

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 19, 2003

1:04 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative John Coghill
Representative Jim Holm
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 52

"An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense."

- MOVED CSHB 52(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 59

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date."

- MOVED CSHB 59(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 52

SHORT TITLE:SEX CRIME AND PORNOGRAPHY FORFEITURES

SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
01/21/03	0045	(H)	PREFILE RELEASED (1/17/03)
01/21/03	0045	(H)	READ THE FIRST TIME -

			REFERRALS
01/21/03	0045	(H)	STA, JUD
01/29/03	0089	(H)	COSPONSOR(S): LYNN, CRAWFORD, HOLM
01/31/03	0107	(H)	COSPONSOR(S): KAPSNER, STOLTZE, CISSNA,
01/31/03	0107	(H)	WEYHRAUCH
02/03/03	0120	(H)	COSPONSOR(S): WILSON
02/11/03		(H)	STA AT 8:00 AM CAPITOL 102
02/11/03		(H)	Moved Out of Committee MINUTE(STA)
02/12/03	0181	(H)	STA RPT 6DP 1AM
02/12/03	0181	(H)	DP: GRUENBERG, SEATON, HOLM, LYNN,
02/12/03	0181	(H)	DAHLSTROM, WEYHRAUCH; AM: BERKOWITZ
02/12/03	0182	(H)	FN1: ZERO(ADM)
02/12/03	0182	(H)	FN2: ZERO(DPS)
02/12/03	0182	(H)	REFERRED TO JUDICIARY
02/19/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 59

SHORT TITLE:CLEANUP OF ILLEGAL DRUG SITES

SPONSOR(S): REPRESENTATIVE(S)HOLM

Jrn-Date	Jrn-Page		Action
01/21/03	0047	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0047	(H)	JUD, FIN
01/21/03	0047	(H)	REFERRED TO JUDICIARY
02/19/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DAVID HUDSON, Captain
 Administrative Services Unit
 Central Office
 Division of Alaska State Troopers (AST)
 Department of Public Safety (DPS)
 Anchorage, Alaska
 POSITION STATEMENT: Testified in support of HB 52.

KRISTIN T.(KRIS) MILLER, Lieutenant, Commander
 Detective Section of Crimes against Children
 Anchorage Police Department (APD)
 Municipality of Anchorage (MOA)
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 52 and responded to questions.

JANET L. BROWN
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 52.

JOS GOVAARS, Staff
to Representative Jim Holm
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 59.

LARRY DIETRICK, Acting Director
Division of Spill Prevention & Response
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 59.

ACTION NARRATIVE

TAPE 03-8, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives McGuire, Anderson, Holm, Coghill, Samuels, Gara, and Gruenberg were present at the call to order.

HB 52 - SEX CRIME AND PORNOGRAPHY FORFEITURES

Number 0032

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 52, "An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense."

CHAIR MCGUIRE, speaking as the sponsor, noted that the legislation that is currently HB 52 was originally introduced in the 22nd legislature by Representative Joe Hayes. She said that HB 52 is a good bill and has a good policy behind it. She relayed that there is precedent in other states for the concept

embodied in HB 52. Under HB 52, she explained, when someone is [convicted] of a crime - specifically, possession or distribution of child pornography; committing indecent viewing or photography; committing a sex offense; or soliciting the commission of, attempting to commit, or conspiring to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense - the items used in the commission of that crime will be forfeit. The intent, she said, is to have the forfeiture of the equipment be an extra penalty - it is meant to be punitive.

CHAIR MCGUIRE mentioned that there are two proposed amendments, one of which will address the forfeiture of equipment to law enforcement agencies, thereby providing an ancillary benefit in that the forfeited equipment can be used as an aid in pursuing those that commit such crimes. She also mentioned that one issue the committee will be discussing is whether to have such language be intent language or statutory language. The other proposed amendment, she noted, would remove the reference to [AS 11.41.460, which pertains to the crime of indecent exposure in the second degree]. She said that although there has been previous discussion regarding how far to expand the scope of HB 52, her intent is to keep the scope narrow.

Number 0402

DAVID HUDSON, Captain, Administrative Services Unit, Central Office, Division of Alaska State Troopers (AST), Department of Public Safety (DPS), after noting that he is the commander of the Criminal Investigation Bureau, which handles computer crimes, said simply that the AST is in support of HB 52, has attached a zero fiscal note, and is appreciative of any funding and equipment that can be channeled its way.

Number 0472

KRISTIN T.(KRIS) MILLER, Lieutenant, Commander, Detective Section of Crimes against Children, Anchorage Police Department (APD), Municipality of Anchorage (MOA), after noting that the Detective Section of Crimes against Children also includes computer crimes, said simply that the APD is in support of HB 52, and that she is available to answer questions.

