ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
May 4, 2001
5:22 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator Dave Donley, Vice Chair

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 49(FIN)
"An Act extending the termination date of the Board of Parole; and providing for an effective date."
MOVED CSHB 49(FIN) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 121(L&C)
"An Act relating to the issuance of qualified charitable gift annuities."
MOVED SCS CSHB 121(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 184(JUD) am
"An Act relating to insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."
HEARD AND HELD

CS FOR HOUSE CONCURRENT RESOLUTION NO. 17(RES)
Expressing the legislature's support for sale of a portion of Alaska's North Slope natural gas for electrical generation to power data centers within the North Slope Borough.
MOVED SCS CSHCR 17(JUD) OUT OF COMMITTEE

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."
MOVED SCS CSHB 172(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 191(L&C)
"An Act relating to insurance pooling by air carriers."
HEARD AND HELD

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

MOVED SSHB 120 am OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 121 - See Labor and Commerce minutes dated 4/26/01.

HCR 17 - See Resources minutes dated 4/30/01.

HB 172 - See Judiciary minutes dated 4/27/01.

SB 191 - See Labor and Commerce minutes dated 4/17/01 4/24/01 and 5/1/01.

WITNESS REGISTER

Ms. Candace Brower, Program Coordinator
Office of the Commissioner
Department of Corrections
431 North Franklin, Suite 203
Juneau, Alaska 99801
POSITION STATEMENT: Supported HB 49

Ms. Amy Erickson
Staff to Representative Lisa Murkowski
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Introduced HB 121

Ms. Gloria Glover, Chief Financial Examiner
Anchorage Field Office
Department of Community & Economic Development
3601 C Street, Suite 1324
Anchorage, Alaska 99503-5948
POSITION STATEMENT: Supported HB 121

Mr. David G. Shaftel
Alaska Community Foundation Board of Directors
3300 Providence
Anchorage, Alaska 99508
POSITION STATEMENT: Supported HB 121

Mr. Jon Calder
No address provided

POSITION STATEMENT: Supported HB 121

Mr. Bob Lohr, Director
Division of Insurance
Department of Community & Economic Development
3601 C Street, Suite 1324
Anchorage, Alaska 99503-5948
POSITION STATEMENT: Supported HB 121

Ms. Katie Campbell, Actuary L/H
Division of Insurance
Department of Community & Economic Development
3601 C Street, Suite 1324
Anchorage, Alaska 99503-5948
POSITION STATEMENT: Testified on HB 121

Representative Kevin Kott
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HCR 17

Mr. James Dodson, Vice President
Netricity, LLC
No address furnished
POSITION STATEMENT: Testified on HCR 17

Mr. Thomas Wright
Staff to Representative Brian Porter
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Introduced HB 172

Mr. Dean Guaneli
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified on HB 172

Mr. Blair McCune
Alaska Public Defender Agency
No address furnished
Anchorage, Alaska
POSITION STATEMENT: Opposed to HB 172

Mr. Bob Lohr, Director
Division of Insurance
Department of Community and Economic Development
3601 C Street Ste 1324
Anchorage, AK 99503-5948
POSITION STATEMENT: Testified on SB 191

Ms. Sarah McNair-Grove
Division of Insurance
Department of Community and Economic Development
P.O. Box 110805
Juneau, AK 99811-0805
POSITION STATEMENT: Testified on SB 191

Representative John Coghill
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on HB 120

Mr. Kenneth Bischoff, Director
Division of Administrative Services
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Supported HB 120

Ms. Diane Schenker, Criminal Justice Planner
Division of Administrative Services
5700 East Tudor Road
Anchorage, Alaska 99507-1225
POSITION STATEMENT: Testified on HB 120

ACTION NARRATIVE

TAPE 01-29, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 5:22 p.m. Senator Cowdery, Senator Therriault, and Chairman Taylor were present. Senator Ellis arrived at 5:26 p.m. Chairman Taylor announced the first order of business would be HB 49.

#HB 49

HB 49-EXTEND TERMINATION DATE FOR BD OF PAROLE

Ms. Candace Brower, Legislative Liaison for the Department of Corrections, explained that the legislation extends the termination date of the board of parole. Originally the extension date was 2006 and the House amended the date to maintain the parole board in its current status until 2008.

CHAIRMAN TAYLOR announced that the CS before the committee was the House bill.

SENATOR THERRIAULT asked what percentage of incarcerated individuals comes before the parole board and how the dynamics have changed since mandatory minimums were instituted.

MS. BROWER did not know that the percentage of individuals eligible for discretionary parole had changed but the number of mandatory paroles has increased with the number of offenders. The workload on the mandatory parole has to do with the number of parole violators. Individuals who are released on mandatory parole have their case reviewed by a parole board member who then determines the supervisory requirements for that offender. Because the paroles are mandatory, there are some parolees who are not successful and their parole is revoked. At that time, there is a full board adjudicatory hearing.

