

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 19, 2003

1:04 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 114

"An Act relating to the issuance of a search warrant."

- MOVED CSHB 114(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 34

"An Act relating to negotiated regulation making; and providing for an effective date."

- MOVED HB 34 OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 114

SHORT TITLE:ISSUANCE OF SEARCH WARRANTS

SPONSOR(S): RLS BY REQUEST

Jrn-Date	Jrn-Page		Action
02/19/03	0253	(H)	READ THE FIRST TIME - REFERRALS
02/19/03	0253	(H)	JUD
03/07/03		(H)	JUD AT 1:00 PM CAPITOL 120
03/07/03		(H)	Meeting Postponed to 03/10/03
03/10/03		(H)	JUD AT 1:00 PM CAPITOL 120
03/10/03		(H)	<Bill Hearing Postponed to 3/12>

03/12/03 (H) JUD AT 1:00 PM CAPITOL 120  
 03/12/03 (H) Heard & Held <subcommittee  
 assigned>  
 MINUTE(JUD)  
 03/19/03 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 34

SHORT TITLE: REPEAL SUNSET OF NEGOTIATED REG.MAKING  
 SPONSOR(S): REPRESENTATIVE(S)HOLM

Jrn-Date	Jrn-Page		Action
01/21/03	0040	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0040	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0040	(H)	JUD
03/19/03		(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

DOUG WOOLIVER, Administrative Attorney  
 Administrative Staff  
 Office of the Administrative Director  
 Alaska Court System (ACS)  
 Anchorage, Alaska

POSITION STATEMENT: Explained Version H of HB 114 on behalf of  
 the administration, and responded to questions.

BARBARA COTTING, Staff  
 to Representative Jim Holm  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: Presented HB 34 on behalf of the sponsor,  
 Representative Holm.

CRAIG TILLERY, Assistant Attorney General  
 Environmental Section  
 Civil Division (Anchorage)  
 Department of Law (DOL)  
 Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB  
 34 and responded to questions.

JEANNETTE JAMES, Former Representative  
 Alaska State Legislature  
 North Pole, Alaska

POSITION STATEMENT: During discussion of HB 34, spoke as the  
 sponsor of HB 264, which passed in 1998.

MARGARET KING, Program Manager  
Resource Solutions  
University of Alaska  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 34.

**ACTION NARRATIVE**

**TAPE 03-23, SIDE A**

Number 0001

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives McGuire, Holm, Ogg, Samuels, Gara, and Gruenberg were present at the call to order. Representative Anderson arrived as the meeting was in progress.

HB 114 - ISSUANCE OF SEARCH WARRANTS

Number 0037

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 114, "An Act relating to the issuance of a search warrant." She indicated that the subcommittee assigned to work on HB 114 has returned with a proposed committee substitute (CS).

Number 0079

REPRESENTATIVE HOLM moved to adopt the proposed committee substitute (CS) for HB 114, Version 23-LS0564\H, Luckhaupt, 3/19/03, as the work draft. There being no objection, Version H was before the committee.

Number 0121

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that Version H addresses concerns raised by the committee and the Public Defender Agency (PDA) at the bill's last hearing. Version H now requires that in order for a police officer to fax in an application for a search warrant, it would be subject to the same criteria as telephonic testimony in support of a search warrant. This criteria has been expanded to include anytime there is a delay that would otherwise ensue in

the issuance of the search warrant, and that delay would interfere with an ongoing investigation. He remarked that members of the subcommittee and representatives from the Department of Public Safety (DPS), PDA, and the ACS worked together to develop Version H, and that all parties are satisfied with the result.

Number 0192

REPRESENTATIVE SAMUELS moved to report [the proposed (CS) for HB 114, Version 23-LS0564\H, Luckhaupt, 3/19/03] out of committee with individual recommendations [and the accompanying zero fiscal notes].

Number 0203

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

REPRESENTATIVE GARA asked Mr. Wooliver to explain in detail the differences between Version H and the original bill.

MR. WOOLIVER responded:

The initial bill as introduced would have allowed faxed applications in support of search warrants, unconditionally. This bill [Version H] restricts faxed application in support of search warrants to those circumstances where not being allowed to fax would result in a delay in the issuance of the search warrant and that delay would either result in the loss or destruction of evidence, which was the original standard, or - the new language - would interfere with an ongoing investigation.

