ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
May 5, 2001
8:49 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. 4(FIN) am
"An Act relating to motor vehicles and to operating a motor vehicle, aircraft, or watercraft; and providing for an effective date."
MOVED SCS CSHB 4(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 132(2d RLS)(efd am)
"An Act relating to the possession, distribution, importation, and transportation of alcohol in a local option area; requiring liquor license applicants to submit fingerprints for the purpose of conducting a criminal history background check, and relating to the use of criminal justice information by the Alcoholic Beverage Control Board; relating to the offenses of operating a motor vehicle, aircraft, or watercraft while intoxicated and refusal to take a breath test; relating to implied consent to take a chemical test; relating 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 HOUSE BILL NO. 179(FIN)
"An Act relating to underage drinking and drug offenses; and providing for an effective date."
MOVED CSHB 179 (FIN) 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."
MOVED SB 177 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 152(RLS)
"An Act relating to brewpub licenses; and providing for an effective date."
HEARD AND HELD

CS FOR HOUSE BILL NO. 181(JUD)
"An Act relating to the obligations of spouses, to insurance policies of spouses, to the nonprobate transfer of property on death to a community property trust, to the division of the community property of spouses at death, and to the Alaska Community Property Act; amending Rule 301, Alaska Rules of Evidence; and providing for an effective date."
MOVED CSHB 181(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 191(L&C)
"An Act relating to insurance pooling by air carriers."
MOVED CSSB 191(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 4 - No previous Senate action.

HB 132 - No previous Senate action.

SB 177 - See Judiciary minutes dated 4/27/01.

HB 152 - See Labor and Commerce minutes dated 5/1/01.

HB 181 - See Labor and Commerce minutes dated 5/2/01.

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

WITNESS REGISTER

Representative Norman Rokeberg
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Sponsor of HB 4, HB 132, and HB 179

Ms. Cindy Cashen
Mothers Against Drunk Driving
No address furnished
Juneau, Alaska 99801
POSITION STATEMENT: Supported CSHB 4(FIN) AM

Mr. Blair McCune
Office of Public Advocacy

Department of Administration
900 W 5th Ave., Suite 525
Anchorage, Alaska 99501-2090
POSITION STATEMENT: Testified on CSHB 4(FIN) AM

Ms. Mary Marshburn
Division of Motor Vehicles
Department of Administration
3300B Fairbanks St.
Anchorage, AK 99503
POSITION STATEMENT: Supports parts of CSHB 4(FIN) AM

Ms. Janet Seitz
Staff to Representative Rokeberg
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Testified on CSHB 4(FIN) AM and HB 132

Mr. Dean Guaneli
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Supports HB 132

Mr. Elmer Lindstrom, Special Assistant
Office of the Commissioner
Department of Health &
Social Services
PO Box 110601
Juneau, Alaska 99801-0601
POSITION STATEMENT: Supports HB 179

Mr. Robert Buttcane, Legislative Liaison
Division of Juvenile Justice
Department of Health &
Social Services
PO Box 110601
Juneau, Alaska 99801-0601
POSITION STATEMENT: Supports HB 179

Mr. Kevin Hand
Staff to Representative Andrew Halcro
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Introduced HB 152 for the sponsor

Mr. Matt Jones
Moose's Tooth
Anchorage, AK
POSITION STATEMENT: Supports HB 152

Mr. Chuck Freese
Great Bear Brewing Company
Wasilla, AK
POSITION STATEMENT: Supports HB 152

Representative Lisa Murkowski
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Sponsor of HB 181

Mr. Dave Chafftel
No address provided
Anchorage, AK
POSITION STATEMENT: Supports HB 181

ACTION NARRATIVE

TAPE 01-31, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 8:49 p.m. Chairman Taylor announced the first order of business would be CSHB 4(FIN)am.

#HB 4

CSHB 4(FIN)am - MOTOR VEHICLES & DRUNK DRIVING

REPRESENTATIVE NORMAN ROKEBERG, sponsor of HB 4, gave the following description of the measure. CSHB 4(FIN)am is omnibus drunk driving legislation. It is the result of work done by the Municipality of Anchorage (MOA) Assembly's task force on driving while under the influence (DUI) of alcohol. That task force was formed last year after a number of tragic accidents occurred in Anchorage. CSHB 4(FIN)am does the following things:

- Lowers the blood alcohol content limit from .1 to .08;
- Mandates treatment for prisoners;
- Deletes the five-year "look-back" provision while phasing in a ten-year "look-back" provision;
- Provides for discretionary immobilization on the second offense and discretionary forfeiture of vehicles on the third offense; and
- Requires seizure of license plates, increased fees and fines and cost caps on various areas of the law to enhance revenue and offset associated costs.

REPRESENTATIVE ROKEBERG commented: "Mr. Chairman, this is the carrot and stick and the penalty provisions of the alcohol package

that is emanating from the House this year." The intention is to separate the vehicle from the habitual offender. CSHB 4(FIN)am also emphasizes certain elements of treatment, particularly for those who are incarcerated. He offered to answer questions.

CHAIRMAN TAYLOR asked why the term "intoxicated" was changed to "under the influence of an alcoholic beverage, inhalant, or controlled substance."

REPRESENTATIVE ROKEBERG said that change was made for a number of reasons. The term, "driving while under the influence ..." is more applicable throughout the United States and inhalants and other controlled substances were added to the definition. He believes that lowering the blood alcohol level (BAC) from .1 to .08 and changing the name of the offense sends a message to the public: think before you drink and get behind the wheel. When the legislature lowers the standard and changes the name of the offense, a person will have to decide whether he or she is under the influence rather than intoxicated. He believes it is important to send the message to the public that the legislature is serious about stopping this offense from occurring.

CHAIRMAN TAYLOR asked at what level Representative Rokeberg believes a person is under the influence.

REPRESENTATIVE ROKEBERG replied: "Mr. Chairman, we have also in the bill the impairment provisions in state law. It is my understanding that law enforcement officers, when they make the initial arrest, many times charge under the impairment statute." Currently "impairment" is defined as .05; it was lowered in the bill to .04. He talked to municipal prosecutors in Anchorage who, on occasion, bring criminal actions under the impairment offense. He reminded committee members that .1 is the under the influence level so an individual could be driving impaired at a .04 BAC under CSHB 4(FIN)am.

CHAIRMAN TAYLOR asked how the penalties differ for impairment and under the influence.

MR. DEAN GUANELI, Assistant Attorney General, Department of Law (DOL), said there is no difference.

CHAIRMAN TAYLOR maintained that by changing the definition within the bill to "under the influence ...," the same penalties are involved but the standard is lowered to .04.

