

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION COMMITTEE

April 9, 2002
1:34 p.m.

MEMBERS PRESENT

Senator John Cowdery, Chair
Senator Jerry Ward, Vice Chair
Senator Robin Taylor
Senator Gary Wilken
Senator Kim Elton

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 358

"An Act naming state ferries."

MOVED SB 358 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 100

"An Act relating to regulation and operation of electric personal motor vehicles and to vehicle registration."

MOVED CSSSSB 100 (TRA) OUT OF COMMITTEE

HOUSE BILL NO. 405

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

MOVED HB 405 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 358 - No previous action to record.

SB 100 - See Transportation minutes dated 3/13/01.

HB 405 - No previous action to record.

WITNESS REGISTER

Kelly Huber
Staff to Senate President Rick Halford
State Capitol, Rm 111
Juneau, AK 99801-1182

POSITION STATEMENT: Testified for the sponsor of SB 358 and SSSB 100

Mr. Dennis Harris
PO Box 21214
Juneau, AK 99802

POSITION STATEMENT: Opposed to SB 100

Mr. Dennis Poshard
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Stated no position on SB 100 but answered questions.

Ms. Mary Marshburn
Division of Motor Vehicles
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Discussed technical problems with SB 100

Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 405

Ms. Anne Carpeneti
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Supports HB 405

ACTION NARRATIVE

TAPE 02-14, SIDE A

CHAIRMAN JOHN COWDERY called the Senate Transportation Committee meeting to order at 1:34 p.m. Present were Senator Ward, Senator Elton, Senator Wilken and Chairman Cowdery. Senator Taylor arrived at 1:39 p.m. The first order of business was SB 358, followed by SB 100 and HB 405.

#SB 358

SB 358-NAMING STATE FERRIES

CHAIRMAN COWDERY said he did not know if members had an opportunity to read the packet and noted that school children did a good job writing essays for the contest. One winner of the

contest selected the name "Fairweather." Wesley Tyrrell's essay contained a pretty good analogy. "Chenega" was the other winning name. That ferry will be named after the Chenega Glacier. SB 358 is a piece of legislation to make those choices legal.

MS. KELLY HUBER, staff to Senate President Rick Halford, explained the bill was introduced through the Senate Rules Committee as a formality. Senate President Halford and House Speaker Porter, as well as Lieutenant Governor Ulmer, judged the contest. To make the process legal and name the next two ferries on the production line "Fairweather" and "Chenega," a bill must go through the legislative process and be signed by the Governor.

MS. HUBER informed the committee that many very good essays were submitted. The essays were interesting and children from all over the state participated.

CHAIRMAN COWDERY said he had a chance to read the essays and was very impressed. He asked if there was anyone else to testify. [No response.]

SENATOR WARD moved SB 358 from committee with individual recommendations. There being no objection, the motion carried.
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#SB100

SB 100-PERSONAL MOTOR VEHICLES/ REGISTRATION

MS. KELLY HUBER, staff to Senator Halford, sponsor of SB 100, informed members that a proposed committee substitute was in members' packets. She noted the sponsor has requested that members adopt the proposed committee substitute and that she would address that version (Version L). She described the bill as follows.

This bill was introduced because of new technology. A new device, called the electric personal motor vehicle assistive device, was unveiled in the fall of 2001. It is a clean fuel, quiet, upright, two-wheel tandem device that can travel at 15 mph, that was designed for use in pedestrian areas. Senator Halford introduced this legislation to make sure that use of those vehicles is not prohibited in certain areas and so that registration licensure is not required. The proposed committee substitute addresses changes in statute concerning farm and construction vehicles. That provision was removed from Version L. Another provision that was removed from Version L prohibited departments from writing regulations concerning the assistive mobility device. The departments will be able to write regulations but they cannot

prohibit use of the device. She said she believes the Administration supports the legislation.

CHAIRMAN COWDERY asked if the legislation also applies to electric wheelchairs.