REPRESENTATIVE GARA asked whether, from a law enforcement perspective, Version H satisfies the problem experienced by out-of-town law enforcement officials in obtaining search warrants under existing law.

MR. WOOLIVER said it does.

REPRESENTATIVE GRUENBERG asked whether the ACS's fiscal note remains the same.

MR. WOOLIVER said it does.

REPRESENTATIVE GRUENBERG removed his objection.

REPRESENTATIVE SAMUELS again moved to report the proposed (CS) for HB 114, Version 23-LS0564\H, Luckhaupt, 3/19/03, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 114(JUD) was reported from the House Judiciary Standing Committee.

HB 34 - REPEAL SUNSET OF NEGOTIATED REG.MAKING

Number 0369

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 34, "An Act relating to negotiated regulation making; and providing for an effective date."

Number 0420

BARBARA COTTING, Staff to Representative Jim Holm, Alaska State Legislature, on behalf of Representative Holm, sponsor, mentioned that there are two fiscal notes for HB 34, and drew attention to the analysis provided on the Department of Revenue's fiscal note. This analysis in part says, "The Tax Division of the Department of Revenue last year used the negotiated regulation making process to draft and adopt new regulations for charitable gaming, and found the process useful and effective." She went on to explain that the original legislation [SCS CSHB 264(STA)] that created the process of negotiated regulation making - referred to as "Neg-Reg" - was passed in 1998, and that it had a sunset date of July 1, 2003, for the purpose of reviewing whether the process works.

MS. COTTING remarked that since the process has proven to be very successful, HB 34 was introduced for the purpose of repealing the sunset provisions of the original legislation. She posited that the Neg-Reg process makes regulation writing more applicable to reality because it allows any interested parties that would be affected by forthcoming regulations to work together as a team and submit recommendations before the regulations are published for public review. She said that this Neg-Reg process has been used with tremendous success over the last few years since the bill was passed, most notably in writing "cruise ship" regulations. She offered that the Neg-Reg process eliminates lawsuits and lengthy public appeals because everything has been ironed out ahead of time; the resulting regulations are much more practical and enforceable than if all the parties had not been involved from the beginning.

MS. COTTING opined that it is very important to keep this process in statute as a guideline. Apparently, she remarked, the process could be used informally, but if it is actually in statute, people who aren't familiar with it can go to a section of statute for guidance. After reiterating that the sunset provisions of the original legislation take effect this upcoming July 1, she urged the committee to pass HB 34 as soon as possible to avoid the statutory Neg-Reg process from sunseting.

Number 0623

CRAIG TILLERY, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), said that the administration has not taken a position on HB 34, that a review of the legislation has not revealed any legal problems with it, and that the DOL believes it accomplishes what the sponsor intends. He relayed his experience involving the "cruise ship negotiated rule making":

That negotiated rule making was entered into at the direction of the legislature, which provided the statute that we should do regulations and, if appropriate, that we should do them through the negotiated rule-making process. That law became effective in July of 2001, and within about four or five months our RFP [request for proposals] was sent out for a facilitator through the negotiated rule making and the commissioner-appointed members. It's fairly instructive to look [at] who was appointed. It was representatives of cruise lines, both large and small cruise ships; there were environmental groups; the United States Coast Guard participated; the Alaska Marine Highway System participated; Native leaders; engineering experts; local governmental officials; and the Department of Environmental Conservation.

When you do this kind of process, what we did was to identify the particular issues that we felt were appropriate for the process. It required basically three meetings in person by the negotiated rule-making group, and then a final teleconference. All of these sessions are open to the public, who are welcome to come. There weren't a lot of public members there, I think primarily because the representatives were chosen fairly well. The stated goal of negotiated rule making is to achieve consensus or to identify, if that's impossible, those areas where consensus cannot

be achieved. In our situation, the meetings went fairly well.

There was some debate; there was little acrimony, although the subject had been acrimonious in the past. There was a lot of understanding that was gained between the different parties, and a lot of problems were solved. And where, in the regular rule-making process, you might propose regulations, then you'll get comments back from both sides, sometimes you end up with ships passing in the night. And, in this case, our ships collided head on and were able to resolve things during the meeting, pretty much to everyone's satisfaction. Consensus was achieved on virtually all important areas; there are about three secondary issues that were not resolved that came back to the commissioner for a final decision. The regulations were proposed by the department and became final in November of 2002, so the entire process took about a year to finish.

