ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 9, 2003
1:40 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. 249
"An Act relating to actions involving monopolies and restraint of trade; and providing for an effective date."

- MOVED CSHB 249(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 164
"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

- MOVED HB 164 OUT OF COMMITTEE

HOUSE BILL NO. 92
"An Act relating to reports by members of the clergy and custodians of clerical records who have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect."

- MOVED CSHB 92(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 24
"An Act relating to intergovernmental agreements regarding management of fish or game."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 249
SHORT TITLE:RESTRAINT OF TRADE: FEES AND COSTS
SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
04/04/03	0787	(H)	READ THE FIRST TIME - REFERRALS
04/04/03	0787	(H)	JUD
04/09/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 164
SHORT TITLE:CLAIMS BY STATE-EMPLOYED SEAMEN
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0435	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0435	(H)	L&C, JUD, FIN
03/05/03	0435	(H)	FN1: ZERO(ADM)
03/05/03	0435	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/14/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/14/03		(H)	<Bill Hearing Postponed>
03/31/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/31/03		(H)	Moved Out of Committee MINUTE(L&C)
04/02/03	0732	(H)	L&C RPT 1DP 5NR
04/02/03	0732	(H)	DP: ROKEBERG; NR: LYNN, GATTO,
04/02/03	0732	(H)	CRAWFORD, GUTTENBERG, ANDERSON
04/02/03	0733	(H)	FN1: ZERO(ADM)
04/02/03	0733	(H)	FN2: (LWF)
04/02/03		(H)	JUD AT 1:00 PM CAPITOL 120
04/02/03		(H)	Scheduled But Not Heard
04/07/03		(H)	JUD AT 1:00 PM CAPITOL 120
04/07/03		(H)	Heard & Held MINUTE(JUD)
04/09/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 92
SHORT TITLE:CLERGY TO REPORT CHILD ABUSE
SPONSOR(S): REPRESENTATIVE(S)LYNN

Jrn-Date	Jrn-Page		Action
02/12/03	0186	(H)	READ THE FIRST TIME - REFERRALS
02/12/03	0186	(H)	STA, HES
02/19/03	0257	(H)	COSPONSOR(S): KERTTULA
03/06/03		(H)	STA AT 8:00 AM CAPITOL 102
03/06/03		(H)	Heard & Held
03/06/03		(H)	MINUTE(STA)
03/18/03		(H)	STA AT 8:00 AM CAPITOL 102
03/18/03		(H)	Moved CSHB 92(STA) Out of Committee MINUTE(STA)
03/24/03	0622	(H)	JUD REPLACES HES REFERRAL
03/26/03	0633	(H)	STA RPT CS(STA) NT 5DP 1NR 1AM
03/26/03	0633	(H)	DP: GRUENBERG, SEATON, HOLM, LYNN,
03/26/03	0633	(H)	DAHLSTROM; NR: WEYHRAUCH; AM: BERKOWITZ
03/26/03	0633	(H)	FN1: ZERO(HSS)
03/26/03	0633	(H)	FN2: ZERO(LAW)
03/26/03	0633	(H)	REFERRED TO JUDICIARY
04/02/03		(H)	JUD AT 1:00 PM CAPITOL 120
04/02/03		(H)	Heard & Held MINUTE(JUD)
04/07/03		(H)	JUD AT 1:00 PM CAPITOL 120
04/07/03		(H)	<Bill Hearing Postponed to Wed. 4/9/3>
04/09/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JEFFREY M. FELDMAN, Attorney
Feldman & Orlansky
Anchorage, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 249 and responded to questions.

TOM BRIGGS, Director
Marine Operations
Central Office
Alaska Marine Highway System (AMHS)
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 164 and responded to questions.

J. LYNN MELIN, Port Captain
Central Offices
Alaska Marine Highway System
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 164.

JAMES P. JACOBSEN, Attorney at Law,
Beard Stacey Trueb & Jacobsen, LLP
Seattle, Washington
POSITION STATEMENT: Provided comments during discussion of HB 164.

SUSAN COX, Chief Assistant Attorney General
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 164.

KEVIN JARDELL, Assistant Commissioner
Office of the Commissioner
Department of Administration
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 164.

RICHARD BLOCK, Representational Lobbyist
for Christian Science Committee on Publication for Alaska
Anchorage, Alaska
POSITION STATEMENT: Testified during the hearing on HB 92.

FLOYD SMITH, Consultant
Alaska District Council of the Assemblies of God
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 92.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 92.

WILLIAM MOFFATT, Staff
to Representative Bob Lynn
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Provided a comment during the hearing on HB 92.

CHIP WAGONER, Lobbyist
for the Alaska Catholic Conference
Juneau, Alaska
POSITION STATEMENT: Provided a comment during the hearing on HB 92.

JUSTIN ROBERTS, Staff
to Representative Max Gruenberg
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided a comment during the hearing on HB 92.

ACTION NARRATIVE

TAPE 03-34, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:40 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 249 - RESTRAINT OF TRADE: FEES AND COSTS

Number 0043

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 249, "An Act relating to actions involving monopolies and restraint of trade; and providing for an effective date."

CHAIR McGUIRE posited that HB 249 is a clarifying bill. She relayed that Civil Rule 82(a) of the Alaska Rules of Civil Procedure says, "Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule." Thus, she surmised, the philosophy has been that the prevailing party may recover its fees, adding that [HB 249] will make it absolutely clear that this same policy also applies with regard to antitrust cases. She mentioned that the legislature has not yet spoken clearly on this issue; under current statutory language,

there is only reference to successful plaintiff recovery. Therefore, HB 249 is intended to clarify, and state expressly, that the successful antitrust defendant has the right to recover partial attorney fees.

CHAIR McGUIRE noted that the legislature has already spoken similarly in the area of unfair trade practices and consumer protection - specifically in AS 45.50.537(b) - which states in part that, "a prevailing defendant shall be awarded attorney fees and costs as provided by court rule." She pointed out that HB 249 has an immediate effective date, and remarked that although she generally tries to "stay away from immediate effective dates," when clarifying an existing policy she believes it is appropriate to have an [immediate] effective date. "If we are going to speak, we should speak firmly, clearly, and immediately," she added.

Number 0322

JEFFREY M. FELDMAN, Attorney, Feldman & Orlansky, remarked that the legislature, in AS 45.50.576, has already stated that if a plaintiff proves that an antitrust violation is wilful, then that prevailing plaintiff can recover actual attorney fees, rather than just the partial fees that [Rule 82] gives a prevailing party. He opined that a commonsense reading of that statute would lead a person to conclude that the general rules - the ordinary rules of Rule 82 - would apply to either a prevailing plaintiff or a prevailing defendant, and that a plaintiff that proves a wilful violation collects full fees. He noted, however, that the courts are not of one mind on this issue; he said that some judges would read that statute as displacing Rule 82 entirely, concluding that because the statute only awards prevailing plaintiffs fees, it is thereby intended to deprive prevailing defendants of any [attorney fees] reimbursement. He opined that a reading of that statute does not logically lead to such a conclusion.

MR. FELDMAN posited that the purpose of HB 249 is to clarify that in enacting the aforementioned provision giving prevailing plaintiffs full [attorney] fees, the legislature did not intend to strip other prevailing parties of partial fee entitlements. He relayed that he is currently "defending one of the fish processors in the antitrust case that's presently being litigated in Anchorage." He said that "this issue" arose a couple of years ago when the processors prevailed on summary judgment and the trial court gave [his party] a signal that it would likely read the current statute as displacing Rule 82. He

noted that this issue was never resolved because the grant of summary judgment in favor of the processors was reversed on appeal, and so his party has been "sent back for trial." He said that if his party were to ultimately prevail, under the trial court's current reading of the statute, his client would not be entitled to recover any attorney fees. He opined that this would be contrary to what was intended by the statute.

MR. FELDMAN, in closing, said that it is not his intention, in proposing the concept of HB 249, to change the law, but rather to simply clarify [legislative intent] and spare his clients the burden of having to go through another two-year process of appeal.

Number 0625

REPRESENTATIVE GRUENBERG suggested that rather than amend AS 45.50.576 by adding a subsection (c) - as is proposed by HB 249 - it might be better to amend (a)(1) of that statute by adding, after "person", the phrase "the prevailing party shall also be awarded the cost of the suit plus reasonable [attorney] fees according to court rule".

MR. FELDMAN acknowledged that doing such would be an alternate way of approaching "this problem." He mentioned, however, that that would have the effect of "deleting, from [AS 45.50.576], the ... provision that would grant an award of full reasonable fees to prevailing plaintiffs for wilful violations."

REPRESENTATIVE GRUENBERG surmised, then, that the court reads "reasonable [attorney] fees" as "full reasonable [attorney] fees."

MR. FELDMAN indicated that that is correct.

REPRESENTATIVE GRUENBERG asked Mr. Feldman whether it is his intention, with HB 249, to have the courts award full reasonable attorney fees to defendants as well.

MR. FELDMAN said no, just Rule 82 fees.