MS. HUBER said she does not believe there are any problems associated with electric wheelchairs right now. The sponsor statement refers to wheelchairs as an example of an assistive mobility device that is useful to senior citizens. She said the sponsor wants the electric personal motor vehicle to be treated similar to an electric wheelchair rather than any other type of transportation.

CHAIRMAN COWDERY asked if the electric personal motor vehicle is a two-wheeled vehicle.

MS. HUBER said it is and that the rider stands on it.

CHAIRMAN COWDERY noted the presence of Senator Taylor.

There being no further questions, SENATOR WARD moved to adopt Version L of SSSB 100 as the working document of the committee.

CHAIRMAN COWDERY announced that without objection, Version L was adopted.

SENATOR ELTON asked Ms. Huber if enactment of this bill would preclude any municipality from regulating the use of these devices on city sidewalks.

MS. HUBER said the bill does not contain a municipal exemption area, based on the idea that this technology is new and there will not be many of these devices on the streets for a while. Should an issue arise later on, the matter can be addressed at that time.

SENATOR ELTON said he hates to sound like the only conservative in the room, but it seems to him that the legislature would not want government to mandate rules until a problem arises. He stated, "That almost seems backward to me - that you're saying well, there may or may not be a problem but we're going to allow it anyway." He said his concern is that negotiating the sidewalks in downtown Juneau during the cruise ship season is difficult. Juneau has banned the use of skateboards on sidewalks. The electric personal motor vehicles travel five times faster than a normal person walks and probably 10 times faster than a tourist ambles through the community. He repeated that he is having a

difficult time with the concept that state government is going to tell communities how to regulate traffic in highly congested areas.

MS. HUBER responded that it is not that the sponsor disagrees, but he does not foresee any problems at this time. She pointed out that electric wheelchairs travel on sidewalks.

SENATOR ELTON said if, in fact, there is a problem, municipalities will have to come to the legislature to request that the statute be amended so that they can deal with the problem.

CHAIRMAN COWDERY asked if the state has jurisdiction over municipal rights-of-way.

SENATOR TAYLOR said it does. He asked if electric personal motor vehicles could travel on bike paths and whether the sponsor would object to a friendly amendment allowing snow machines to use the bike paths also.

MS. HUBER said they would be allowed to travel on bike paths.

CHAIRMAN COWDERY took public testimony.

MR. DENNIS HARRIS informed members that he is very active in Juneau's cycling community. He is very concerned about this legislation for several reasons, one being that there are already many conflicts on multiple-use paths. Those paths are already congested, particularly sidewalks in downtown Juneau. He pointed out there is a good reason why state law and most city codes don't allow the use of bicycles on sidewalks by anyone over 12 years old - because bicycles move at a much greater speed than pedestrians; the same reason skateboards are prohibited in a good part of the downtown area of Juneau. Many elderly people with osteoporosis fear bicycles and skateboards on sidewalks because if they fall, their injuries are slow to heal. He said his biggest concern about this bill is that the first orders will be delivered to businesses such as UPS and FedEx for commercial use in the next six months. The manufacturer does not expect them to be in general use for at least two years and the manufacturer is engaged in a giant lobbying effort across the country to exempt these vehicles from regulation. He stated:

That's what this bill does and it's wrong. Quite frankly, we should allow some experience with these vehicles before we decide what kind of regulation to do but in my opinion they should not be - this bill

essentially prohibits cities from prohibiting their use on a sidewalk. I can just see the situation between here and the Governor's Mansion on Calhoun Avenue - on that very narrow sidewalk - where someone is trying to zip along and get to work on their segue at 15 miles an hour and it's crowded with pedestrians in the morning trying to walk to work and there's heavy traffic in the street. This is just not a good idea. I think we need to wait and see what kind of experience we can have with these vehicles.