Although she did not have any figures, she thought the annual parole board report should give percentages of discretionary parole hearings held as well as the number of mandatory parole revocation hearings.

SENATOR THERRIAULT stated his reason for asking stemmed from a constituent who was on probation and questioned the need for a parole board since instituted mandatory good time and mandatory minimums had automated so much of the system.

MS. BROWER responded that there were still a significant number of discretionary parole hearings held.

SENATOR THERRIAULT noted that the monetary outlay was about $450,000.00 per year.

MS. BROWER agreed.

CHAIRMAN TAYLOR asked that the record reflect his pleasure regarding the work that has been done by the current and past parole boards. There has been no abuse of discretion in this state, which indicates that good judgment is being exercised.

SENATOR COWDERY moved CSHB 49(FIN) from committee with individual recommendations.

There being no objection, CSHB 49(FIN) moved from committee with individual recommendations.

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#HB 121

HB 121-QUALIFIED CHARITABLE GIFT ANNUITIES

MS. AMY ERICKSON, staff to Representative Lisa Murkowski, explained gift annuities as contractual agreements whereby a donor makes a gift to a charity in exchange for a guaranteed annual income. This benefits the donor by allowing them to not only make the gift but also to receive a partial tax-free lifetime income. It benefits charities as a means of raising funds. On average, the charitable deduction equals one-half the gift.

HB 121 is modeled legislation that has been adopted by more than 30 other states. It defines charitable gift annuities and states that they are not insurance. It also sets a $300,000.00 minimum unrestricted cash requirement and limits the opportunity to established charities that have been in operation for three years or more.

Number 565

SENATOR THERRIAULT asked what would happen when the donor died.

MS. ERICKSON said all donors would have to have named a beneficiary to the annuity and upon the donor's death they would receive the money.

MS. GLORIA GLOVER, Chief Financial Examiner with the Department of Community & Economic Development, testified that the Alaska Division of Insurance supports the legislation. Although current Alaska statute does not address this type of annuity separately, gift annuities sold by charities meeting certain conditions are exempt from insurance regulation. Charities must give notice to the donor as well as the Division of Insurance when they begin issuing these types of contracts. Alaska Division of Insurance provides no information about the solvency or the product but there are penalties for not issuing the required notices.

MR. DAVID G. SHAFTEL, Alaska Community Foundation (ACF) board member, expressed general support for the bill but outlined one concern. They are a relatively new non-profit foundation whose main focus is to support and implement charitable giving in Alaska. Although they are endowed for over one million dollars, they do not have $300,000.00 in unrestricted cash and this would make them ineligible to initiate a charitable gift annuity program.

He asked that the committee add a subsection that would allow one charitable institution to guarantee annuity programs established by another charitable institution such as the Alaska Community Foundation. With that alternative, ACF and other new non-profits could establish a program while also providing the security that the Act requires.

CHAIRMAN TAYLOR asked whether he had specific language available for the amendment.

Mr. Shaftel said he and Gloria Glover had discussed and agreed upon specific language and Ms. Erickson should have it in her possession.

CHAIRMAN TAYLOR said his staff would provide members with copies of the proposed changes and the committee would return to the issue after other testimony.

MR. JON CALDER, testified in support of HB 121. He wanted to clarify that when a donor takes out a gift annuity they are paid a lifetime income by the charity with which they took out the gift annuity.

SENATOR THERRIAULT referred to supporting literature in the bill packet that stated that, “In addition you will receive certain tax advantages which make your gift even more valuable.” He wanted to know how the tax advantages of the gift accrue to the individual donor.

MR. CALDER explained that when a person takes out a gift annuity they get several benefits. The donor receives the benefit of giving the gift and a tax deduction for the charitable portion of the gift annuity. A gift annuity is a legal contract that is part gift and part return of principal so some of the money returned every year is tax-free. There is also the charitable deduction in the year the gift is made or it may be spread over five years.

SENATOR THERRIAULT asked whether the programs could be set up to benefit any group or cause.

MR. CALDER responded that charities have been offering gift annuities for close to 90 years and typically a donor takes out a gift annuity with a charity that they believe in or support.

SENATOR THERRIAULT asked if his definition of charity was 501(c)(3).

MR. CALDER said that was correct.

SENATOR THERRIAULT asked if it was only 501(c)(3) non-profits.

MR. CALDER said USC 170(c) is also listed in the bill under the definition of charitable contribution but normally the bill is for 501 (c) that “we normally think of as a charitable organization.”

SENATOR THERRIAULT said there are 501(c)(3)s that are not political and 501(c)(4)s that are political.