REPRESENTATIVE GRUENBERG suggested, then, that AS 45.50.576(a)(1) be amended to say, "including full reasonable [attorney] fees". "Let's add the word 'full' in there, so they'll understand what we're doing," he remarked.

MR. FELDMAN said, "That may be granting us more than what I'm asking for."

REPRESENTATIVE GRUENBERG indicated that it would not, and clarified that in addition to the change proposed by HB 249, his latest suggestion would be to also amend AS 45.50.576(a)(1) by adding the word "full" before "reasonable".

MR. FELDMAN, in response, said his only goal is to ensure that a prevailing defendant is given Rule 82 fees.

Number 0847

REPRESENTATIVE GARA opined that [Representative Gruenberg's] suggestion would be creating mischief with the statutes. He elaborated:

> There are a number of provisions where the State of Alaska has decided that certain cases are so important, and the attorney general's office doesn't have the presence to file these cases, that we want to encourage people to be able to find private counsel. And, so, in the consumer protection area, the antitrust area, there are provisions in there that provide for full [attorney] fees in recognition that the State of Alaska doesn't have the presence to take all of these cases that ... people would need them to take. And sometimes we refer to the full [attorney fees] provision as a reasonable [attorney fees] provision in the statute, [and] sometimes we use the word "full".
>
> My worry is, by changing "reasonable" to "full", that might imply, in all the other places in the statutes where we use the term "reasonable", that that doesn't mean full. And the term "reasonable [attorney] fees" has always been interpreted by the court to mean "full" - they understand what it means - I just don't think we need to ... change the wording of the statute at all. This follows the federal antitrust statute, which does the same thing.

REPRESENTATIVE GRUENBERG offered his understanding that at the federal level, since this is the same as federal law, it is interpreted as "full".

REPRESENTATIVE GARA affirmed that. Indicating he'd discussed it earlier that day with Mr. Feldman, he then brought up removing the immediate effective date. Representative Gara said he had no problem with the substance of the bill and was pretty confident that it accurately stated existing law and the way it should have been interpreted by the trial court in this case. He said he wasn't 100 percent comfortable, however, because he hadn't read every single case; he suggested the courts would have more insight in that area. He asked whether adopting the bill without Section 3 would have an impact as this case wends it way through the courts, and whether the courts would look at "our act in clarifying existing law as evidence of the meaning of existing law."

MR. FELDMAN responded that if Section 3 were removed, the consequence for the currently pending Bristol Bay antitrust case would be that the proposed legislation would become effective 90 days after enactment; given how protracted the case has become, it is possible that the bill could be enacted without Section 3 and it still would apply to this case by the time final judgment is entered. He expressed doubt, therefore, that the immediate-effective-date provision controls whether this law is going to apply to this case. He also said he believes the court would still be obliged to consider the enactment "as an indication of how the statute, even before the enactment, should have been considered." He explained:

> If ... the legislature says, "This is a clarification and this is what the prior statute was intended to mean," I would like to think that the court would give that enactment appropriate deference and would weigh it and consider it. Now, courts do lots of things, and ... we'd have to wait and find out. ... I'll be candid and say that part of my motivation for being here is just to avoid the uncertainty and the cost and the delay of running that risk. But ... I understand your concern about it. ... If I thought that this was a substantive change in the law, it would trouble me more. But I really just think ... that it clarifies and makes explicit what I think was obviously intended when the statute was enacted originally.

Number 1128

REPRESENTATIVE GARA said he thought he largely agreed and didn't believe it was a substantive change in the law. However, he acknowledged the need to analyze all the cases in order to be

able to speak for sure. With regard to legislative intent, he offered his belief that this bill is consistent with the intent of the statutes, "even before it gets changed." He informed members that at some point during the hearing he would move to delete Section 3.

REPRESENTATIVE OGG asked whether Mr. Feldman was aware of any antitrust cases in which the defendants prevailed in Alaska under Rule 82, and what the results were.

MR. FELDMAN answered that he knew of no other private case tried under the antitrust statute, and thought this was the first; thus there is no precedent to draw on. He added:

> The trial court actually gave us a ruling ... that said, "I read the statute as precluding Rule 82 fees to prevailing defendants." That issue was part of what was appealed to the supreme court. But because the supreme court ... reversed the grant of summary judgment and sent us back for trial, the supreme court never addressed the issue of whether the trial court was right or wrong on that ruling. But Judge Michalski certainly has told us what his perspective is ... on the issue, and ... I assume he'll give me a fair chance to try and change his mind; if we win, we have that issue presented all over again. But ... he read the statute, and ... I respect him completely. And ... he's entitled to his view. ... I think it does violence to the words in the statute, though, in the intent.

Number 1251

REPRESENTATIVE OGG asked what the argument would be on the other side of the existing case.

MR. FELDMAN replied:

> Well, I know what their argument is because they advanced it ... when we had this issue crop up back in 1999, ... the first time. ... Rule 82 talks about "except as otherwise provided by law. Their view is that when the legislature speaks to [attorney] fees at all, it displaces Rule 82. And the only thing that thereby becomes operative is what the legislature has said, which, I supposed, ... if that were the rule, the legislature ought to keep in mind that if it ever

says anything about [attorney] fees, it ought to make sure it says it completely and entirely, because it's effectively displacing Rule 82.

Now, I'm not sure that that's a sensible reading ... of the law - and of the rule, for that matter - but ... they would say that because the antitrust statute only spoke to full fees for prevailing plaintiffs, it thereby displaced everything else. ... It depends on one's view, I suppose, of the intent of the statute as to whether that's true or not. We couldn't find anything in the history of the statute that supported that [view].

CHAIR McGUIRE asked whether anyone else wished to testify; she then closed public testimony.

REPRESENTATIVE GRUENBERG, noting that [Mr. Feldman] was speaking on behalf of at least one of the defendants, asked whether the plaintiffs had been notified. He recalled that when legislation involves litigation, usually the policy has been to notify everyone.

CHAIR McGUIRE offered her belief that most bills before the House Judiciary Standing Committee affect litigation in some way. She announced that her position is to provide five days' notice on every bill, and that the legislative information offices (LIOs) are available. She said this bill is no different from any other, and that there is no intent to either exclude or include anyone.

MR. FELDMAN added that although he has a role as legal counsel for one of the parties in the case, this is a little outside those activities; he hadn't coordinated with the other defendants and didn't believe the other defendants knew that he'd sought this correction. He remarked, "We handled the appeal back in 1999 and, frankly, it always just kind of stuck in my craw that we were having to litigate that issue." He indicated that after realizing that another way to deal with this was to clarify the law, he'd begun the attempt.

Number 1412

CHAIR McGUIRE announced that the hearing on HB 249 would be recessed in order to take up HB 164. [The hearing on HB 249 was recessed until later in the meeting.]

HB 164 - CLAIMS BY STATE-EMPLOYED SEAMEN

Number 1423

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 164, "An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

Number 1509

TOM BRIGGS, Director, Marine Operations, Central Office, Alaska Marine Highway System (AMHS), Department of Transportation & Public Facilities (DOT&PF), said that the AMHS supports HB 164 because it feels that the bill benefits both the state and state-employed seamen. He offered that the Jones Act is intended to compensate seamen for illness or injury on long voyages away from home, and to protect them from the risk of abandonment. He opined, however, that AMHS employees do not face those same risks, since typical AMHS voyages last only one or two weeks and employees are never too far from home.

MR. BRIGGS remarked HB 164 will have a fiscal impact on the AMHS because there are considerable general fund costs associated with the fact that the Jones Act is the exclusive remedy for AMHS employees. For example, the cost to the AMHS for unearned wages is approximately a quarter of million dollars. He noted that the provision in the union contract that allows for unearned wages to the exclusion of annual leave or sick leave was put there after the Alaska Supreme Court case, Dale Brown v. State & Div. of Marine Highway Systems. He opined that passage of HB 164 will increase the state's chances of being able to successfully negotiate the removal of this unearned wages provision.

MR. BRIGGS pointed out that in 1983, the representative from the Inlandboatmen's Union of the Pacific (IBU) worked very hard, on behalf of state-employed seamen, to get the contract changed to allow for a workers' compensation remedy instead of a Jones Act remedy. On the issue of whether the Jones Act provides a better remedy, he relayed that he has been told of cases in which injured seamen have become destitute while waiting for resolution of their personal injury claims under the Jones Act. He said that the AMHS is satisfied that workers' compensation will adequately address maintenance and cure issues, and

indicated that having a workers' compensation system in place will prevent frivolous lawsuits.

MR. BRIGGS said the AMHS believes that seriously injured employees will have adequate occupational disability coverage via the Public Employees' Retirement System (PERS) and the Supplemental Benefits System (SBS). He mentioned that state-employed seamen are provided with retirement benefits and health care benefits, and opined that those seamen are not typically exposed to hazardous working conditions. He offered his belief that state-employed seamen face risks no greater than those faced by laborers, heavy equipment operators, and public safety personnel employed by the state. He said it is the AMHS's contention that passage of HB 164 will give adequate remedy to its employees, and asked that the bill be passed out of committee.