Number 0542

CHAIR MCGUIRE closed the public hearing on HB 52, and said that the committee would begin consideration of the proposed amendments.

The committee took an at-ease from 1:10 p.m. to 1:12 p.m.

CHAIR MCGUIRE relayed that there was still one person who wished to testify on HB 52, and so reopened the public hearing.

Number 0567

JANET L. BROWN said that she is the co-founder of a group called Pissed Off Parents (POP). She said that she is in support of HB 52, and relayed that she is the mother of a child who was one of the victims of a sexual predator, her husband. She listed the different types of evidence uncovered and equipment seized during the investigation of her daughter's rape, and remarked that because that equipment played a large part in the different sexual crimes her husband committed over the course of 20 years, it would be a catastrophe to return the equipment back to him upon his release from prison. She asked the committee to support HB 52 and put the rights of children first, in deed as well as in thought.

CHAIR MCGUIRE again closed the public hearing on HB 52.

Number 0723

CHAIR MCGUIRE made a motion to adopt Amendment 1, which read [original punctuation provided]:

INTENT. The forfeitures contemplated by this Act are intended to be forfeitures imposed in connection with conviction for a crime. The legislature intends for the forfeiture to be ordered to the commissioner of public safety or other law enforcement agency. Further, the legislature intends for the courts to continue to provide hearings to interested persons who have an ownership interest in equipment subject to forfeiture under this Act and to allow for remission to innocent nonnegligent third parties as applied in State v. Rice, 626 P.2d 104 (Alaska 1981), Fehir v. State, 755 P.2d 1107 (Alaska 1988), and Baum v. State, 24 P.3d 577 (Alaska App. 2001).

Number 0738

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

CHAIR McGUIRE relayed that there is precedent, in the statutes related to driving while intoxicated (DWI), for having forfeited items go directly to [and become the property of] the Department of Public Safety. She indicated that this forfeiture issue has been researched to ensure that what is proposed by Amendment 1 is constitutional. The remaining question regarding this language, she reiterated, is whether to have it added to the intent section of the bill or directly into statute. She noted that there is precedent, in AS 12.55.015(a)(9), for adding such language directly into statute; nonetheless, she indicated that her preference is to have the language added to the intent section so that it is clear that "we wanted the forfeiture of the items in this bill to be consistent with that public policy and to have them go to the commissioner of [the Department of Public Safety]."

REPRESENTATIVE GRUENBERG asked for confirmation that such language is constitutional because it would merely be intent language.

[Chair McGuire nodded her head yes.]

REPRESENTATIVE GRUENBERG asked how it would be determined which agency would get the forfeited equipment.

CHAIR McGUIRE, after noting that the language in Amendment 1 mimics language in AS 12.55.015, suggested that for clarity, the words, "or a municipal law enforcement agency" could be added to Amendment 1 after the words, "commissioner of public safety".

LIEUTENANT MILLER replied that typically, whichever agency runs the case and ends up seizing the equipment will also be the agency that finally disposes of it.

Number 0937

REPRESENTATIVE GRUENBERG pointed out that Amendment 1 needs a technical correction with regard to underlining in that, beginning with the second sentence, the new language to be added should read:

"The legislature intends for the forfeiture to be ordered to the commissioner of public safety or other law enforcement agency. Further,

CHAIR McGUIRE indicated that she would consider that to be a friendly amendment to Amendment 1 and had no objections to it.

REPRESENTATIVE GRUENBERG withdrew his objection.

Number 0997

CHAIR McGUIRE asked whether there were any further objections to adopting Amendment 1 [as amended]. There being no objection, Amendment 1 [as amended] was adopted.

CHAIR McGUIRE made a motion to adopt Amendment 2, which read [brackets added around text to be deleted, which originally had a line drawn through it; all other punctuation as provided]:

Pg. 2, Sec. 2, Lines 4 & 5

Sec. 11.41.468. Forfeiture of property used in sexual offense. (a) Property used to aid a violation of [AS 11.41.410 - 11.41.470] AS 11.41.410 - 11.41.458 or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of [AS 11.41.410 - 11.41.470] AS 11.41.410 - 11.41.458 may be forfeited to the state upon the conviction of the offender.

CHAIR McGUIRE explained that Amendment 2 would exclude the crime of indecent exposure in the second degree. She relayed that previous testimony by Ross Plummer of the APD indicates that he did not consider the aforementioned crime to fall within the scope of the bill.

