable compromise language that retains the opt in requirement, generally speaking. So, the bankers have gone all the way from wanting to opt out for everything to agreeing to opt in. Mr. Elder commented:

However, we've included a section (d) in AS 06.01.028, the proposed privacy section, which allows financial institutions to share information with other firms who provide their own services. For example, if they have checks printed and statements printed and things like that, they can do that and the compromise language that we came up with allows them to enter into joint marketing agreements for financially related services.

TAPE 01-24, SIDE B

MR. ELDER continued:

Where those marketing partners would sign an agreement to also be bound by the privacy provision of our code, the opt in, we view that as a reasonable compromise on the basis that generally we are still at opt in. However, we also have to remember that the sharing of information among affiliates is not restricted. The Fair Credit Reporting Act on the federal level allows the financial

institution to share information among affiliates and prohibits states from restricting that kind of sharing of information until January 1, 2004. After that date, in fact, states can adopt more restrictive privacy provisions covering affiliates, but they have to pass the law after that date and specifically reference the Fair Credit Reporting Act to do that.

MR. ELDER said further:

In the meantime banks and other institutions that have a large affiliate structure can share the information without restriction. That puts smaller banks that are largely but, not only state chartered institutions that don't have an affiliate structure at a significant competitive disadvantage. We don't think that's healthy for state chartered institutions. We don't think it's healthy for smaller banks. So, what we're trying to do in section (d) is to level the playing field between the banks that have the larger affiliate structure with the banks that have the smaller or no affiliate structure.

MR. ELDER explained that this information sharing is limited to what is necessary to do these things, "So, it's not all the information in a file."

It is limited only to financial related products, limited to joint marketing efforts and to partners that are willing to subject themselves, even though they don't have to otherwise, to the Alaska Privacy Code. Mr. Elder noted, "With those kinds of limitations, it's sufficiently tight enough for us to feel comfortable even though we have made it very clear we have been and remain extremely concerned and supportive of more restrictive privacy provisions."

He said that the small neighborhood banks are going to have difficulty competing and staying independent unless regulators make some reasonable accommodations for privacy of information. He thought it was still a significant action on the part of the legislature to continue the higher privacy provisions that we have had for the last 30 years in Alaska and yet still make reasonable accommodations to smaller banks to operate.

CHAIRMAN TAYLOR noted that Mr. Elder's comments were on a proposed amendment to SB 66.

MR. ELDER said that is correct and that he was addressing section (d) that was currently in the committee substitute before them. He was also discussing the differences between HB 106 and SB 66.

CHAIRMAN TAYLOR asked if they used his list of differences as an

amendment, if the examination policy on page 2 was in the bill.

MR. ELDER answered that it was not. He said it was in HB 106, though. "We discussed it in Senate Labor and Commerce, but frankly, I think it was an oversight."

CHAIRMAN TAYLOR asked if he was changing "depositors of" to "other depository institutions in the following sections" in item 4, page 2.

MR. ELDER said yes because currently there is no language in the credit union chapter for ATMs. Language for that section was taken from the banking section.

CHAIRMAN TAYLOR asked if the remainder of the amendment pertains to automatic teller machine provisions for credit unions.

MR. ELDER responded that language was taken from HB 106. The only thing that was not in HB 106 was, "Once you put in the words 'depositors of' which the House Labor and Commerce Committee did, you can remove 'and their customers' because that's redundant."

CHAIRMAN TAYLOR offered Mr. Elder's list of changes as an amendment. SENATOR ELLIS objected.

CHAIRMAN TAYLOR said he wanted to change page 2 (e) to delete "in an amount equal to the actual damage" and insert "for" so that damages sought for violation of this section would not be limited to just actual damages, but to all damages that may be incurred. There were no objections.

SENATOR ELLIS said he thought they should divide the amendment and that the section that changes the opt in section gives him pause. He complimented the work that had gone into it, but he was more comfortable with the traditional wording.

CHAIRMAN TAYLOR said he had an amendment that deletes on page 2, lines 25 - 26, the reference to Gramm-Leach-Bliley.

SENATOR COWDERY said he understands that the large institutions have less need of this than the smaller ones that aren't in the marketing or loan business. He asked if this would allow them to be brokers.

MR. ELDER said that is correct as long as it was a financially related service.

SENATOR COWDERY asked if he had a number in his head of small banks.

MR. ELDER replied that the state currently has four state chartered

banks and two state chartered credit unions. The Alaska Pacific Bank, which is a federal charter, also doesn't have an affiliate structure and is equally concerned.