Number 1784

REPRESENTATIVE GARA said he is troubled by the assertion that AMHS employees file more claims than other classes of state employees, because the statistics provided at the last hearing on HB 164 compared AMHS employees, who almost all do manual labor, with the types of state employees that don't do manual labor. He asked whether there are any statistics comparing AMHS employees with other state employees that do as much manual labor as those in the AMHS.

MR. BRIGGS said he did not have such statistics at this time. In response to further questions, he said that although state employees who do manual labor might have a higher rate of claims than was illustrated in the aforementioned statistics for departments other than the AMHS, he did not think it would be as much as two and three times higher as is the case with the AMHS employees. He mentioned that when a seaman is sick or injured, in addition to paying that person unearned wages, there is also the cost of paying wages - sometimes overtime wages - to a replacement employee and providing transportation to and from the vessel. He said he suspected that if state-employed seamen had to use sick leave when ill rather than receiving unearned wages as they do now, there would be fewer claims filed.

REPRESENTATIVE GARA asked Mr. Briggs whether, if given the time, he could provide a comparison using a group of workers who do manual labor similar to what is performed by state-employed seamen. He added that he would deem such a comparison relevant.

MR. BRIGGS said he could, adding that he might also be able to provide information from the Washington state ferry system.

REPRESENTATIVE GARA, turning to the governor's transmittal letter and its assertion that maritime law generates greater compensation awards, said he is troubled by the idea that they should change the law to reduce the compensation that injured workers get as a way to balance the budget. He asked Mr. Briggs to comment.

MR. BRIGGS said he agreed: "You don't want to balance the budget on the back of the workers." But that's not the intent, he argued. "We believe, and I think this can be substantiated by talking to some of the seamen themselves, that there are instances, more regular instances, where a person is deprived of adequate compensation under the Jones Act remedy than they would have been under the [workers'] compensation," he stated.

REPRESENTATIVE GARA said that according to his understanding, Mr. Tseu, Regional Director, Alaska Region, Inlandboatmen's Union of the Pacific (IBU) expressed concerns about HB 164 when he testified before the House Labor and Commerce Standing Committee.

Number 2016

CHAIR McGUIRE announced that the hearing on HB 164 would be recessed in order to again take up HB 249. [The hearing on HB 164 was recessed until later in the meeting.]

The committee took an at-ease from 2:19 p.m. to 2:20 p.m.

HB 249 - RESTRAINT OF TRADE: FEES AND COSTS

Number 2031

CHAIR McGUIRE announced that the committee would resume the hearing on HOUSE BILL NO. 249, "An Act relating to actions involving monopolies and restraint of trade; and providing for an effective date."

Number 2070

REPRESENTATIVE SAMUELS moved that the committee adopt Amendment 1, which read [original punctuation provided]:

Page 1, Line 9:

Delete "this section"
Insert "AS 45.50.562 - 45.50.570"

REPRESENTATIVE GARA objected for discussion purposes.

CHAIR McGUIRE explained that the purpose of Amendment 1 is to clarify that it's a suit under the [entire applicable] section. The current legislation only references AS 45.50.576, which refers to suits by persons injured and treble damages. Without this amendment, "the meat" of the suit isn't obtained, she remarked.

REPRESENTATIVE GARA withdrew his objection.

Number 2101

There being no further objection, Amendment 1 was adopted.

Number 2117

REPRESENTATIVE SAMUELS moved that the committee adopt Amendment 2, which read [original punctuation provided]:

Page 1, Line 10:
After "costs", Delete "and"
After "costs", Insert "of the suit, including"

REPRESENTATIVE GARA objected in order to read Amendment 2. He then withdrew his objection.

Number 2134

CHAIR McGUIRE noted that there were no further objections. Therefore, Amendment 2 was adopted.

Number 2174

REPRESENTATIVE GARA moved that the committee adopt Amendment 3, which read [original punctuation provided]:

Delete Section 3.

CHAIR McGUIRE objected.

REPRESENTATIVE GARA pointed out that virtually every time legislation impacting legal rights is enacted, it applies to all causes of action that accrue after the date of the act.

Therefore, [new legislation doesn't impact the rules or the outcome of] pending lawsuits. The arguments presented in favor of HB 249 are good ones, he said, adding that he agreed with the substance behind HB 249. Furthermore, he anticipated that the courts will end up agreeing that the state's interpretation is the correct interpretation. He offered his belief that the antitrust case [referred to by Jeffrey M. Feldman in the first part of the meeting] should run its course. He noted that a superior court's ruling on [attorney] fees can be appealed. The Alaska Supreme Court will, he predicted, address the issue of [attorney] fees on appeal, and will likely issue a ruling favoring the defendants in this case. He said he didn't believe the legislature should make it a practice to pass legislation that would impact pending litigation.

REPRESENTATIVE GARA then acknowledged the weakness of his argument: this legislation doesn't change existing law. However, he noted that he isn't the authority on the matter; rather, the supreme court is. Although he said that he hasn't read all of the relevant cases, he did believe that he has an understanding of the intent behind existing law. Again, he relayed his belief that ultimately the [Alaska Supreme Court] will agree that Civil Rule 82(a) of the Alaska Rules of Civil Procedure ("Rule 82") applies when a defendant prevails under antitrust statutes. Representative Gara said he didn't believe it looks good for the legislature to pass legislation that could be perceived as favoring one side in a [pending case] - a very contentious case.

Number 2303

REPRESENTATIVE GARA explained that with the adoption of Amendment 3, the normal effective date provision will apply. Therefore, the legislation will be applicable a certain number of days after passage and will be applicable to all new causes of action. The courts should be left to make the decision, he opined.

REPRESENTATIVE SAMUELS asked whether the elimination of Section 3 would also impact the case.

REPRESENTATIVE GARA said he believes that the courts will always look to legislative history for legislative intent. He indicated that he didn't feel comfortable impacting a pending case.

CHAIR McGUIRE reiterated her earlier statement regarding the need to speak clearly, effectively, and immediately on the subject.

TAPE 03-34, SIDE B
Number 2389

REPRESENTATIVE GRUENBERG relayed his belief that this is a different issue. Putting the effective date aside, the question [the committee wants] to address is another clause, the applicability section, that should be in the legislation. If the legislation is left as it is, Representative Gruenberg said, he thought the legislation would be interpreted as applying to all cases previously, currently, or prospectively. Upon an indication [from Chair McGuire] that such is not the case, Representative Gruenberg said that [the language] is ambiguous. Therefore, the legislation should include an applicability clause regardless of the effective date.

REPRESENTATIVE OGG relayed his belief that [this legislation] is stepping out in such a way that [the legislature] could be perceived as acting as a court. When an act is passed, the court looks for legislative intent from the legislature that passed it. Therefore, the court would be looking back in time, to the legislature that passed the antitrust statute, to try to find legislative intent. Representative Ogg said [it seems] that by looking back in the future and specifying the intent of a past legislature, [this legislature would be] trying to influence something that "we" really don't know. He relayed his belief that this isn't the proper purview for the legislature, to be stepping in [on a current, very heated case]. If the desire really is to clarify the intent of a previous legislature, then an applicability clause is necessary, he opined.

Number 2253

JEFFREY M. FELDMAN, Attorney, Feldman & Orlansky, noted his belief that this legislation is a clarification of current law, not a change in the law. If one believes that this is a clarification, then the question becomes why wouldn't one want it to apply to all cases, including those currently in the system. He said that a prospective effective date is even worse because it suggests that the legislation is changing the law in that this provision will only apply prospectively and thereby imply that something different must be applied in the past.

Therefore, he stressed that he didn't want a prospective effective date.

REPRESENTATIVE HOLM said that although he isn't an attorney, he did know that it's the legislature's job and purview to write law. Furthermore, it's not the legislature's place to allow interpretation by courts to indicate how the legislature writes law. Moreover, no legislature can bind another legislature and thus if a legislature chooses to say that an existing law is inappropriate, it's inherent upon that legislature to change it if the legislature so chooses. He said, "I don't think that we can't make those choices, in good faith." He then said that if this legislature feels that this legislation should be retroactive, then it should be so.

Number 2172

REPRESENTATIVE GARA requested that the committee members place themselves in the shoes of someone involved in a lawsuit that's important to them. He also requested that the members imagine the opposite; a case in which an individual felt that he/she would prevail, and the other side felt the same but went to the legislature and requested clarity of the law such that that side's view was reflected in the law. The latter situation would be troubling, he said. Representative Gara said that it would look poorly upon the legislature to issue a rule that would be applied in a pending lawsuit.

REPRESENTATIVE GARA, after noting his support of the policy, said that the legislature can pass a law and specify that the legislation will clarify the intent behind previous legislation. Because there are rules for interpreting statutes, he said, he wasn't concerned that passing HB 249 would send a message to the courts that the previous law was different. A letter of intent can be included with this legislation to specify that it clarifies the law, and all the comments on the record would support that as well.