CHAIR McGUIRE asked whether there were any objections to Amendment 2. There being no objection, Amendment 2 was adopted.

REPRESENTATIVE COGHILL moved to report HB 52, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 52(JUD) was reported from the House Judiciary Standing Committee.

HB 59 - CLEANUP OF ILLEGAL DRUG SITES

[Contains discussion of CSSB 9(STA).]

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 59, "An Act relating to the evaluation and cleanup of sites where certain controlled substances may have

been manufactured or stored; and providing for an effective date."

CHAIR McGUIRE informed the committee that each member should have a new fiscal note for HB 59 from the Department of Environmental Conservation (DEC).

Number 1209

REPRESENTATIVE HOLM moved to adopt the proposed committee substitute (CS) for HB 59, Version 23-LS0341\D, Lauterbach, 2/18/03, as a work draft. There being no objection, Version D was before the committee.

The committee took an at-ease from 1:27 p.m. to 1:28 p.m.

Number 1268

REPRESENTATIVE HOLM, testifying as the sponsor of HB 59, began by informing the committee that this legislation originated from a request by the Fairbanks North Star Borough emergency services coordinator. He noted that last year there was similar legislation in the Senate. He explained that current law has no provision for a requirement by the Department of Environmental Conservation (DEC) to expect the cleanup of methamphetamine laboratories. The idea is to clean up illegal drug sites so that properties that have been rented or leased and used for methamphetamine laboratories aren't re-rented and leased without proper cleanup.

REPRESENTATIVE HOLM explained the changes encompassed in Version D. He directed attention to page 5, line 9, of HB 59, and pointed out that Version D does not include the language, "the capacity to perform the testing procedures". That language was deleted per the request of the DEC. He then turned to page 6, line 1, and said that the language, "the owner submits satisfactory evidence to the department that" was changed in Version D so that it now reads, "the owner certifies to the department under penalty of unsworn falsification". He indicated that this penalty changes the liability for cleanup from the DEC to the owner of the property.

CHAIR McGUIRE closed public testimony on HB 59.

Number 1515

REPRESENTATIVE GARA posited that HB 59 seems to properly set forth standards for cleanup of methamphetamine laboratory sites. However, he expressed the need to be sure that there really are methamphetamine laboratories being transferred to new tenants without first being cleaned up so as not to cause a danger to people. He asked if there was evidence that would support that this danger really exists.

REPRESENTATIVE HOLM provided the following three examples. A cabin at Arctic Lake was being used as a methamphetamine laboratory, and although the police dismantled it, there was no mechanism by which the state could require the owner of the property to clean it up and ensure that it was safe for habitation. Thus, because the DEC can't be required to check the property, the potential danger for the next occupant is significantly dangerous. Additionally, there was a motel room in which a methamphetamine laboratory was created. Representative Holm relayed his understanding that it's very easy to air out and clean out a property while still not removing the affected carpet or baseboard. Without proper cleaning to ensure a location is habitable, there is the potential for dangerous drugs to affect the brains of children [who may be at the property at a later time]. Also, there was a methamphetamine laboratory found in a corner of the Aspen Hotel in Fairbanks.

REPRESENTATIVE GARA asked if there is any information available that would address the extent of any existing danger to the public under today's absence of a law.

CHAIR MCGUIRE pointed out that the committee packet should include an article entitled, "IS THERE A METH LAB COOKIN' IN YOUR NEIGHBORHOOD?" This article discusses the potential health impacts from exposure to methamphetamine laboratory contaminants, such as nausea, skin and eye irritation, headaches, respiratory problems, et cetera. She stressed that [methamphetamine] is a known carcinogenic. She relayed that the article also discusses some of the items that could indicate the existence of a methamphetamine laboratory. Chair McGuire pointed out that the committee packet should also include an article from the Fairbanks Daily News Miner, which discusses some of the specific incidents.

Number 1798

JOS GOVAARS, Staff to Representative Jim Holm, Alaska State Legislature, referred to the article [entitled, "IS THERE A METH

LAB COOKIN' IN YOUR NEIGHBORHOOD?"] which he found on the Internet. [That article relayed] that the potential health hazards from the chemicals in methamphetamines are dependent upon the length of time one has been exposed to [those] hazards, as well as the size of the methamphetamine laboratory. The small laboratories that fit in the trunk of a car don't pose as serious a health hazard as would a methamphetamine laboratory the size of the committee room. Contaminants can soak into furniture, carpets, draperies, and even sheetrock and ceiling tile. Furthermore, some of the chemicals can lay dormant because some are heavier than air and thus can end up in a basement or the crawl space of a house. Mr. Govaars said that [the existence of methamphetamine laboratories] is a serious problem that needs to be addressed.