MR. CALDER said that is correct and “the one this actually again this applies to the 501(n-5) and then also 514(c) 5. So you have a couple of them there.”

SENATOR THERRIAULT responded, “I’m not sure if we’re gathering up money with governmental support and pouring it into politics.”

MR. CALDER said the qualified charitable gift annuity means an annuity as described in the code as a 501 (n-5) and a 514(c). Normally a gift annuity is for a charitable organization and they are normally 501 (c).

SENATOR THERRIAULT said, “(c) (3) or (c) (4)?”

MR. CALDER replied, “(c)(3)”

CHAIRMAN TAYLOR pointed out that 501 (c)(3) is provided on page 3, at line 23 and 501(m)(5) is listed at line 25 and 514 (c)(5) is on that same line and 170 (c) is on line 22. He shares Senator Therriault’s concern.

He noted that Mr. Shaftel’s amendment was before them and he asked whether Representative Murkowski had any objection.

MS ERICKSON stated she had no objection but her preference is the model act.

CHAIRMAN TAYLOR moved the amendment as amendment 1 for the purpose of discussion. On page 4, after “years.” on line 1, remove the period and add: “; or (C) a guarantee that the obligations of the annuity contract will be met by a charitable organization that meets the requirements of (A) and (B).”

Number 1323

SENATOR COWDERY expressed confusion about a charitable institution sponsoring the required $300,000 in unrestricted funds. Could they sponsor more than once with the same $300,000?

MR. SHAFTEL responded that a public charity would be very cautious about providing this type of guarantee because they are underwriting the annuity program. He agreed that using the unrestricted $300,000 more that once was a concern and perhaps there should be additional language to tighten the area.

Number 1480

SENATOR THERRIAULT referred to the definition of charitable organization on page 3, line 20 and said “person” can be a living breathing or a corporation. On line 22 he wondered whether “a

person" meant "a living breathing person who this gift was set up to benefit?"

SENATOR TAYLOR responded that it did.

SENATOR THERRIAULT then referred to (b) and confirmed that the only group that is allowed for the programs to be set up to benefit is (c) (3)s.

CHAIRMAN TAYLOR responded affirmatively allaying the concerns expressed by Senator Therriault.

SENATOR TAYLOR asked whether there was objection to amendment one and there was none.

Amendment 1 passed with no objection.

SENATOR COWDERY moved SCS CSHB 121(JUD) from committee with accompanying fiscal notes and individual recommendations.

There being no objection, the bill moved from committee.

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#HB184

HB 184-INSURANCE CODE AMENDMENTS

SENATOR TAYLOR announced he had suggested technical amendments. In a hearing on SB 138, which is the same bill, the department explained the changes to the insurance code. He asked for an explanation of the differences between the two bills.

MR. BOB LOHR, Director of the Alaska Division of Insurance, spoke in support of the bill. Privacy provisions received the most discussion on SB 138 and the House version of the bill incorporated language on privacy that was as restrictive as the National Conference of Insurance Legislators model language. This is a higher standard for protection of privacy than the Gramm-Leach-Bliley Act Title 5 privacy provisions provided by SB 138 as it moved from Senate Labor & Commerce. There is little opposition to the House version of SB 138.

Other changes include authorizing the division to update its insurance investment regulations, which have not been updated for many years. There are many sound investment products on the market that are categorized as suspect because they weren't in existence when the laws were adopted. The House version would allow those standards to be updated by regulation and outdated investment regulatory language would be repealed resulting in the National Association of Insurance Commissioners model law on investment

regulation.

Another change deals with trust accounts. Currently the division requires licensed trust account producers (agents and brokers) to ensure that money going to an insurance company for a policy is protected from embezzlement. There is reciprocity with the Federal National Association of Registered Agents and Brokers and if Alaska maintains its present requirements for its trust accounts, it would probably be declared non-reciprocal and not helped to qualify to avoid federal takeover of licensing. The House version of SB 138 would give the division the authority to adopt regulations to have trust accounts but would not be required to do so. As a result, if the reciprocity provision arises, there is a mechanism in the bill to deal with it.

Committee members were also provided with a list of technical changes to HB 184.

CHAIRMAN TAYLOR called for a motion to amend.

SENATOR COWDERY moved amendment one to insert the technical amendments submitted by the division.

CHAIRMAN TAYLOR objected for the purpose of an explanation.

MS. KATIE CAMPBELL, Life & Health Actuary for the Division of Insurance, gave an explanation of the non-substantive changes. Copies of these technical changes are found in amendment one of the bill file.

CHAIRMAN TAYLOR asked for additional objections and there were none. Amendment 1 passed. There was no other testimony.

SENATOR COWDERY moved SCS CSHB 184(JUD) from committee with individual recommendations.