REPRESENTATIVE ROKEBERG said the current law is .05; CSHB 4(FIN)am would lower it to .04. He noted Chairman Taylor is correct in that

it is the per se level at .1 or .08. A person is still considered under the influence under current law.

Number 784

SENATOR COWDERY asked for definitions of "inhalant" and "controlled substance."

REPRESENTATIVE ROKEBERG said "controlled substance" is defined in statute, which contains a list of certain drugs. He then said, "Inhalant also, I believe, is defined here and there's other pending legislation on that." He pointed out the definition was included at the request of Representative Kapsner.

SENATOR COWDERY referred to Section 19, regarding evaluation, and asked if an evaluation can be done if a person refuses to submit to a breath test.

REPRESENTATIVE ROKEBERG said one reason the bill is so long is that the implied consent and blood alcohol level statutes were replicated in it. Regarding treatment, the bill refers to ASERP - the Alcohol Screening and Evaluation Referral Program, an existing program where initial screening occurs to evaluate whether the individual needs additional alcohol abuse treatment. The charge for that program is paid for by the defendant. CSHB 4(FIN)am contains a provision that allows municipalities to charge the fee for ASERP screening.

SENATOR THERRIAULT asked Representative Rokeberg to clarify the comments he made about the .05 blood alcohol level.

REPRESENTATIVE ROKEBERG explained that the current impairment statute has a .05 to .1 level.

SENATOR THERRIAULT asked if a person was driving erratically and had a BAC of over .05, he or she could be cited while impaired.

REPRESENTATIVE ROKEBERG said that is correct.

SENATOR THERRIAULT asked if the fines are the same for impairment and driving under the influence.

REPRESENTATIVE ROKEBERG said according to Mr. Guaneli that is correct.

SENATOR THERRIAULT asked why the bill requires a vehicle to be registered under a person's first, middle and last name.

REPRESENTATIVE ROKEBERG said the Division of Motor Vehicles currently has two separate databases for licenses and registrations. Those databases are not interactive because of the ways the names are entered into them. By requiring the same name format, the databases will be interactive.

SENATOR THERRIAULT asked for clarification of the vehicle forfeiture provision.

REPRESENTATIVE ROKEBERG explained that under current law, a judge may make a discretionary call as to whether to forfeit a vehicle on the third offense. However, the municipalities of Anchorage and Fairbanks have ordinances that mandate forfeiture on the second offense, that has worked as an excellent deterrent. The original version of the bill had mandatory, rather than discretionary, forfeiture on the third offense. It also contained a provision that allowed for either mandatory forfeiture or impoundment, which was primarily aimed at smaller communities where no vendors are available to take the vehicle and, for example, in a situation that warranted impounding the vehicle for 20 days so that it could not be used by the owner. However, some House members were concerned about the mandatory aspect so "shall" was changed to "may" on the House floor, making both discretionary. He felt the bill still makes progress because it provides a discretionary forfeiture and/or impoundment for the second offense. His intent was to implement the mandatory standard used in Anchorage and Fairbanks statewide.

SENATOR THERRIAULT asked about impoundment if a car is registered to several people.

REPRESENTATIVE ROKEBERG said that current statute allows for any co-owner or lien holder to assert his or her claim. During the floor debate, House members discussed the possibility that a defendant may have to sell the vehicle to pay off the co-owner or lien holder. He explained that the rights of the co-owner would be protected.

SENATOR THERRIAULT asked if the co-owners would have to pay a fine or fee to get the vehicle back.

REPRESENTATIVE ROKEBERG said a fee would have to be paid to re-register the car. He pointed out that is one of the provisions with license plate confiscation.

SENATOR THERRIAULT asked about a vehicle that is towed away and auctioned.

REPRESENTATIVE ROKEBERG said a statutory procedure is in existing law and Anchorage and Fairbanks use a very simple civil procedure. He informed the committee that the Chair of the Anchorage Assembly has proposed an amendment that will allow a municipal government to have tougher provisions for the offense of driving with a suspended license by allowing for the forfeiture of vehicles. He asked for the committee's support of the amendment.

CHAIRMAN TAYLOR took public testimony.

MS. CINDY CASHEN, representing Mothers Against Drunk Driving (MADD), gave the following testimony.

> The MADD chapter strongly endorses HB 4 and we have spent a lot of time working on this with Representative Rokeberg and his staff and it is our hope that this bill will pass. Thank you.

Number 1187

MR. BLAIR MCCUNE, Deputy Director of the Alaska Public Defender Agency, stated the House has done quite a bit of work on CSHB 4(FIN)am but he feels the need to point out some continuing problems with the bill. Fines will increase dramatically, making Alaska one of the harshest states in the nation. For a first time offense, the mandatory minimum fine will increase from $250 to $1500. The judge would have no discretion to lower that amount. The fine for a third offense will increase from $1,000 to $4,000. The public defender's agency is concerned about putting these fines in place at such a high level. In addition, the license forfeiture period for a felony DUI is permanent. It can be restored after 10 years. He believes it is important to make sure that drivers are licensed and insured and fears that people whose license has been revoked will be tempted to drive anyway. He feels the bill should provide a way for people to get licensed and insured in a shorter period of time.

MR. MCCUNE said CSHB 4(FIN)am increases the "look-back" provision from five to 10 years for felony DUIs, which will add quite a bit of time and expense for the public defender's agency.

MS. MARY MARSHBURN, Director of the Division of Motor Vehicles (DMV), said, like Mr. McCune, DMV has been significantly involved with the sponsor and the legislation since its drafting almost a year ago. DMV supports lowering the BAC to .08 but DMV continues to take issue with the vehicle registration revocation provisions. A driver's license dictates whether an individual may drive any vehicle. If a person is permitted to drive, it is the driver's

license that determines when and where he or she may drive. A vehicle does not need to be registered in a specific person's name for an individual to drive it. DMV does not believe that removing a person's name from a vehicle registration for the period of the driver's license revocation will have any appreciable effect on the DUI problem. DMV does believe that dealing with re-registration will be a chore for spouses, other family members, or co-owners who need the vehicle. Likewise, she does not believe the work required of DMV to implement that provision will be the most productive and have the intended effect. DMV believes the funds in its fiscal note should be directed to more effective methods of addressing drunk driving, such as screening, treatment and rehabilitation, and vehicle impoundment. She repeated DMV does not support inclusion of the vehicle registration provision in the bill.

SENATOR THERRIAULT asked that Representative Rokeberg respond to Ms. Marshburn's comments.