REPRESENTATIVE GARA said that it's clear that the chemicals are dangerous substances. He asked whether there is any evidence that people are transferring potentially dangerous homes to new tenants/buyers. He again expressed the need to be sure that the aforementioned is an existing problem.

MR. GOVAARS said that he has heard stories from people in Fairbanks in which homes that were once methamphetamine laboratories are reinhabited by other people [with no cleanup taking place]. Furthermore, two hotels in Fairbanks have had methamphetamine laboratories this year. He said he questions how many people may be exposed to methamphetamine chemicals left behind in a hotel room after a methamphetamine laboratory is dismantled.

Number 1926

CHAIR MCGUIRE acknowledged Representative Gara's concern and also asked whether there is evidence that methamphetamine laboratory sites aren't being cleaned before being [made available for habitation].

MR. GOVAARS answered that he doesn't have any documentation. Currently, there is no statute specifying the tracking of methamphetamine laboratory locations; this legislation would establish standards so that methamphetamine laboratories can be tracked and cleaned up. This is a good first step, he said.

Number 1990

REPRESENTATIVE GRUENBERG referred to page 5, lines 8-10, of HB 59, and pointed out that the language, "that have the capacity

to perform the testing procedures and" wasn't included in Version D. He relayed his understanding that because the requirement that the department determine whether a laboratory has the capacity [to perform testing procedures] would engender a fiscal note, the department wanted to eliminate that requirement. He recommended that in the notification process, laboratories should not only state that they want to be on the list but also that they have the capacity to perform the test. He characterized the aforementioned as a reasonable requirement that doesn't cost anything. He asked if there is any problem with adding language such that Version D, page 5, lines 8-10, would read as follows: "The department shall establish and maintain a list of laboratories in the state that have notified the department that [they] have the capacity to perform the testing procedures and that they wish to be on the list maintained under this subsection".

REPRESENTATIVE HOLM responded that he didn't have any problem with the aforementioned. However, he said that he didn't believe a laboratory would want to be on the list unless it was going to provide the service and thus [capacity to perform] wouldn't need to be specified.

REPRESENTATIVE GRUENBERG said he could foresee laboratories wanting to be on the list without having the capacity [to perform the test]. If a laboratory is required to specify that it has the capacity [to perform the test], then it will be on the record that they do have the capacity.

REPRESENTATIVE HOLM said that he didn't have a problem with [that language].

Number 2123

REPRESENTATIVE ANDERSON, also, expressed interest in knowing the number of individuals that have been harmed in these situations. He said he views this legislation as preemptive in that respect.

REPRESENTATIVE HOLM agreed that this legislation is preemptive.

REPRESENTATIVE ANDERSON said he likes the legislation, and noted that he generally supports anything that is related to public safety and is prudent. He informed the committee that Senator Gretchen Guess has [similar] legislation [SB 9], although [there are a few differences]. One of the differences is that [SB] seeks the name and mailing address of any lienholder of record for the property where the site is located. Furthermore, under

the standards for determining fitness, [SB 9] lists more substances than does HB 59.

REPRESENTATIVE HOLM said although he hadn't really reviewed [SB 9], one of the differences is related to the need to maintain a minimum of bureaucracy. Representative Holm said, "The other portion of it where it wasn't the same has to do with the fact that we don't think it's necessary ... because Section 46.03.530 ... (b) is implied in the bill." He explained that the problem, if one requires a title search to find the owner of record, is that it adds a burden to the department; he remarked that he didn't believe this was necessary. Therefore, HB 59 merely refers to certification of the owner.

Number 2258

REPRESENTATIVE GARA pointed out that although the legislature is under pressure not to increase the budget, HB 59 is accompanied by a fiscal note. He expressed concern that the funds going to this program will have to come from some other program. He opined that the committee needs to be able to assess the risks that are [supposedly] being avoided by adopting this legislation, and measure those against the risks created by underfunding another program. He suggested that one way to obviate his concern would be to make HB 59 contingent upon the receipt of adequate legislative funding. Such a contingency would provide him comfort that the protection afforded by HB 59 is not coming at the expense of another protection that might be more important to people. Representative Gara maintained that he wanted to know the real risks with regard to whether people will be harmed without HB 59. However, he did note that he might be leaning in favor of the legislation.

REPRESENTATIVE SAMUELS stated his belief that the individual running the methamphetamine laboratory, not the landlord, should be responsible for cleaning the site and paying for the DEC's [testing costs].