Number 0802

MR. TILLERY continued:

My impressions of what we did was that it was a very effective process. It allowed for the exchange of information that made for a better set of regulations. What we don't know, what I suspect was accomplished but is very hard to measure, is sort of the lack of lawsuits being filed; we have not had anyone challenge them to date. And it's also impossible to measure the lack of violations that might occur because of better clarity, because the regulations were drafted in a way that was clear to all parties and that worked for all parties. But I think that all of those are components of this being [an] effective process.

I would also note that it is a somewhat costly process. For the state, my experience has indicated it's critical to have a facilitator, and that is an expensive proposition. For the parties, several of the parties have noted that it was pretty expensive for them to attend; [for] some of the groups, people were attending without compensation, so that's time out of their day. There's travel involved because these meetings do generally have to be face to face.

I'd also note that negotiated rule making is not good in all situations; in fact, it's not good in most situations. It does require some specific circumstances. It requires identifiable interest groups, on all sides of an issue; it requires a manageable number of different interests; it requires issues that are amenable to consensus; and it requires parties that will agree to not revisit decisions that have already been made by the legislature - this is not a time to re-fight the cruise-ship legislation battle. And, again, in this case we were able to do that and work pretty well.

Number 0897

MR. TILLERY concluded:

In summary, I believe that this is a tool that needs to be in the toolbox; it will have limited application, but where it has application it can be a very important method of moving forward. And one more thing I would point out is that we had another instance with nontank vessel legislation, or regulations, where negotiated rule making was not used formally. That is, we didn't specifically follow those rules. Nevertheless, the outline in the statute was followed, and that also was quite a successful process. So there certainly is importance to having the framework in the statutes even if it's not formally used.

REPRESENTATIVE GARA asked who pays for the facilitators.

MR. TILLERY indicated that facilitators are paid for by the state, adding that this worked well in the cruise ship context because the fee that the cruise ships were paying paid for the facilitator. He acknowledged that in other situations, there might not necessarily be such a straightforward source of revenue. And although a facilitator was not used for the charitable gaming regulations, he remarked that for both the cruise ship regulations and the nontank vessel regulations, it was very important to have a facilitator because those discussions involved very contentious issues and the facilitator kept people on track.

MR. TILLERY, in response to questions, said that the fee he referred to earlier was the "per passenger berth fee" that was part of the cruise ship legislation. This fee, although technically general fund (GF) revenue, goes into a special account that the legislature has indicated should be appropriated for specific purposes, and he likened the manner in which this fee is dealt with as similar to "the response fund." He also mentioned that the facilitator used in the Neg-Reg process for both the cruise ship regulations and the nontank vessel regulations was Brian Rogers.

REPRESENTATIVE GARA asked Mr. Tillery if he could provide an estimate of the facilitator's cost.

Number 1141

MR. TILLERY asked Representative Gara to refer that question to the Department of Environmental Conservation (DEC) - specifically Gretchen Keiser [Program Manager, Water Discharge Permits & Certification Plan]. In response to further questions regarding having a facilitator during a Neg-Reg process, he said:

I believe that in our situation with the [cruise ship regulations] it was very important. The legislation came out, it was very contentious, and there is always a chance in that situation that you will not be able to achieve consensus because of old animosities or because people get off subject. What a trained facilitator can do is to bring everybody -- in addition to handling a lot of the sort of chores, which is keeping transcripts of the meetings and in keeping updated versions of where the regulations are, but what they can do is keep everybody on track, and they can talk to people who might have differing points of view and bring things together. ... I understand that [in] the view of the people involved in the nontank vessel activities, that that was important. But, again, ... it wasn't used for the charitable gaming [regulations], which also was somewhat contentious but was a slightly smaller problem, and my understanding is that they were successful in that, though I was not directly involved.

REPRESENTATIVE GARA asked Mr. Tillery if, in his experience, there is any danger that negotiated rule making ends up making regulations weaker, in any sense.

