ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 16, 2003
8:15 a.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

CS FOR SENATE BILL NO. 45(JUD)
"An Act relating to the Legislative Budget and Audit Committee."

- MOVED HCS CSSB 45(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 102
"An Act relating to concealed deadly weapons."

- HEARD AND HELD

HOUSE BILL NO. 245
"An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: SB 45
SHORT TITLE:LB&A CRIMES AND COOPERATION
SPONSOR(S): SENATOR(S) GREEN

Jrn-Date	Jrn-Page		Action
01/29/03	0075	(S)	READ THE FIRST TIME - REFERRALS
01/29/03	0075	(S)	JUD, FIN
03/12/03		(S)	JUD AT 1:30 PM BELTZ 211
03/12/03		(S)	Heard & Held MINUTE(JUD)
03/19/03		(S)	JUD AT 1:30 PM BELTZ 211
03/19/03		(S)	Moved CSSB 45(JUD) Out of Committee MINUTE(JUD)
03/24/03	0570	(S)	JUD RPT CS 2DP 2NR SAME TITLE
03/24/03	0570	(S)	DP: SEEKINS, THERRIAULT;
03/24/03	0570	(S)	NR: ELLIS, FRENCH
03/24/03	0570	(S)	FN1: ZERO(ADM); FN2: ZERO(LAW)
03/26/03	0595	(S)	FIN REFERRAL WAIVED
03/28/03	0614	(S)	RULES TO CALENDAR 3/28/2003
03/28/03	0614	(S)	READ THE SECOND TIME
03/28/03	0615	(S)	JUD CS ADOPTED UNAN CONSENT
03/28/03	0615	(S)	ADVANCED TO THIRD READING 3/31 CALENDAR
03/31/03	0644	(S)	READ THE THIRD TIME CSSB 45(JUD)
03/31/03	0644	(S)	RETURN TO SECOND FOR AM 1 UNAN CONSENT
03/31/03	0644	(S)	AM NO 1 OFFERED BY FRENCH
03/31/03	0644	(S)	AM 1 DIVIDED
03/31/03	0645	(S)	AM NO 1A FAILED Y7 N10 E3
03/31/03	0645	(S)	AM NO 1B FAILED Y7 N10 E3
03/31/03	0645	(S)	AUTOMATICALLY IN THIRD READING
03/31/03	0646	(S)	PASSED Y12 N5 E3
03/31/03	0646	(S)	FRENCH NOTICE OF RECONSIDERATION
04/02/03	0669	(S)	RECONSIDERATION NOT TAKEN UP
04/02/03	0671	(S)	TRANSMITTED TO (H)
04/02/03	0671	(S)	VERSION: CSSB 45(JUD)
04/04/03	0759	(H)	READ THE FIRST TIME - REFERRALS
04/04/03	0759	(H)	JUD, FIN
04/07/03		(H)	JUD AT 1:00 PM CAPITOL 120
04/07/03		(H)	<Bill Hearing Postponed>
04/16/03		(H)	JUD AT 8:00 AM CAPITOL 120

BILL: HB 102
SHORT TITLE:CONCEALED DEADLY WEAPONS LEGAL

SPONSOR(S): REPRESENTATIVE(S)CROFT

Jrn-Date	Jrn-Page		Action
02/14/03	0215	(H)	READ THE FIRST TIME - REFERRALS
02/14/03	0215	(H)	STA, JUD
02/19/03	0257	(H)	COSPONSOR(S): GATTO
03/13/03		(H)	STA AT 8:00 AM CAPITOL 102
03/13/03		(H)	Scheduled But Not Heard
03/27/03		(H)	STA AT 8:00 AM CAPITOL 102
03/27/03		(H)	Heard & Held
03/27/03		(H)	MINUTE(STA)
03/28/03	0688	(H)	COSPONSOR(S): ANDERSON
04/07/03	0830	(H)	COSPONSOR(S): DAHLSTROM, KOTT
04/08/03		(H)	STA AT 8:00 AM CAPITOL 102
04/08/03		(H)	Heard & Held MINUTE(STA)
04/10/03		(H)	STA AT 9:00 AM CAPITOL 102
04/10/03		(H)	Moved CSHB 102(STA) Out of Committee -- Time Change -- MINUTE(STA)
04/14/03	0960	(H)	STA RPT CS(STA) 3DP 3NR
04/14/03	0960	(H)	DP: GRUENBERG, DAHLSTROM, HOLM;
04/14/03	0960	(H)	NR: SEATON, BERKOWITZ, WEYHRAUCH
04/14/03	0960	(H)	FN1: ZERO(LAW)
04/14/03	0977	(H)	COSPONSOR(S): HOLM, SEATON
04/16/03	1017	(H)	COSPONSOR(S): SAMUELS, MASEK
04/16/03		(H)	JUD AT 8:00 AM CAPITOL 120

WITNESS REGISTER

SENATOR LYDA GREEN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 45.