CHAIR McGUIRE noted that she respectfully disagreed with Representative Gara. She informed the committee that when someone requests that she introduce legislation, she won't do so if she doesn't think it's the right thing. She relayed her belief that [HB 249] is the right thing because she thinks it is the law and is consistent with Rule 82 and with fairness and equity. Furthermore, if the legislature speaks, she said, it should speak clearly. She said, "My concern is that if you speak halfway, even though you have all kinds of intent and

don't have an immediate effective date, that may be interpreted as saying something as well."

REPRESENTATIVE GRUENBERG asked if the committee wanted to include an applicability clause. He said that it seems that the committee can either choose to make [HB 249] applicable to pending cases or not. However, it seems that if the committee chooses to say nothing and the language remains ambiguous, that may be poor public policy. Representative Gruenberg suggested that the committee address [whether to make HB 249 applicable to pending cases or not].

CHAIR McGUIRE announced that the bill will move out of committee today. She reminded committee members that Amendment 3 is before the committee, and said she is maintaining her objection.

Number 1907

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 3. Representatives Anderson, Ogg, Holm, Samuels, and McGuire voted against it. Therefore, Amendment 3 failed by a vote of 2-5.

Number 1898

REPRESENTATIVE GRUENBERG moved that the committee adopt Conceptual Amendment 4, which would add an applicability clause.

The committee took an at-ease from 2:42 p.m. to 2:43 p.m.

REPRESENTATIVE GRUENBERG specified that conceptually, the applicability clause would say, "This act applies to cases pending at trial or on appeal on the effective date of this act."

CHAIR McGUIRE objected.

Number 1844

A roll call vote was taken. Representative Gruenberg voted in favor of Conceptual Amendment 4. Representatives Anderson, Ogg, Holm, Samuels, Gara, and McGuire voted against it. Therefore, Conceptual Amendment 4 failed by a vote of 1-6.

Number 1835

CHAIR McGUIRE, after remarking that the current title of HB 249 is too broad, made a motion to adopt Amendment 5, which reads [original punctuation provided]:

> Amend title to read:
>
> "An act relating to the award of attorney fees in civil actions brought under monopoly and restraint of trade statutes; and providing for and effective date."

Number 1821

REPRESENTATIVE GRUENBERG objected, and said:

> I think it's still too broad. And I would move the following amendment to ... Amendment [5]. After the word "fees", add the following, "to defendant under court rule". The title would then read: "An act relating to the award of attorney fees" -- I should say, "and costs" - "costs and attorneys fees". I'm going to say, "to the award of costs and attorneys fees to defendants under court rule in civil actions brought under monopoly ..."

CHAIR McGUIRE said: "I have no objection to your friendly amendment. With that, do you maintain your objection to Amendment 5?"

REPRESENTATIVE GRUENBERG said no.

Number 1793

CHAIR McGUIRE asked if there were any further objections to adopting Amendment 5 [as amended]. There being none, Amendment 5 [as amended] was adopted.

Number 1782

REPRESENTATIVE SAMUELS moved to report HB 249, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 249(JUD) was reported from the House Judiciary Standing Committee.

HB 164 - CLAIMS BY STATE-EMPLOYED SEAMEN

Number 1757

CHAIR McGUIRE announced that the committee would resume the hearing on HOUSE BILL NO. 164, "An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

Number 1720

J. LYNN MELIN, Port Captain, Central Offices, Alaska Marine Highway System, Department of Transportation & Public Facilities (DOT&PF), provided the following testimony:

> I have 20 years in the industry, approximately 11 of them offshore, sailing American ships, foreign ports. I'm a graduate of the United States Merchant Marine Academy [USMMA]; I hold an "Unlimited Masters/Oceans license - all tonnage, all oceans." In addition, I have an MBA [Master of Business Administration] from the University of Maryland. ... My purpose is twofold. One as a sailor. And one because of my observations as port captain within [the AMHS]. I've been here three and a half years; every injury and illness report that occurs aboard our vessels crosses my desk, and I read it. I also have some participation in pulling documents together, finding out what the injury was - illness is pretty self-explanatory - and we try to find the bottom line on what happened.
>
> I want to state straight up ... that I am where I am because of the Jones Act. The Jones Act has a definite place in our country. ... It's main intention with regard to personnel, in my opinion, is that it is for seamen who go offshore. If a seaman goes from Baltimore to Poland, or wherever he may go, and he breaks his leg, and he gets off the ship in Poland, it is the obligation of the employer to bring him back to the states. It is also the obligation of the employer to maintain his wages until his articles are closed - that ship returns back to the [U.S.].
>
> I believe that that definition of taking care of seamen is appropriate; I think it's where it's supposed to be. That seaman has no other remedy. His only other remedy, other than the unearned wages or the wages that he earns 'til the ship gets to the U.S.

port, is to sue. The company is not obligated to provide him any type of compensation, any type of sick leave, after that voyage ends. And I think that's where the Jones Act does play a role. What it does is, it gives that seaman the ability to go back to the company and say, "Because you are unseaworthy, because you have had problems with your work environment, you owe my for my broken leg; it was your fault."

Number 1640

And that's where the seaman's remedy is: he sues, he goes to court, he gets his remedy and he gets it up front. The problem with this remedy is that ... he doesn't have any other compensation coming in while the court case is going through the courts. ... He doesn't have any unemployment; he doesn't have any [workers' compensation]. He may have some benefits from a union, but that is not a guarantee. His only compensation comes at the conclusion of that lawsuit, which is why, when you do have injuries that are substantial, that affect the man's or woman's working career, then those lawsuits should be substantial. They should be able to help him get through with his life, especially if his injury was caused by an unseaworthy condition. That is my understanding of the intent of seamen's injuries and illnesses within the Jones Act.

MS. MELIN continued:

Now, within [the AMHS], there ... are other compensations that [AMHS] employees receive. They receive sick leave - they earn it, it's part of ... our contractual obligation - and they also receive unearned wages to the end of the voyage. So if a seamen, in our case, broke a leg on day one of his voyage, he would get wages until the voyage ended - which in most cases in the Southeast are one to two weeks, and they go longer up in the Southwest system - ... [and] because it's a broken leg, he's probably out for five or six weeks or whatever the case may be, he then would be entitled to the sick leave that he has earned as employee to the State of Alaska. The question is, ... then is he entitled to additional compensation by suing the state ... because he broke a

leg [by doing] ... whatever [he was doing when it] happened? ...

The question is: Is it not enough to say that we do take care of our employees, that we do bring sick leave into effect, [that] we do want to bring [workers' compensation] into effect? We have cases within [the AMHS], one in particular, that the gentleman was practically destitute by the time his case closed. ... It took approximately four years for that case to come to a conclusion, and he was doing nothing in the meantime. So, the question is, where is the benefit? I'm not sure that the right to sue the employer is the answer. I think where our thoughts need to be, is, what does the person need - what does the employee need? And [workers' compensation] certainly seems to be able to handle that.

Number 1460

MS. MELIN added:

Now, ... what's the percentage of major injury? There has been one [case] since I've been here - I've been here three and a half years; I do not know where that [case] is. There have been a couple that have been brought up to me in the last ten years. Are they the exception? The answer is yes. Do we have the individuals onboard the ships that have injuries - slips and falls, sprain the wrists - get the flu? Do they need to be entitled to Jones Act compensation? I'm not sure. I think that they can be compensated with sick leave, that they can be compensated with [workers' compensation], and that we should look at it that way.

Seamen who go offshore do not have sick leave. I sailed 11 years offshore. If I broke my leg the day before the ship got back to U.S. port, the next day I was done - I had no compensation coming to me - unless I sued the employer. However, if I was going away for a three-month trip, and I broke my leg on day two, I would be entitled to compensation for the next three months. That would give me time to heal, get back on my feet and get back to work. And that is the intent:

for these people to get up, get going, and get back to work.

Number 1372

JAMES P. JACOBSEN, Attorney at Law, Beard Stacey Trueb & Jacobsen, LLP, offered the following testimony:

I would only make two really very brief points. Number one is [regarding] ... the statistics that Mr. Thompson [Director, Division of Risk Management, Department of Administration] provided to the committee [on 4/7/03]: I think there's been a misunderstanding between the committee and Mr. Thompson on those statistics. If I understood his testimony, there would have been about 340 Jones Act claims in the last two years, and Ms. Cox [Chief Assistant Attorney General, Civil Division (Juneau), Department of Law (DOL)] testified there are about 15 pending suits.

It occurs to me that what Mr. Thompson stated were Jones Act claims were merely reports of accident or injury on the ship, rather than actual claims or cases in which monies were paid to a seaman pursuant to a legal judgment or pursuant to a settlement agreement. I would think that if you focus on the number of claims where there was a settlement agreement assigned or a judgment entered against the state, it occurs to me that you will find that probably the amount of claims is vastly diminished from what was represented in the statistics. And I will also say that the [AMHS] and [Ms. Melin] can testify to this too and confirm this.

The state ferries are covered under the international safety management [ISM] code and they must have a safety management system [SMS] in place. And this system has applied to the ferries for the last three or four years, and it actually requires the reporting of all accidents, or injuries, to the management so that they can look into it and see how those can be avoided in the future. So, whether or not a seaman intends to file a Jones Act claim against his or her employer, they are still required, under the ISM and SMS, to report an accident so that the management can look into it.

