ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
March 25, 2002
1:40 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault

MEMBERS ABSENT

Senator Dave Donley, Vice Chair
Senator Johnny Ellis

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 324(L&C)
"An Act providing that a utility or electric operating entity owned and operated by a political subdivision of the state competing directly with a telecommunications utility is not subject to the Alaska Public Utilities Regulatory Act."
MOVED CSSB 324(L&C) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 33
Proposing an amendment to the Constitution of the State of Alaska relating to limiting the rate of state income and sales and use taxes.
MOVED CSSJR 33(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 196(JUD)
"An Act establishing a right of action for a legal separation; requiring a report about legal separations; and amending Rule 42(a), Alaska Rules of Civil Procedure."
MOVED CSHB 196(JUD) OUT OF COMMITTEE

SENATE BILL NO. 344
"An Act relating to an aggravating factor at sentencing for terrorism."
MOVED SB 344 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 297(JUD)
"An Act related to aggravating factors at sentencing."
MOVED SCS CSHB 197(JUD) OUT OF COMMITTEE

PREVIOUS SENATE COMMITTEE ACTION

SB 324 - See Labor and Commerce minutes dated 3/5/02 and Judiciary minutes dated 3/20/02.

SJR 33 – See Judiciary minutes dated 3/18/02.

HB 196 – No previous action to record.

SB 344 – No previous action to record.

HB 297 – No previous action to record.

WITNESS REGISTER

Senator Alan Austerman
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SJR 33

Mr. Larry Persily
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Answered questions pertaining to SJR 33

Representative Fred Dyson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 196

Mr. Dave Golter
PO Box E. Mayflower Lane, Suite 4
Wasilla, AK
POSITION STATEMENT: Supports HB 196

Ms. Jennifer Rudinger
Alaska Civil Liberties Union
No address provided
POSITION STATEMENT: Opposed SB 344

Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 297

ACTION NARRATIVE

TAPE 02-11, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:40 p.m. Senators Therriault, Cowdery and Chair Taylor were present.

#SB 324

SB 324-MUNICIPAL PUB.UTIL.COMPETING W/TELECOM

CHAIRMAN TAYLOR announced that he would bring up SB 324 under Bills Previously Heard. The committee heard and held that bill at a previous meeting because he was not present. He noted SB 324 is a simple matter and he would like to move it out. It provides one community, Ketchikan, from RCA regulatory involvement if a competing private utility, which is not regulated under state law, were to enter the field.

SENATOR COWDERY moved SB 324 from committee with individual recommendations.

SENATOR THERRIAULT objected to ask if SB 324 will still require regulation by a local utility board.

CHAIRMAN TAYLOR said it would and, in fact, the local board is appointed by the city council but the city council sits as a supervisory board over the utility board.

SENATOR COWDERY said this situation is similar to the ATU situation in Anchorage.

CHAIRMAN TAYLOR said that is correct. He then announced that with no further objection to moving SB 324 from committee with its zero fiscal note, the motion carried.
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#SJR 33

SJR 33-CONSTITUTIONAL AMENDMENT: TAX CAP

CHAIRMAN TAYLOR noted the committee received a letter from the Commissioner of the Department of Revenue (DOR) that answers some of the questions asked at the last meeting. He stated that he prepared a sponsor substitute (SS) for SJR 33. The drafter had sent along with it a resolution that provides for a title change. He questioned why another resolution is necessary since SJR 33 is a Senate resolution and, in addition, he has not seen any title change in the sponsor substitute.

SENATOR AUSTERMAN also expressed confusion as to why a second resolution accompanied SJR 33 and noted that he is not aware of any title change.

CHAIRMAN TAYLOR and SENATOR AUSTERMAN then clarified the new version is a committee substitute, not a sponsor substitute. Senator Austerman prepared a sponsor substitute, but Chairman Taylor changed it to a committee substitute so that the resolution would not have to be re-read on the Senate floor.

SENATOR COWDERY asked if an accompanying resolution for a title change would be required if the original resolution came from the House.

CHAIRMAN TAYLOR said it would. He then said SJR 33 was introduced on February 4, 2002 and was referred to the Senate Judiciary and Finance Committees. He asked Senator Austerman if SJR 33 received an additional referral.

SENATOR AUSTERMAN said it did not and noted that he submitted a sponsor substitute to the Senate Judiciary Committee in error.

CHAIRMAN TAYLOR clarified that the version before members is not a committee substitute for a sponsor substitute, it is a committee substitute to the original resolution.

SENATOR COWDERY moved to adopt the proposed committee substitute, Version F, as the work draft before the committee.

CHAIRMAN TAYLOR announced that without objection, Version F was before the committee. He then moved to delete from the bill heading the words "**FOR SS**" so that the title of the bill reads:

CS FOR SENATE JOINT RESOLUTION NO.33(JUD)

There being no objection, the motion carried.