MS. JANET SEITZ, Chief of Staff to Representative Rokeberg, said Ms. Marshburn was referring to Section 7: Seizure of Registration Plates. Currently, when a person is stopped for a DUI offense, the driver's license is seized and replaced by a temporary driver's license during which time the person can file an appeal. Section 7 puts a similar scheme in place for the registration plates so that license plates are seized and the driver is given a temporary permit. The bill also says that DMV shall allow a co-owner to re-register the vehicle. She noted it is a way to separate the vehicle from the drunk driver to impress upon the inebriated person that he or she should not be driving.

SENATOR THERRIAULT said he is not sure what will be gained for the cost and, apparently, neither does DMV.

MS. SEITZ thought the offender would realize the seriousness of the offense.

Number 1509

SENATOR THERRIAULT asked if the co-owner will have to pay the registration fee under Section (7)(e) and the offender, using a temporary license, can continue to drive that vehicle.

MS. SEITZ said the offender and still has the right to appeal, just as he or she does when a driver's license is confiscated.

SENATOR THERRIAULT asked if a vehicle would be considered borrowed if a husband drove a vehicle registered under the wife's name only.

MS. SEITZ said she believes that would be correct if his name is not on the title.

SENATOR THERRIAULT asked if the seizure provision would kick in at all for a borrowed vehicle.

MS. MARSHBURN said it does not apply to a borrowed vehicle.

CHAIRMAN TAYLOR surmised that if a person was convicted under CSHB 4(FIN)am and could not register a vehicle, he or she would only be able to drive a borrowed vehicle.

MS. MARSHBURN agreed but noted it is the revocation of a driver's license that determines whether a person can drive or not.

CHAIRMAN TAYLOR said the bill contains a provision that makes an exception for a limited class of people, those being victims of domestic violence. He asked how that will work.

MS. SEITZ explained that under current law, a person is not supposed to knowingly authorize or permit another person to drive a vehicle if that person does not have a valid license. Representative Rokeberg added language on page 12, lines 11 through 14, at the request of people who felt the law needs to be strengthened so that victims of domestic violence could not be charged under current law as being an enabler if in fear of domestic violence.

SENATOR DONLEY asked how that differs from any person who acts out of fear of physical violence.

Number 1800

MS. SEITZ said the language regarding domestic violence was added at the request of Lauree Hugonin.

SENATOR DONLEY expressed concern that the language is myopic because acting under threat is an affirmative defense to any crime. He questioned why the law should specify that the person can only be threatened in a domestic violence situation.

REPRESENTATIVE ROKEBERG said Senator Donley is correct but that provision will not lessen a person's common law right.

CHAIRMAN TAYLOR said existing law says one cannot loan a car to a person without a valid license. He asked how the vehicle owner would know whether a driver is licensed under existing law. He asked if that immunity is also part of the forfeiture provision.

MS. SEITZ said the title of the current statute is Unlawful Use of License Permitting Unauthorized Person to Drive. She thought the "knowingly" standard would apply so a person would not be guilty if he or she did not know the driver did not have a valid license.

CHAIRMAN TAYLOR indicated that with the modification in CSHB 4(FIN)am, a person could knowingly loan a vehicle to an unlicensed driver but could "bail out" by claiming to be a victim of domestic violence.

MS. SEITZ said that is correct.

CHAIRMAN TAYLOR informed members that an amendment [Amendment 1] had been proposed that would allow municipalities to impose harsher penalties than those provided in CSHB 4(FIN)am.

REPRESENTATIVE ROKEBERG noted the Anchorage Assembly passed a resolution a few weeks ago that requests the legislature to [indisc.] forfeiture.

SENATOR DONLEY maintained that the MOA was successfully dealing with forfeiture.

REPRESENTATIVE ROKEBERG said the ordinance only applies to DUI offenses; not to suspensions.

Number 2004

MS. SEITZ explained the MOA approved an ordinance on April 17. It is considering a resolution that requests the legislature to amend Title 28 to allow municipalities to increase penalties for driving while a license is suspended, revoked, or cancelled and allow the impound and forfeiture of vehicles used in the offense. She pointed out implementation of the MOA's ordinance is pending a change to state law.

SENATOR DONLEY said he was very skeptical when penalties were lowered for driving without a license. He moved to adopt Amendment 1, which reads as follows:

AMENDMENT 1

TO: CSHB 4(FIN) am

Page 12, following line 14:
Insert a new bill section to read:
"*** Sec. 22.** AS 28.15.291 is amended by adding a new subsection

to read:

(d) Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle involved in the commission of an offense described under this section or an ordinance with elements substantially similar to an offense described under this section. An ordinance adopted under this subsection is not required to be consistent with this title or regulations adopted under this title."

Renumber the following bill sections accordingly.

SENATOR THERRIAULT expressed concern that the phrase "not required to be consistent" was used in the last line of Amendment 1 because it could be interpreted to mean less stringent.

CHAIRMAN TAYLOR noted he shares the same concern.

SENATOR THERRIAULT said he favors allowing municipalities to impose stricter provisions, but he does not favor allowing more lenient provisions.

SENATOR DONLEY agreed with Senator Therriault in that the state law should be the floor and that local governments be given the discretion to go farther.

CHAIRMAN TAYLOR suggested striking the last sentence from Amendment 1.

REPRESENTATIVE ROKEBERG said he agrees with Senator Therriault's concern.

SENATOR DONLEY moved a conceptual amendment to Amendment 1 to allow local governments to adopt standards that are the same or more stringent than the state standards, but not less.

CHAIRMAN TAYLOR announced that with no objection, Amendment 1 as amended was adopted.

SENATOR DONLEY asked if the House examined the penalties for driving without a license. He felt that is a problem with the current law because the penalty for driving without a license has been reduced.

REPRESENTATIVE ROKEBERG said that subject was talked about in general terms but was not addressed in the bill as he was trying to keep the focus of the bill narrow.

CHAIRMAN TAYLOR asked what rehabilitation provisions are contained

within the bill.

REPRESENTATIVE ROKEBERG replied the primary one is the long term mandatory treatment. In addition, the fiscal notes expand the ASERP or the initial assessment, as well as other treatment elements that normally occur for those defendants found to need additional treatment. The most innovative part makes treatment for long term, incarcerated substance abusers mandatory.

CHAIRMAN TAYLOR asked if, in some instances, mandatory treatment could last for as long as one year.

REPRESENTATIVE ROKEBERG said it could; the Department of Corrections will have to make a judgment call about the timing and length of treatment. The problem with voluntary treatment is that some inmates succeed with treatment but others do not even attempt it.

CHAIRMAN TAYLOR noted that not everyone incarcerated under CSHB 4(FIN)am will be serving lengthy terms.

REPRESENTATIVE ROKEBERG said he was trying to focus on the habitual drunk driver.

CHAIRMAN TAYLOR said with a ten-year look-back, a person could be arrested with a .04 BAC who had a DUI nine years prior, and that person would lose his or her license and car for 10 years.