MR. HARRIS said his other concern is that people are not aware of the mass of these vehicles. They weigh 80 pounds and can travel at 20 mph. The delivery devices will be set at 12.5 mph. He expressed concern that the promotion of these devices has been disingenuous because they are referred to as personal assistive mobility devices, which sounds like something for use by the handicapped. However, they will not work for many handicapped people because passengers must stand to ride them. He also expressed concern that this bill will take away local control over these devices. He indicated that most bicycle paths and pedestrian walkways alongside federal aid highways in Alaska were financed by a federal law. Under that federal law, this bill would not be legal because the federal law prohibits the use of any kind of motorized device on a sidewalk or pedestrian way that was built with federal aid dollars. He offered to submit the correct citation to members.

CHAIRMAN COWDERY asked Mr. Harris to describe a multiple use path.

MR. HARRIS said that multiple use paths were designed for non-motorized use, which is what is stated in federal law. He added that in doing research for a proposed Juneau ordinance to allow the use of motorized scooters, he found they were prohibited by the same federal law. He urged members to move slowly on this legislation as it needs further research, particularly in the pedestrian conflict area.

SENATOR TAYLOR pointed out that, according to the sponsor statement, "the National Highway Traffic Safety Administration ruled this device is not a motor vehicle and should not be under their jurisdiction." He also pointed out that 12 states have enacted similar legislation.

MR. HARRIS said as far as he is aware, the only activity at the federal level regarding use of these devices is a bill sponsored by Senator Bob Smith of New Hampshire. He said use of these devices is still prohibited by the U.S. Code unless it has been changed in the last six months and that maybe those states are

ignoring the federal law. He repeated the manufacturer has made an aggressive lobbying effort in every state. He said he believes they could be a great idea for commercial use for package delivery as long as the vehicles are not running on sidewalks.

MR. DENNIS POSHARD, Special Assistant at the Department of Transportation and Public Facilities (DOTPF), told members that DOTPF has taken no position on this bill. He clarified that the National Highway Traffic Safety Administration has made a ruling that classifies this particular device as a non-motorized vehicle. He pointed out that Section 1 of this bill applies to the state and says that regulations adopted may not prohibit the use of an electric personal motor vehicle; however, DOTPF could adopt regulations that limit their use. He assumed the same provisions under the Alaska Uniform Traffic Act would apply to local governments so they could regulate the use of electric personal vehicles but not prohibit their use.

SENATOR ELTON asked if he is correct in assuming that the city of Juneau could not prohibit the use of electric personal vehicles on sidewalks in the core downtown area during the tourist season.

MR. POSHARD said he is not qualified to make a legal analysis, but his initial reaction is that a local government may be able to further restrict them. He is aware of certain traffic laws that local governments have adopted, particularly in Anchorage, that are more restrictive than those contained in the state's Uniform Traffic Act. He did not know whether any local laws have been challenged. He said the Department of Law recently pointed out that Sec. 28.01.010 of the Alaska Uniform Traffic Act reads, "The provisions of this title and the regulations adopted under this title are applicable within all municipalities of this state." He indicated that could be legally interpreted either way.

CHAIRMAN COWDERY asked Mr. Poshard if he was referring to the restriction on truck routes in Anchorage and whether that restriction was made because certain roads were not built to withstand heavy truck traffic.

MR. POSHARD said he believes that is true but noted that other provisions adopted by the local government in Anchorage are more restrictive than the Uniform Traffic Act.

SENATOR TAYLOR said one could shoot a cannon down the main street of Wrangell in the summer and not hurt anyone. He suggested if pedestrian traffic is a problem in Juneau in the summertime, that some of the pedestrians be sent to other communities.

CHAIRMAN COWDERY continued to take public testimony.

MS. MARY MARSHBURN, Director of the Division of Motor Vehicles (DMV) in the Department of Administration, said she assumes members are aware of a glitch in current law that requires a driver's license to operate a snow machine and HB 397, which seeks to fix that glitch for snow machines and other vehicles that are not designed for road use. She noted that under current law, electronic personal vehicles would be defined as motor vehicles and because they do not meet federal safety standards, they could not be used on the roadway. Passage of HB 397 would resolve that problem.