SENATOR AUSTERMAN informed members that the only change in the CS is that the word "retail" was added on page 1, line 12 before the words "sales tax."

CHAIRMAN TAYLOR noted that change was made to clarify that the provision does not apply to wholesale sales. He pointed out that Mr. Persily answered the committee's questions about what adjusted gross income means, about what the percentage would be and the amount that percentage would generate. He expressed concern that the limiting factor of five percent of the federal adjusted gross income is hardly a limit. That amount would probably generate about $550 to $600 million.

MR. LARRY PERSILY, Deputy Commissioner, Department of Revenue,

explained that Chairman Taylor's estimate is correct and that amount would go a long way in solving Alaska's fiscal problems.

SENATOR COWDERY noted that Mr. Persily defined "federal taxable income" as income remaining after itemizing deductions. He asked if earnings from another state would be considered an itemized deduction. He said that if an individual had income derived from another state with an income tax, the individual might be able to deduct them, but if the income was derived in a state without an income tax, those wages would have to be included in the federal return.

MR. PERSILY clarified that federal taxable income would include income from all sources. If Alaska had an income tax and part of one's income was earned in Washington, which has no personal income tax, Alaska could impose an income tax on all of the income earned in Washington state because that individual's domicile is in Alaska. If Washington had an income tax and one-third of the individual's earnings were from Washington, Alaska could tax two-thirds. He stated an individual would never pay taxes to two states on the same income.

SENATOR COWDERY pointed out Alaska would draw in the income derived from other states with no income tax.

MR. PERSILY said the state could benefit by taxing the earnings of its residents where those earnings are earned in states without a personal income tax.

SENATOR AUSTERMAN said that works both ways as Oregon residents who earn their wages in Alaska are taxed by Oregon.

SENATOR COWDERY said that is the point he has a problem with. He said he believes an Alaska income tax should be based on Alaska income.

SENATOR THERRIAULT referred to the limit of 5 percent and questioned whether Alaskans would see it as a cap since it is at the upper limit. He asked Senator Austerman if he feels strongly about the five percent.

SENATOR AUSTERMAN said his only thought is if the legislature asks the public to vote on a constitutional amendment, it should allow the public the latitude of future growth. He said if it reads two or three percent, a future legislature will probably have to go back to the public for another vote. He noted that he anticipates that Alaska will have a broad based tax structure in the not-too-distant future but he does not believe it will be just an income tax and sales tax. He also anticipates the

permanent fund will be part of the solution so he does not believe the five percent cap will be reached for a very long time. He maintained that is a policy call the legislature will have to make.

CHAIRMAN TAYLOR said the overall policy call reaches far beyond the numbers. His concern is that today, under Alaska's Constitution, people are not afforded an opportunity to vote on the budget or to vote on the level of taxation that the legislature chooses to impose. He thought it would be a good idea to have a cap or limit on taxation, but expressed concern that placing a cap in the Constitution creates a significant policy shift. The Constitution was originally designed so that questions of revenue would be left up to the legislature and that initiative petitions could not be brought to amend the Constitution. In addition, one of the things the framers truly isolated at the state and municipal levels is that the public does not have a vote on that. By putting any number in the Constitution, that number can only be changed by a public vote. He said he believes that is a major shift within the framework of Alaska's Constitution.

SENATOR COWDERY noted the title does not say that an income and sales tax will be implemented, it only says if the legislature decides to impose one, it must be limited to five percent so it is moot until a tax is in place.

SENATOR AUSTERMAN said that is correct and stated, "The whole issue, and I believe the courts have upheld also, like you indicated, the initiative process, they cannot set the budget by initiative process but this is not necessarily setting a rate, but it's setting the maximum at this point in time that the public would feel comfortable with."

CHAIRMAN TAYLOR asked Senator Therriault his thoughts on three percent, which would generate almost $400 million.

SENATOR THERRIAULT said he prefers 2.5 percent. He then moved to replace the word "five" on page 1, line 10 with "2.5."

CHAIRMAN TAYLOR asked Senator Therriault if it is his intent to make the same change on lines 7 and 12.

SENATOR THERRIAULT clarified that he would take Chairman Taylor's suggestion to make the same change on line 7 to be a friendly amendment to his amendment, but it is not his intent to make the same change on line 12 as that applies to a sales tax.

CHAIRMAN TAYLOR asked if there was objection to adopting the amendment and then objected for the purpose of allowing Senator Austerman time to review the amendment.

SENATOR AUSTERMAN thanked Chairman Taylor.

CHAIRMAN TAYLOR announced that with no further objection, the amendment was adopted.

CHAIRMAN TAYLOR moved to replace “five” on page 1, line 12, with 2.5 to limit the percent of sales tax that could be levied by the state to 2.5. He noted that without objection, the motion carried.

There being no further testimony, SENATOR COWDERY moved CSSJR 33(JUD) as amended from committee with individual recommendations.