CHAIRMAN TAYLOR asked if there were any further objections to adopting amendment 1. SENATOR ELLIS objected. CHAIRMAN TAYLOR called for a roll call vote. SENATORS COWDERY, THERRIAULT, and TAYLOR voted yea; SENATOR THERRIAULT voted no; so amendment 1 passed 3 to 1.

CHAIRMAN TAYLOR offered amendment 2 and asked Mr. Reinwand to explain it.

Number 1620

MR. JERRY REINWAND, Alaska Peddler Gift Shops, said he does a lot of business via credit card and as time goes on, they have noticed more credit card usage. A percentage of the sales, 2 to 4, pays for the system. He has no problem with that, but in Juneau and other places with sales taxes or purchase taxes, the banks are taking their percentage out of the total purchase, including the tax. "This means less money in my pocket at the end of the day."

MR. REINWAND said it isn't fair and once this law is passed, credit card companies could offer it as an incentive for merchants to use their cards.

SENATOR COWDERY asked how that works in communities that accept credit cards for the payment of taxes.

MR. REINWAND replied that generally the IRS tacks on a fee of 2.5 percent to credit card payments so, "You're better off to write a check."

CHAIRMAN TAYLOR said his concern is that what's really happening in this transaction is that Mr. Reinwand is not collecting the legal amount of sales tax. He thought discounting on the credit cards actually put him in a difficult position of having to collect it and he didn't think it would be insignificant over a large volume of sales.

SENATOR THERRIAULT asked how this would trigger competition.

MR. REINWAND explained that there is a lot of competition between credit card companies and they might be able to structure a contract where it's an added incentive. He hadn't thought it through, but a small business is at a real disadvantage in dealing with the credit card companies. He was talking to a staff person in Washington, D.C. when they were hearing a bankruptcy bill and there was total silence on the other end when someone figured out the total amount of money involved nationwide. "It's a huge amount of

money."

CHAIRMAN TAYLOR asked if there were any objections to adopting amendment 2. There were no objections and it was adopted.

MR. JOE SCHIERHORN, Sr. Vice President, Northrim Bank, said he was testifying on behalf of the Alaska Bankers Association as well. They support the amendment and appreciate the efforts of Mr. Elder and the Division of Banking in working with them on this compromise. "I think it's very important to go forward with this to insure that there's a level playing field between nationally regulated banks and state regulated banks for the very reasons Mr. Elder brought forth."

CHAIRMAN TAYLOR thanked him for his testimony and said they would hold SB 66 to await the companion bill.
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#HB193

HB 193-MODIFIED BLANKET PRIMARY ELECTION

CHAIRMAN TAYLOR announced HB 193 to be up for consideration.

Number 1163

MS. SARAH FELIX, Assistant Attorney General, said she was also testifying for the Division of Elections. She explained:

> This bill is necessary because the Alaska statutes currently provide for a blanket primary in which all the voters may vote for any candidate regardless of party affiliation. The United State Supreme Court last summer issued a decision in the case called California Democratic Party v. Jones that basically said that a state could not force a political party to participate in a blanket primary against that partys' will. The court found that that violated the first amendment rights of free association of the political parties. So, the Jones decision affects all states that had a blanket primary system and that's California, Washington and Alaska. So the Alaska statutes need to be amended because of California Democratic Party v. Jones.
>
> In our state, we did have objections from a political party to the blanket primary under the Jones case and, therefore, the State of Alaska could not force that party to participate in the blanket primary. When we faced those objections last summer at the primary election, there was insufficient time between when the Jones decision was issued on June 26, 2000 and the primary

election, which was being held in August 2000. There was insufficient time during that brief window for the legislature to enact new primary election legislation. Obviously, you weren't in session so the Lieutenant Governor issued emergency regulations for conduct of the primary election for that political party. Those regulations have now expired by operation of law and Alaska needs a new set of statutes, a new law, on the primary election.

In order to help deal with this issue, the Lieutenant Governor felt that she was responsible for making a recommendation to the legislature for a new primary election law and, therefore, she created a task force on the primary election. Normally, we would have the chairperson of that task force testifying today, former Alaska Attorney General, Av Gross, but he's out of state. He would tell you the task force developed legislation and that the Governor presented that to the state legislature. That legislation has gone through the House and it's different from what the primary election task force proposed and it's before you now, the Finance Committee version of HB 193.