CHAIRMAN COWDERY asked if any licensing requirements apply to bicycles.

MS. MARSHBURN said none do.

SENATOR WARD asked Ms. Marshburn if it is her opinion that drivers' licenses would be required to drive an electric personal motor vehicle.

MS. MARSHBURN replied, "Mr. Chairman, very, very technically because of a glitch in the law, yes."

SENATOR WARD said her interpretation is different than his. He asked her to forward her opinion to the committee in writing so that he could take a closer look at the issue.

CHAIRMAN COWDERY asked Ms. Marshburn if she would consider an electric personal motor vehicle to be a motor vehicle.

MS. MARSHBURN said they are motor vehicles by state definition because they are self-propelled devices. Because they do not meet the federal safety equipment standards required under 13AAC 04, they cannot be operated on a roadway.

SENATOR WARD asked Ms. Marshburn if she has read the latest committee substitute (Version L) and whether it is her impression that this version will allow electric personal motor vehicles to be operated on roadways.

MS. MARSHBURN said she has the original bill.

SENATOR WARD said a previous witness mentioned skateboards with motors and asked if DMV requires skateboards to be licensed.

MS. MARSHBURN said DMV does not.

SENATOR WARD asked why not.

MS. MARSHBURN said a motorized skateboard does not meet the definition of a motor vehicle.

SENATOR WARD asked if an electric personal motor vehicle does even though the federal government has ruled otherwise.

MS. MARSHBURN said that is correct. It is her understanding that the National Highway Traffic Safety Administration makes rulings based on the role that agency will play in developing standards for vehicles. The rulings have nothing to do with the operation of the vehicles.

SENATOR WARD asked why a skateboard with a small gas engine and a steering device would not be considered to be a licensable vehicle while an electric personal motor vehicle would be.

MS. MARSHBURN said she did not know that she could give Senator Ward an answer to the technicalities. She stated, "And I would emphasize - you know, emphasize, that in the strict interpretation of the definition of motor vehicle is what we're talking about for the segue or the IT just as it was a very strict interpretation of the driver license law, which said it's required for a snow machine. That certainly was not the intent of the law." She pointed out this refers to a vehicle license as opposed to a driver license.

CHAIRMAN COWDERY said he believes Senator Ward is concerned because Mr. Poshard just said that an electronic personal motor vehicle is not considered to be a motor vehicle under the federal guidelines. He asked Ms. Marshburn if she has actually seen an electronic personal motor vehicle.

MS. MARSHBURN said she has seen pictures of them.

SENATOR WARD asked Ms. Marshburn to send a written explanation to members of how she arrived at her opinion that a driver's license would be required to operate an electric personal motor vehicle.

MS. MARSHBURN agreed to do so.

There being no further testimony, SENATOR WARD moved CSSSSB 100(TRA) from committee with individual recommendations.

SENATOR ELTON objected for the purpose of addressing a proposed amendment. He proposed that on page 1, line 12, following "personal motor vehicle on a," the words "state owned and maintained" be inserted. He explained with that amendment the state could mandate that electric personal motorized devices could be used on state sidewalks, vehicular ways and bike paths, but it would preserve the point of view that the best government is the government closest to the people and allow local governments to implement their own rules.

SENATOR WARD objected.

SENATOR TAYLOR said he was taken with Mr. Harris's testimony, as he believes these vehicles will be difficult to navigate. He said he does not know that Senator Elton's amendment accomplishes his goal because he does not know that the state does much maintenance on any of those paths.

MS. HUBER said she understands Senator Elton's intent, but she believes his amendment would be difficult to enforce because state roads are within cities and could cause confusion. She asked the Chairman if he would be willing to hold the bill until Thursday so that she could work with members on a local option. She said she would also look at what other states that have passed similar legislation have done.