CHAIRMAN TAYLOR announced that without objection, the motion carried.
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The committee took up HB 196.

#HB 196

HB 196-RIGHT OF ACTION FOR LEGAL SEPARATION

REPRESENTATIVE FRED DYSON, sponsor of HB 196, reminded members the committee had a hearing on this legislation last year. He explained that HB 196 adds a new category in the process of modifying the marriage status. Currently, a couple can annul a marriage or get a divorce. 17 other states and the District of Columbia have adopted an interim status, which is a legal separation. It allows the couple to get a court decision on separating their legal affairs and establishing custody and child support payments on either an interim or final basis. He noted for people on his side of the political-philosophical spectrum, this issue often arises when a marriage is troubled and the conduct of one of the members jeopardizes the family estate but one partner does not believe in divorce. He explained this bill will provide an interim status in those situations.

REPRESENTATIVE DYSON said, to his understanding, in other states that have provided for legal separation, one percent of couples who file for divorce choose this option. Alaska courts see about 3500 divorce actions per year so one might deduce that 35 of those couples might choose legal separation instead. He said the answer to the question of whether the courts are already doing this is yes. Judges have the prerogative of granting a separate maintenance agreement but if HB 196 is enacted, the courts will have to consider the option of legal separation. In addition, passage of HB 196 will make the public more aware of the option.

CHAIRMAN TAYLOR asked what would happen if one partner wants a

legal separation but the other wants a divorce.

REPRESENTATIVE DYSON said, to his understanding, the judge can answer and rule in favor of either petitioner and have the parties enter into an interim agreement for property settlement protection while the divorce is underway. However, nothing precludes either partner for filing for a divorce.

SENATOR THERRIAULT asked if HB 196 is identical to Senator Wilken's legislation.

REPRESENTATIVE DYSON said it is.

CHAIRMAN TAYLOR said he consulted with three different attorneys in the state whose practices consist of a lot of family law cases. He said one, a gentleman in Fairbanks who also contacted Senator Wilken, felt this legislation will provide an important clarification in the law. The other two he spoke with felt this legislation is unnecessary because sufficient legal basis exists today for a court to provide all of the same authorizations provided in HB 196. He said in weighing his decision, he does not believe this bill does a disservice to the existing law and that codifying what professionals in the field know exists today will provide others with the knowledge that another option is available. He commented that his 18 years in the legislature have taught him to be cautious about the law of unintended consequences. He fears, in passing this type of legislation, a legal separation could be granted and years might go by while both parties lead totally separate lives. One person might be living in another state where common law relationships are recognized, so the estate could become convoluted. He believes there is some legal clarity with divorce and would feel more comfortable with the idea of legal separation if there was some time limitation attached to it but his concern is not serious enough to stand in the way of the legislation. He then took public testimony.

MR. DAVE GOLTER, a private practitioner from Wasilla, informed members he has practiced family law in the Mat-Su Valley for about 17 years. He stated support for HB 196 because he believes clarification of the law is necessary for several reasons. First, there are statutes that authorize a judge to do much of what is accomplished in HB 196, but those statutory provisions leave questions about how far a judge can go and on what authority. Questions arise in the judicial branch as well. He must counsel his clients that attorneys have not had a lot of experience with the judges on how they are going to interpret these laws and rule on these issues. He has found that most of the people he has discussed this option with are not interested in being a test case.

MR. GOLTER said his interpretation of existing law is that the courts have the right to decide issues of custody and support outside of the context of the divorce. However, he does not know if he could convince a judge to divide up marital property outside of the context of divorce and what the ramifications would be if the judge did so and a divorce was granted later. He repeated that for those reasons, it would be helpful to have a reference in the statutes to legal separation. He said he has received a call from one couple that wants to know the status of this bill.

CHAIRMAN TAYLOR asked Mr. Golter to comment on his concern that the bill contains no time limitation for a legal separation.

MR. GOLTER said one thought that came to mind is that he has had experiences with couples who go about their separate lives but don't get a divorce until a legal complication arises so he does not know that it is extremely uncommon for couples to handle their marital affairs that way.

CHAIRMAN TAYLOR asked how after-born children would be treated and whether they would become children of the marriage.

MR. GOLTER said he thinks everyone is aware that parents are sometimes not married and, in his experience, there is not much difference in the way the custody laws apply to married versus unmarried parents. The same standards apply.

CHAIRMAN TAYLOR said if a married couple separates and the woman gives birth to a child who is not of her husband, under the bastardy laws of the State of Alaska, that child is presumed to be a child of that marriage. Denial of paternity will require a lengthy court proceeding. He noted if the mother was on welfare, state agencies are then involved and could garnish the wages of the husband for child support purposes.