Number 2371

MR. GOVAARS informed the committee that he has spoken about that issue with Legislative Legal and Research Services, and the concern expressed is that there is criminal and civil law being mingled. However, the issue is being reviewed in order to develop a [mechanism] for reimbursement. Mr. Govaars pointed out that the fiscal note in members' packets is for HB 59, not [Version D].

TAPE 03-8, SIDE B

MR. GOVAARS indicated that the fiscal note for [Version D] should be significantly less than for the original legislation.

REPRESENTATIVE HOLM, in further response to Representative Samuels's comments, mentioned that [the issue of who pays for the cleanup and testing] would be a civil matter between the [perpetrator] and the landlord. He explained that he approached this matter as a state function in which society should demand that it is taken care of prior to the time unknowing citizens are subjected [to the hazards of methamphetamine laboratories].

Number 2334

REPRESENTATIVE GRUENBERG relayed his belief that this is definitely an area in which the perpetrator should be ordered to make restitution. However, half of the time the perpetrator will have absconded, have hidden his/her assets, or have no money. Still, he said that he understood that Representative Holm's desire is to cleanup these sites fast.

REPRESENTATIVE HOLM agreed and clarified that he is more concerned about protecting [society] rather than who pays the bill. If one chooses to rent property, the landlord is subject to those leasing and renting the property. However, he noted that if someone breaks into property, then it's a different issue.

CHAIR McGUIRE relayed her sense that this is veering dangerously close to the collateral source rule.

REPRESENTATIVE GRUENBERG said that he didn't know whether insurance generally covers this sort of act by a tenant. He suggested that someone may want to review this matter and make sure that insurance covers this when possible.

Number 2220

REPRESENTATIVE GRUENBERG informed the committee that there were some amendments made to [SB 9] that this committee might want to review. On page 3, lines 9-10, the following paragraph was added: "(4) the name and mailing address of any lienholder of record for the property where the site is located". On page 5, lines 22-24, the following items were added: "iodine, sodium hydroxide, red phosphorus, lithium metal, sodium metal, or

another substance for which the department has set a limit under (b) of this section". And the following text was added to proposed Sec. 46.03.530(b), beginning on page 5, line 27:

The department shall also determine whether there are other substances associated with illegal drug manufacturing sites that may pose a substantial risk of physical harm to persons or animals that enter or occupy the site and shall adopt regulations that set limits for those substances for purposes of determining whether the property for which notice was received under AS 46.03.500 is fit for use.

MR. GOVAARS pointed out that a difference between CSSB 9(STA) and HB 59 is related to the fitness for use, which can be found on page 6, line 10 [of CSSB 9(STA)]. Basically, [under CSSB 9(STA)], the owner submits satisfactory evidence to the department that the site is clean. However, there was concern that if the lienholder was included there would have to be a title search.

CHAIR MCGUIRE remarked that the fiscal note in members' packets from the Division of Spill Prevention & Response is for HB 59, not Version D. She requested testimony regarding whether the changes [incorporated in Version D] would have any fiscal change.

Number 2101

LARRY DIETRICK, Acting Director, Division of Spill Prevention & Response, Department of Environmental Conservation, noted that [the division] has worked with the sponsor on the changes incorporated in Version D. The changes on page 5, line 9, and page 6, line 1, were both changes [the division] felt were necessary for the department to be able to reduce the fiscal note and [the division's] role. The intent was to make the bill self-implementing in order to protect public health without developing a new government service that would add a large fiscal note. Upon preliminary review, he said that the aforementioned changes encompassed in Version D are acceptable to the department. With regard to laboratory certification, Mr. Dietrick said that laboratory certification is quite costly. He said that according to his interpretation of [Version D], the laboratories with the analytical capability to provide the services specified in the legislation would simply notify the division and the laboratory would then be placed on the list.

MR. DIETRICK turned to the deletion of the language "the owner submits satisfactory evidence to the department". The deletion of that language clarifies that the department won't review the work and the cleanup, but rather the owner will do so. Both of the changes incorporated in Version D ratchet the division's role down to what the division believes to be an appropriate role from a fiscal standpoint while still achieving the sponsor's goal of protecting public health by having the division establish the standards. The standards would include the appropriate cleanup standard for each parameter identified in the legislation. Furthermore, the division would develop the guidelines for sampling the property and the analytical methods that the laboratory would use to perform the analysis of the samples. The division would also develop guidelines for cleanup based on a variety of laboratory situations, from a simple suitcase-type laboratory, to a large, complex laboratory with ventilation systems.