There was no objection and Chairman Taylor moved the bill from committee. [Before adjournment Chairman Taylor announced HB 184 would be held in committee.]

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#HCR17

HCR 17-SALE OF NATURAL GAS TO POWER DATA CENTERS

REPRESENTATIVE PETE KOTT, reported that the resolution lends legislative support for the sale of royalty gas to a company if it is in the best interests of the state. The gas would be used for electrical generation to power data centers within the North Slope Borough. This would create jobs and provide long lasting economic

diversity. It is estimated that one trillion of the 33 trillion cubic feet of gas from the North Slope would be used over the next 25 years.

SENATOR THERRIAULT pointed out that the “resolves” support a competitive, reasonable price but the “WHEREAS” beginning on page 2, line 2 states that the commissioner of natural resources may determine that a competitive bid is not in the best interest of the state and therefore not required. He asked why there is concern with the competitive bid process.

REPRESENTATIVE KOTT responded that there is just one company that has come forward but if there was another interested company then there could be a competitive bid.

JAMES DODSON, Netricity LLC, testified that the language in the resolution reflects the two ways the commissioner of natural resources is able to sell gas leases. The commissioner may decide not to hold a competitive sale due to the lack of market or the decision could be made to hold a competitive sale.

SENATOR THERRIAULT questioned the wording on page 1, lines 12 and 13 that stated that jobs would be created in Anchorage and Nikiske. He pointed out that since modules have been constructed in Fairbanks as well, he would like to strike the words “Anchorage and Nikiske” and replace them with “Alaska”.

REPRESENTATIVE KOTT had no problem with the change stating that the modules would undoubtedly be built in the most efficient location.

Number 2189

SENATOR THERRIAULT moved amendment 1 striking “Anchorage and Nikiske” from page 1, line 13 and inserting “Alaska”.

There was no objection. Amendment 1 passed.

SENATOR ELLIS expressed support for the resolution and moved SCS CSHCR 17(JUD) from committee with unanimous consent.

There being no objection, the resolution moved from committee.

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#HB172

HB 172-THERAPEUTIC COURTS/ SUPERIOR COURT JUDGES

CHAIRMAN TAYLOR announced a committee substitute and asked whether Mr. Wright had reviewed the amendment.

THOMAS WRIGHT, Staff to Representative Brian Porter, reported no problem with the proposed change.

CHAIRMAN TAYLOR explained that on page 2 of the amended version it is established that the pilot sites for the Anchorage and Bethel therapeutic courts shall be in effect for three years as in the original bill but the activity of the two courts has been limited to the Anchorage and Bethel venue districts.

Venue districts are geographic boundaries that act as a guideline to determine in which superior court cases should be filed and are not the same as judicial districts.

TAPE 01-29, SIDE B

SENATOR THERRIAULT asked whether the change was an attempt to deal with the issue of someone in the larger judicial district trying to preempt judges so they are able to access the benefits of the therapeutic court as far as sentencing.

CHAIRMAN TAYLOR responded that the primary concern was equal protection. The cases evaluated had three things in common. All were time limited, all were experimental and all had geographic boundaries.

The amendment also intends that mandatory minimums would no longer be waived. Rather, it is provided that the court may find that the rigorous nature of the sentence imposed under the therapeutic court is equal to or exceeds that imposed under mandatory minimums.

The changes would provide for equal protection and still maintain the original thrust of the program.

MR. WRIGHT reported no objection to the amendment.

CHAIRMAN TAYLOR directed attention to page 4, lines 19-29 of the work draft beginning with “Imprisonment”. The section replaces the portion dealing with possible suspension of the imposition of sentencing.

MR. WRIGHT said he would have to defer to the department of law for a comment.

Number 2169

MR. DEAN GUANELI, Department of Law, said it appears as though the change requires that a sentence be imposed according to current law in 12.55 but after some period of time, not limited by rule 35 the

court can entertain a motion for reduction of sentence. That motion would be based on the same considerations that were in the previous version of the bill.

Line 25 of the work draft, reading "(1) may not reduce the sentence below the mandatory minimum sentence for the offense unless the court finds that the defendant has successfully complied with and completed the treatment plan and that treatment plan was in its totality as rigorous as the minimum period of imprisonment," was in the previous version and is acceptable.

However, the second portion, "(2) may consider the defendant's compliance with the treatment plan as a mitigation factor under AS 12.55.155." may present difficulty. Under the previous version, the court had the option of suspending the entire prison sentence. Because mitigating factors would only allow a reduction of imprisonment to be cut to half of the presumptive term rather than suspended altogether he questioned the practical effect. The crimes this court would typically hear would be first offense, class C felonies in which mitigating factors could go to zero.