SENATOR ELTON said that would be great.

CHAIRMAN COWDERY said the committee has a full calendar on Thursday so he will reschedule it on Thursday or Tuesday.

SENATOR WARD reminded the Chairman that his motion to move the bill from committee was still active. He said he does not want the Anchorage coastal trail exempted from this bill.

SENATOR ELTON stated, "Mr. Chair, what I would suggest is that I don't have a problem with that - I think it's very generous of the sponsor's office to make the offer and if, in fact, we can't come to some kind of an agreement, I might vote against moving it but I certainly wouldn't try to get in the way of moving it. I would think that moving the bill, either amended or in its present form, will take a matter of less than a minute." He noted he maintained his objection.

SENATOR WARD repeated his motion to move CSSSSB 100(TRA) from committee with individual recommendations.

SENATOR ELTON objected and said this bill imposes big government rules that the municipalities will have to live under. He said electric personal motor vehicles would create a big problem in his community.

SENATOR WARD stated this legislation says that electronic personal motor vehicles cannot be prohibited; it does not say they cannot be regulated.

CHAIRMAN COWDERY announced the motion carried with Senators Ward, Taylor and Cowdery in favor and Senator Elton opposed.

SENATOR TAYLOR noted for the record that he would work with Senator Elton and the sponsor's staff to try to create a local

option.

SENATOR WARD said he would do likewise.

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The committee took up HB 405.

#HB 405

HB 405-CRIMES ON OR AGAINST STATE VESSELS/PLANES

REPRESENTATIVE KEVIN MEYER, sponsor of HB 405, gave the following summary of the legislation.

HB 405 gives the state jurisdiction over our state owned watercraft including our watercraft that is outside of state waters.

Recently a Superior Court judge dismissed the prosecution for a sexual assault that occurred on one of our Alaska state-owned ferries while it was in Canadian waters.

Last year a young woman who was only 16 years old was sexually assaulted while she was on the Alaska ferry, Matanuska, en route from Seattle to Ketchikan. The ferry was in Canadian waters at the time of the assault. The district attorney in Ketchikan presented the case to the grand jury there, and the grand jury returned an indictment of one count of sexual assault in the first degree, one count of sexual assault in the second degree, and four counts of misdemeanor assault.

Unfortunately, Mr. Chairman, the court found that there was no statutory authority for the State of Alaska to prosecute the crime even though the victim was an Alaskan on an Alaska-owned state ferry. Under federal maritime law, the United States Government has jurisdiction over crimes committed on United States vessels in Canadian waters but the dismissal by the state court is a concern because the client is unlikely to be prosecuted by the federal government and certainly is of very little interest to the Canadian government. The federal government does not generally prosecute offenses such as sexual assault and the Canadian government has little interest in pursuing this since it was a state-owned ferry and it was an Alaska victim that it occurred to on the Alaska ferry.

I believe, Mr. Chairman, that it's prudent that we pass a law that specifically will give the State of Alaska the power to prosecute cases like this one and to protect and defend our passengers on our state-owned ferry system. Unfortunately this is not an isolated incident and it is not going to go away. Just as recently as December, four months ago, an intoxicated passenger attacked two crewmembers on one of our ferries with a vodka bottle and caused some minor injuries. The passenger - and charges were filed against this passenger - but the passenger has filed a motion to dismiss the case based upon the sexual assault that was dismissed last summer. Again, this occurred in Canadian waters en route between Prince Rupert and Ketchikan.

This bill is a very simple bill. It's a simple solution to a very serious problem. What we have here is a loophole in our law. The bottom line is that if the Canadians won't and don't want to prosecute criminal activity that occurs on state-owned vessels in Canadian waters and the federal government doesn't have the time or doesn't want to prosecute, then the State of Alaska should at least have the option to do so if we so desire. That, Mr. Chairman, is the just of the bill.

SENATOR WARD asked the name of the judge in Ketchikan who made the ruling.