Number 1270

MR. JACOBSEN continued:

> The second point was the Director's [Mr. Briggs's] point about paying unearned wages to the end of the voyage. Changing this to workers' [compensation] is not going to change the liability at all to the [AMHS] on that because sick leave is, my understanding is, it's an unfunded obligation in that when a state employee retires, he or she gives up their sick leave compensation. And it's a use-it-or-lose-it [benefit], and, therefore, rather than just paying wages to the end of the voyage under the union contract ..., the [AMHS] will then be paying sick leave for those same days, and so it won't make any difference at all, I don't think, based on my understanding, as to what, ultimately, the [AMHS] will end up paying when a worker has to get off the vessel, whether they're sick or whether they're injured.

REPRESENTATIVE GRUENBERG turned to page 1, line 12, which deletes the phrase "under this section". He said he is reluctant to remove that language. He asked why that language should be eliminated.

Number 1124

SUSAN COX, Chief Assistant Attorney General, Civil Division (Juneau), Department of Law (DOL), offered two explanations for the deletion of that phrase. One, it clarifies that the retentions of immunity in AS 09.50.250(1)-(5) are not the exclusive expressions of immunity in statute. Two, it would preclude someone from making the argument that there is contradictory language elsewhere in statute.

REPRESENTATIVE GARA asked whether the administration would be amenable to an amendment that would allow "both parties" to negotiate workers' compensation into the contract. Under such an amendment, if the parties don't agree to have workers' compensation apply, the Jones Act would still apply.

MS. COX opined that the Alaska Supreme Court case, Dale Brown v. State & div. of Marine Highway Systems, determined that such provisions are void in the face of federal law.

REPRESENTATIVE GARA observed, however, that the Dale Brown decision simply says that absent an expression of legislative intent, the Jones Act applies and that the legislature can change that situation if it so chooses. The legislature, he surmised, could make a statutory change to the effect that workers' compensation laws apply if the parties agree to it.

MS. COX acknowledged that such an option, if placed in AS 09.50.250, might be possible. In response to further questions, she mentioned that although railroad workers throughout the country are ordinarily covered by the Federal Employers' Liability Act (FELA) - which is incorporated by reference into the Jones Act - Alaska Railroad employees are not; instead, the Alaska workers' compensation law covers those employees.

REPRESENTATIVE GARA asked whether there are any other seamen in Alaska who are not subject to the Jones Act.

MS. COX said no; in Alaska, the people who actually qualify as seamen under the Jones Act have only that as their remedy. She mentioned, however, that there are "seamen in other states, who are employed by other states," who have workers' compensation remedies instead of Jones Act remedies.

Number 0565

REPRESENTATIVE GRUENBERG mentioned that there are historical reasons, having to do with protecting wards of the admiralty, for the development of the Jones Act.

MS. COX agreed, but mentioned that the working conditions of state-employed seamen today are quite different, as are their benefits.

REPRESENTATIVE GRUENBERG spoke in favor of the aforementioned suggested amendment regarding allowing parties to negotiate which remedy will apply. He asked whether other states have "allowed this to be the subject of collective bargaining."

MS. COX mentioned that the dissenting opinion in the Dale Brown decision said that the majority had ignored the labor law across the country and that this really was an area in which the unions could collectively bargain. She noted, however, that she did not know whether there were any case citations associated with that dissenting opinion, or whether the subject of the collective bargaining spoken of related to workers' compensation remedies versus Jones Act and other maritime remedies.

REPRESENTATIVE GRUENBERG suggested that perhaps the aforementioned amendment could be crafted to include the phrase, "to the extent allowed by federal law".

MS. COX pointed out, however, that the point of HB 164 is to say, "we're not doing it under vestiges of federal law." Thus, "we'd have to be doing it through the vehicle of AS 09.50.250 in order for this to be operative," she added, because, outside of the state's waiver of sovereign immunity, the state is not allowed to bargain "this kind of substitution" with its unions.

REPRESENTATIVE GRUENBERG surmised, then, that "if we waive sovereign immunity, we could."

MS. COX replied, "That's the theory."

Number 0305

KEVIN JARDELL, Assistant Commissioner, Office of the Commissioner, Department of Administration, said that the administration would be opposed to Representative Gara's suggestion. He said the administration views the decision to have workers' compensation apply to state-employed seamen as a policy call, the same type of policy call made for law enforcement officers who also work in dangerous situations. He added that if workers' compensation is not fairly compensating state employees, then that would be a different policy call and a different bill. He opined, however, that it is the administration's position that employees are "well taken care of and well cared for" under workers' compensation, and is therefore the policy that the administration has elected to pursue. "We think it's better for the vast majority if not all of the employees; we think it's better for [DOT&PF]; we think it's better for the state," he added. He also opined that there is still the question [even with a statutory change] of whether a union can bargain away its members' "rights of litigation."

MR. JARDELL, in response to a question, said that he did not have any case law to support his position on the suggested change; rather, it is just his instinct that the courts would still reject a collective bargaining agreement on this issue. He said it is the administration's strong belief that policy dictates that workers' compensation is the better remedy for the employees.

REPRESENTATIVE GARA indicated that although he respects that the administration is making a policy decision, he can't accept that it is the administration's position to decide which remedy is better for workers. "I'd like to hear from the workers themselves," he qualified. With regard to the issue of whether his suggested change would present a legal problem, he opined:

> If the Alaska Supreme Court says, "The Jones Act can apply," and if the Alaska Supreme Court says, "The workers' [compensation] law can apply," then the Alaska Supreme Court would say that you can come up with a contract that lets either of those laws, that they've said can apply, apply. So, if they've said that either of those can apply, they would respect a contract that picked which one of those laws should apply. There's no doubt in my mind. If you come up with legal precedent to support your position, I'd like to see it, but I just can't accept the legal interpretation that you've [offered as a basis to reject this amendment. If it's researched, I can accept it; if it's instinctive, I can't accept it.] [The preceding bracketed portion was taken from the Gavel to Gavel recording on the Internet.]

TAPE 03-35, SIDE A
Number 0041

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

> - Allow parties to negotiate to be covered by Wkrs comp law. But don't mandate it.
>
> With no agreement, the Jones Act will apply.

Number 0052

CHAIR McGUIRE objected.

MR. JARDELL reiterated that he doesn't know whether the court would view that as an individual right and one that can be waived by the union. He said that "it" causes him concern. He relayed that there are five separate bargaining units that "deal with" seamen. He said, "Bargaining over, 'We will give you 50 more dollars if you waive your rights to Jones Act compensation,' isn't the type of policy call that the administration believes is a good one." He again said that the

administration believes that workers' compensation provides a fair remedy, adding that if such is not the case, either the legislature or the governor should revisit the issue to ensure that it does provide an adequate remedy for all state employees.

REPRESENTATIVE GARA opined that contrary to how such might sound, the latter portion of Mr. Jardell's statement is not really an open invitation to change the current workers' compensation laws. Speaking in favor of Conceptual Amendment 1, he said:

> Here's what I know is clear. If you suffer a substantial injury, you're entitled to full compensation under the Jones Act. If you suffer a substantial injury, you're entitled to partial wage compensation and then very partial compensation for physical injury under the workers' [compensation] statute. That is the reason for the statement by the administration in its letter recommending that we adopt this bill change; it's the reason for their statement that under existing law, the existing law results in ... "significantly greater compensation awards to injured employees." It's just not an issue that's debatable.
>
> That's why many employers like the workers' [compensation] system better, because awards are limited. There are benefits to the workers' [compensation] system; there are detriments to the workers' [compensation] system. The detriment is that your whole body is valued at $170,000 and, depending on whether you've lost 100 percent of your body or just 50 percent or 25 percent, you get a portion of that $177,000 to compensate you for your loss of your ability to fish, your loss of your ability to hike, your loss of your ability to swing a child around, your loss of your ability to do anything with your family. It values all of that, apart from the wage claim and the medical costs claim, all of that at a portion of $170,000.

Number 0365

REPRESENTATIVE GARA added:

> I think there are serious problems with the workers' compensation statute. I think that it is a false

choice to say, "Put workers in the workers' [compensation] statute now, which pays limited compensation, and then later on consider whether or not you want to change it." We know what kind of system this bill is asking us to put workers in. I think it presents problems. I don't want to balance the budget on the backs of workers; I don't want to balance the budget by taking away workers rights to receive full compensation. For now, I ... will entertain comments from the unions that are affected, before this reaches the floor.

But I think it is fair to give people the choice which law they want to apply: the law that saves the state money, which is the workers' [compensation] law - I think we all agree that the workers' [compensation] law would save the state money; that's the reason for the bill - or existing law. Let it be negotiated. We know in the '80s, the workers' [compensation] law was at the point and compensated at a level that unions didn't mind being covered by it. I suspect that the workers' [compensation] law is far less generous today than it was 15 years ago from the perspective of injured workers. They might want to negotiate it into their contracts; they might not.