CHAIRMAN TAYLOR agreed and said the additional language anticipates inpatient treatment programs and the Supreme Court has ruled that time spent in such a program equals time spent in jail. First offender, class C driving while intoxicated (DWI) would have the opportunity to have their sentence reduced to zero. Although there may be some benefit to having jail time that must be served, there would be individual inducement to going into the program if enrollment reduced jail time.

MR. GUANELI didn't see any problems but wanted to characterize some of the testimony heard in other committees.

First, some judges felt that rather than imposing and then reducing sentences, they had more leverage over an offender if they could wait to impose sentence until they were sure the offender was complying with certain conditions. In contrast, some felt that imposing a sentence and reducing it later gives the offender a clear idea of how much they have to gain.

From the prosecutor's standpoint, there was no objection but the public defender was of the opinion that a large incentive was needed to convince some clients of the benefits of going through the long and intense treatment.

CHAIRMAN TAYLOR reported that there is adequate incentive available to a superior court judge under a felony count. He thought there was a lot of incentive for most to be in a program whereby a minimum mandatory could be reduced to nothing.

Number 1933

MR. BLAIR McCUNE, Alaska Public Defender Agency, had not seen a copy of the changes but he had concerns. Language on page 4 dealing with the judge withholding the pronouncement of the period of imprisonment, "kind of sets things off." He did not understand the reference to rule 35 if the sentence is not actually pronounced. Reference to mitigate in 12.55 is troubling because the mitigating factors are narrowly drawn. To his knowledge, there is no mitigating factor that he knows of for participating in a therapeutic court. In fact, most mitigating factors would not apply.

CHAIRMAN TAYLOR responded that the bill "specifically authorizes the court to consider the offenders compliance with the treatment program as a mitigating factor under Alaska Statute 12.55.155."

MR. McCUNE said that does not fit in any existing list of mitigating factors.

CHAIRMAN TAYLOR said, "It doesn't, we're adding it to it in a special piece of legislation just for this court just in these types of circumstances. That's why we structured it the way we did. You get into therapeutic court you get an extra ticket to get out of jail."

MR. McCUNE said another problem is that mitigating factors refer to felony offenses and may reduce presumptive terms. Mitigating factors are listed in but 12.55.155 and they do not apply to misdemeanor offenses.

CHAIRMAN TAYLOR said they were not talking about misdemeanor offenses. Rather, they were talking about felony cases in the superior court.

MR. McCUNE thought some misdemeanor defendants with a previous, non-felony, DWI could still be considered because the superior court can take jurisdiction for misdemeanors. He saw problems associated with using reference to mitigating factors under Alaska Statute 12.55.

His suggested language on the rigorous nature of the program as approximating mandatory minimums was that the legislature use this in a separate findings section, which would take care of the equal protection questions that might be raised.

CHAIRMAN TAYLOR responded that it was placed so that the judge would make the call as to whether is was as rigorous.

MR. McCUNE said the preference of the Public Defender Agency would be to have it worded the way it left the House because it provides

a greater incentive. Equal protection concerns could be addressed in a separate finding and the statute left unchanged.

In summary: He does not understand reference to rule 35. His main concern is reference to Alaska Statute 12.55 because that is a narrow type of action that the court could take and without amending Alaska Statute 12.55.155 to apply to misdemeanors it would not serve Chairman Taylor's intended purpose.

CHAIRMAN TAYLOR said he understood his concerns and asked whether he had other questions or comments.

MR. McCUNE replied that on page 4, lines 30-31, some individuals might not be given credit for time served and the reason that language was included was because of language on page 4, lines, 14-18.

CHAIRMAN TAYLOR asked which version he was referring to.

MR. McCUNE said he was looking at the L version.

CHAIRMAN TAYLOR said the committee was working on the T version.

MR. McCUNE said this was the area where there are changes made to include rule 35 and the reference to mitigating factors.

CHAIRMAN TAYLOR asked for the reference again.

MR. McCUNE said he was referencing version L, page 4, lines 14-18 and page, 4, lines 30-31. Lines 30-31 make it so that a defendant may not get credit for time served but lines 14-18 give them the opportunity to lose mandatory minimum times.

CHAIRMAN TAYLOR said the language on page 4, lines 14-18, of his version refer to probation.

MR. McCUNE said he was referring to the last sentence on paragraph (i) that begins with "within 30 days after entry of the plea".

CHAIRMAN TAYLOR said his paragraph (i) reads, "If the defendant is terminated from therapeutic court," and asked whether that was what he was talking about.

MR. McCUNE responded that he didn't have a paragraph that began that way.

CHAIRMAN TAYLOR said the two versions were dissimilar.

MR. WRIGHT interjected that his L version was the one coming from House Judiciary but changes were made in House Finance and there was also an amendment adopted on the floor of the House.

CHAIRMAN TAYLOR agreed that the version coming from the House was /O.a.

MR. McCUNE had a different version altogether.