MR. DIETRICK said that by providing a set of guidelines and standards for a range of conditions, the hope would be that the property owner could use the standards to determine what to do and whether help is necessary and who is available to conduct the analytical work. The aforementioned measures leave the division out of an oversight role and the unsworn falsification is an additional incentive for the property owner to perform cleanup correctly. Therefore, the division's role is to set the standards, maintain the laboratory list, de-list properties that have cleaned up, and adopt the guidelines [via regulation]. [Version D] substantially shrinks the division's role in terms of review and approval and, thus, the fiscal note will be changed accordingly. He estimated that the fiscal note would probably be cut in half, adding that the initial cost of setting the standards will make the initial costs higher, and that the out-year costs will depend upon the number of new chemicals that are discovered in the future.

Number 1831

REPRESENTATIVE GARA relayed his understanding that [a version of] SB 9, the companion to HB 59, passed the House last year. He asked Mr. Dietrick if he would know the differences between the two bills.

MR. DIETRICK answered that [the department] has worked with the sponsor of SB 9 this year. The two areas of concern [for the division] are the same areas that were addressed by the sponsor.

REPRESENTATIVE GARA turned to the scaled-back role of the DEC and inquired as to what mandates enforcement of this so as to ensure cleanup is done by the guidelines.

MR. DIETRICK answered that [HB 59] makes it very clear who is responsible - the property owner. With the self-certification method being subject to a penalty, Mr. Dietrick said he felt that there is a fairly decent incentive for a property owner to do the correct thing. He noted that the capacity in this state to perform this kind of cleanup is available. With all the aforementioned and a good set of standards and guidelines, Mr. Dietrick said he believes this goes a long way to accomplish the goal. However, he did acknowledge that there may a need to revisit this and create a more sophisticated cleanup procedure and tighter controls to increase confidence [that cleanup is achieved]. He characterized [Version D] as a good start.

REPRESENTATIVE GRUENBERG noted that he was the author of the asbestos legislation. He asked if there would be similar health risks to the people involved in cleanup of methamphetamine laboratories.

MR. DIETRICK said that he wasn't sure he would qualify as a health expert on the effects.

REPRESENTATIVE GRUENBERG expressed the need to review the aforementioned.

MR. DIETRICK pointed out that the knowledge of the types of chemicals and levels of concentrations and their impact on health are just coming to light.

REPRESENTATIVE GRUENBERG informed the committee that [health] problems [related to asbestos] occurred for years and led to tremendous tort exposure. He asked if [this legislation] is going to expose a group of laboratory technicians or workers to some significant health risks.

MR. DIETRICK highlighted that one of the items for which [the department] will set standards will be for the decontamination guidelines, including the personal protection requirements. Within those [personal protection requirements], what one has to do for protection of the cleanup crew should be included. In further response to Representative Gruenberg, Mr. Dietrick said he envisions that the decontamination guidelines and training would go hand in hand.

REPRESENTATIVE GRUENBERG pointed out that on page 5, line 21, of [CSSB 9(STA)], the contaminant mercury is listed. Mercury is terrifically contaminating, he remarked, and thus is of great concern.

Number 1460

REPRESENTATIVE HOLM explained that he introduced HB 59 because of the children who could possibly be exposed to these toxins.

MR. DIETRICK reiterated that he isn't a health expert. However, he explained that normally, numerical standards could be established such that certain situations would be covered. A risk-based approach could also be used. The risk-based approach takes into consideration the nature of the operation, the levels of concentrations, and the types of individuals who would be exposed. The aforementioned is done on an individual basis. He noted that generally, healthy male adults can sustain higher dosages of contaminants than can more sensitive populations such as infants. Since one number wouldn't suffice in all cases, the numerical standard would be more conservative. Mr. Dietrick said that the standards established would probably be based on a child's dosage. Mr. Dietrick explained that [the DEC] will write a request for proposals (RFP) to have the standards created [by] one of Alaska's consultants who will review the literature and the standards of other states. He mentioned that Washington, Oregon, and Missouri have established some standards and numbers.

REPRESENTATIVE GRUENBERG directed attention to page 5, line 26, of [Version D], which in part reads: "The department shall establish guidelines for decontamination of sites". He expressed the need to be sure that the language includes training and protection of the workers.

REPRESENTATIVE HOLM remarked that he believes [the discussion] to be moving a bit away from the thrust of the legislation. The thrust of HB 59 is to protect young people. He acknowledged that protections for workers and others could be included, although he characterized that as muddying the bill. He related his desire to move HB 59 along.

REPRESENTATIVE GARA said that he would be offering an amendment to address the concerns of Representative Gruenberg. He offered his belief that if the aim of this legislation is to protect people rather than harm them, people could be placed in harm's

way by telling these individuals what to remove without also specifying how they should protect themselves.