REPRESENTATIVE MEYER told members that this case was brought to his attention by the Department of Law. He deferred to Ms. Carpeneti for details of the case.

MS. ANNE CARPENETI, Assistant Attorney General, informed members that Judge Weeks made the decision but said there is reason for his decision. She noted that although the Department of Law is appealing the decision, the most prudent approach is to pass a statute, which Judge Weeks suggested in his decision.

SENATOR WARD asked if both the victim and the alleged offender are American and Alaska citizens.

MS. CARPENETI said the victim is an American who lives in the Anchorage area. Ms. Carpeneti said she believes she is an Alaska resident. The defendant is an American citizen and she was not sure what state he is a resident of.

SENATOR WARD asked what charge the defendant was extradited on.

MS. CARPENETI said she did not know as he was extradited on charges brought in another state. She offered to get Senator Ward more information on the extradition charge. She added that the defendant was extradited in Alaska on this charge.

SENATOR WARD stated, "He was indicted on this charge, but yet the judge ruled that he couldn't be indicted on this charge because there was no law for it?"

MS. CARPENETI explained the ruling stated that crimes and jurisdiction over crimes in Alaska are dictated by statute; Alaska does not have common law crimes anymore. Alaska's jurisdictional statute allows the state to prosecute crimes committed in its territory or committed outside of the territory when the effect is consummated in our state. This particular offense was committed outside of Alaska's territory and the harm occurred outside of its territory. For that reason, the judge ruled that the state does not have jurisdiction.

SENATOR WARD asked if a sexual assault occurred in a state-owned military airplane while flying over Canada's airspace and the victim and offender were American citizens, whether Alaska would have jurisdiction.

MS. CARPENETI said this bill does not address that issue and that state airplanes generally operate in state airspace.

SENATOR WARD said he was referring to a state-owned military airplane that legally travels outside of state airspace.

MS. CARPENETI said it would depend on the circumstances. She remarked, "I'm sure they would be breaking somebody's law. They would probably be breaking federal law and they would probably be breaking the law if it's a sexual assault of the territory in which it happened - in the airspace where it happened."

SENATOR WARD asked, "And it's this judge's opinion that the law wasn't broken because there was no law on it?"

MS. CARPENETI replied that Judge Weeks did not express an opinion on the particular offense. His decision was not based on his opinion that a law hadn't been broken but instead that the state needs a statute on which to base the state's authority to prosecute the case because it occurred outside of Alaska territory.

SENATOR WARD asked, "So if, in fact, this hypothetical airplane I just described was flying outside of Alaska airspace into Canadian airspace and this sexual assault had occurred, would there not be any law to bring charges in that situation?"

MS. CARPENETI asked Senator Ward if he was referring to State of Alaska law or Canadian law.

SENATOR WARD said Alaska law.

MS. CARPENETI said that first of all, federal law would probably apply.

SENATOR WARD asked if federal law would apply to the case on the ferry.

MS. CARPENETI said yes, the federal government has jurisdiction on United States flag vessels but, generally, the federal government does not pursue cases like this on ferries. It tends to pursue cases on airplanes.

REPRESENTATIVE MEYER commented that it seems when something happens on an airplane, the federal government is right there to prosecute. However, since the ferry system is state-owned, the federal government does not seem to have the same level of interest.

CHAIRMAN COWDERY asked about cruise ships or privately owned ferry systems.

MS. CARPENETI said the jurisdictional theory that this bill is based on is that a state-owned vessel, "has enough connections - is kind of like a piece of Alaska traveling through international waters." She assumed a vessel owned by another private entity traveling in Canadian waters would turn into the next port in Canada and report the crime there. It is much more difficult for an Alaska ferry to go off course and off schedule and travel to a port that may not be able to accommodate the vessel.

SENATOR TAYLOR said a different Ketchikan Superior Court judge found jurisdiction in a previous case and convicted someone traveling on the Alaska ferry in Canadian waters.