MR. TILLERY opined that there is not a significant danger of that; it doesn't make them weaker and it doesn't make them stronger, he added, it makes them better. He reiterated that one of the problems with the regular rule-making process is that "you may have ships passing in the night"; there may be a concern raised by one group that is not addressed by another, and this can lead to a second round of the public notice process, and can lead to the commissioner making decisions without first hearing all the parties address all the issues directly and head-on. He reiterated that all meetings in the Neg-Reg process are public meetings, and opined that the Neg-Reg process tends to make for a better process. He pointed out that the Neg-Reg process occurs in addition to and before the regular Administrative Procedure Act (APA) process. Hence the APA process is much shorter and [more productive] because most of the concerns have already been worked out.

REPRESENTATIVE GARA asked whether parties who participate in the Neg-Reg process are prevented from challenging the resulting regulations.

MR. TILLERY said that legally, parties are not prevented from challenging the resulting regulations even if they initially agreed to them.

Number 1387

CHAIR McGUIRE recalled that the Neg-Reg process proved quite helpful with the mariculture regulations, which was a very contentious issue. At the end of the Neg-Reg process, she remarked, parties came out with a better understanding of each other's positions, which was important for the [end result].

REPRESENTATIVE GRUENBERG turned to AS 44.62.720(a), which contains the phrase, "In making that determination, the agency head is advised to"; he remarked that this is an unusual statutory phrase. He also noted that according to AS 44.62.780, actions taken under AS 44.62.720(a) are not subject to judicial review. He asked Mr. Tillery if the term, "is advised to" carries any more weight with administrative agencies than the term, "may".

MR. TILLERY said that to him, the two terms are pretty similar in that they are discretionary rather than mandatory. He relayed that in the cruise ship Neg-Reg process, the commissioner did consider all the items listed in AS 44.62.720(a).

REPRESENTATIVE GRUENBERG turned attention to AS 44.62.720(a)(7), which read, "the agency head, to the maximum extent possible consistent with the legal or other obligations of the agency, will use the consensus of the committee as the basis for the regulation proposed by the agency under AS 44.62.010 - 44.62.320." He asked whether the term "will use" is synonymous with "must" or is merely an aspiration.

CHAIR McGUIRE surmised that in that paragraph, the phrase, "to the maximum extent possible consistent with the legal or other obligations of the agency" acts as a qualifier.

REPRESENTATIVE GRUENBERG turned to language in statute that pertains to the negotiated regulation making committee assisting the agency head in making decisions. He asked how much the agency head must follow what that committee says.

MR. TILLERY said that although the agency head is not bound to follow the recommendations of the committee, as a practical matter it would be very unusual if those recommendations were not followed as much as possible. He recalled that during the cruise ship Neg-Reg process, there was only one instance in which the commissioner did not follow the committee's recommendations. In that instance, it was anticipated that after the Neg-Reg process, certain regulations were going to be approved via a different [ongoing] process, and so the committee was warned that those forthcoming regulations would substitute the committee's recommendations for that particular issue.

Number 1686

REPRESENTATIVE GRUENBERG turned to AS 44.62.780, which in part reads:

An agency action relating to establishing, assisting, or terminating a negotiated regulation making committee under AS 44.62.710 - 44.62.800 is not subject to judicial review. Nothing in this section bars judicial review if the judicial review is otherwise provided [for] by law.

REPRESENTATIVE GRUENBERG asked whether an agency head's decision to disregard the committee's report is judicially reviewable.

MR. TILLERY said that as far as that particular action is concerned, there is nothing to review. All that can be reviewed judicially are the regulations themselves, and those would be reviewed under the APA.

REPRESENTATIVE GRUENBERG surmised, then, that the process of disregarding or adopting is in itself not judicially reviewable; rather, only the content of the regulation [is judicially reviewable].

MR. TILLERY said that is correct, and explained that as a practical matter, the agency has the discretion to disregard even a consensus recommendation if necessary. He reminded members that when these regulations come out of the committee, they go before the public again and there can be changes made during that APA process.

CHAIR McGUIRE pointed out that if the regulations are under review, a provision of law specifies that greater deference can't be given by the court.