SENATOR THERRIAULT thought the working version could be faxed to Mr. McCune.

MR. McCUNE provided his fax number.

CHAIRMAN TAYLOR directed a copy to be sent and announced they would hold the bill until later in the meeting.

MR. McCUNE said perhaps Mr. Guaneli understood his concerns about the reference to mitigating factors and AS 12.55.

MR. GUANELI responded that he understood the point but he was not sure about the concern. Perhaps the mitigating factors under AS 12.55.55 don't apply to misdemeanors but subsection (1) does apply and says, "you can reduce it below the mandatory minimum if these other things occur." He thought the reference to mitigating factor is only a limitation when there is a presumptive term and you want to limit how much the judge can reduce that term. It is not a limitation in a misdemeanor case because presumptive terms do not apply to misdemeanors. With this in mind, he does not agree with Mr. McCune's concerns.

CHAIRMAN TAYLOR said he was pleased to hear that because it was not his intention to obstruct but to provide the court with the discretion to reduce the term to zero.

Number 1185

MR. McCUNE said he missed some of the changes.

CHAIRMAN TAYLOR responded that it would be hard to follow the changes without having the document to examine.

He would give Mr. McCune time to examine the T version and get his comments on record before adjournment.

SCS CSHB 172(JUD) was held until later in the meeting.
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#SB191

SB 191-JOINT AVIATION INSURANCE ARRANGEMENTS

Mr. BOB LOHR, Director Division of Insurance, expressed his

appreciation to the committee for including the division of insurance in developing SB 191. Although a number of their suggestions were incorporated in the bill, his testimony would focus on ways the bill could be strengthened.

- Minimum surplus and capital requirements similar to those required of a domestic reciprocal insurer have been added and is an important addition to the legislation.
- Aviation insurance will only work if it is adequately funded. Authorization for an aviation joint insurance arrangement that is tied to a congressional or legislative grant or loan for reserves should be explored.
- The term "admitted assets" used on page 3, line 31 in section 21.77.040 should be defined since the specific meaning under title 21 would not apply. In title 21 it is a term related to statutory accounting and would not be applicable. They suggested replacing "admitted assets" with "cash and U.S. treasuries.
- They recommend that the aviation joint insurance arrangement be required to notify members that the insurance is not regulated and they provide no guarantee of protection in case of insolvency. Language in AS 12.34.080 could be used as a model.

CHAIRMAN TAYLOR offered amendment 1 striking the term "admitted assets" from page 3, line 31 and inserting "cash or U.S. treasury".

SENATOR COWDERY moved amendment 1.

CHAIRMAN TAYLOR asked for the next recommendation.

MR. LOHR said the next recommendation was conceptual in nature but he was reading from AS 24.34.080 relating to surplus lines. In (c) is says, "a producing broker shall execute and deliver to the surplus lines broker not later than the end of each month, on a form proscribed by the director. A surplus lines broker shall file with the director with a report required by (a) if this section or with the surplus lines association with the evidence of insurance required by (b) of this section. The surplus lines insurance first placed or renewed in the preceding calendar month an affidavit shall be open to public inspection. The affidavit must contain a statement by the producing broker that the insured was expressly informed in writing before the insurance contractor coverage was bound that the surplus lines insure with whom the insurance is to be placed is not licensed in this state, is not subject to the state's supervision and in the event of the insolvency of the surplus lines insurer, losses will not be covered under AS 21.80, the Alaska Insurance Guarantee Association Act." He thought the forgoing could be adopted for the purposes of the aviation joint insurance arrangement.

CHAIRMAN TAYLOR said “That’s to basically take them out from under any coverage provided to other carriers because they are licensed and here in the state and that’s their kind of solvency pool, right?”

MR. LOHR replied that SB 191 already takes them out because it precludes the division from exercising any regulatory function. It simply notifies the policyholders of the fact that the coverage does not exist.

CHAIRMAN TAYLOR asked him to draw up the amendment and they would include it in the bill.

MR. LOHR agreed to do so.

SENATOR ELLIS asked whether he had an opinion on the adequacy of the minimum capital and surplus requirements set forth in the bill.

MR. LOHR replied that the requirements are drawn from the reciprocal chapter and, at this time, aviation insurance is the riskiest form of insurance. Because of this, there is need for additional mechanisms even though those mechanisms face the same difficulties that existing insurers face. Because there are so many air crashes in Alaska, there are many insurers that are unwilling to write policies here unless it’s with companies that are known and present little risk. Safety is certainly an element of the concern and those requirements are better than no capital surplus requirements but adequate capitalization is imperative. If one crash stands to wipe out the capital surplus of the entire joint insurance aviation arrangement then this is a recipe for disaster.

SENATOR ELLIS asked what would constitute adequate capitalization.