PAT DAVIDSON, Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of SB 45 by responding to questions.

STEPHEN BRANCHFLOWER, Director
Office of Victims' Rights (OVR)

Alaska State Legislature
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 45, suggested changes and responded to questions.

REPRESENTATIVE ERIC CROFT
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 102.

BRIAN JUDY, Alaska State Liaison
Institute for Legislative Action
National Rifle Association of America (NRA)
Sacramento, California
POSITION STATEMENT: Testified in support of HB 102.

ACTION NARRATIVE

TAPE 03-40, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 8:15 a.m. Representatives McGuire, Ogg, Samuels, Gara, and Gruenberg were present at the call to order. Representatives Anderson and Holm arrived as the meeting was in progress.

SB 45 - LB&A CRIMES AND COOPERATION

Number 0039

CHAIR McGUIRE announced that the first order of business would be CS FOR SENATE BILL NO. 45(JUD), "An Act relating to the Legislative Budget and Audit Committee."

Number 0044

SENATOR LYDA GREEN, Alaska State Legislature, sponsor, noted that current law provides that the Legislative Budget and Audit Committee has the power to require all state officials and agencies of state government to give full cooperation to the Legislative Budget and Audit Committee or its staff in assembling and furnishing requested information. Unfortunately, the current law is unenforceable, she opined, because it lacks penalties for those who are uncooperative or who seek to undermine the work of the Legislative Budget and Audit Committee. Therefore, the purpose of SB 45 is to provide

prosecutors with the necessary tools to deter and punish those who hinder the investigative work of the Legislative Budget and Audit Committee. The proposed legislation also clarifies the process by which privilege is claimed and the process by which it is determined, she added.

SENATOR GREEN posited that when the legislature created the Legislative Budget and Audit Committee, it was envisioned that it would have full access to all information necessary to carry out its work. When legislators request reports from or reviews of an agency, it is important for the Legislative Budget and Audit Committee to have all the cooperation it needs. Senate Bill 45 will ensure that this occurs. She noted that there is a proposed House committee substitute (HCS) for members' consideration.

Number 0176

REPRESENTATIVE SAMUELS moved to adopt the proposed HCS for SB 45, Version 23-LS0205\U, Luckhaupt, 4/8/03, as the work draft. There being no objection, Version U was before the committee.

REPRESENTATIVE GARA surmised that SB 45 was engendered by some circumstance wherein "things didn't work out well in the past," and noted that he would like to hear more about that situation. He said that he understands the sponsor's concern and applauds her for trying to do something about it. He mentioned, however, that he has a few concerns with [Version U], and directed attention to the top of page 2, which describes what hindering the Legislative Budget and Audit Committee process would entail. He surmised that one could be convicted of hindering if one either discouraged or prevented another from fully cooperating with the process. He said he is wondering whether the following example would cause someone to be convicted under SB 45:

> Legislative Budget and Audit [Committee] comes to, well, let's just say, Representative Samuels's office. And Representative Samuels is working on 30 different issues and all of them are priorities to him including the Legislative Budget and Audit issue, and so he tells his staff, "Well, there are these three other things that affect school kids, that I have to deal with right now; put the Legislative Budget and Audit thing fifth in line." And it takes an extra week for him to get the information to Legislative Budget and Audit. Has he discouraged or prevented another from giving full cooperation to the legislative auditor?

It seems like full cooperation would mean immediate cooperation, and it seems like he would have committed a crime.

SENATOR GREEN noted that the term "full cooperation " is currently in statute - AS 24.20.201 - regarding the Legislative Budget and Audit Committee; thus that term is merely replicated in Version U. With regard to Representative Gara's example, she suggested that had it referred to a state agency rather than another legislator, it would be more pertinent to the discussion. She opined that the intention is to ensure that requested information is forthcoming, and noted that a failure to provide full cooperation must rise to a certain level in order to be prosecuted. It can't be, "Oh, I think you have hindered me, therefore, ... I'm going to penalize you," she assured members, adding that the requested information, once received, goes through a process.