REPRESENTATIVE ROKEBERG clarified that is possible on a third offense.

CHAIRMAN TAYLOR asked if the ten years is a minimum mandatory sentence.

REPRESENTATIVE ROKEBERG said in 1995 the legislature changed the third offense to the felony level. That has not been changed in CSHB 4(FIN)am, but the anomaly that happened with the five-year look-back was changed; i.e., a third offense within the fifth year was a felony, but a third offense in the sixth year was a misdemeanor. He felt that was unfair and, in addition, he wanted to clarify that a third offense is a felony.

CHAIRMAN TAYLOR said hopefully the vast majority of people affected by this bill will be those with a high rate of recidivism.

REPRESENTATIVE ROKEBERG pointed out that over 73 percent of first offenders do not re-offend.

CHAIRMAN TAYLOR asked within what time period those 73 percent were measured.

REPRESENTATIVE ROKEBERG said within three years.

CHAIRMAN TAYLOR asked what the percentage is over a ten-year period and expressed concern that it is unlikely that such records are available.

TAPE 01-31, SIDE B

CHAIRMAN TAYLOR said maybe 30 to 40 percent no longer drink at all but they will not be able to work for 10 years if they cannot drive.

REPRESENTATIVE ROKEBERG suspected the percentage would not be very high. He noted the numbers start falling off to less than 10 percent for major habitual offenders.

CHAIRMAN TAYLOR asked if less than 10 percent of habitual offenders will be "turned around" with treatment programs.

REPRESENTATIVE ROKEBERG said it is the opposite.

CHAIRMAN TAYLOR said that is why he asked about the rehabilitation program. He asked if Representative Rokeberg is assuming that some of these people will not drink anymore.

REPRESENTATIVE ROKEBERG said, "Absolutely, that's why the whole package, particularly with the therapeutic courts - the other provision we have there - we believe that we will make progress in rehabilitation and treatment."

CHAIRMAN TAYLOR asked how the rehabilitated individuals will be treated in contrast to the habitual offenders that continue to drink and what benefit the rehabilitated individual will get from complying. He said the loss of a person's license often affects that person's ability to earn a living.

REPRESENTATIVE ROKEBERG agreed but suggested the person could get a temporary license to get to and from work.

CHAIRMAN TAYLOR disagreed and said CSHB 4(FIN)am does not provide for a temporary license for that 10-year period.

SENATOR THERRIAULT asked if the bill has provisions with regard to driving with a revoked license that trigger other suspensions for longer periods of time or whether everything is tied to a DUI

conviction.

MS. SEITZ said the latter.

SENATOR DONLEY said his concern about Section 21 is that the court has standards for an affirmative defense if a person acts out of fear. He believes the statute sets out the tests for that standard, yet Section 21 doesn't seem to have any trigger tests at all. It appears that anyone could assert that they acted in fear of domestic violence and would automatically be exempted from the provisions of the bill. He asked Mr. Guaneli to comment.

MR. GUANELI said Senator Donley's characterization of Section 21 is accurate. Under existing statute, a person who is forced to commit a crime in order to avoid a greater harm has an affirmative defense, but the person must present some evidence. The Network on Domestic Violence and Sexual Assault did not want the domestic violence victim to even be charged and have to provide evidence.

SENATOR DONLEY said his concern is that many of these situations will involve spouses who use the same vehicle. CSHB 4(FIN)am seems set up to allow abuse of the law, whereas if one was required to follow the normal law [affirmative defense], some sort of measure is involved.

MR. GUANELI agreed that is a possibility. He said he would prefer to rely on the existing law which involves necessity and duress.

CHAIRMAN TAYLOR asked Representative Rokeberg to clarify his statement that he lost a vote on the floor on a provision he was trying to change.

REPRESENTATIVE ROKEBERG said that provision pertained to mandatory versus discretionary forfeiture. He said the floor vote changed it back to discretionary.

SENATOR THERRIAULT asked for an example of a case in which a person's vehicle would be impounded or sold.

REPRESENTATIVE ROKEBERG said, excluding an offense in Anchorage and Fairbanks, under existing law, law enforcement officials will impound the vehicle initially when a person is arrested. CSHB 4(FIN)am will provide for the confiscation of plates and the release of the vehicle with a temporary permit. After adjudication and the finding, the judge could require confiscation if the offense is a second or third.

SENATOR THERRIAULT asked if the vehicle has to be registered in the

offender's name.

REPRESENTATIVE ROKEBERG said he believes the offender has to have an ownership interest in the vehicle.

SENATOR THERRIAULT said for a first offense, the spouse would have to get the vehicle re-registered in his or her name, thereafter, the offender would be driving a borrowed car. He asked if the judge would have the latitude to seize the vehicle.

REPRESENTATIVE ROKEBERG said he doesn't believe so, which is one reason he didn't want the civil procedures used in Anchorage and Fairbanks. In Anchorage and Fairbanks they use a civil action.

SENATOR THERRIAULT's next comment was inaudible.

REPRESENTATIVE ROKEBERG said under current statute a person has the right to assert ownership.

CHAIRMAN TAYLOR asked Representative Rokeberg if he has statistical information from the District Attorney's Office or the court system on the actual days of sentence being given on average by the courts in the state for a first, second, and third offense.

REPRESENTATIVE ROKEBERG said he has not seen the actual number of days, but he found the prosecuting community to be frustrated that the court system has tended to default to the lowest minimum sentence it can impose.

CHAIRMAN TAYLOR noted, "Well, the previous low minimums were 120 - you've gone up to 180, 240 - you've gone to 360, 360 was the minimum before - you've now gone to 440." He asked whether Representative Rokeberg had any information to show that sentencing was occurring at those levels or below.

REPRESENTATIVE ROKEBERG said he has a sentencing report but he could not recollect the amount of time.

CHAIRMAN TAYLOR said Representative Rokeberg also came up with an extensive list for seven different standards for first, second, third, fourth, and more offenses. He pointed out the existing law requires not less than 60, 120, 240, and 360 days for those offenses. He asked Representative Rokeberg if he found that the court system was not increasing the fines.

REPRESENTATIVE ROKEBERG explained that one reason for stepped up fines in the bill was that they were recommended by the DUI task force in Anchorage. Also, during substantial discussions in

committees, there was a feeling that the recommendation of the confiscation of a permanent fund dividend would be a good deterrent. However, because of priority lists for permanent fund dividends, the committee decided to use an equivalent amount or close to it to catch people's attention at the first offense. Members decided on $1500 for a first offense and raised the others from there.