But I think we should leave it as a matter of free choice. I don't think if workers don't want this law to apply to them, I don't think we should force them to have a law they don't want to apply, to apply. I don't think we should take rights away that workers don't want give up, in order to balance the budget. So, this amendment that I present probably will save the administration money; ... it will in those cases where the workers' [compensation] law is negotiated into a contract. It won't where it's not. But I see this as an issue of fairness and not a way to solve the state's budget woes.

CHAIR McGUIRE relayed that according to conversations she's had with the representative from the Inlandboatmen's Union of the Pacific (IBU), although there is mixed opinion among members of the IBU, "it appears to be the belief of the general population of workers that more of them would benefit under the no-fault-based workers' [compensation] system, whereby you're guaranteed instant compensation for your illness and without a statute of limitations." She reminded members that under the Jones Act, a

seaman must bring a suit, which must find fault, and that there is a statute of limitations. She suggested that while one of the goals of HB 164 is to save money, another goal is to compensate a higher percentage of seamen more certainly.

Number 0572

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Conceptual Amendment 1. Representatives Ogg, Holm, Samuels, and McGuire voted against it. Therefore, Conceptual Amendment 1 failed by a vote of 2-4.

Number 0619

REPRESENTATIVE SAMUELS moved to report HB 164 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 164 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 3:20 p.m. to 4:10 p.m.

HB 92 - CLERGY TO REPORT CHILD ABUSE

Number 0637

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 92, "An Act relating to reports by members of the clergy and custodians of clerical records who have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect." [Before the committee was CSHB 92(STA).]

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for HB 92, Version 23-LS0257\U, Lauterbach, 4/8/03, as a work draft. There being no objection, Version U was before the committee.

Number 0710

RICHARD BLOCK, Representational Lobbyist for Christian Science Committee on Publication for Alaska, told the committee that he is speaking on behalf of those who turn to spiritual prayer for healing. He referred to his previous testimony regarding HB 92, heard by the House State Affairs Standing Committee [on March 6 and 18, 2003], wherein he stated that his organization had no objection to the proposed legislation and understands its purpose, and had asked for and was granted some changes in the

language that recognize that Christian Science practitioners need the same level of protection as ordained clergy because they do take "confidential communications" from those who come for spiritual solace or healing. He added, "And that could include situations where they might disclose the kind of things that the legislature's trying to reach here." He said, "So, we were pretty content with [CSHB 92(STA)]."

MR. BLOCK said that he had not studied Version U until last night. After reading it, he said, he came to the conclusion that the committee is still interested in ensuring that the provisions [in the bill] apply to all faith communities, so that those who entertain confidential communications from the members of that faith community are as protected as those who might speak to a catholic priest, or a minister, or a pastor who is ordained. He noted that a Christian Science practitioner is not ordained and is not selected or engaged in anything that might be termed "ecclesiastical." Thus, he has concern regarding the way the language has developed; he said that it tends to focus on those faith communities that have a more elaborate ecclesiastical, ceremonial, or ritual approach to determining who can speak and pray with those who have the need for it.

Number 0906

MR. BLOCK said that in talking with the staff:

> They use the word in the definition of ... "clergy" - those who are set apart. But I'm not sure that I understand what the meaning of that is. Unfortunately, should this ever reach the level of having to be interpreted by a court, we're left with judicial interpretation and the rules thereof, and I'm afraid that the overabundance of language here that speaks to the more ceremonial and ritual may turn the court away from the fact that, in reality, what the legislature had in mind was making room and recognizing all faith communities that had people within them that wanted to pray for and with those that were in need.

MR. BLOCK said that in keeping with what he believes is the legislature's intent, he would propose some modest changes. He noted that there are two things that [Version U] does differently than CSHB 92(STA). He elaborated:

One is: it really tightens up the circumstances under which the communication is protected. Irrespective of who they're talking to, the communication is protected only if it meets three criteria set out in [proposed AS 47.17.021].

CHAIR McGUIRE indicated to Mr. Block that the committee has formulated amendments to address the issue he is raising.

Number 1027

FLOYD SMITH, Consultant, Alaska District Council of the Assemblies of God, said that his organization could endorse [Version U] as long as committee adopt the same amendments that Mr. Block has proposed.

MR. BLOCK clarified that one of his amendments [which was later referred to as Conceptual Amendment 1] reads [original punctuation provided]:

Page 2, line 14
Delete "in the clergy member's ecclesiastical capacity"

MR. BLOCK opined that the language doesn't add anything, but strengthens the impression that "you have to have some sort of ecclesiastical formal arrangement." He added, "And we're trying to move away from that."

MR. SMITH said, "We could endorse that." He referred to [page 2, beginning on line 15], which read: "if (1) the church qualifies as tax-exempt under 26 U.S.C. 501(c)(3)(Internal Revenue Code)". He told the committee that many of his organization's churches are in villages, are not incorporated, don't have 501(c)(3) status, and "piggyback on the basis of the state." If it is the intent that a church qualify for and receive 501(c)(3) status, he said, there will be problems in the villages. If it instead simply means that the church "could" qualify, then that's okay, he stated.

MR. SMITH referred to the portion of [page 2], line 19, which read: "places the clergy member specifically and strictly". He said his organization would like to see "and strictly" deleted because "it adds nothing to it, and it might be subject to interpretation."

MR. SMITH also noted, in keeping with Mr. Block's comment regarding Christian Science practitioners and the definition of clergy, that many Assembly of God ministers and other evangelical ministers are not ordained; instead, they are licensed. He said he would like the word "licensed" to be used.

Number 1199

CHAIR McGUIRE thanked Mr. Block and Mr. Smith for their testimony. She then announced that public testimony was closed.

REPRESENTATIVE GARA said:

> I think I can speak for most of us if I say that we don't want to create a privilege that is so broad that it would strike out the duty to report child abuse or child neglect. And I applaud the committee members for inserting the term child neglect back into this version of the bill. I believe we should report both child abuse and child neglect; it is that important. We still have a decision to make. I think many of us believe that the confidentiality provision should be written as narrowly as possible. That was the intent of the sponsor when just the sacramental confession was included into the confidentiality provision, but nothing else. But many of us thought, "Well, that is too religion-specific." I applaud [Chair McGuire]. We've all discussed what's probably the most narrowly drawn confidentiality provision in the country, and that's the Idaho version. ... That's the one that is now in this CS.
>
> But, before we discuss which confidentiality provision to accept - and that's what all the amendments relate to, which confidentiality provision to accept - I still am wondering whether or not we should recognize any confidentiality provision. And I guess I want to hear from the members about that. We don't accept one in the case of reporting abuse of elders. Many other states do not accept any privilege by clergy members to refrain from reporting abuse and neglect. And I would like to hear from the other committee members, views on whether that is a proper approach, or whether ... it seems to us that we should adopt a confidentiality provision. So, [it's] that threshold question of whether a confidentiality provision is something that we want or don't want. And I suppose

if the other members believe that we do need a confidentiality provision of some sort, then I don't need to hear from them, but that's my question to the other committee members.

Number 1340

REPRESENTATIVE GRUENBERG stated that he thinks there should be a confidentiality provision. He said that "these are very, very confidential communications," and if a person goes to seek counseling from a clergy person in a confidential setting, "that ought to be respected." He referred to the recent revelations of sexual abuse, and said that to his knowledge, every case was "done outside of the confidences." Referring to the Alaska Rules of Evidence, he noted that "priest penitent," more broadly defined as "confidential communication with a clergy," is very strongly respected. He stated that if the committee adopted some kind of confidentiality provision, he would ask that something similar be put in the elder abuse law.. He relayed that Karleen Jackson, Deputy Commissioner, [Office of the Commissioner], Department of Health & Social Services [DHSS], told him that [the DHSS] wants child abuse and elder abuse to have the same standards regarding [confidentiality provisions].

CHAIR McGUIRE said she has spent much time contemplating this issue. She said she wondered "whether it was fair to the children [who] were being abused." She asked, "Whose rights are we putting first?" She said child abuse is a terrible thing, with lifelong ramifications, and stated her concern that "those abuses will be revealed and nothing will be done about them." Noting that religion is an important part of society and the church is an important part of many people's lives, she stated that criminalizing priests and clergy for doing what they believe is within the cannons of their church is not the goal of the committee.

CHAIR McGUIRE said she would support a very narrow exception, adding that it is her belief that most of what occurs is to be reported by law. She said she would encourage members of the clergy to advise their parishioners who are abusing children to seek help and report it to the civil authorities.

REPRESENTATIVE SAMUELS said he agreed that it doesn't do any good [for the legislature] to put into law that they report, if they're not going to report because of their cannons and beliefs. He said that he would hate to criminalize somebody whose job is to help people. He continued as follows:

And I would also echo what [Chair McGuire] said on ... "very narrow." Just because you're a catholic priest doesn't mean, when somebody tells you something, that it's in confession, or just because you are a minister does not mean that it is confidential. There's got to be a pretty bright line .... So, I would support having the exemption.