The primary election task force that was convened by the Lieutenant Governor was composed of former lieutenant governors and former attorneys general and Av Gross was the chairperson of the task force. It was a non-partisan task force and viewed its mission as coming up with a new law on the primary election because Alaska's law was no longer valid.

The process the task force used was to convene an informational meeting where they received the laws and options for conducting the primary election. Then there was another at which public comment was taken from all the recognized political parties, as well as the League of Women Voters and other interested parties. Finally, the task force had a third meeting in which it prepared its recommendations for the primary election.

The task force basic principle was to change Alaska's law as little as possible and comply with the United States Supreme Court decision in the Jones case. The testimony they received indicated that the political parties did not object to using the premise of the blanket primary as a starting point for the new primary election system.

However, the parties did want to retain the right to limit participation in their party primaries.

Therefore, the original bill started with the premise of the blanket primary and then the political parties had the option to limit participation in their primary election. For example, the Republican Party ballot would list all candidates of all party affiliation, but only members of the Republican Party could vote for Republican Party candidates. However, members of the Republican Party could vote for candidates of other parties so long as those [indisc.].

The primary election task force believed that this type of primary system was consistent with Alaska's past history and the apparent preference of Alaskan voters for the blanket format.

However, that original bill has changed and there have been a number of [committee substitutes]. They all approach the issue of the primary election from a different direction. The [committee substitutes] start from the premise of a closed primary in which parties are allowed to open up their primaries if they so choose. There are been two versions of this type of CS and the current CS that you have before you from House Finance, while calling for closed party primaries, starts with the premise that nonpartisan and undeclared voters may participate in the closed party primary so long as the parties do not object.

A prior CS, I believe from House Judiciary, called for a closed party primary and started from the premise that only party members could vote in those primaries unless the parties affirmatively opened up their primaries to nonpartisan undeclared voters. In either case, the primary election task force recommendation is essentially the flip side of those kinds of [committee substitutes]. However, any of those bills will cure the problem in the Alaska statute caused by the Jones case. It's the legislature's policy call to make…

CHAIRMAN TAYLOR asked why we need to do anything in light of the fact that the decision came down from the court, emergency regulations were passed, and an election was held.

MS. FELIX replied that the emergency regulations have expired by operation of law. They can only last for so long. "Now we are in the situation of having no regulations on the books and a set of

statutes that do not comply with California Democratic Party v. Jones."

CHAIRMAN TAYLOR asked if the state could not draft regulations because the existing statute would not authorize those regulations.

MS. FELIX explained that existing statutes provide for a blanket primary in Alaska. He said:

> The emergency regulations that were adopted last session on an emergency basis abrogated the statutes. The Alaska Supreme Court considered that issue in the O'Callahan case and the Court ruled that that was permissible on an emergency basis essentially until the legislature was able to meet and do a legislative fix. At that point the executive branch was doing regulations, arguably, without statutory authority. If there was no legislation to fix the primary and we were left to our own devices and had to do something, I think that we would probably be sued no matter what we did unless there was some legislation enacted this session regarding the primary election.

SENATOR THERRIAULT commented that the Constitution says the election shall be run as dictated by law and that the legislature should set the policy for the way the elections are run.

> If we do nothing, the administration will have to do something in a proposed regulation package. As we can see by the piece of legislation they started out with, there's some difference between what they would like to see and what the legislature would like to see. So, we will have taken that policy power that is ours by Constitution, thrown it into their lap, they will make a policy call, be subject to suit with no statute to back it up and we will have basically thrown the whole policy system into the court system, in my opinion. So, it's not the advisable thing to do.

MS. FELIX agreed with Senator Therriault.

SENATOR THERRIAULT asked if it was the right of the party to have a closed primary unless they choose to let people participate. He asked if there was a problem coming from that direction.

MS. FELIX responded that they could do it either way.

SENATOR THERRIAULT said he had an earlier conversation with her to understand House language with regard to candidates who get on the ballot by petition. She explained because of a court case, the legislature changed the law in 1995 to say that they all have the

same decision date when they get their name on the ballot. The House changed the petition candidate date back to the day of the primary, which basically undoes what the legislature did in 1995. He thought there was some court decision driving Representative Coghill's action.