REPRESENTATIVE GARA remarked that almost all prosecutors prosecute the law blindly; however, since, as in all professions, there is the possibility of there being "one bad apple," it is the legislature's job to ensure that there is no room for abuse in the legislation it passes. The term, "full cooperation", he opined, could leave room for a prosecutor with a politically motivated agenda to abuse the law by portraying a situation such as he used in his example as not providing "full cooperation". He pondered whether changing the term to "good faith cooperation", or something similar, would allay his concern and still achieve the sponsor's goal. He said his concern is that "full cooperation" says that 95 percent cooperation or really-good-but-not-full cooperation would be prosecutable under Version U.

Number 0635

PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, explained that "hindering" as used in the bill refers to a failure to comply with a request from the legislative auditor or the legislative fiscal analyst. The language doesn't refer to either her staff or the fiscal analyst's staff being hindered; if her or her counterpart's staff is hindered, "they move it up the chain of command." Thus, if either the legislative auditor or the legislative fiscal analyst has had to request information from an agency, "it has already gone through the chain of command, and we've already decided that this is critical information to completing an audit" or analysis. She opined that the language in Version

U ensures that at least a couple of internal processes would have already taken place before someone is subject to prosecution and penalties.

REPRESENTATIVE GARA replied:

> I completely understand that [the Division of Legislative Audit] doesn't intend to have this statute enforced abusively, but if we allow the language to allow a future person at [the Division of Legislative Audit] to have the statute enforced abusively, then we've now created mischief in the statutes. So, I understand that you have circumstances in the past that you're trying to address, and that you currently do your job very well, and I think [the Division of Legislative Audit] does a great job; ... I'm just concerned about passing a statute that allows for mischief in the future.

REPRESENTATIVE OGG, turning to Section 2 of Version U, opined that it reads awkwardly, and suggested that it could be clarified a little bit.

Number 0819

STEPHEN BRANCHFLOWER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, referred to Representative Gara's concern regarding "full cooperation", and said that given his background as a prosecutor, he understands completely the concern that someone bent on mischief could cause mischief via the language currently being used. He suggested that one solution would be to change the culpable mental state - page 2, line 1 - from "knowingly" to "intentionally", which, he explained, requires a specific intent and is defined in AS 11.81.900. He acknowledged that another solution would be to do as Representative Gara suggests, change "full cooperation" to "good faith cooperation".

MR. BRANCHFLOWER said that SB 45 is intended to address situations in which a supervisor directs a subordinate to disregard requests from the Legislative Budget and Audit Committee or only provide partial compliance. He elaborated:

> I have seen that in my career, am aware of instances where that has occurred, and, as a result of such an order, information was not provided. It is particularly bad when the person to whom such a

> direction is made is an exempt employee or a partially exempt employee. And, of course, all lawyers within the Department of Law are partially exempt, so those are the people who are oftentimes aware of information that would be of great use to the [Legislative Budget and Audit Committee] or the fiscal analyst.

MR. BRANCHFLOWER noted that the penalty for noncompliance is a class B misdemeanor, and that one of the consequences of being convicted is that the person immediately looses his/her position and is not eligible for rehire. He opined that this consequence provides a great disincentive to violate the statute, and puts teeth into the current statute.

MR. BRANCHFLOWER then addressed Representative Ogg's concern regarding the language on page 2, line 17. He acknowledged that the language is a little cumbersome and indefinite, and that it could probably be smoothed out. He said that the intent of SB 45 is a good one, and that after looking in other areas of statute to find language that would put some teeth into AS 24.20.201, he'd realized that language would have to be tailored to fit the specific situation. In response to a question, he confirmed that he'd looked at the statute pertaining to legislative leadership's subpoena power, but had found that that particular statute alone would not be sufficient.

Number 1076

MR. BRANCHFLOWER said that to his knowledge, the Legislative Budget and Audit Committee has never gone to court to challenge someone's refusal to provide information. Proposed AS 24.20.201(c) will provide a mechanism by which to address claims of privilege. He then mentioned that AS 39.90.140(3), which he called the "whistleblower statute," is also being amended by SB 45, in that the definition of, "matter of public concern" will now include, "interference or any failure to cooperate with an audit or other matter with the authority of the Legislative Budget and Audit Committee". He suggested that this latter change will promote truth telling by employees who "have to make tough decisions when they're told not to cooperate."

REPRESENTATIVE GARA asked what steps, currently, the Legislative Budget and Audit Committee can take to force compliance. He suggested that if it involves a court process, then rather than adding a criminal statute, perhaps that court process could simply be expedited. He also reiterated that he would like to know more about the circumstances which have engendered SB 45.