Number 1131

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 5, line 9:

Between "that" and "they"

Insert "they have the capacity to perform the testing requirement and that"

CHAIR MCGUIRE objected for discussion purposes.

REPRESENTATIVE ANDERSON asked if the sponsor viewed Amendment 1 as a friendly amendment.

REPRESENTATIVE GRUENBERG noted that there is a misprint in Amendment 1; instead, it should read:

Page 5, line 9:

Between "that" and "they"

Insert "they have the capacity to perform the testing procedure and that"

REPRESENTATIVE HOLM asked whether the changes encompassed in Amendment 1 [as amended] would have any ramifications for the DEC.

REPRESENTATIVE GRUENBERG explained that Amendment 1 [as amended] says that the proposed laboratory must state in its notice [to the DEC] that they want to perform the testing and also that they have the capacity to do so. He said he didn't intend to add any expense to [the department].

MR. DIETRICK said that [the department] agrees with the intent of having the laboratories "self-represent" their capability [to perform testing]. Mr. Dietrick noted that the Department of Law reviewed this. He said:

It would appear that if they have the capacity to perform the testing procedures, if that is preceded by the list of laboratories in the state [that] have notified the department they have the capacity, if this meets that self-certifying intent, then we agree conceptually with that.

REPRESENTATIVE HOLM said that he no objection to Amendment 1.

CHAIR McGUIRE removed her objection. Noting that there were no further objections, Amendment 1 [as amended] was adopted.

Number 0926

REPRESENTATIVE GARA made a motion to adopt Amendment 2, which, on page 5, line 26, after "guidelines", would add "including guidelines to protect the health and safety of those removing the controlled substances,".

CHAIR McGUIRE objected for discussion purposes.

The committee took an at-ease from 2:30 p.m. to 2:35 p.m.

REPRESENTATIVE GARA explained that the DEC has relayed its intent to include guidelines related to health and safety; thus his understanding is that Amendment 2 wouldn't add to the fiscal note.

REPRESENTATIVE HOLM said he had no problem with Amendment 2.

REPRESENTATIVE GRUENBERG noted that he would like to be known as a co-sponsor of Amendment 2.

CHAIR McGUIRE removed her objection. Noting that there were no further objections, she announced that Amendment 2 was adopted.

Number 0752

REPRESENTATIVE GRUENBERG directed attention to page 5, lines 22-24, of [CSSB 9(STA)] and requested that the following language be added: "iodine, sodium hydroxide, red phosphorus, lithium metal, sodium metal, or another substance for which the department has set a limit under (b) of this section". He asked [Mr. Dietrick] to comment.

MR. DIETRICK said that he hasn't had any discussion with [Senator Guess], although he understood that there is potentially a wide range of chemicals associated with the [methamphetamine] laboratories. He pointed out that the legislation includes a provision allowing those chemicals discovered at a later time to be added.

REPRESENTATIVE GRUENBERG highlighted that the most important language is "another substance for which the department has set a limit under (b) of this section." The aforementioned language is not currently included in [Version D]. Representative Gruenberg said that this seems to be important language as it provides the department with an important authority.

MR. DIETRICK relayed his belief that the department's authority to add other substances already exists, since the DEC could add another substance via regulation.

REPRESENTATIVE HOLM indicated that the aforementioned language appears to be unnecessary.

Number 0509

REPRESENTATIVE GRUENBERG informed the committee that Title 17 includes a list of controlled substances - narcotics. Every time someone wants to add another controlled substance to the list of illegal drugs, an amendment is required by the legislature. However, this legislation allows the department to add another compound via regulation and, thus, avoid returning to the legislature each time.

REPRESENTATIVE HOLM pointed out that on page 5, line 6, of [Version D], the language specifies that, "The department shall establish procedures for testing property that may have been an illegal drug manufacturing site". He highlighted that the language doesn't refer to a specific illegal drug, it merely says, "illegal drug". Therefore, he surmised, if a drug is later determined to be illegal, it would fall under the aforementioned language.

CHAIR McGUIRE relayed her belief that it wouldn't hurt to provide a broad grant of authority via language specifying such. The debate, she remarked, is in regard to how many substances to list at the moment.

REPRESENTATIVE HOLM inquired as to the language that would be used. He said that he wasn't opposed to a laundry list, as was suggested, although it isn't inclusive and doesn't have future inclusiveness. Therefore, he indicated that it may be best not to mention any specific drugs, chemicals, or volatiles.