MS. FELIX explained:

> In House Judiciary the question came up of what to do with the petition candidates under the closed primary system: Should they appear on each of the parties' closed primary ballots or should there be a separate ballot for them? House Judiciary decided to solve that problem, they would simply say that the petition candidates would not appear on the primary election ballot. If they don't appear on the primary election ballot, then we can't hold them to the earlier filing date. The reason that the petition candidates are held to the June 1 filing date is because they had to appear on the primary election ballot. That was taken out of the bill and now the petition (no party) candidates only appear on the general election ballot. So, there is a court case that says under those circumstances, the petition candidates cannot be held to the early filing deadline. They have to be given a filing deadline no sooner than the date of the primary election.

SENATOR THERRIAULT said he didn't understand why there's a problem with everyone having the same decision date. He said he didn't have a way of evaluating who his candidate was even though they could read everything about him. He thought it would make things fair.

CHAIRMAN TAYLOR asked if there was a court case now.

MS. FELIX replied that there were two Superior Court cases; one in 1998, the Ziegler case, and one in 1990, the Sykes case. The Sykes case was decided in the Superior Court by then Judge Dana Fabe, who is now the Chief Justice of the Alaska Supreme Court. The person who handled it explained:

> It was a case in which the court made a very strong decision that the state could not meet a rational basis test, a compelling interest test; they couldn't really establish any basis for requiring a petition candidate to meet the same filing deadline of June 1 that the party candidates would have to meet, because if the petition candidate wasn't going to be in the primary, there was no reason to require them to file at that time. The only reason for the June 1 date is because the party

candidates are going to be in a primary. So, she found there was an insufficient state interest to require that. I understand what Senate Therriault is saying, but I think the Court did consider that argument and didn't find it was weighty enough.

REPRESENTATIVE COGHILL said:

I was persuaded in House Judiciary that if they weren't going to be on the primary ballot, then the starting gun could effectively go off on the date of the primary. Since I was pushing so hard for the party selection process to be the primary source of selection under that primary election, they put themselves outside that party process and put themselves in pretty much the initiative or signature gathering process. At that point, I couldn't make my case any stronger for keeping the primary closed if I had gone that direction. The starting gun from my point of view was sufficient for me to say the start of the primary. So be it…

Number 170

This particular bill - I think it's better than what we started off with. This forces an inclusion, though, with those voters who have disenfranchised themselves from the party - the undeclared, the nonpartisan and the little independents. This particular bill you have before you does force the inclusion in the primary and if there is to be a closed primary within a party, they have to choose to exclude people, I find that fundamentally wrong. I find it out of line with the California Democratic Party V. Jones.

TAPE 01-25, SIDE A

REPRESENTATIVE COGHILL continued:

On page 6, paragraph 2 of the decision, the Court has recognized that the fist amendment protects the freedom to join together in furtherance of common political beliefs, which necessarily presupposes the freedom to identify the people who constitute that association and to limit the association to those people only. I think if we force the inclusion, we're going against the very crux of this case. I implore you to make that plea…

REPRESENTATIVE COGHILL had prepared some amendments. Regarding page 14, paragraph 14, he said, "If the party wants to open up the

primary, that should be a party decision. It should not be a state mandate that they open it. In my view, a primary is a selection process; it's not an election."

CHAIRMAN TAYLOR moved the two-page amendment that Representative Coghill prepared as amendment 1. He objected for purposes of discussion.

SENATOR THERRIAULT asked if the effect of this was to go back to the closed primary unless the party takes action to open it.

REPRESENTATIVE COGHILL answered yes.

CHAIRMAN TAYLOR asked if that would leave them with a status quo in that the Democrats have not had to open their primary in the past. Their party had done it already.

REPRESENTATIVE COGHILL agreed in that regard.

CHAIRMAN TAYLOR asked if there were further objections to amendment 1. There were no objections and it was adopted.

SENATOR THERRIAULT asked if that action forced the legislature to change the filing deadline for the petition candidates.

REPRESENTATIVE COGHILL replied yes and said, "The date of the primary election would be the deadline for the physical delivery of that petition for a general election."

SENATOR THERRIAULT asked if it forces the legislature to act because of the possibility that their names will not appear on any ballot in the primary and, because of that, there's no justification for having them file on an earlier date.

REPRESENTATIVE COGHILL replied that was his understanding.

SENATOR THERRIAULT said that if they didn't have to file before the date of the primary, they didn't have to file all the APOC reports before then. "You have no idea if they're gathering money; where it's coming from; what they're spending it on. So all your information is available to them and you get nothing back."

REPRESENTATIVE COGHILL said if you go through the party process, you would be running your election from June through November, but the petition candidates would only have to start from the primary date on. He said they could ask APOC to have them begin reporting as soon as they start spending money on a petition drive.