MR. GOLTER said that is correct and that there is a presumption but it is a rebuttable presumption. He said he believes paternity actions are done voluntarily but if not, courts are very quick to order one and the question is usually resolved right away. He said he agrees with Chairman Taylor that it could present a substantial problem for a separated husband but that would be something he could take into account when deciding to allow a separation to continue. He noted that if one spouse does not agree, he or she could move for divorce.

CHAIRMAN TAYLOR replied:

> I understand that. I'm just trying to think of examples of the concerns that I have. In some circumstances it may very well be that neither party goes on welfare. No

state or federal agency gets involved but additional child or children are born. They're considered born of that marriage and, as a consequence, dad now dies intestate. Who are his children?

MR. GOLTER said in such a circumstance, there would be a presumption of paternity but it could be rebutted.

CHAIRMAN TAYLOR said it would have to be rebutted after the father's or mother's death during a probate action to dispute the division of the intestate estate and the issue of decedent. He said he understands the religious concerns but he knows of cases in which people were separated for 20 years and never did anything until, "the IRS showed up on their doorstep and they found out that my husband hadn't paid taxes and now I am bankrupt." He then thanked Mr. Golter for his testimony.

SENATOR COWDERY moved CSHB 196(JUD) from committee with individual recommendations.

CHAIRMAN TAYLOR announced that with no objection, CSHB 196(JUD) moved from committee.
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The committee took up SB 344.

#SB344

SB 344-TERRORISM AGGRAVATING FACTOR

CHAIRMAN TAYLOR stated that he introduced this legislation because of an article that appeared some years ago in the **Earth First** journal. He said his concern stems from the fact that he is seeing more articles in the newspaper about people acting out and committing arson to protect animals or protect the earth. He said that those acts would be considered terrorism in any other forum. SB 344 increases the aggravating factors at sentencing should a person be found to have committed a criminal act for these purposes. He then took public testimony.

MS. JENNIFER RUDINGER, Alaska Civil Liberties Union (ACLU), said the ACLU is a non-profit organization dedicated to preserving and defending the principles of liberty and free speech guaranteed in the Bill of Rights and the Alaska Constitution. The ACLU urges committee members not to pass SB 344 from committee because rather than punishing criminal acts, this bill punishes political ideas and motivations, which are at the core of what the First Amendment was adopted to protect, that being the right of citizens to petition their government for redress of grievances and the right of dissenting voices to be heard. She clarified that the ACLU does not oppose the criminal prosecution of people who commit acts of civil disobedience if those acts result in

property damage or place people in danger. That type of behavior is already illegal. However, such crimes are often not what Alaskans think of as terrorism and it would be very unfortunate if the legislative response to terrorism is to start turning ordinary Alaskans into terrorists just because their motivation is to effect political change.

MS. RUDINGER stated that under the sweeping definitions in SB 344, the desire to effect change could in and of itself be sufficient to aggravate the sentences or people whose civil disobedience does not come anywhere near the level of what Alaskans think of as terrorism. She said recent examples are the World Trade Organization protestors who engaged in minor acts of vandalism or anti-abortion protestors who engage in civil disobedience by blocking entry to clinics.

TAPE 02-11, SIDE B

MS. RUDINGER said another example is the people in Puerto Rico who committed civil disobedience to stop the use of the island of Puerto Rico for weapons testing and bombing. She repeated the criminal acts of vandalism and assault in those examples should be punished and existing law allows for punishment of acts involving force or violence against persons or property, as SB 344 recognizes. However, the motivations of the protestors to influence world economic policy, to dissuade women from seeking abortions or to change U.S. policy with regard to bombing in Puerto Rico are the bedrock of democracy. She concluded by saying she supports Chairman Taylor's effort to punish criminal acts, but in legislators' efforts to protect Alaskans from real criminal threats, it is important that they not criminalize ideas and beliefs protected by the First Amendment by punishing Alaskans' political motivations.

SENATOR DONLEY asked Ms. Rudinger if the ACLU has taken a position on hate crimes legislation.

MS. RUDINGER replied that about eight or nine years ago, the national ACLU submitted a brief to the U.S. Supreme Court urging it to uphold a Wisconsin hate crimes enhancement statute as being constitutional, however the ACLU also asked the Supreme Court to set forth a clear set of rules governing the use of these statutes. The ACLU warned the court that if the state is not able to prove that a defendant's speech is directly linked to the criminal behavior, chances would increase that the state's hate crime prosecution would be politically motivated. She told Senator Donley that she appreciated the question because the issue is very complicated. She said the ACLU is against hate speech codes in which only politically correct speech is tolerated, but it does support a narrowly crafted hate crime bill if it has restrictions on the kind of evidence introduced. She

asserted that the intent and the effect of hate crimes is to oppress and silence a group of vulnerable people using fear. She emphasized the importance of ensuring that the evidence introduced is limited to the hate crime charges.

SENATOR DONLEY asked if the ACLU does not oppose hate crimes legislation if there is linkage between the actual speech or thought.