MS. CARPENETI said she believes Senator Taylor is correct.

SENATOR TAYLOR said that is why this decision was considered to be unique or aberrant to the extent that probably no one has aggressively raised the defense before.

TAPE 02-14, SIDE B

SENATOR TAYLOR asked why the legislation is limited to ferries. He questioned whether federal jurisdiction extends to foreign flag vessels bringing tourists to Juneau from Vancouver, B.C.

MS. CARPENETI said she believes the state could prosecute a crime

against a state law on such a vessel if the crime occurred while the vessel was in Alaska territory. The Canadian government would have jurisdiction if the vessel was in Canadian waters. She added the flag of the ship would have jurisdiction no matter where the ship is. The United States government has prosecuted crimes that occurred on U.S. flagships traveling on rivers in Africa. She assumed the Washington authorities could prosecute a crime that happened between Bellingham and Canada.

SENATOR TAYLOR said he gets confused about the jurisdictional questions because it is almost frightening to think about an incident occurring to a tourist on a boat registered in the Seychelles. He noted that Dixon Entrance is a large gray zone as far as whether Canada or the United States has jurisdiction. He stated:

You could very easily be dealing with two different foreign nationals involved. You might have a crewmember that's perpetrated a crime and the crew member is from Italy maybe, and the victim is from Mexico. I think that all becomes very confusing. I think at least as far as our state-owned vessels we ought to have some continuity and I'm assuming that your department supports this legislation.

MS. CARPENETI said the department does support the legislation.

SENATOR TAYLOR asked if there is any reason to not consider aircraft in the legislation. He said the Departments of Public Safety and Fish and Game have an aircraft fleet of somewhere between 46 and 52 and that any aircraft flying three miles offshore is in international airspace.

MS. CARPENETI replied that most state aircraft operate in the state but she can understand the desire to include state-owned aircraft traveling outside the state. The problem, in terms of vessels, for the Department of Law has not necessarily been with crimes that have occurred in international waters because Alaska has a statute that says where the federal government can exercise jurisdiction, the state can also. That has allowed the state to prosecute under Alaska's theft statutes. The issues generally deal with due process - whether it is fair for the state to exercise jurisdiction under the circumstances with the connection between Alaska and the offense. She added that a state-owned aircraft would probably be similar to a state-owned ferry.

SENATOR WARD asked, regarding the previous conviction that Senator Taylor referred to, if that person would be able to file for an appeal to get out of prison if this bill passes.

MS. CARPENETI said she does not believe so because this bill will give the state jurisdiction to prosecute.

SENATOR WARD asked if passage of this bill could set up an argument that the person convicted of rape was not convicted legally because the state did not have jurisdiction.

MS. CARPENETI said she does not believe so because she believes this legislation makes explicit a position taken in the lower court.

SENATOR TAYLOR noted the case is on appeal and a decision will be made eventually by Alaska's Supreme Court as to whether or not Judge Weeks was correct in denying jurisdiction to our state in those waters. If the Supreme Court decides the state had jurisdiction all along and Judge Weeks was wrong, then the man convicted in Ketchikan was justly convicted and there would be no problem. However, if the Supreme Court says Judge Weeks was correct, the state did not have jurisdiction, the convicted man would have some right to appeal that conviction. Enacting this law, confirming or reasserting the state's jurisdiction, will only be effective from that date forward anyway but it would not play upon the earlier case because it is not a negative - it doesn't say the state did not have jurisdiction, it further asserts the state did have jurisdiction. He commented that he does not want to see the case on appeal dropped if this law is enacted.

MS. CARPENETI stated the Department of Law is pursuing the appeal.

There being no further testimony or questions, SENATOR WARD moved HB 405 from committee with individual recommendations.

CHAIRMAN COWDERY announced that without objection, the motion carried. With no further business to come before the committee, he adjourned the meeting at 2:30 p.m.

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