REPRESENTATIVE GRUENBERG pointed out that the language to which Representative Holm referred earlier on page 5, line 6, of [Version D], refers to procedures for testing. However, the

section [to which he is referring] addresses property not fit for use. Representative Gruenberg offered that the following language could be used, "if sampling and testing of the property under 46.03.520 shows the presence of a substance that for which the department has set a limit under (b) of this section", and then not put anything [under standards for fitness] section.

MR. DIETRICK clarified that currently, [Version D] identifies four compounds for which the property is unfit if the standards are exceeded. He directed attention to page 6; proposed Sec. 46.03.570(b) of [Version D] is the mechanism for adding or subtracting from the current list of four compounds. Therefore, he surmised that the question is whether the four contaminants listed are the correct core group to characterize the contamination resulting from the type of drug laboratories encountered in Alaska. Mr. Dietrick said he couldn't speak to the aforementioned because of the lack of data.

REPRESENTATIVE GRUENBERG interjected, stating his belief that at the very least, the phrase, "or another substance for which the department has set a limit under (b) of this section", should be added. He clarified that this language should be added under proposed Sec. 46.03.530(a), on page 5 of [Version D]. Representative Gruenberg acknowledged Representative Holm's earlier statement that if the broad authority is being given, then additional language isn't necessary. To that end, Representative Gruenberg said that all the language [referring to specific contaminants] could be eliminated and then the bill would simply refer to "a substance for which the department has set a limit under (b) of this section". However, he surmised from Mr. Dietrick's comments that it would be helpful [to the department] to have those four substances included. Therefore, he inquired as to whether Mr. Dietrick wanted there to be a list of substances and if so, how many would he recommend.

Number 0056

CHAIR McGUIRE stated that she understood not wanting a laundry list [of substances], but what she liked was the latter part of Representative Gruenberg's amendment: "or another substance for which the department has set a limit under (b) of this section". Chair McGuire said she didn't know that she would eliminate the list of four substances, since those have been identified as core elements present [in a methamphetamine laboratory].

TAPE 03-9, SIDE A

Number 0008

CHAIR MCGUIRE suggested the following language: "or another substance for which the department has set a limit under (b) of this section".

REPRESENTATIVE GRUENBERG withdrew his suggestion, which he, at that point, called Amendment 3, and, after discussion, made a motion to adopt the following as new Amendment 3:

Page 5, line 17:
Delete "and"

Page 5, line 18, after "compounds":
Delete "."
Insert "and another substance for which the department has set a limit under (b) of this section."

CHAIR MCGUIRE noted that there were no objections to new Amendment 3. Therefore, Amendment 3 was adopted.

Number 0282

REPRESENTATIVE GRUENBERG referred to [CSSB 9(STA)], page 5, line 27, through page 6, line 1, which read:

The department shall also determine whether there are other substances associated with illegal drug manufacturing sites that may pose a substantial risk of physical harm to persons or animals that enter or occupy the site and shall adopt regulations that set limits for those substances for purposes of determining whether the property for which notice was received under AS 46.03.500 is fit for use.

REPRESENTATIVE GRUENBERG asked if the aforementioned language would be a helpful addition to [Version D of HB 59]. He stressed that he didn't want to add any money to the fiscal note.

MR. DIETRICK specified that what would impact the fiscal note would be when a new contaminant arrives and necessitates establishing new standards, cleaning guidelines, analytical methods, and sampling protocols. The current language of [Version D] would necessitate preparation of initial standards for the compounds listed, he remarked, noting that additional contaminants would be added if and when they are identified as a chemical of concern associated with a drug laboratory.

REPRESENTATIVE GRUENBERG surmised, then, that the aforementioned language from CSSB 9(STA) wouldn't add a fiscal note because it isn't contaminant specific. Therefore, he again asked if it would be helpful to have that language in Version D.

MR. DIETRICK remarked that although the language itself wouldn't trigger a fiscal note, the addition of a new contaminant would.

The committee took an at-ease from 2:55 p.m. to 2:58 p.m.

REPRESENTATIVE GRUENBERG said he would offer the aforementioned language [from CSSB 9(STA)] as an amendment to Version D if [the sponsor] would like to add it.

REPRESENTATIVE HOLM said that adding that language would take the legislation on a different path, which he didn't want to travel.

Number 0495

REPRESENTATIVE ANDERSON moved to report the proposed committee substitute (CS) for HB 59, Version 23-LS0341\D, Lauterbach, 2/18/03, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG asked whether the committee wanted to wait for a new fiscal note for the new CS.

Number 0535

CHAIR McGUIRE, after stating that the new fiscal note from the DEC would be forthcoming, and hearing no objections to the motion, announced that CSHB 59(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0559

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.