MR. LOHR thought the current statutory requirement would have to be doubled at a minimum.

SENATOR ELLIS asked Chairman Taylor for the basis for his figures for the capital and surplus requirements.

CHAIRMAN TAYLOR said they were the same as reciprocal insurance carriers.

Number 690

SENATOR ELLIS asked if it was realistic to think that Congressman Don Young would capitalize such a fund in Alaska.

CHAIRMAN TAYLOR replied that Congressman Young was thinking about a $500 million figure, which is much higher than the figure legislators considered.

SENATOR ELLIS asked whether Mr. Lohr had thought about exempting from his oversight the activity referred to on page 2, line 5.

MR. LOHR said the Alaska Municipal League Joint Insurance Arrangement and other entities currently operate successfully under statute without regulation by the division. He thought it was a legislative policy call as to whether something was within the scope of Title 21 or not. In terms of early warning of potential problems, Title 21 regulations are effective and problems would come to light sooner if they were regulating than if they were not.

Number 552

SENATOR COWDERY noted that building contractors were interested in a pool several years ago and wondered how that was working.

MR. LOHR didn't believe the effort was carried to fruition but the concern at that time was adequacy of capitalization.

CHAIRMAN TAYLOR agreed that they weren't able to capitalize the effort.

He directed SB 191 be held in committee.

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Number 443

#HB120

HB 120-CRIME PREVENTION & PRIVACY COMPACT

REPRESENTATIVE John Coghill testified that the sponsor substitute for HB 120 provides language for a privacy compact between Alaska and other states and the federal government to facilitate the exchange of criminal history records information for non-criminal purposes. The compact would be assumed by statute rather than by reference. Any changes to the language in the compact would necessitate a state review to protect 10th Amendment rights. He assured members that his focus was to ensure that the compact could never have authority over state.

On pages 1 and 2 there are 10 criteria for use of the information and gives authority for receiving the information to individuals who are not associated with law enforcement. Positive identification would be made using fingerprints that are submitted voluntarily.

There are five major purposes for the compact outlined on page 7 that provide a legal framework for the establishment of the

cooperative venture.

MR. KEN BISCHOFF, Director of the Division of Administrative Services for the Department of Public Safety, stated strong support for the bill. The department is the repository for all criminal history records and they process about 30,000 fingerprint based criminal history checks.

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The state can now access federal records but by joining the compact, they could directly access other states' records as well. This would make accessible 40 percent of the information that is currently unavailable. The compact does nothing to change what individual legislatures approve or authorize regarding dissemination laws. They can only use the information as a compact member if the Alaska legislature authorizes the release of the information. Examples of areas in which the information would be used are for school bus drivers, day care workers, foster care licensing, teacher certification and nursing home and assisted living workers.

CHAIRMAN TAYLOR asked who was currently being paid to handle this.

MR. BISCHOFF replied that there is a criminal history repository staff in Anchorage headed by criminal records bureau chief, Kathryn Monfreda, who is a latent fingerprint expert. Diane Schenker is the criminal justice planner.

CHAIRMAN TAYLOR thought they had a retired trooper on contract to put the package together.

MR. BISCHOFF responded they have received federal and general funding through the legislature to begin the process of rewriting the Alaska Public Safety Information Network. The contract for the project manager was put to bid and awarded to a retired major with the troopers. He's working to develop a new computer information system that will allow efficient national criminal history checks.

CHAIRMAN TAYLOR commented that he had seen significant funding available for that.

MR. BISCHOFF responded that the compact under consideration has a zero fiscal note. The funding referred to is for development of the new system.

CHAIRMAN TAYLOR said the compact simply sets up the bureaucracy and the rules for the bureaucracy that makes up the compact. The actual cost is for buying hardware and software, setting up the system and training people to use the system.

MR. BISCHOFF did not agree. The National Privacy Compact is based on the Interstate Identification Index network system (III), which is an FBI system. That system was paid for and is a federal network to which Alaska has access.

SENATOR THERRIAULT asked whether passage of the compact obligates the state to follow through and update the current system.

MR. BISCHOFF said passage of the compact carries no legal or financial obligation to replace the system. However, the computer system that was implemented in 1984 is obsolete and not able to meet current demands. Although Alaska has used the III for 35 years, it has just been used for law enforcement purposes. The compact allows access to that information for civil purposes based upon a set of rules outlined in the compact.

CHAIRMAN TAYLOR asked who would be able to use this information for civil purposes.

MR. BISCHOFF replied it would be the department of public safety criminal records bureau personal who would send information based on fingerprint requests from employers and regulatory agencies that are authorized to receive the information as set forth in statute. The criminal records bureau is the sole repository and control point for fingerprint information in Alaska and every state has such a bureau.

CHAIRMAN TAYLOR asked for verification that this was to be used for civil purposes.