CHAIRMAN TAYLOR asked if Judge Fabe's decision was based on the law that the legislature passed by Senator Sharp to clarify that.

SENATOR THERRIAULT interjected that Senator Sharp's law was passed afterwards and basically fixed the problem.

CHAIRMAN TAYLOR asked if this bill somehow threw that change out.

MS. FELIX replied yes. The bill removes the requirement that the petition candidates run in the primary. Under the bill, they will only run in the general election. If they put petition candidates in the primary, there is the question of implementing.

CHAIRMAN TAYLOR said they would show up on everybody's ballot.

REPRESENTATIVE COGHILL said that would force a nonpartisan on a partisan ballot, which is one of the things he has been arguing not to do.

CHAIRMAN TAYLOR said he would give them until Monday to work out the differences.

MS. GAIL FENUMIAI, Election Program Specialist, commented, "The reason for the change in the bill the way it exists now is because the no party candidates are removed from being on a primary ballot. In 1995, the law was changed to have them appear on the primary ballot. Therefore, they had the same filing deadline as candidates from recognized parties. Prior to 1995, they went straight to the general election ballot and had a filing deadline of the primary election date, due to the lawsuit that was filed."

MS. FENUMIAI said she would check on Alaska Public Office's paper work, but she thought they would fall under the same guidelines as the candidates do. Petition candidates have to file a letter of intent before they can start raising money and expending funds.

SENATOR THERRIAULT said he thought petition candidates should have to make their decision on the same date everyone else does and file the paperwork just like everybody else does.

CHAIRMAN TAYLOR said, "If they have the means to finance their own campaign, they don't have to report anything until the day they file…"

Number 724

CHAIRMAN TAYLOR said he would hold the bill over until Monday.
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#HB172

HB 172-THERAPEUTIC COURTS/ SUPERIOR COURT JUDGES

CHAIRMAN TAYLOR announced HB 172 to be up for consideration.

REPRESENTATIVE PORTER, sponsor of HB 172, said the legislature has been dealing with the DUI issue for years and most of the progressive enhancements to that law have proven to be effective. This bill addresses the drivers who have an addiction as opposed to a problem with drinking and don't have the individual capacity to stop. The Anchorage community has found that there is a small group of multiple offenders who are continuing to drive and drink. "They are killing people."

He explained this program and new approaches that are available in the area of treatment, especially pharmaceuticals, have anecdotally been successful at the district court level and should be expanded to the felony DUI situation in Anchorage. HB 172 provides for a pilot project in Anchorage and Bethel where it provides for the involvement of local treatment programs and people who deal with cultural diversity in our state.

CHAIRMAN TAYLOR said it appeared to him to take in all criminal offenses that are alcohol related with the exception of the most severe felonies.

REPRESENTATIVE PORTER explained that it asks that the court concentrate on DWI offenders. The pilot program provides for a fiscal analysis that deals with a certain number of felony DWIs. That is the focus now, although there are a multitude of criminal offenses that are alcohol related, between 70 to 80 percent. He would not be opposed to gradually including some of those.

CHAIRMAN TAYLOR asked if admission into the therapeutic court program in any way provides for deviation from the existing minimum mandatories that are provided under the DWI law.

REPRESENTATIVE PORTER responded that the bill provides the opportunity for that to happen, but it doesn't require it. "Once the person is in the program, having been approved by the prosecutor's office, the court has the discretion and the idea is from our perspective to hold that sentence over the head of the individual for as long as it takes to be assured of satisfactory completion of the program.

CHAIRMAN TAYLOR said he believes there needs to be some inducement to use the program, but if a person is prosecuted for a second or third offense in Palmer, he gets a mandatory minimum sentence, pays the fine and there is no prosecutorial discretion. However, if he shows up in the Anchorage court, he could get the entire period of imprisonment and the amount of fine including the presumptive or mandatory minimum sentence suspended if he is successfully completing court ordered treatment. "Who wouldn't jump into treatment if the guy down the road is getting 100 plus years in jail, suspension of his license for three or four years and you can get all of that suspended by going through this court?"

REPRESENTATIVE PORTER said that was the idea of the program - to have an inducement to get someone started in the activity of meaningfully trying to change that addictive behavior.

CHAIRMAN TAYLOR asked, except for the additional cost of support personnel, why we shouldn't provide the same level of discretion for every judge who is dealing with alcohol offenses.