CHAIRMAN TAYLOR said he asked because he wondered if Representative Rokeberg had information showing the courts were sentencing at lower amounts than that or at such low amounts he felt it was important to impose the additional mandatory minimums.

REPRESENTATIVE ROKEBERG said that is from anecdotal evidence he received from prosecutors. He noted, "There was a regular time, particularly because of using [indisc.] credits for time served and defaulting to the minimum allowable, that's what they would use." He also pointed out that in response to a comment made by Mr. McCune, the public defender, a provision was added to the bill that allows a judge to reduce the fine by half.

SENATOR DONLEY referred to Section 21, and pointed out that AS 18.66.990 is the definition of domestic violence that contains a list of the elements of domestic violence, one is making repeated phone calls at extremely inconvenient hours. He said if a person one formerly dated was inebriated and called at an inconvenient hour and asked to borrow a car, the loaner would have a foolproof defense for doing so. He questioned whether that is good public policy.

REPRESENTATIVE ROKEBERG responded:

> Let me just explain what happened there. We had - this is the enabling section of the law. It's already existing law. There's a recommendation of the DUI task force that we make that tougher so the original draft of the bill had a tougher section in here. What happened is, the committee didn't like that and then the domestic violence people came in before the committee and asked that we adopt this. So we did a complete flip-flop there. It was like one of those - a little bit of a last minute thing so, Mr. Chairman, I'm not married to that and I agree with [Senator] Donley if it's not appropriate at all...."

Number 1711

SENATOR DONLEY moved to delete Section 21 [Amendment 2].

CHAIRMAN TAYLOR announced that with no objection, Amendment 2 was adopted.

REPRESENTATIVE ROKEBERG clarified that the standard will not be lowered by Amendment 2 because the common law defense remains.

SENATOR THERRIAULT said that the proponents of Section 21 will have an opportunity to provide more balanced language and present it to the Senate Finance Committee.

SENATOR DONLEY moved SCS CSHB 4(JUD) from committee with individual recommendations.

SENATOR THERRIAULT objected and asked for the total amount of all fiscal notes.

REPRESENTATIVE ROKEBERG said they amount to about $3.5 million with the five percent assumption that pertains to the .08 BAC. He pointed out that is the net amount because the bill will generate revenue.

CHAIRMAN TAYLOR stated with no objection, SCS CSHB 4(JUD) moves from committee with individual recommendations.
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CHAIRMAN TAYLOR announced that HB 106 and HB 184 would be heard the next day. The committee took up HB 132.

#HB132
CSHB 132(2nd RLS)efd am-ALCOHOL:LOCAL OPTION/DWI/LICENSING

REPRESENTATIVE ROKEBERG presented the bill on behalf of the House Judiciary Committee. He explained that CSHB 132(2nd RLS)efd am gives the Alcohol Beverage Control (ABC) Board permission to require fingerprints of applicants for liquor license applications and makes provisions for cutting down on the bootlegging activities by restricting the amount of presumed alcohol in the hard liquor form from 12 to 6 liters of hard alcohol that can be brought into a "damp" area. It also increases the penalty for mailing or shipping liquor to dry areas to include an attempt to import liquor into a "damp" area. The final change in the bootlegging part of the bill is the establishment of delivery sites for the receipt of and the importation of alcohol beverages into a "damp" community. Currently, the city of Barrow operates one quite successfully. This bill will allow the state to operate them in Bethel and Kotzebue, part and parcel with a $1.5 million federal grant to cut down on bootlegging. In addition, because of timing issues, the House decided to add the .08 blood alcohol level (BAC) provision stand alone and the look-back from CSHB 4(FIN)am. He offered to answer questions.

SENATOR THERRIAULT asked about the fiscal impact of adding the .08 BAC provision to the bill.

REPRESENTATIVE ROKEBERG thought the amount was $197,000. He suggested directing the question to Mr. Guaneli.

CHAIRMAN TAYLOR said he noted that the phrase, "within 10 years preceding the date of a present offense" was deleted from AS 28.35.030(o) on page 10. He asked if that refers to a driving while under the influence (DUI) offense.

REPRESENTATIVE ROKEBERG said, "No, that's part of the look-back, Mr. Chairman."

CHAIRMAN TAYLOR asked if, because the 10 years was deleted, the look back provision would apply forever.

REPRESENTATIVE ROKEBERG said it contains the language from HB 4 so he would have to defer to the drafter for an answer. He then said it is a phase in of the look back.

MS. SEITZ explained the phrase, "within 10 years preceding the date of the present offense" because, as Representative Rokeberg says, we are phasing in a ten-year look back with a date certain of January 1, 1996.

CHAIRMAN TAYLOR said that is clarified in Section 14 on page 11.

REPRESENTATIVE ROKEBERG said that helps with the fiscal note.

SENATOR DONLEY pointed out the Department of Corrections' fiscal note does not specify the fund source. He asked that information be provided before the bill is heard by the Senate Finance Committee.

CHAIRMAN TAYLOR referred to Section 22(2) on page 12 and asked if that is the impairment section as it drops the .05 BAC to 04.

REPRESENTATIVE ROKEBERG said there was a spread between .05 and .1.

CHAIRMAN TAYLOR said he didn't note any rewriting of the entire code as was done with HB 4, for example changing the word "intoxicated" to "under the influence."

REPRESENTATIVE ROKEBERG replied, "This is the light version."

Number 1198

MR. DEAN GUANELI, Assistant Attorney General, Department of Law (DOL), said the Administration strongly supports HB 132. This bill accomplishes many of the goals that DOL set out to accomplish, the

.08 BAC being one of the goals. He said regarding Chairman Taylor's question about deleting the 10 year look back language, that particular definition applies to second offenders. To be considered a second offender under current law, the person would have had to committed the first offense within 10 years. The new language removes the 10 year limit.

MR. GUANELI said he believes this bill makes meaningful changes to the laws involving alcohol in rural Alaska. It cuts in half the allowable limit that people can possess in "damp" areas, places where the sale of alcohol is prohibited but importation is allowed. Right now, a person can possess 12 liters of hard liquor, 24 liters of wine, plus 12 gallons of beer. The profit margin in bootlegging is in hard liquor so cutting that presumptive level in half is an important step, an act was recommended by the Criminal Justice Assessment Commission.

CHAIRMAN TAYLOR asked if the presumptive level is being cut in half for the second offender.

MR. GUANELI clarified that it pertains to areas where alcohol is allowed to be imported but not sold. He noted only the amount of hard liquor was cut in half because there was some concern on the House side that a person should be allowed to possess the current limit.

MR. GUANELI said DOL believes it is important to change some definitions so that anyone who attempts to send liquor to a "damp" area and is intercepted would be treated as if the liquor had actually arrived, a class C felony. Under current law, if the liquor doesn't arrive, the sender can only be charged with an attempt, a class A misdemeanor. DOL does not believe that the charge should be less because good police work stopped the shipment.