MR. BISCHOFF confirmed it was 100 percent for civil use.

CHAIRMAN TAYLOR asked about provisions for violation of utilization of the system since individuals have to agree to have their fingerprints run through the system for civil purposes.

MS. DIANE SHENKER, Criminal Justice Planner Division of Administrative Services for the Department of Public Safety, said that nothing in the bill changes the law for violation of the system. State law requires an audit system whereby use is logged and audited. Access may be terminated and criminal charges referred for violations of release of confidential information. The FBI has similar provisions for action for violations.

CHAIRMAN TAYLOR asked whether there have been any violations and or terminations of use.

MS. SHENKER said there have been both. Violations are discovered through investigated complaints and routine audits. “A handful” of violations have been confirmed since they instituted the accelerated audit program in the last several years. As a result,

the individuals' access was terminated.

CHAIRMAN TAYLOR commented that although access was terminated, none of the parties were fired. In fact, one violator was promoted.

MS. SHENKER responded that in the statute and regulations for the department of public safety as a repository, they do not have the authority to terminate an employee of another agency but they do have the authority to terminate access to the criminal justice information system. It's up to the employer to determine a particular personnel action.

MR. BISCHOFF acknowledged the issues that arose several years ago but wanted to emphasize that this is a discrete process that is easier to control. Although the concerns will understandably continue, this is a civil process and access to the process will not be widespread. Through a given set of rules, his staff in Anchorage would process applicant checks in that shop.

CHAIRMAN TAYLOR said he understood but the network of information that is available is being expanded.

MR. BISCHOFF responded that the information they have is for law enforcement purposes and could not be provided to employers and licensing agencies. Passage of the bill would allow them to provide information for those purposes.

CHAIRMAN TAYLOR called for further questions or additional witness testimony and received no response. He asked for the pleasure of the committee.

SENATOR COWDERY moved SSHB 120(am) from committee with individual recommendations.

There being no objection, SSHB 120(am) moved from committee with individual recommendations.

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#HB172

CHAIRMAN TAYLOR asked Mr. Blair McCune whether he had reviewed the T version of HB 172.

MR. McCUNE said he had reviewed the T version and had no particular objections but did have some language changes. On page 4, line 27 he suggested striking "was in its totality as rigorous as" and substitute "approximated the severity of". Then on line 29, after "mitigating factor" strike "under AS 12.55.155" and substitute "allowing a reduction of a sentence pursuant to 12.55.155(a)."

The first language change would make it easier for judges to apply the law. Criminal law frequently speaks of severe and lenient sentences and "approximated" gives the judge more interpretive leeway then the original language. The reasoning behind the second change is rooted in sections (e), (f), and (g) at the end of AS 12.55.155 requiring clear and convincing proof of any mitigating factor. Limiting reference to just section (a) solves any tendency of the court to ask whether clear and convincing proof is needed that something is a mitigating factor.

CHAIRMAN TAYLOR asked Mr. Wright whether he understood and agreed with the changes.

MR. WRIGHT thought the suggestions were appropriate.

SENATOR THERRIAULT moved to adopt \T version dated 5/4/01 as the working document. There was no objection.

CHAIRMAN TAYLOR moved to amend page 4, line 27 striking "was in its totality as rigorous as" and inserting "approximated the severity of" and on page 4, line 29 striking "under AS 12.55.155" and inserting "allowing a reduction of a sentence pursuant to AS 12.55.155(a)."

There being no objection, Amendment 1 passed.

CHAIRMAN TAYLOR asked if there were other suggestions.

MR. McCUNE said they would like to see the language as it came out of the House but if "this is what the committee is going to pass out we appreciate the opportunity to read this over and make some changes."

CHAIRMAN TAYLOR acknowledged the work both Mr. McCune and Mr. Guaneli had done on the bill but in his review of the equal protection information they submitted, he though it was essential to have a geographic boundary, a time limitation and that all the minimum mandatory sentences not be dropped.

He strongly supports the program and hopes it works as well as anticipated.

The Chair asked for a motion to move SCS CSHB 172(JUD) from committee with individual recommendations.

SENATOR THERRIAULT asked whether an impact on the fiscal notes was anticipated because of the changes in the CS.

CHAIRMAN TAYLOR thought there would be a reduction if anything. The bill would go to finance next and they would address this question.

SENATOR THERRIAULT apologized for his interruption and asked whether there had been a vote on moving the bill.

CHAIRMAN TAYLOR asked for objections and there was none.

SCS CSHB 172(JUD) moved from committee.
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#HB184

HB 184-INSURANCE CODE AMENDMENTS

CHAIRMAN TAYLOR announced he would hold HB 184 in committee [see hearing of HB 184 above.] and adjourned the meeting at 7:22 p.m.
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