MS. RUDINGER said she thought Senator Donley was right but it is a tough line to draw. ACLU opposed Senator Ted Kennedy's bill in Congress unless it was amended to narrow the kind of evidence that could be introduced. The ACLU was leery of the broad scope of the bill and how much of a person's beliefs and associations could be used against them in a trial about a particular crime. However, sometimes speech is related to a crime, such as in a lynching, so it is a very difficult line to draw. The ACLU supports hate crime legislation overall because of the oppressive effect hate crimes have on vulnerable groups of people.

SENATOR DONLEY asked if the ACLU has extended its area of concern into disparate treatment based on race or other non-permissible factors.

MS. RUDINGER asked Senator Donley to be more specific.

SENATOR DONLEY asked Ms. Rudinger if the ACLU has taken a position on the Governor's proposed subsistence amendment.

MS. RUDINGER said the ACLU supports a constitutional amendment but it hasn't yet testified on the issue. The ACLU does not see the subsistence issue as a race-based issue but one of necessity that is connected to freedom of religion and spiritual heritage. She said the short answer is the ACLU does support a constitutional amendment or some kind of protection of subsistence use based on the fact that subsistence is so integral to Native culture - it goes beyond simply food and gets into the spiritual heritage of the culture.

SENATOR DONLEY asked why the ACLU feels a constitutional amendment is necessary when the state already prioritizes subsistence uses as the highest priority use. The only purpose of a constitutional amendment would be to provide for discrimination of urban subsistence users to the benefit of rural subsistence users, not necessarily based on any merit or cultural background.

MS. RUDINGER responded by saying the ACLU wouldn't limit its support to just a constitutional amendment but it would support a subsistence preference in times of shortage, the reason being that subsistence is so much a part of the culture and heritage. Subsistence is not simply a matter of gathering food. The Alaska

Constitution gives everyone the right to eat. The ACLU supports subsistence because it believes it is a very important matter that needs to be resolved and it will only come into play in times of shortage. She repeated that during times of shortage, it is very important to protect the spiritual heritage of Alaska Natives. She offered to meet with Senator Donley at another time to elaborate further.

SENATOR DONLEY said he appreciates Ms. Rudinger's offer and explanation but he doesn't believe her explanation is consistent.

MS. RUDINGER remarked that it is hard to sum up a position on an issue like subsistence in a short time period.

SENATOR DONLEY noted the Anchorage Assembly thinks it's competent enough to do so.

CHAIRMAN TAYLOR said he was fascinated by Ms. Rudinger's comment that the ACLU supports hate crime legislation if it contains a sufficient limitation upon the evidence of motive or the evidence of hate.

MS. RUDINGER agreed that is what she said and stated the ACLU is opposed to hate speech codes. The ACLU does not believe speech can be restricted and, in fact, the ACLU has defended the rights of numerous groups whose speech she can't stand. The ACLU defended the rights of the Nazi party to peaceably march through a primarily Jewish town in Illinois. However, when it comes to hate crimes, the motivation in itself does harm. The motivation behind a hate crime is not just aimed at the victim of the crime but it is aimed at an entire group of people and sends the message that this will happen to you if you assert your rights. The ACLU is very cautious however, and has opposed hate crime bills that include speech.

CHAIRMAN TAYLOR said SB 344 refers to the defendant's criminal conduct so it does not apply to anything that is defensible under the First Amendment because that wouldn't be criminal conduct. He read from SB 344, "...the defendant's criminal conduct involved the use of force or violence against persons or property and was designed to (A) intimidate or coerce a civilian population." He asked, "Isn't that what a lynching is all about?"

MS. RUDINGER said SB 344 does not affect criminal conduct because the conduct has already been punished. SB 344 does say that at sentencing for that conduct, there's an aggravating factor as to what the motivation was in the mind of the person who committed the act.

CHAIRMAN TAYLOR asked, "Isn't that what we do in all sentencing? Don't we look to the motive and the mens rea – the criminal

intent of the individual?”

MS. RUDINGER replied:

> Mr. Chairman, intent and motive are different. The intent is to commit the act or to see that the harm itself is done but the motives listed here are not just to commit the act, but to send a message. This looks at is the motive behind the act being committed, is that motive to send a message. The sending of a message, however unpopular the message may be, is exactly what the First Amendment was designed to protect. We can punish the means, and we already do in the first part of statute 12.55.155 and .125 but the motive, the thought, we cannot and should not punish, especially – we have some concerns about how vaguely these are worded... as I look at all of the verbs in here, I think they all boil down to wanting to make political change.

CHAIRMAN TAYLOR asked how the verbs are any different than those found within the definitions of the various hate crime laws that Ms. Rudinger mentioned. He questioned how the lynching she used as an example was not designed by the Ku Klux Klan to intimidate or coerce a civilian population?