MR. GUANELI said after receiving a $1.4 million grant for alcohol interdiction and reviewing the issue further, he feels it is appropriate to go one step further. At present, a municipality in a damp area can designate a site where all of the alcohol shipped to the area must go so that the municipality can guarantee package stores are not shipping more than the monthly legal amount. However, a bootlegger could place orders from multiple stores. Barrow has designated a site and put out a contract. All liquor is funneled into that area, where it and the recipient's identification are checked. That procedure has cut back on the amount of bootlegged liquor in Barrow. In some areas of the state, communities do not have the money or political will to establish a similar procedure so the question is, why shouldn't the state? The state spends millions of dollars to counteract the effects of alcohol in many places in rural Alaska. CSHB 132(2nd RLS)efd am provides the statutory authority that allows the state to operate a

delivery site.

CHAIRMAN TAYLOR commented a community would have to vote to be either damp or dry for bootlegging to occur. He asked if the state would be spending money to run a checkpoint for those people who are shipping liquor into their community.

MR. GUANELI said that is the basic idea. He clarified that it is illegal to ship any alcohol into dry communities so this provision would only apply to damp communities.

CHAIRMAN TAYLOR asked if a bootlegger would ship to that checkpoint voluntarily.

MR. GUANELI said that is correct. Right now any orders shipped from a package store must contain a label specifying what and the amount of the product. In Barrow, someone checks the labels to make sure the recipient hasn't exceeded his or her monthly allowance.

SENATOR DONLEY asked what the public policy reason is to set the limits in statute.

Number 777

MR. GUANELI said when sale is banned but possession and importation is allowed, some level had to be established to prevent people from having huge storehouses from which to sell. Recognizing that bootlegging did exist in those areas, those limits were set. The limits were designed to provide an amount to allow for social drinking but not too much to sell. The feeling is that the amount of hard liquor is too much. This has existed in state law for a number of years.

SENATOR DONLEY thought the limits were set quite high and that bootlegging could take place within those parameters.

MR. GUANELI agreed and said that is why the amount of hard liquor was cut in half.

CHAIRMAN TAYLOR said he appreciates the efforts behind this legislation and hopes it work. He expressed concern that the bill is based on voluntary activities.

MR. GUANELI said if someone circumvents the delivery site, the offense would be a misdemeanor. He noted he has discussed this measure with Representatives Kapsner and Joule. They are excited about the idea and feel it can't hurt.

CHAIRMAN TAYLOR wondered how tough things would have to get in Juneau before a checkpoint program could be imposed.

SENATOR DONLEY said these communities have had a popular vote to impose such a program.

CHAIRMAN TAYLOR said he finds it fascinating that the committee can so easily sit back and consider these things as if it is them, not us. He announced that he would hold CSHB 132(2nd RLS)efd am in committee until tomorrow. He assured participants he was only holding the bill for the purpose of accommodating others who are interested in amending it. He then took up HB 179.
#

#HB179

CSHB 179(FIN)-UNDERAGE DRINKING & DRUG OFFENSES

REPRESENTATIVE NORMAN ROKEBERG presented CSHB 179(FIN) on behalf of the House Judiciary Committee. In December, the Alaska Supreme Court ruled on the state versus Neidemeyer (ph) case making structurally inoperative the "Use it and lose it" law. The court found that revoking a minor's driver's license without a trial violated the minor's constitutional right of due process. Consequently, the House Judiciary Committee worked with the Administration to find a way to re-criminalize minor possession and consumption. The prosecutors and law enforcement are doing little or nothing to enforce the law because their hands are tied. Right now a maximum fine of $300 is imposed. He said the Legislature needs to send a message to the youth of this state that they should wait until they are of age before using alcohol responsibly.

Working with the Administration, the House Judiciary Committee designed a new penalty scheme which provides for a violation on the first two offenses. The fine amounts range from $200 to $600, which can be suspended. It also mandates attendance at an alcohol education program and, for a first offense, allows the use of a community diversion panel, which could be a youth court, if approved by the court. For a second offense, the maximum fine is $1,000 (up to one-half may be suspended), 48 hours of community service, revocation of the driver's license for three months. A third offense rises to a class B misdemeanor with the imposition of 96 hours of community service and revocation of the driver's license for 6 months. A person under 18 years of age is referred to juvenile court, if over, to district court.

TAPE 01-32, SIDE A

CHAIRMAN TAYLOR asked why community service is part of the sentence for offenders over the age of 18 if they are old enough to go to jail.

REPRESENTATIVE ROKEBERG said, "Well, I believe Mr. Chairman, it is a class B misdemeanor."

CHAIRMAN TAYLOR asked if the House Judiciary Committee came up with a habitual minor consuming standard and if that is new.

REPRESENTATIVE ROKEBERG said he believes it is new and that it also provides for a juvenile alcohol safety action program (ASAP).

CHAIRMAN TAYLOR asked if it will provide for treatment.

REPRESENTATIVE ROKEBERG said the bill includes a pilot treatment program that specifies the communities of Ketchikan, Fairbanks, Kotzebue and Juneau as recipients of the treatment money at this time.

CHAIRMAN TAYLOR asked a representative from the Department of Health and Social Services (DHSS) to testify.

MR. ELMER LINDSTROM, special assistant to Commissioner Perdue, DHSS, said he appreciates the opportunity to work with Representative Rokeberg on this bill. The genesis of HB 179 began last summer when they met with representatives from the court system, law enforcement, prosecutors and the public defender. The bill contains elements that DHSS believed should come forward even before the Alaska Supreme Court ruled. From DHSS's perspective, monitoring is key. ASAP serves only adults and the court system wants and needs equivalent assistance for juveniles. The court system feels it has been unable to have any kind of meaningful intervention with juveniles. If the "Use it and lose it" law did nothing else, it provided good data. That data revealed juveniles who were 10, 12, or 15-time offenders. Under current law, the state's response for the 15th offense is the same as it is for the first offense so the concept of graduated sanctions was one that DHSS felt had merit. Its goal is to get the monitoring and provide treatment to intervene early.

CHAIRMAN TAYLOR asked if the state has any treatment facilities for juveniles.

MR. LINDSTROM said treatment capacity for juveniles in Alaska is very limited, either in-patient or out-patient. DHSS's original fiscal note on this bill requested in excess of $1 million for treatment in all places it wanted to put juvenile ASAP sites. The House Finance Committee cut that and put in language for pilot sites. He said he does not want anyone to believe that even with passage of this bill and its attached fiscal note, there will be adequate facilities for youth in the state.