REPRESENTATIVE GRUENBERG turned to AS 44.62.730 and 44.62.760, which refer to a convener and a facilitator respectively. He relayed his understanding that a convener is one who establishes a committee, while a facilitator is more like a moderator or mediator. He asked whether his understanding is correct.

MR. TILLERY agreed and pointed out that the convener isn't particularly necessary, although the facilitator is the key individual. He relayed that in the cruise ship Neg-Reg process, the commissioner acted as the convener.

Number 1830

REPRESENTATIVE GRUENBERG directed attention to AS 44.62.750(c) and surmised that the adoption of the procedures don't have to be by regulation and isn't judicially reviewable. He further surmised that the negotiated rule-making committee may use informal procedures for the method of adopting the procedures of the committee.

MR. TILLERY confirmed those points.

REPRESENTATIVE GRUENBERG returned to AS 44.62.780, which contains the following sentence: "Nothing in this section bars judicial review if the judicial review is otherwise provided by law". He inquired as to the meaning of "otherwise provided by law".

MR. TILLERY explained that if there is another provision in statute that allows judicial review of regulations, it may be done. In this case, [the language] is directly aimed at the judicial review provisions for the adoption of regulations under the APA. In response to further questions, he said that the judicial review procedures of the APA apply to regulations coming out of the APA, and the procedure [proposed in HB 34] leads into the APA. Thus the regulations developed under the Neg-Reg process ultimately go through the APA under which the judicial review procedures fall.

REPRESENTATIVE GRUENBERG directed attention to AS 44.62.795 which specifies that records containing proprietary information can be kept confidential. He asked whether the decision to maintain confidentiality on a proprietary basis is judicially reviewable.

MR. TILLERY opined that it would be, and noted that this issue has come up many times with regard to public record requests. He noted that this is a well-recognized exception. Mr. Tillery specified that he believes that it would be judicially reviewable, however he is unsure as to whether the department would've received the records under promise of confidentiality. He elaborated, "Typically we would say, 'We believe they're confidential, we will take a position that they're confidential, but a court may rule otherwise.'"

REPRESENTATIVE GRUENBERG clarified that he was simply interested in whether the court had jurisdiction to consider the issue.

MR. TILLERY said that it would under the Public Records Act.

Number 1982

JEANNETTE JAMES, Former Representative, Alaska State Legislature, speaking as the sponsor of SCS CSHB 264(STA), which passed in 1998, said that it is important to extend the original legislation into the future [via HB 34]. She said that she has found that specific regulations targeting a select group or objective can be troublesome because often those writing the regulations aren't familiar with how the regulations will

actually impact people. Therefore, she opined, it's important and appropriate to have [the Neg-Reg process] available and outlined in statute. She informed the committee that she obtained the idea from the federal government and some other states that were doing this. And although the Neg-Reg process requires a bit more work upfront, she predicted that the savings would roll forward because of the lack of lawsuits and other things that usually ensue because of regulations. [The Neg-Reg process] is cheaper in the long run and it's more compatible with both the government and the public, she concluded.

CHAIR McGUIRE thanked Ms. James for her hard work on this issue. She opined that the idea behind the Neg-Reg process is to bring the public, the very people impacted by regulations, to the process.

REPRESENTATIVE HOLM commented that the Neg-Reg process is just another tool that allows the state to negotiate in the best interest of the state.

Number 2116

MARGARET KING, Program Manager, Resource Solutions, University of Alaska, explained that the Resource Solutions program focuses on training, research, and community services advancing collaborative approaches to public decision-making. She agreed that [the Neg-Reg process] is another tool. Ms. King turned to the earlier conversation with regard to facilitators. She relayed that she has found facilitators to be effective, whether they are contracted by an agency or are already public employees with facilitating skills.

Number 2173

CHAIR McGUIRE closed public testimony.

REPRESENTATIVE GRUENBERG noted that there were other things included in the [original] legislation that were merely conforming. For example, Section 3 added another paragraph - (38) - to AS 36.30.850(b); this paragraph would exempt from the State Procurement Code contracts for a convener or a facilitator related to the Neg-Reg process. He asked whether there are any other paid employees or contractors who should be considered exempt from the procurement code.

MR. TILLERY, drawing on his experience, relayed that the facilitator and the facilitator's staff were the only people

used. He mentioned that at some point, "an expert" might be called upon to assist, but that expert would typically be someone already on the committee. Mr. Tillery said he didn't believe it would be much of an issue as long as the committee was well chosen.