MS. DAVIDSON explained that for the most part, the Division of Legislative Audit does almost all of its work in the executive and judicial branches of government. An audit process involves interviewing agency people and reviewing records; it is very much an investigative process. She elaborated:

> Typically what happens is, when we are denied information that we know of -- and that's part of this problem: ... if we ask for something and somebody says, "We don't have it," if they're lying to us, we may find it in other ways, but then again we may not. And whether that piece of information is critical to the audit objective, it depends upon what it is. So you'll interview people. If people don't want to talk to you or they don't want to give you the information - [for example] they're claiming it's confidential - ... we move it up the chain of command. There's a discussion; we would involve the Department of Law, saying ..., "Statute requires cooperation and Legislative Audit has access to records whether they're confidential or not." And sometimes they'll listen to the Department of Law, and sometimes they continue to be stubborn.

Number 1263

> The Legislative Budget and Audit Committee actually does have subpoena powers; however, if you're going to go to a subpoena, you have to know what you're looking for. And in an audit process, you can't, oftentimes, specifically identify what it is that you're looking for, because you want to know, "Has 'this' ever happened or has 'that' ever happened." So trying to audit by subpoena would be an enormously difficult process. And that all has to do with whether or not you know that you're being denied.
>
> I think that ... this bill does ... two things. Number one, ... through ... adding ... [that] cooperating with Legislative Audit is part of the whistleblower [statute], it provides comfort for employees to talk to us - talk to us truthfully. The second thing that it does is, it would create a penalty for anybody or their supervisor's trying to hinder that cooperation. And so what it does, as I look at the audit process, is it is going to make it

> more efficient, it's going to make it more streamlined, and I think Mr. Branchflower used the [term] "sentinel effect." It's like, "Yes, it's out there; yes, you're going to cooperate; ... let's get through it."

SENATOR GREEN, with regard to the circumstances that engendered SB 45, said that a friend of hers, whose agency was asked to supply information to the Legislative Budget and Audit Committee, was specifically told by his supervisor to not cooperate. Because this friend was an exempt employee and was putting his credentials on the line for lying, he looked into the current statute to see what sort of protections would be available to him for disobeying that order and what sort of penalties his supervisor would be subject to for giving the order. What he discovered was that he had no protection and his supervisor would not be subject to any penalties.

Number 1384

SENATOR GREEN said that the purpose of SB 45 is to address situations in which somebody, for whatever reason, has decided not to cooperate with the legislative auditor or the legislative fiscal analyst. She offered that if information is being requested, there has already been a considerable amount of discussion to determine that, indeed, that information is critical to a particular investigation. She noted that there have been recent audits involving Medicaid and the Division of Agriculture, and that entities with sunset dates are all audited. These audits provide valuable information that can influence policy decisions and offer insight pertaining to whether an entity's sunset date should be extended.

SENATOR GREEN, in conclusion, said that because the legislature must rely on good, truthful information, the goal of SB 45 is to ensure that people will tell the truth, that they will be forthcoming, and that they won't prevent someone else from providing information.

REPRESENTATIVE GRUENBERG, after mentioning that he has had to use the threat of subpoena to get information from someone in the administration and that perhaps the legislature's subpoena policy should be scrutinized during the interim, agreed that it is essential for the legislature to have everybody's cooperation.

The committee took an at-ease from 8:44 a.m. to 8:47 a.m.

CHAIR McGUIRE closed public testimony on SB 45.

Number 1640

REPRESENTATIVE OGG made a motion to adopt Conceptual Amendment 1: delete from page 2, lines 17-18, the words, "if the information is requested from a department or agency,". There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE OGG asked whether the Legislative Budget and Audit Committee has the ability to grant immunity.

MR. BRANCHFLOWER replied that AS 24.25.070 addresses that issue and says that the legislature can grant immunity. However, if the matter goes to court on the basis of reviewing the assertion of the privilege, then the rules governing the judicial branch of government would apply. He opined that at that point, it might be problematic to grant immunity and thus it would become a question for the Department of Law to address.

REPRESENTATIVE GARA, on the issue of subpoenas, said that he disagrees with the assertion that a subpoena has to specifically ask for a specific document. Historically, subpoenas have been used very effectively to ferret out the truth. One can ask for categories of documents, documents relevant to a subject; one does not have to point out a particular document. He opined that the existing subpoena provision would be a very effective tool if it is used right.