REPRESENTATIVE PORTER replied that the program in Anchorage has only been going for about a year and a half, so results are just anecdotal. The proof will come six or seven years from now. The program is labor intensive and requires frequent returns by the defendant and prosecution as part of the treatment process.

CHAIRMAN TAYLOR asked about equal protection.

REPRESENTATIVE PORTER replied that issue was not raised and he would ask Mr. Guaneli about that. He personally thought they had gone as far as they could go with personal incarcerations. There is so much graphic evidence that hardly anyone responds to a revoked or suspended license. He thought that this program would not have 100 percent success and there would always be that 10 percent that would never get the message in any format.

Number 1655

SENATOR THERRIAULT asked why they couldn't set these programs up everywhere when language says "to the extent feasible, the therapeutic court shall use existing public agencies, medical treatment."

REPRESENTATIVE PORTER replied that the labor intensity of this program is in the state of evolution. "To make sure that we have the capacity to do it correctly, we are suggesting that we should have these two new courts…"

CHAIRMAN TAYLOR asked if they were going to have two Superior Court judges in Bethel.

REPRESENTATIVE PORTER replied yes.

CHAIRMAN TAYLOR said that he doubted that they needed it, but it was sad.

MS. JANET MCCABE, Partners for Downtown Progress in Anchorage, said they had been working with Judge Wanamaker on the wellness court and strongly supported HB 172. "Therapeutic courts are effective in bringing about lasting change in alcohol addicted offenders. It's a long difficult process for both the person who opts into the program, the defender, and it also needs a lot of intensive

participation on the part of the judge."

She said that about 90 percent of their participants have stayed sober and are doing well. She asked the committee to consider an amendment. She said the wellness court is at the district court level and none of the provisions in this bill affect the wellness court since it applies to the Superior Court. She thought it was important that the judge have the ability to reduce the mandatories if someone completes the wellness court successfully.

CHAIRMAN TAYLOR asked what the difference is between a therapeutic court and a wellness court.

MS. MCCABE replied that they are basically the same.

CHAIRMAN TAYLOR asked if the judge involved in the wellness court in Anchorage was Judge Wanamaker.

MS. MCCABE said yes.

CHAIRMAN TAYLOR asked, if he was doing such a great job at a district court level, why are they talking about creating two new superior court positions for what's being done in the district court today and is the model program.

MS. MCCABE replied that was considered long and hard. She said there was a great need in Bethel and there were a lot of people in Anchorage who are at the felony level who could benefit. The wellness court doesn't touch that group of people.

CHAIRMAN TAYLOR said that was only because of silly jurisdictional restrictions between superior and district court as to who is busted for a felony and who is busted for a misdemeanor. He was trying to figure out why they were going to add to a superior court bench in Anchorage that was not overburdened by any means and not assist a district court bench, which he knows is terribly overburdened with mostly alcohol related offenses. He said they should put two more district court judges in Anchorage and give the superior court the authority to help out.

MS. MCCABE said these projects are intended to be demonstrations to build up support and to really make an impact on the problem.

MR. BLAIR MCCUNE, Deputy Director, Alaska Public Defender Agency, said they had done a lot of work on this bill and that it was important that it gets done right. They don't want the public to lose confidence in this process. He said that the program is working really well so far. On the equal protection issue, the program had to start somewhere. He didn't think there would be a challenge based on not having it in one community opposed to another. It's like a prosecutor might allow a plea bargain where

another prosecutor might not.

CHAIRMAN TAYLOR said he thought this was an important point and they aren't talking about a particular prosecutor or discretion that may be exercised. They are talking about changing the minimum mandatory sentences that are currently required on every criminal offense with the exception of major felonies. It says, "However, not withstanding any other provision of law, the entire period of imprisonment or fine including a presumptive or mandatory minimum sentence may be suspended if the defendant has successfully completed court ordered treatment."

MR. MCCUNE replied that he thought the legislature had looked at the carrot and the stick and the type of intensive work that a criminal defendant and participants would have to do in making all treatment appointments. It would mean making considerable effort to come to court every day and work with the professionals involved.

TAPE 01-25, SIDE B

MR. MCCUNE said that the court might think that burden was the equivalent of a mandatory minimum sentence.