CHAIRMAN TAYLOR said,

> In fact, what we've been doing with the court system until the decision came down from the Supreme Court, is

we were fining kids until we worked our way through their permanent fund dividend check. So, at $300 a pass, it took you about seven times and you got to drink for free. So, number 8, 9, 10, 11, 12, 13 that year, those were free because you'd already burned up your permanent fund dividend check. That's literally how they work it in the court. They'd come in and give them $300 civil fine - they'd take it out of their permanent fund dividend check ...."

He said he appreciates this legislations and said he would personally go a little tougher on the state as far as providing treatment facilities.

Number 470

MR. ROBERT BUTTCANE, Division of Juvenile Justice, DHSS, informed the committee that his division has a number of treatment programs in the state for adolescents, mostly outpatient programs. The amount in the fiscal note will increase some of that capacity but HB 179 will hopefully provide a scheme to identify chronic abusers of alcohol earlier so that early intervention can take place. DHSS will be able to provide additional supervision and support to the court system to try to change behavior. If that doesn't happen, the delinquency system will kick in on the third offense and the forces of the Superior Court, juvenile probation officers and family members will attempt more intrusive and effective interventions. He believes it will be a lot better than what currently exists.

CHAIRMAN TAYLOR said he is glad the bill has a pilot program aspect to it so that the state can get some hard numbers to determine how it works and how to expand it. He then asked Mr. Guaneli what happened to the minors who lost their drivers' licenses for decades as a result of multiple offenses under the "Use it lose it law."

MR. DEAN GUANELI, Assistant Attorney General, Department of Law, said he believes that provision of the law was changed recently so that those revocations will run concurrently rather than consecutively.

There being no further questions or testimony, SENATOR DONLEY moved CSHB 179(FIN)am from committee with individual recommendations.

CHAIRMAN TAYLOR announced that with no objections, the motion carried.
#

#SB 177

SB 177-DRIVING WHILE INTOXICATED:BAC LEVEL/FINES

CHAIRMAN TAYLOR announced participants that the committee has held two hearings on SB 177, sponsored by Senator Ward.

SENATOR DONLEY said although he likes the substance of the bill, he is still concerned about the fiscal note. He then moved SB 177 from committee with individual recommendations.

CHAIRMAN TAYLOR announced that with no objection, SB 177 moved from committee with individual recommendations.
#

#HB 152

HB 152-BREWPUB LICENSES

The committee took up HB 152.

MR. KEVIN HAND, staff to Representative Halcro, sponsor of HB 152, explained that HB 152 is a stop gap measure to ensure the unencumbered operation of a relatively new, highly successful industry in Alaska. HB 152 provides a band-aid solution involving a one-year sunset clause that will enable brew pubs to continue their operation for a full year, rather than having to shut down their operation once they reached the production cap put in place. The bill has a sunset date is June 30, 2002; it raises the production cap on brew pubs to 150,000 gallons, of which no more than 75,000 gallons can be sold retail through their in-house establishments and no more than 75,000 gallons can be sold to a wholesaler. The brew pub industry has fostered employment in the state, it has made millions of dollars in capital investments, and it provides diversification of the economy. The idea behind the sunset clause is to allow a one year period for everyone to come to the table, including the industry groups to foster a long solution. He informed the committee that Representative Halcro has received thousands of contacts from patrons of these establishments statewide who would like to see the continued operation of them. He pointed out the net effect of this production cap in place is that it will leave the brew pub operator with a few choices: the operator can cease the operation upon reaching the production cap and no longer sell beer or bring in another brand until the end of the calendar year; contract brew to a brewery, which can be done without the cap, or contract brew to a company out-of-state; or move the entire facility to the Lower 48 where there is no production cap, but the operator will lose the moniker of a handcrafted Alaskan beer. In fact, the production cap is a disincentive for Alaskan employment and capital investment in Alaska.

SENATOR COWDERY noted the downtown pub is an asset to the downtown area. He questioned whether any other establishments are limited to what they can sell, for example, imports.

MR. HAND said regarding the alcohol industry, there is no limit to how much Anheuser-Bush or Coors can ship into Alaska and sell and there is no limit to how much a package store or brewery, such as the Alaskan Brewery, can sell of any product.

SENATOR COWDERY asked when the limit was established whether it would be adjusted in the future.

MR. HAND said that brings up a very valid point because when the brew pubs first came on to the scene in Alaska, for example the Moose's Tooth, the law allowed a brewery to also own a restaurant-eating place license. At that time, there was no limit on the amount that could be brewed. That law was changed and the cap was put in place while they were in operation in 1996. The Moose's Tooth's license became illegal and had to be grandfathered in.

SENATOR DONLEY asked if the increase is temporary for one year.

MR. HAND said that is correct; it is a temporary fix so that all parties have time to come up with a long term fix.

MR. MATT JONES, co-owner of the Moose's Tooth Brewing Company, urged committee members to support HB 152. He informed the committee that when he and his partner planned their business in 1995, the Moose's Tooth legally obtained both a restaurant license and a brewery license. At that time, when they opened in 1996, they could produce and sell an unlimited amount of beer in both the wholesale and retail sectors, as well as own as many restaurant licenses as they desired. After less than six months of operation, the 1996 Legislature passed a statute prohibiting the simultaneous ownership of a restaurant and brewery license.

His business was never contacted during that session as to the effect that statutory change would have on the business. The Moose's Tooth was told by the ABC Board that the law had changed and that their license was in a grandfather status. Right now, the Moose's Tooth is asking to be able to brew beer to meet the market demand for its product, as allowed in 1996. Bar owners often complain that the Moose's Tooth has an unfair market advantage, but he pointed out that bar owners can also add a brewing facility to their bar to become a brew pub. The only thing stopping them is the investment in that infrastructure. In many states brew pubs can wholesale and retail. The state of Oregon has a free market approach, in which brew pubs can wholesale, retail, own a distillery, winery or restaurant and bar and they can brew to meet the market demands. That approach is the reason Oregon is now internationally recognized as one of the most flourishing brewing industries in the world. His final point was that of the beer produced in Alaska, the microbrewed sector accounts for about 4 percent. Of that 4 percent, the Alaskan Brewery makes about 2 to 3

percent; the remainder is divvied up amongst 10 other breweries. He does not believe his business is about to monopolize the market. He noted that he would like to be able to brew to the demand that he built his brewery for in 1996. Doubling the production cap under HB 152 will allow him to get closer to that and to meet with other parties to find a permanent solution.

MR. CHUCK FREESE, a principal in the Great Bear Brewing Company, stated support for HB 152. He said Mr. Jones summarized the benefits of HB 152.