REPRESENTATIVE GRUENBERG pointed out that there was a similar conforming amendment to the State Personnel Act. He asked whether the exemption from the State Personnel Act would need to extend to anyone other than conveners or facilitators.

MR. TILLERY said that based on his experience, he couldn't think of anyone else.

REPRESENTATIVE GRUENBERG noted that Section 1 of HB 34 contains legislative intent language. He noted that normally he isn't a fan of legislative intent language and that, furthermore, simply repealing a sunset clause, as HB 34 does, is obvious and wouldn't require that language. He asked if there is a legal reason why Section 1 is necessary.

MR. TILLERY said he wasn't sure why the legislative intent language was included. He remarked that normally, it is not necessary, and agreed with Representative Gruenberg that the intent of HB 34 is fairly clear. However, he said he recalled case law supporting the need to be specific when repealing sunsets, and offered to get back to the committee on that issue. Mr. Tillery said he saw no harm in leaving the intent language in HB 34.

MS. COTTING recalled that in her conversation with the bill's drafter, she'd requested that the repeal of Sections 6, 7, and 9 of [SCS CSHB 264(STA)] be made very clear.

REPRESENTATIVE GRUENBERG opined that the intent of HB 34 is crystal clear, [especially] given the legislative history. Therefore, he said he didn't see the need for the intent language.

**TAPE 03-23, SIDE B**

Number 2382

REPRESENTATIVE HOLM expressed a preference for leaving the intent language in.

REPRESENTATIVE GARA said that the policy behind the legislation seems fine. However, he said he has concern with forwarding

legislation for which there hasn't been much discussion of its real world application, adding that it seems that [the Neg-Reg process] is used frequently by the resource agencies. Therefore, he expressed the desire to hear more testimony with regard to how the [original] legislation has worked over the last four years. He noted that his discomfort is further compounded because this is the only committee of referral for HB 34.

REPRESENTATIVE GARA also remarked that the fiscal notes don't appear to be accurate because it seems that HB 34 will cost a certain amount of money. The legislation provides that a facilitator may be used and, in fact, facilitators are used. The one facilitator about which the committee heard is a private facilitator whose services cost money. Representative Gara said he would prefer to see an accurate fiscal note before reporting HB 34 from committee.

REPRESENTATIVE SAMUELS relayed that he was comfortable with [HB 34]. With regard to the fiscal notes, he surmised that if funds for facilitators are already incorporated into the budget, the zero fiscal note is correct because [the Neg-Reg process] is already being done now; thus, there would be no additional costs for continuing to do it, but there would be positive revenue if it was discontinued. Representative Samuels said that if everyone is at the [negotiating] table [at the beginning], it would save money in lawsuits. He concluded by saying, "I'm all for it."

REPRESENTATIVE ANDERSON echoed Representative Samuels's comments. He remarked that [the original legislation] experienced bipartisan support. With regard to Representative Gara's questions, Representative Anderson asked why Representative Gara didn't contact those agencies involved. Representative Anderson pondered how many meetings Representative Gara would want to have to get his questions answered.

Number 2207

REPRESENTATIVE GARA pointed out that legislation is supposed to receive public hearings, not hearings behind closed doors. The public is supposed to understand and hear the merits and demerits of legislation. Therefore, he said he would rather have a public hearing versus a private hearing because that is part of the public process. Representative Gara remarked that when a representative receives legislation, it is fair for that

representative to assume that there will be adequate public comment. Representative Gara said that he didn't feel that there was adequate public comment [for HB 34]. He said that he would be more comfortable if HB 34 had another committee of referral. He noted that it's unique for legislation to receive only one committee of referral. He indicated that he is willing to ask for additional public testimony whenever he believes it's necessary.

CHAIR MCGUIRE noted that she does her best to ensure that this committee has full and adequate public hearings on all legislation. She said that she could line up folks from various groups that have benefited from [the Neg-Reg process]. She highlighted that the most important thing about HB 34 is that it's optional. Furthermore, nothing in HB 34 negates an agency's responsibility in terms of oversight. An agency can decide to use or not use this process and if it is used, the agency can disregard a recommendation that the agency deems to be poor or improper. Therefore, she said she believes checks and balances are in place. She said she disagrees with the notion that there hasn't been an adequate public process.