Number 1642

REPRESENTATIVE GARA stated that it was also a very difficult issue for him. He added:

> The bill that came to this committee included a provision that would have allowed many instances of child abuse not to be reported. I think we've done a good job in limiting the circumstances where ... that would happen.

REPRESENTATIVE HOLM stated, "The bill we're talking about here is not in place." He said he is looking at ten amendments which would change the bill considerably. He suggested taking up the amendments before debating the bill.

CHAIR McGUIRE said she had been allowing some latitude for members to speak to the broader philosophical question regarding whether any exemption should be provided. She said, "This bill would clearly do that, and the amendments would clarify that particular choice."

REPRESENTATIVE HOLM stated that he does not agree with Representative Gara's assessment that reporting neglect is a simple and easy thing to put in the bill, adding that he has objection to such a provision. He said that until the amendments are in place, it is difficult for him to make an assessment of the bill.

REPRESENTATIVE OGG said he believed the question that Representative Gara asked was whether to favor no restrictions or favor strict confidentiality. He stated that he favors "a strict statement of what confidentiality is."

REPRESENTATIVE GRUENBERG mentioned that although he'd had specific amendments prepared affecting Sections 2 and 3, he has decided not to offer those specific amendments. On the issue of reporting neglect, he said that although the House State Affairs

Standing Committee eliminated the reporting of neglect, he has since decided that he does want neglect to be reported.

Number 1882

CHAIR McGUIRE noted that Representative Holm had been absent at the time the committee discussed the issue of reinserting the reporting of neglect. She indicated that because of testimony provided by the Division of Family & Youth Services (DFYS), the Alaska Catholic Conference, and the sponsor at the prior hearing, the committee had agreed to reinsert the reporting of neglect. She added, "It was in the elder abuse statute, [and] it's the right thing to do."

REPRESENTATIVE HOLM indicated that his problem with requiring the reporting of neglect is that the term is subjective. He noted that there are two definitions of neglect: one is in the Child In Need Of Aid (CINA) regulations, and the other is in state law. He stated his understanding that the two are not the same, adding that the CINA definition is stricter.

REPRESENTATIVE HOLM continued:

> But my point is ... that the problem with neglect is it's ... a view of someone who looks at how other folks live and says that they've been neglected or not neglected. Now I'm not promoting any child to be neglected. Lord knows, I grew up in a homestead, where people could have accused my parents of neglecting me, because we didn't have any of the amenities that the people that lived in town did. But what I did have is ... good parenting, and I had love. I had a lot of things that have nothing to do with nice clothes and new shoes and any of those things.
>
> So, I'm a little sensitive to this from a personal standpoint because I want to give pastors and churches the ability to uplift, to bring people up, to elevate them without being penitent, without being accusatory, without feeling as if they're going to have to judge folks, based upon some inappropriate judgment. ... It really has nothing to do with whether or not a person can or cannot be neglectful of their children, but whose making that choice? And to penalize, or to take a member of the clergy, who is a member of the clergy for the purpose of helping ... every person [who] comes to them, regardless of where they come from, I

think ... it's a bad message. ... I ... think we could probably all agree what child abuse is, but I'm not sure you can use the word "neglect" because neglect's too soft a word for me.

Number 2049

Neglect means that what? Maybe the mother left the child in the car and went out and got drunk - good case for neglect. [Maybe] she ... left the car and ... went in to get ... milk. Is that neglect? Well, you could make the case it's neglect if, in fact, somebody broke into the car and hurt the child. You could make the case if she left the child in the car and it was 100 [degrees] above [zero]. ... But I don't think neglect is as firm a word or as good a word to use, even though it's in law.

... We can write them down in a book, but that doesn't mean the pastor who is sitting in the church reads the law book. ... They only know neglect based upon their history; they don't [know] what neglect is based upon you and I sitting here ... telling them neglect means such and such. So I think it's so nebulous of an area that it's just tough for me to buy, ... putting it into law like this. ... I think it's one of those words that can be misused by overzealous members of [the DHSS].

REPRESENTATIVE GRUENBERG responded, "That was the thinking that carried the day in the [House] State Affairs Committee." He stated, "I have changed my position since then."

CHAIR McGUIRE told Representative Holm that she appreciates what he is saying, but said, "On this one, I err on the side of the child."

Number 2142

CHAIR McGUIRE moved to adopt [Conceptual] Amendment 1 [text provided previously].

REPRESENTATIVE GARA stated that he would object to each one of [the amendments] so that he could read them in context with the bill.

REPRESENTATIVE BOB LYNN, Alaska State Legislature, sponsor, said that he has no objection to [Conceptual] Amendment 1.

REPRESENTATIVE GARA noted that the bill [with Conceptual Amendment 1] would read as follows [on page 2, line 14]:

> confidential communication made to the clergy member in the course of discipline enjoined by the church

REPRESENTATIVE GARA asked for the definition of "in the course of discipline enjoined by the church".

REPRESENTATIVE GRUENBERG said that "discipline" is in the course of their official function"; however, he stated that he is not sure of the meaning of the word "enjoined".

CHAIR McGUIRE noted that "this was taken from Idaho."

REPRESENTATIVE GARA asked what is wrong with "ecclesiastical capacity". He asked if the concern is that it only applies to religions that believe in a god.

REPRESENTATIVE GRUENBERG asked Mr. Block to clarify the issue.

MR. BLOCK reiterated his point that the term ["ecclesiastical capacity"] tends to connote a more ritualistic, ceremonial, or organized form of ordination. He said that his suggestion had been to remove the abundance of language in the Idaho version that would tend towards the more ceremonial and ritualistic circumstance, and make it more open.

REPRESENTATIVE GRUENBERG said, "That was persuasive to me at the time and it is now."

REPRESENTATIVE LYNN said that [his staff] has just informed him that the word "ecclesiastical" is the Latin word for "church."

WILLIAM MOFFATT, Staff to Representative Bob Lynn, Alaska State Legislature, said removing that word would be fine.

REPRESENTATIVE HOLM said, "So we're just getting rid of the word 'ecclesiastical'."

REPRESENTATIVE GARA, in response to a question, said he maintains his objection.

Number 2322

REPRESENTATIVE OGG suggested that the word "ecclesiastical" be replaced by the word "religious" [on page 2, line 14].

CHAIR McGUIRE called it a friendly amendment to [Conceptual Amendment 1]. Thus [Conceptual] Amendment 1 would now read:

Page 2, line 14
Delete "ecclesiastical"
Insert "religious"

CHAIR McGUIRE asked whether there were objections to [Conceptual Amendment 1, as amended].

REPRESENTATIVE GARA said he had no objection.

Number 2340

Therefore, Conceptual Amendment 1, as amended, was adopted.

CHAIR McGUIRE announced that all the amendments would be conceptual so that the drafters could alter them as needed in order to "make this work."

REPRESENTATIVE GRUENBERG, referring to the language on page 2, line 15, said, "I assume that ... means in the course of discipline sanctioned by the church (indisc.)." He suggested replacing "enjoined" with "sanctioned."

Number 2361

CHAIR McGUIRE, in response to Representative Gruenberg, [made a motion to adopt] Conceptual Amendment 2, as follows:

Page 2, line 15
Delete "enjoined"
Insert "sanctioned"

There being no objection, Conceptual Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG referred to Mr. Smith's previously stated suggestion to strike the words "and strictly" [from page 2, line 19].

TAPE 03-35, SIDE B
Number 2380

REPRESENTATIVE GRUENBERG offered Conceptual Amendment 3, to delete the words "and strictly" from page 2, line 19.

REPRESENTATIVES SAMUELS and GARA objected.

CHAIR McGUIRE said she likes "specifically and strictly", because it makes the language clear.

REPRESENTATIVE GARA concurred with Chair McGuire. He elaborated:

> We are trying to keep this confidentiality provision ... as narrow as possible, because I want as much abuse and neglect to be reported as possible, without offending the major tenets of a religion.

REPRESENTATIVE GRUENBERG withdrew Conceptual Amendment 3.

[The next amendment was also given the name, "Conceptual Amendment 3."]

Number 2328

REPRESENTATIVE GRUENBERG [made a motion to adopt Conceptual] Amendment 3, which read [original punctuation provided]:

> At P. 2 ln 20
> Delete "church"
> Insert "religious"

There being no objection, Conceptual Amendment 3 was adopted.

REPRESENTATIVE OGG referred to the previously stated comments [by Mr. Smith], regarding [page 2, beginning on line 15]: "if (1) the church qualifies as tax-exempt under 26 U.S.C. 501(c)(3) (Internal Revenue Code)". He suggested inserting "could qualify" instead of "qualifies". He said, "To me, 'qualifies' says you either are qualified or you can, when you use the 'qualifies' term," but acknowledged that others might not have this same understanding.

CHAIR McGUIRE noted, however, that they didn't want everybody using the exemption.

REPRESENTATIVE SAMUELS relayed that he is not familiar with what the qualifications are for that status.

REPRESENTATIVE OGG said that there is a list of qualifications, adding that some organizations which do qualify apply for the status and some don't.