MS. RUDINGER said clearly lynchings and hate crimes are designed to intimidate but the difference between hate crimes and SB 344 is who the intimidation is aimed at. She noted the motivation behind a hate crime is designed to intimidate and oppress groups of people who have been oppressed in the past.

CHAIRMAN TAYLOR asked why hate crimes only apply to groups who have been intimidated in the past.

MS. RUDINGER said the hate crimes bills that she has seen have tried to protect people from being oppressed by violence. The bills are aimed at correcting past discrimination. She stated there is a big difference between oppressing a group of people who are vulnerable and intimidating the government. Any kind of protest is designed to influence the policy of a government, and one could argue by intimidation if a lot of voters are going to be upset by it.

CHAIRMAN TAYLOR commented, “Not by criminal conduct, I hope.”

MS. RUDINGER said the conduct should be punished under the first part of the statute.

CHAIRMAN TAYLOR asked if that punishment should not be aggravated by what the conduct was designed to do. He stated, “If it was

intentionally designed by the people who did the criminal conduct to intimidate and coerce all of the people living down river from the dam when they blew the dam up, and they blackmailed on that basis, they said pay us $2 million or we'll blow up the dam. That's pure and simple, we don't have a problem with that one. But, if instead they say you cannot allow that nuclear power plant to be built down river or we'll blow up your dam, somehow that's free speech and the other one is not. It's a criminal act that should be punished. Why should the aggravator not apply?"

MS. RUDINGER said both acts are criminal acts. The acts themselves say harm will come if something isn't done. She continued, "The acts themselves are criminal conduct and this, of course, is limited to using force or violence, not just threatening to use force or violence."

CHAIRMAN TAYLOR said that is correct.

MS. RUDINGER stated:

> The only thing that your bill changes is the part that says and was designed to (A)(B)(C)(D), in other words, the motivation was (A)(B)(C) or (D). Those motivations are so vaguely worded, we have some real concerns about protected free speech being swept into them just because that speech might be politically unpopular if a prosecutor wanted to try to add some aggravating sentences and send a message.

CHAIRMAN TAYLOR said he understood Ms. Rudinger's point.

SENATOR THERRIAULT noted there must be the underlying commission of a crime so none of SB 344 would be triggered unless a person commits and is convicted of a crime. He said he believes a lot of limits were built into SB 344 by the way it is structured.

MS. RUDINGER gave the example of the WTO protest several years ago at which protesters got out of hand. The individuals who vandalized the car would be prosecuted. If SB 344 was in force, it would apply during the sentencing stage. Without SB 344, the sentence would be whatever it is for vandalizing a car. With SB 344, it would be possible to say that because the motivation of the act was to influence the economic policy, the sentence should be worse. She said the motivation is protected by the First Amendment but the act is not so SB 344 would be turning the First Amendment on its head.

SENATOR THERRIAULT asked if the question is whether the perpetrator wanted to affect policy change through the commission of a crime.

MS. RUDINGER replied, “No, the conduct should be punished but it’s not the same thing to say we want to affect policy as to say well, we want to affect policy by – you know, things got out of hand so we should not be responsible.” If things get out of hand, the protester is responsible and should be punished for the act, but to say the motivation is an aggravating factor says the act itself is even worse because of the motivation.

CHAIRMAN TAYLOR said, regarding the WTO protest, from the reports he has seen, nothing got out of hand, it was well planned and orchestrated to create mob violence in downtown Seattle. He stated:

> Inability to show total conspiracy on the part of those individuals – somehow it’s okay now to yell fire in a crowded theatre if you’re doing it for the right reason but the judge shouldn’t consider that the outcome of your act, if you were not doing it for some politically correct reason, that somehow the judge has to have blinders on and go, oh no. You were Mahatma Gandhi in the middle of the theatre and you just yelled fire and it happened to get out of hand and you didn’t do it for any other reason but if you were part of the WTO protesters and you sent a person into every single theatre in town and the yelling of fire occurs all at the same time, that the judge is not supposed to consider that as an aggravating factor? That was what your criminal conduct was designed to do?

MS. RUDINGER stated that shouting fire in a crowded theatre with the obvious intent of causing a panic would not be protected speech. In the example of a protest that gets out of hand, even if there was a conspiracy to cause a riot, she felt Chairman Taylor was saying that some people were caught and some were not so this would be a way to tie in those who weren’t caught.

CHAIRMAN TAYLOR said he was not suggesting that at all.

MS. RUDINGER said SB 344 only comes into play at sentencing, after a person has been convicted.

CHAIRMAN TAYLOR said SB 344 only comes into play after all of the events have occurred. The person was found guilty and is standing before the court to be sentenced. He said Ms. Rudinger is telling him that the Alaska Legislature can’t tell the judge to look into the heart of the individual and the heart of the action that occurred to determine what the action was designed to accomplish - whether the intent of the protester was to be part of a group to intimidate and coerce another group of people, just like a lynching was intended to. He asked Ms. Rudinger how she makes the fine line distinction between that which is a protected designed-

to-do activity because it might involve speech and is a criminal act, and that which is not protected. He said apparently it is politically correct to use hate crime legislation and to use, as an aggravator, somebody who lynches a black person, yet it is not politically correct to use, as an aggravator, somebody who tears up downtown Seattle, puts people in hospitals and causes mayhem.