REPRESENTATIVE SAMUELS opined that the [the Neg-Reg process] enhances the public process.

REPRESENTATIVE HOLM pointed out that the APA retains its oversight, and noted that HB 34 merely addresses the sunset provisions, not the merits, of the [original legislation], which received a full public hearing at the time of its passage.

REPRESENTATIVE GARA said that the public process in this committee was fine. He clarified that he wanted to know more about how HB 34 has worked in practice, because the decision today is whether to reauthorize legislation that has been used in the past. Therefore, people will infer from the committee's actions [in passage of HB 34] that this reauthorization occurred due to the [committee's] belief that the original legislation worked well. Hearing one example of how [the Neg-Reg process] worked doesn't provide the committee an adequate basis to determine how well the process has worked over the past four years, he remarked. Therefore, if, as a legislator, he is being asked to forward legislation on the supposition that it has worked well in the past, he expressed the need to know that such is true.

Number 2157

REPRESENTATIVE GARA said he didn't believe he has heard enough information to know that and, furthermore, the next stop for this legislation is the House floor. He noted that he would be more comfortable if HB 34 were to have a referral to the House Resources Standing Committee. He also recalled instances on the House floor of the question being asked regarding how well certain legislation works; the response has been that that work, gathering that information, should've been done in the committee to which the legislation was referred.

CHAIR MCGUIRE posited that the sponsor of HB 34 will be able to provide another practical life example [of how the Neg-Reg process] worked. With regard to Representative Gara's desire for there to be a House Resources Standing Committee referral, she said she presumed that this is connected to the cruise ship example. However, she highlighted the fact that [the Neg-Reg process] can be used as an option for any regulations involving any area of law. Therefore, she said that it makes no sense to her why a referral to the House Resources Standing Committee would be the preference over [any other committee].

REPRESENTATIVE ANDERSON said that he had misunderstood Representative Gara to be questioning the public process. Representative Anderson said that he didn't want legislation to pass from committee when [a member] doesn't feel the legislation has received due public process.

REPRESENTATIVE GARA, in response to the comments by Chair McGuire, explained that he'd mentioned the need for the House Resources Standing Committee referral because of his knowledge that the Department of Natural Resources (DNR), the Alaska Department of Fish & Game (ADF&G), and the DEC issue regulations that might use the law which HB 34 pertains to. With regard to the chair's comment that perhaps HB 34 should have referrals to other committees, he said that maybe it should and that that wouldn't be a reason not to send it to the House Resources Standing Committee. He clarified that his desire is to have HB 34 receive a referral to a committee that has jurisdiction over agencies that use the legislation.

CHAIR MCGUIRE said she believes HB 34 should have come to the House Judiciary Standing Committee. She announced that [HB 34] would pass out of committee.

REPRESENTATIVE GRUENBERG remarked that since HB 34 isn't going to another committee he wanted to return to his earlier issue with the intent language. Noting that he doesn't have a problem

with this particular intent language, he said he is concerned about including intent language when the legislation merely repeals a sunset clause. Representative Gruenberg stressed that as a policy matter, he didn't want to see a lot of intent language clutter up the statutes. Representative Gruenberg said that he wouldn't offer an amendment in committee if Representative Holm and Ms. Cotting would work with him informally and discuss this with the drafter. If it appears that the intent legislation isn't necessary, he desired Representative Holm's commitment to work with him on a floor amendment to delete it.

REPRESENTATIVE HOLM said that would be fine. He reiterated that HB 34 merely addresses sunset provisions.

Number 1742

REPRESENTATIVE SAMUELS moved to report HB 34 out of committee with individual recommendations and the accompanying zero fiscal notes.

REPRESENTATIVE GARA objected.

Number 1731

A roll call vote was taken. Representatives Gruenberg, Anderson, Ogg, Holm, Samuels, and McGuire voted in favor of reporting HB 34 from committee. Representative Gara voted against it. Therefore, HB 34 was reported from the House Judiciary Standing Committee by a vote of 6-1.

#### **ADJOURNMENT**

Number 1717

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:10 p.m.