SENATOR COWDERY asked Mr. Freese if his primary business is a restaurant and, in a brew pub business, whether arrests of intoxicated people occur more often than with a restaurant.

MR. FREESE said his business is just getting started and does about half restaurant business and half brew pub business. His business closes at 1:00 a.m. on Friday and Saturday nights. They have never had an incident with the police. He offered to forward a letter he has received from the Chamber of Commerce. He believes the community is very supportive of his business and families comprise a big part of his business.

CHAIRMAN TAYLOR noted he would take up HB 132 again tomorrow.
#
#HB181

HB 181-COMMUNITY PROPERTY/OBLIGATIONS OF SPOUSES

REPRESENTATIVE LISA MURKOWSKI, sponsor of HB 181, explained that the bill fills in gaps in Alaska's Community Property Act, passed in 1998. HB 181 is the result of discussions with and suggestions from one of her constituents, Dave Chafftel, a trust attorney who is very involved with the trust section of the Alaska Bar Association. Four areas are at issue. The first is a creditor rights issue with regard to obligations incurred by a spouse. Those obligations can only be satisfied from the spouse's non-community property. The creditor of a debtor spouse can only reach the separate property of the debtor spouse and that spouse's jointly held property. Two other issues pertain to life insurance and specify that one can designate a trust itself as a beneficiary. HB 181 clarifies the sources of funds that can be used to purchase the life insurance and expand the category. At present it only pertains to family members but often one wants to extend it to grandchildren. The final area relates to the division of property. When community property was discussed in 1998, division of property upon death was not covered. HB 181 specifies that if one has different property items, they can be allocated differently as long as the surviving spouse receives half of the total value.

MR. DAVE CHAFFTEL, an Anchorage attorney, said he is one of a group

of estate planning attorneys who have helped with some of the technical matters of drafting estate planning legislation. The group has found that the community property act that the legislature passed in 1998 has been very popular. Most of his clients opt to designate some or all of their property as community property so the bill has been very successful and beneficial to Alaskans. He said:

> We originally adopted the Uniform Marital Property Act, which was a uniform act that provided a basic framework for community property but has a number of gaps, as a lot of these model acts do, and they need to be designed for each state. That's what this bill is doing - it's filling in some of the gaps in a number of areas that we have noticed either are ambiguous or need resolution for Alaskans.

CHAIRMAN TAYLOR thanked Mr. Chafftel for his efforts on this legislation. He said that he plans to hold a hearing next session for the specific purpose of learning what has happened with the trust modifications made by the legislature. He pointed out that a lot of local people owned large pieces of land, homes and other things and would have been wiped out by taxes if it hadn't been for some unique properties provided by Alaska that other states don't have.

SENATOR DONLEY moved HB 181 from committee with individual recommendations and its accompanying zero fiscal note.

CHAIRMAN TAYLOR announced that with no objection, HB 181 moved from committee.
#
#SB 191

SB 191-JOINT AVIATION INSURANCE ARRANGEMENTS

CHAIRMAN TAYLOR informed participants that the committee has already held several hearings on this legislation. He proposed Amendment 1, and explained that it provides further clarification from the Division of Insurance.

SENATOR DONLEY moved to adopt Amendment 1, which reads as follows.

AMENDMENT 1

TO: SB 191

Page 2, line 9

Insert a new subsection (b) and re-letter accordingly:

21.77.020 (b) Before the air carrier signs the cooperative agreement, the Joint Aviation Insurance Arrangement shall notify the air carrier in writing that the Joint Aviation Insurance Arrangement is not licensed in this state, is not subject to this state's supervision, and in the event of the insolvency of the Joint Aviation Insurance Arrangement, losses will not be covered under AS 21.80 (Alaska Insurance Guaranty Association Act).

CHAIRMAN TAYLOR announced that with no objection, the motion carried.

SENATOR ELLIS asked for clarification.

CHAIRMAN TAYLOR said Amendment 1 provides additional sidebars because, "Everybody's worried about these guys running off and being too thinly financed."

SENATOR ELLIS proposed Amendment 2, which reads as follows.

AMENDMENT 2

TO: SB 191

Page 2, lines 5–9:
Delete all material and insert:
"Sec. 21.77.020. Annual report. By October 1 of each year, the administrator of a joint insurance"

SENATOR ELLIS said his intent is to require an annual report and that requiring annual reports seem to be the prevailing attitude on the floor today. He noted Amendment 2 would require this structure to be under the review of the Division of Insurance.

CHAIRMAN TAYLOR said he has no problem requiring an annual report but he has a problem with the first part. He therefore objected to Amendment 2 and explained:

> ... what it does is today it's a joint insurance arrangement, which is not under the regulation of the Division of Insurance, like the pools are with the schools, and the amendment would put them back under the division and require an annual report. And I'll have to object to that one.

SENATOR ELLIS noted the committee heard testimony from the director of the Division of Insurance that it would be a good idea because

of the risk involved. He said he supports what Chairman Taylor is trying to do but he would feel more comfortable if the Division of Insurance had oversight.

CHAIRMAN TAYLOR stated:

> I appreciated that. My frustration is if that were the case, they could just form a reciprocal at this time and there's been no movement towards that and part of the difficulty is the extensive reporting requirements and auditing requirements, much of which we've not put back into the bill or a good portion of it we have, which further will impinge on them a bit. Actually, the JIAs that are working on the municipalities in the school districts have basically a one paragraph authorization and they have done the things they are doing because it's good business to do it and not because they were required to.

A roll call vote was taken. The motion to adopt Amendment 2 failed with Senators Cowdery, Therriault, Donley and Taylor voting against, and Senator Ellis voting in favor.

SENATOR ELLIS moved to adopt Amendment 3, which reads as follows:

AMENDMENT 3

TO: SB 191

Page 3, line 3l:

Delete “$250,000”

Insert “$500,000”

He said the doubled amount would provide a more adequate level of capitalization. The director of the Division of Insurance testified that $250,000 was inadequate.

CHAIRMAN TAYLOR said he believes Amendment 3 is fair and he has no objection to it. With no other objection to Amendment 3, it was adopted.

SENATOR DONLEY moved CSSB 191(JUD) from committee with individual recommendations. There being no objection, the motion carried.
#
#HB 152

CHAIRMAN TAYLOR announced, regarding HB 152, that it is his intent to let the parties find a solution and insert it into the other

bill.

SENATOR ELLIS said that bill represents everything the legislature says it stands for, regarding economic development in Alaska so he hopes the Chairman can make that happen.

CHAIRMAN TAYLOR announced that the committee would take up HB 106 and HB 184 the following day, and that he hopes to hold the meeting at 1:30 p.m. or while the full Senate takes a recess. He then adjourned the meeting at 11:13 p.m.
#