MS. RUDINGER responded that most Alaskans would want a person who threw a rock through a window to be punished but would not think of that act as terrorism.

CHAIRMAN TAYLOR said maybe his act wasn't designed for that purpose.

MS. RUDINGER said, regarding Chairman Taylor's question on how to draw that line, she agrees it is a difficult line to draw so she would look to the First Amendment, which she read parts of. The First Amendment provides for the right of people to peaceably assemble and to petition the government for a redress of grievances. She said that according to Section (C) of SB 344, the aggravating factor would apply to acts that "affect the conduct of a unit of government;". Therefore redressing the government for grievances would be the motive.

CHAIRMAN TAYLOR clarified that it applies to criminal conduct used to influence government and asked what is so shocking about that. He pointed out that by statute, one cannot coerce or financially threaten a seated legislator on how they vote.

MS. RUDINGER said the ACLU agrees with that statute but SB 344 doesn't affect it. She said:

> We've already got criminal conduct. We've got a conviction and now we're at sentencing. This bill really says [it applies if] that criminal conduct was designed to (A)(B)(C)(D) and the (A)(B)(C)(D) look like the First Amendment's goal of protecting – affecting change. It's the motivation that is the aggravating factor. The motivation is affecting political change, the behavior should be punished and we completely agree, no one has a right to use violence or force against people or property for any reason – we agree.

CHAIRMAN TAYLOR said there must be some reasons for which the ACLU is saying there should be no aggravators.

MS. RUDINGER stated it is not the conduct, it's the idea behind it that SB 344 is affecting. She clarified that she is saying those should not make the sentence worse; they should not be aggravators.

CHAIRMAN TAYLOR said he has a difficult time working that rationale into watching the Twin Towers collapse on September 11. He can't believe those acts were any other than criminal acts designed to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, affect the conduct of a unit of government, or influence the policy of a private enterprise by intimidation or coercion. He said in essence, Ms. Rudinger is saying those perpetrators should be charged with violating flight laws of the U.S. Government and that conduct should be punished.

MS. RUDINGER disagreed and said her caution to the Legislature is that SB 344 will "throw the baby out with the bath water." Alaskans need protection from real terrorists but SB 344 is worded so broadly it could sweep into its scope protected First Amendment activity by protesters.

CHAIRMAN TAYLOR said his difficulty in understanding her concern is:

> The fellow who goes out because he's all concerned about the environment and drives ceramic spikes into a tree because he knows that the detection unit for metal objects will not register the ceramic spike, and then the ceramic spike in the tree ends up in a mill in Oregon where it goes through, and he knows that it's going to that plant, it goes through a high speed saw. The saw hits the ceramic spike and the saw blows up and kills the workman inside the plant. Now those are actual facts. What's he guilty of – of trespassing on the tree? Or did he intend and was his act and conduct designed to intimidate and coerce an entire section of our population. And if there's something in there about his freedom of speech because he thought he was doing it for some good purpose, I'm having a hard time understanding your analogies.

MS. RUDINGER said he would be guilty of the criminal conduct, which gets him to the sentencing phase.

CHAIRMAN TAYLOR asked if, at the sentencing stage, the judge should consider why he was motivated to design and carry out the act.

MS. RUDINGER said at the sentencing phase, the fact that somebody wanted to affect political change should not be an aggravating factor on the sentence. The sentence should be harsh because someone died but the motivation of wanting to affect change should not be the factor that makes the sentence worse.

CHAIRMAN TAYLOR replied:

> The Unabomber should not be – should not have his sentence enhanced because of the thing that motivated him to blow people up? He should only be convicted of and sentenced to whatever damage, I guess, the bomb caused when it went off? Nobody should consider his motivation for doing it? I find that difficult to understand why you would expect the judge to have those blinders on.

MS. RUDINGER said that is not what she is saying. She is saying that SB 344 is so broadly worded that in his attempt to go after real terrorism, he is sweeping into the scope of this bill people who the ACLU doesn't think of as terrorists. She noted if an abortion protester uses force to block a person from entering a clinic, the protester will be arrested for assault or battery but the motivation could have been to affect change and should not be an aggravating factor in sentencing. She pointed out that the First Amendment does not protect a person who uses criminal acts to affect change, and SB 344 does not change that.

CHAIRMAN TAYLOR noted that civil disobedience is not civil if a person hurts another; the act is criminal. The Constitution does not sanction criminal acts as free speech.