CHAIRMAN TAYLOR responded that they had one judge who could exercise unlimited discretion with the defendant who is sitting in one courtroom in Anchorage. The very same Superior Court judge sitting out in Palmer has absolutely no discretion and will violate state law should he fail to sentence to the maximum extent that law requires. When he was practicing 25 years ago, it was very easy for him to check to see if offenders were showing up for their antabuse every day or following up with their social worker. He didn't have to have another $2 million dollars to hire a judge who does nothing but this. "I consider it a part of the job!"

MR. MCCUNE said they are in the type of situation where someone gives a Rule 11 type of plea bargain. This puts a lot of pressure on the defendant to complete this program successfully.

CHAIRMAN TAYLOR asked if they could amend the bill to provide the same level of authority and the same criteria for meeting it to both district and superior court judges across the state, leaving it optional for that court if they wish to participate and utilize this form of sentencing.

MR. MCCUNE replied that he didn't think there would be an equal protection problem.

CHAIRMAN TAYLOR said he agreed with him as long as the discretion is uniform among the judiciary. That one sentence changes the minimum mandatory sentencing laws on every criminal offense in this state with the exception of unclassified felonies, but it only

changes it if you walk in the right courtroom door. "That definitely seems to be different as far as equal protection is concerned."

He asked Mr. McCune to address the legal aspect.

MR. MCCUNE responded again that he didn't think equal protection would be a problem because of what this requires of the individual criminal defendant. It is far above requirements that are placed on other defendants.

Number 2107

MR. DEAN GUANELI, Chief Assistant Attorney General, said:

> For those of us in the criminal justice system, and I include you in that because of your long experience, we often get very jaded about offenders and we see them coming back time after time, particularly the ones who have alcohol problems. This is a program that really deserves to be tried out, deserves to be used. I think it can make some inroads in what is a real serious problem in Alaska.
>
> What this was designed to do was to focus on felony drunk drivers. To be a felony drunk driver it has to be your third or more conviction within five years and we certainly have those who are more. They are tough nuts to crack. The treatment people all tell us that…

MR. GUANELI explained that this program involved an intensive period of 18 months of oversight by the court, the prosecutor, the defense attorney, the probation officer and treatment providers. It's so intensive that a lot of clients would rather go the jail for the mandatory four months than go through this program. He thought the courts would also consider the way they look at treatment programs in terms of getting credit for time served. The Lock and Nygren cases (Supreme Court) say that if you are ordered to go to a treatment program that has conditions that really restrict your liberty, you get credit for time served. "It's in essence the equivalent of incarceration and you get credit against your sentence."

MR. GUANELI said that he thought the court would give the legislature a lot of latitude in trying out this program for those reasons. He said the legislature has broad latitude in analyzing where equal public facilities are going to be, particularly on a pilot basis. The court has pretty definitive language after a lawsuit against the Division of Health and Social Services.

CHAIRMAN TAYLOR agreed with the analogy of treatment, but he was concerned with the loss of liberty. "There is no higher standard that we look to in equal protection cases than loss of liberty."

He knows a family whose son is serving two and a half years in a state institution for DWI and they have asked him why he hasn't been placed in a program in that institution for treatment. He doesn't know how to explain to them that their son has to stay there for two and a half years, while a kid in Anchorage or Bethel can work and get treatment. One is elective and the other is mandatory.

MR. GUANELI said Senator Taylor had a good point, but he just didn't think the court would say they couldn't start out with a pilot program just because they don't have the budget for the rest of the state.

CHAIRMAN TAYLOR said this bill would include more than just DWIs. "This court can literally take anybody."

He wanted to know if they were going to limit to just drunks or try and expand it. He wanted to know if the legislature could suspend the effect of all state minimum mandatory sentences just for one court and not be facing an equal protection problem.

SENATOR TAYLOR wanted to see some parameters where the person didn't jump in to the program without some additional help. He thought that other communities might have people who would want to help with this kind of program and asked if they shouldn't be entitled to do it, too.

MR. GUANELI responded that Anchorage was chosen because the treatment infrastructure exists there. "That is why I think keeping it in Anchorage to begin with for the first six months is a good idea."

He said further that the court finds a relationship between treatment and incarceration. To provide the incentive necessary for defenders to go through the treatment program for 18 months, you really have to give the judge the latitude to design a sentence and even throw the mandatory minimums, to give particular offenders the incentive to continue with these programs. "Throwing out the mandatory minimum or giving the judges flexibility to do that is a necessary part of making this treatment effective. I believe our Supreme Court will recognize that."

He thought extending that flexibility throughout the state for all offenses is wiping out all mandatory sentencing in Alaska.