CHAIR McGUIRE suggested using instead the term, "qualifies or [meets] the standards".

REPRESENTATIVE GRUENBERG remarked that using the term "would qualify" would be sufficient.

REPRESENTATIVE HOLM agreed.

Number 2212

REPRESENTATIVE OGG [made a motion to adopt Conceptual Amendment 4]:

> Page 2, line 16
> Delete "qualifies"
> Insert "would qualify"

There being no objection, Conceptual Amendment 4 was adopted.

Number 2199

REPRESENTATIVE GRUENBERG [made a motion to adopt Conceptual] Amendment 5, as follows:

> Page 2, line 28
>
> After "ordained"
> Insert ", licensed,"

There being no objection, Conceptual Amendment 5 was adopted.

REPRESENTATIVE GRUENBERG began discussion of Conceptual Amendment 6, which read [original punctuation provided]:

> Page 2, line 29,
>
> After "the", insert "laws,"
> After "ceremonial, [sic]" insert "or"
> After "ritual" insert "practices"

REPRESENTATIVE GRUENBERG suggested adopting Conceptual Amendment 6 in three parts.

CHAIR McGUIRE pointed out, however, that as a whole, Conceptual Amendment 6 would change the language on line 29 to read: "accordance with the laws, ceremonial or ritual practices, or discipline".

Number 2128

REPRESENTATIVE GRUENBERG [moved to adopt Conceptual Amendment 6 as a whole].

CHAIR McGUIRE objected.

REPRESENTATIVE SAMUELS asked if there would be a problem using the term, "the laws of a religious organization".

REPRESENTATIVE LYNN replied that he did not have a problem with that term, because some churches have what is called "cannon law."

REPRESENTATIVE GRUENBERG added that the Catholic Church has [cannon law] and the Jewish faith has Talmudic law.

REPRESENTATIVE GARA objected to the insertion of the word "practices". He elaborated:

> I think the inclusion of the word "practices" allows us to include somebody as a clergy member who, in the church's day-to-day practice, is somebody who receives confidential communications. That could be somebody who we don't really regard as a clergy member. That could be ... somebody who we regard as just a counselor. I think that threatens to make the people to whom these confidential communications can go to, and the people ... who won't have to report abuse and neglect, too broad. So ... I think that this would allow ... counselors within a religion to refrain from reporting abuse and neglect.

REPRESENTATIVE GRUENBERG pointed out that the phrase is "ceremonial or ritual practices".

CHAIR McGUIRE concurred, adding that "ceremonial or ritual practices" is one concept.

REPRESENTATIVE GARA withdrew his objection.

CHAIR McGUIRE asked whether there were any further objections to Conceptual Amendment 6.

Number 1999

CHIP WAGONER, Lobbyist for the Alaska Catholic Conference, after noting that the Alaska Catholic Conference is made up of the three Roman Catholic bishops of Alaska, opined that a slight drafting error has been made [in Section 3]. He elaborated:

> Clergy members are required to report, under this bill. We want clergy members to be required to report, under this bill. But, if you define clergy member as only those people who hear confessions and/or confidential communications, then those clergy members that don't hear confessions and confidential communications would not be mandatory reporters.

Number 1943

CHAIR McGUIRE surmised, then, that perhaps an amendment defining "clergy" is needed, unless [the committee] wants to leave the [current] definition and delete, from page 2, line 31, "to hear confessions and confidential communications". [The latter concept was later moved as Conceptual Amendment 8.]

REPRESENTATIVE GRUENBERG pointed out, however, that [Conceptual Amendment 7] strikes "and" from line 31 and puts in "or".

Number 1903

CHAIR McGUIRE, turning back to the issue of Amendment 6 and indicating that there was no longer any objection, announced that Conceptual Amendment 6 was adopted.

REPRESENTATIVE GRUENBERG relayed that [Justin Roberts, one of his staff members] has just told him that "this definition is throughout this bill"; therefore, "unless you hear confessions or confidential communications, you won't even have to report."

CHAIR McGUIRE said, "Right; that's why we're going to strike it."

Number 1882

CHAIR McGUIRE [moved to adopt Conceptual Amendment 7], which read [original punctuation provided]:

Page 2, line 31
after "confessions"
Delete "and"
Insert "or"

REPRESENTATIVE GRUENBERG said:

> If we do this, and I don't know if this is where Mr. Wagoner was coming from, but Justin said that what -- there are two things here. One question is who reports. And if clergy people are required to report - clergy members - and we limit it to people who hear confessions ... or confidential communications, then clergy members who don't hear those don't have to report. What we want to do is make everybody report, but only have the people who [hear] confessions or [confidential communications] have the privilege.

CHAIR McGUIRE said, "Absolutely." She surmised, then, that Representative Gruenberg's comment was support for Conceptual Amendment 7 rather than objection to it. She opined that by inserting "or" in place of "and" on line 31, "we are getting at exactly what you said, which is, we are allowing both types in for the privilege, and in for the reporting."

REPRESENTATIVE GRUENBERG said he wasn't sure. He asked Mr. Roberts to speak.

Number 1838

JUSTIN ROBERTS, Staff to Representative Max Gruenberg, Alaska State Legislature, said:

> [If] you don't hear either confessions or confidential communications, then you wouldn't be required to report. So somebody that doesn't hear either ...

REPRESENTATIVE GRUENBERG said, "That's what my concern is."

Number 1830

REPRESENTATIVE GRUENBERG [renewed Chair McGuire's motion to adopt Conceptual Amendment 7].

Number 1827

REPRESENTATIVE GRUENBERG made a motion to adopt the following [which became Conceptual Amendment 8]:

> But then I'll offer another conceptual amendment for the drafters and ... the staff to make certain that, what we want is, everybody reports, but only the people who hear confessions or confidential communications have a privilege.

CHAIR McGUIRE said, "Perfect."

Number 1821

CHAIR McGUIRE asked if there were any objections to Conceptual Amendment [7]. There being no objection, Conceptual Amendment 7 was adopted.

Number 1818

CHAIR McGUIRE asked if there were any objections to Conceptual Amendment 8. There being no objection, Conceptual Amendment 8 was adopted.

MR. BLOCK, in reference to Conceptual Amendment 5, pointed out that he had asked that the word "listed" be used in the definition of a clergy member [on page 2, line 28], because Christian Science practitioners are neither ordained nor licensed. In response to Representatives Gruenberg and Ogg, he clarified that it had been Mr. Smith, not he, who had offered the word "licensed".

CHAIR McGUIRE opined that the term, "set apart" would addresses Mr. Block's concern.

MR. BLOCK responded that if the words "otherwise set apart" were used, [that would be] okay.

Number 1748

CHAIR McGUIRE reminded Mr. Block that public testimony was closed.

REPRESENTATIVE GRUENBERG stated that he wanted the legislative history to reflect that the words, "or set apart" means exactly what Mr. Block has just said.

CHAIR McGUIRE announced that the record is now clear that "or set apart" can include the Christian Science practice of listing clergy.

REPRESENTATIVE GARA stated, "The record is now muddled." He elaborated:

> The questioner actually inserted something that none of us intend and something that some of us do intend. I believe that what we intend to do, and unless I hear any objection, what we mean to do is for this to read, "who has been ordained, licensed, or otherwise set apart".
>
> So, we all mean to insert the word "otherwise" in concept, but we believe it's covered, as written, so we're not going to insert the word. That's what we mean to accept from ...

CHAIR McGUIRE said, "That's right."

REPRESENTATIVE GRUENBERG, at the same time, said, "That's the amendment."

REPRESENTATIVE GARA concluded, "That's what we agree to."

[Although there was no motion to insert either "listed" or "otherwise", the drafters later, at the request of the Chair, inserted the word "listed" into the House Judiciary Standing Committee's final version of the bill as part of Conceptual Amendment 5.]

Number 1699

REPRESENTATIVE GRUENBERG moved to adopt [Conceptual Amendment 9], to be inserted at the end of Section 2, [original punctuation provided]:

> (c) nothing in this section shall prevent a clergy member from reporting an instance of child abuse or neglect.

There being no objection, Conceptual Amendment 9 was adopted.

Number 1678

REPRESENTATIVE GRUENBERG moved that "we do, conceptually, the same thing for the elder abuse law."

REPRESENTATIVE GARA objected.

CHAIR McGUIRE suggested to Representative Gruenberg that he do that in a separate bill.

REPRESENTATIVE Gruenberg said, "That's fine."

REPRESENTATIVE OGG recommended that the committee hold HB 92 over for the purpose of reviewing the drafter's finished product.

CHAIR McGUIRE stated that she would prefer to see the bill moved from committee. She said that the finished product would be brought to members' offices, and offered that if there is a problem, the legislation can either be pulled back into the House Judiciary Standing Committee or altered in the House Rules Standing Committee.

Number 1620

REPRESENTATIVE GRUENBERG moved to report the proposed committee substitute (CS) for HB 92, Version 23-LS0257, Lauterbach, 4/8/03, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 92(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 1597

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:10 p.m.