MS. RUDINGER said the ACLU is not saying that the act is an act of free speech. The act is an act of violence. She said the ACLU agrees with the premise that criminal conduct should be punished but it does not agree the sentence should be harsher because the criminal conduct was done to make a political statement. The ACLU believes doing so could be dangerous because it will lead to prosecution of unpopular political ideas as an aggravating factor.

CHAIRMAN TAYLOR said he understands Ms. Rudinger's point and appreciates the discourse, as it is important to have it on the record. There was no further testimony on SB 344.

SENATOR COWDERY moved SB 344 to the next committee of referral with individual recommendations.

CHAIRMAN TAYLOR announced that without objection, SB 344 moved to the next committee of referral.
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The committee took up HB 297.

#HB 297

HB 297-CRIMES: RESTITUTION & AGGRAVATING FACTORS

REPRESENTATIVE KEVIN MEYER, sponsor of HB 297, said this bill has

been a learning experience for him, as it has become a “Christmas tree” bill. He said that is acceptable to him as the original intent of his legislation is still intact and the additions improve the juvenile restitution program. He explained that Section 2 of the committee substitute contains the contents of HB 297. It adds an aggravating factor when drugs or excessive alcohol are used to incapacitate a person to the point where they become the victim of a sexual assault. He believes the seriousness of such conduct should be elevated in the eyes of the court. He noted that sexual assault is devastating Alaska communities. He began working on this bill because the “date-rape” pill is being used to commit more sexual assaults. Sex offenders who use those pills often do so to prevent the victim from resisting. CSHB 297(JUD) does not require the courts to impose stricter penalties, it simply gives the court the ability to do so.

REPRESENTATIVE MEYER explained the other sections of the bill amend the juvenile restitution statutes and were included at the request of Senator Halford.

Section 1 creates a new section declaring that if a conviction is set aside, the restitution will remain enforceable. He explained that sometimes a conviction is set aside when part of the sentence was served. Section 1 ensures that restitution is paid even if the conviction is set aside.

Section 3 relates to delinquency disposition orders. Under current law, juveniles and parents are required to submit full financial statements when restitution is being decided. Section 3 requires full financial statements only when one party requests them. He noted that in most cases, full financial statements are not necessary because the amount of restitution is less than a permanent fund dividend. However, if damages run into thousands of dollars, full financial statements would be required.

Section 4 makes sure that restitution orders are not terminated just because the offender has “aged-out” of the authority of the juvenile system. Restitution must be paid even though the offender has reached his or her 19th or 20th birthday.

Section 5 relates to the paperwork process for restitution payments. The current process has the paperwork going from the Department of Health and Social Services to the court system to the Department of Law for collection. Section 5 will allow the paperwork to go directly from the Department of Health and Social Services to the Department of Law to make the process more efficient.

REPRESENTATIVE MEYER asked the committee to support SCS CSHB 297(HUD) and noted he had several people available to answer

questions.

SENATOR THERRIAULT asked what is repealed in Section 6.

REPRESENTATIVE MEYER said it applies to mandatory financial disclosure.

SENATOR DONLEY moved to adopt the proposed Senate Judiciary CS (Luckhaupt 3/22/02, Version S) as the working document of the committee.

CHAIRMAN TAYLOR announced that without objection, SCS CSHB 297(JUD) was before the committee.

REPRESENTATIVE MEYER asked if the committee needed to take action on the concurrent resolution.

SENATOR DONLEY suggested that Chairman Taylor introduce the concurrent resolution on the Senate floor.

CHAIRMAN TAYLOR maintained that it is “ready to go.”

SENATOR THERRIAULT noted that, in general, a bill contains a repeal section when new statutory sections are added but he did not see any.

CHAIRMAN TAYLOR clarified that the new material was added to .120.

MS. ANNE CARPENETI, representing the Criminal Division of the Department of Law, explained that repealing the section requiring mandatory financial disclosure will make disclosure optional at the request of various parties. For example, if the victim advocate requested financial disclosure, the court would be required to order it. She noted in most cases, financial disclosure is not necessary because the restitution amounts to less than the permanent fund dividend.

SENATOR THERRIAULT asked if the language is being repositioned on the bottom of page 2, line 29.

MS. CARPENETI said that is correct.

CHAIRMAN TAYLOR asked if the requirement that orders for restitution remain past the age of minority applies to other orders for restitution in district and superior courts.

MS. CARPENETI said she believes so. She noted this requirement has been passed by the legislature in all forms of restitution and Section 1 actually clarifies in statute that in a suspended imposition of sentence, the restitution order survives.

There being no further testimony, SENATOR DONLEY moved SCS CSHB 297(JUD) from committee with individual recommendations and any accompanying fiscal notes.

CHAIRMAN TAYLOR announced that without objection, SCS CSHB 297(JUD) moved from committee. He also announced that the committee would introduce a Senate concurrent resolution to provide for the title changes necessitated by the changes made in the committee substitute. There being no further business to come before the committee, he adjourned the meeting at 3:15 p.m.