CHAIRMAN TAYLOR said that would happen only to the extent another judge would be flexible that this one "super judge" is now going to

do.

MR. GUANELI said that would do away with mandatory and presumptive sentencing in Alaska.

CHAIRMAN TAYLOR asked why he should trust a judge who hasn't even been hired yet to do that on all offenses with the exception of unclassified felonies.

MR. GUANELI said he thought the court system would probably put one of the sitting judges there, but maybe not.

SENATOR DONLEY said he didn't know the scope was so broad. He asked if class B felonies were crimes of violence against a person.

MR. GUANELI replied that those would be included. "The intent in Anchorage is to limit to the felony drunk driving, but in order to try this out in a rural area, in Bethel, there are not sufficient numbers of felony drunk driving offenses. It was felt to broaden it out to allow others…Burglaries are a common offense and that's a class B felony…"

SENATOR DONLEY asked what the role of the victim was in deciding whether or not punishment should be waived in favor of treatment.

MR. GUANELI replied that is a good question. The prosecutor has to agree for someone to be accepted into this program. If there is a strong objection from the victim to someone not serving time, that would be taken into consideration.

SENATOR DONLEY asked if the sponsor considered putting language in statute that the victim should be consulted. He thought it was important.

MR. GUANELI said he thought that was a legitimate concern, but he hadn't talked to the sponsor about amending it.

CHAIRMAN TAYLOR said section 5, page 3, provides that the offender could be living in a municipality of an area of the state without a judge who can appoint someone to do the job for him. If that system was workable out of Bethel, it ought to work out of Fairbanks.

MR. GUANELI said this program was set up based on guidelines used in other states. It was designed particularly for the Bethel region to be flexible because of the remoteness. No one knows how well the program would work.

CHAIRMAN TAYLOR asked if this would help Judge Wanamaker's program.

MR. GUANELI said there was language stating that it's not intended to bind the district court.

CHAIRMAN TAYLOR said that district courts deal with more mandatory minimum sentences than anybody else and as a consequence Judge Wanamaker has been making his program work within the minimum mandatory sentencing. So he didn't have to offer them an extra day or two less in jail to get them to come into his program. "I think I know how he did it. He just hung more time over their heads…"

MR. TOM WRIGHT, staff to Speaker Porter, pointed out that language on page 2 says, "Nothing in this act is intended to place additional requirements on or make changes to other existing specialized or general state courts."

He said the Judge Wanamaker's court was working under a federal grant that runs out in a short time and they are looking for an appropriation through the capital budget process so they can continue. "This is a pilot project and nothing more. There may be some things that aren't going to work like the part he just mentioned about the rural areas. The Senate just passed a bill granting VPSO to probation officer status and this could tie in with that."

MR. GUANELI commented that although the Judge had some anecdotal successes, this is designed to get at felony drunk drivers and he is generally not handling cases at that level. "These are the problem cases. These are the ones who are going to continue to drink and drive if something isn't done."

CHAIRMAN TAYLOR said he appreciated Representative Porter bringing this legislation forward. It is the most creative thing he had seen in a long time. However, every agency wants to be paid more to go do the job we think they ought to be doing in the first place, which is concentrated more on alcohol related addiction.

MR. WRIGHT agreed.

CHAIRMAN TAYLOR asked if this program could operate without the requested funds.

MR. WRIGHT responded that he would have to ask the courts.

CHAIRMAN TAYLOR asked if Judge Froelich was receiving any funding in Juneau?

MR. GUANELI and MR. WRIGHT said they didn't think so.

CHAIRMAN TAYLOR said the words, "does not affect the jurisdiction of other similar courts" intrigued him. He asked if there were any other specialized courts.

MR. GUANELI replied that the state has a mental health court and a

drug court that has been funded with federal funds that's operating in Anchorage.

SENATOR DONLEY said there doesn't appear to be any sunset on the number of Superior Court judges if this program goes away.

MR. WRIGHT replied that it was his impression that if this program didn't work, they would revisit that issue, but they wouldn't have a problem with a sunset clause.

SENATOR DONLEY said he was thinking about language that would require a specific consultation with victims since theirs was a special circumstance of waiving mandatory sentencing.

MR. WRIGHT said he would discuss that with the sponsor.

CHAIRMAN TAYLOR noted that the sponsor has been a great advocate for victims' rights.

CHAIRMAN TAYLOR said they would take this up again on Monday and adjourned the meeting at 4:47 p.m.

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