REPRESENTATIVE GARA then turned attention to page 2, line 4. He indicated that in addition to the changes suggested by himself and Mr. Branchflower, there is another issue to consider. He elaborated:

> We need to make sure that legislative audits are also done properly, and historically they have been - and I've actually been very impressed with the work of legislative auditors in the past - but right now you will commit a crime if you don't furnish requested information to the committee or staff. I suppose requested information could be completely irrelevant information if we had a bad legislative auditor or legislative staff member working on a project.
>
> I suppose we could be investigating, for example, an issue of overspending by Representative Samuels's

office, and the requested information could be, "Representative Samuels, please give me every contact you've ever had with a voter over you're last ... twenty years in office." And Representative Samuels would say, "Well gosh, what does that request have to do with your audit?"

And so, I think we probably also have to make sure the requests are proper. And you could probably do that ... by changing "furnishing requested information" to "furnishing relevant requested information". I think we really have to sit down and make sure that we're doing what we intend here, so if we changed it to "furnishing relevant requested information", then that would protect the person [the information is] being requested from. ...

Number 1957

CHAIR McGUIRE surmised, then, that are three possible changes to discuss: Page 2, line 1, change "knowingly" to "intentionally"; page 2, line 3, change "full cooperation" to "good faith cooperation"; page 2, line 4, change "furnishing requested information" to "furnishing relevant requested information".

REPRESENTATIVE HOLM remarked that "relevant" is a subjective term.

MS. DAVIDSON indicated that she had concerns regarding the term "relevant". Most of the debate the Division of Legislative Audit gets into with agencies involves the question of whether the information requested is really needed. Auditing standards require that auditors be in control of the auditing process, and that means that if auditors believe certain information is needed, then they have to be free to ask for it. Therefore, having an agency tell an auditor that the requested information is not relevant is contrary to auditing standards. She noted that the legislative auditor is required to be a CPA; thus audits will be performed in accordance with standards. She opined that adding the term "relevant" will create more difficulties.

MR. BRANCHFLOWER remarked that the term "good faith" is also a subjective term, and counseled against adding the term "relevant".

Number 2127

REPRESENTATIVE GARA made a motion to adopt Amendment 2, on page 2, line 1, change "knowingly" to "intentionally". There being no objection, Amendment 2 was adopted.

Number 2137

REPRESENTATIVE GARA made a motion to adopt Amendment 3, on page 2, line 3, change "full" to "good faith".

Number 2150

CHAIR McGUIRE objected. She said that although she understands Representative Gara's concerns, she believes that in addition to mirroring what is currently in AS 24.20.201, the term "full" more adequately describes what is being sought.

REPRESENTATIVE GARA pointed out that although the term "full cooperation" is used elsewhere, it is not yet a crime to not engage in it. The language in SB 45 would make it a crime if the cooperation is not as full and as prompt as the legislative auditor wants. "Full" is full; "full" is 100 percent, not 95 percent; "full" is immediate; and "full" is sometimes an unreasonable objective, he remarked. "Good faith" has a historical definition; it is a term that is often used and is well defined in the courts, and it is the courts that will be imposing criminal sanctions for noncompliance.

CHAIR McGUIRE opined that changing the mental state from "knowingly" to "intentionally" is sufficient to do what Representative Gara is striving for, which is to ensure that someone doesn't have the deck stacked against him/her.

MR. BRANCHFLOWER agreed that there is a connection between the culpable mental state and the conduct. He said that as a prosecutor, he would first have to be satisfied that there was an intent, a conscious objective, to do any of the things thereafter described, with the goal of obstructing the work of the Legislative Budget and Audit Committee. Inherent in that analysis, he remarked, would be a consideration of the defendant's good faith and so there is a place for a good faith analysis. He also said to keep in mind that if there is a crime, it will be prosecuted by an experienced prosecutor from the Department of Law's Criminal Division, and he/she will be able to identify and distinguish between good faith efforts and bad faith efforts.

Number 2289

MR. BRANCHFLOWER added, "Ultimately, in terms of the jury, that will be a defense; it may not be a legal defense, but it will be a de facto defense in terms of allowing the defense attorney to argue that there was substantial compliance and good faith conduct on the part of the [defendant]". He said that he did not see the term "full cooperation" as being problematic, adding, "We have to defer to the exercise of good judgment on the part of the people who we put in these positions, whether they be someone in Pat Davidson's office or someone in the Criminal Division, to observe good faith conduct and exercise discretion not to prosecute. He predicted that there won't be many prosecutions resulting from this language; essentially, it is a deterrent more than anything else.

CHAIR McGUIRE agreed.

REPRESENTATIVE SAMUELS said that he too objected to Amendment 3.

REPRESENTATIVE GARA said he is not satisfied that changing the mental state to "intentionally" takes care of his concerns. He elaborated:

> If we adopt the bill ... without [Amendment 3], it's a crime to intentionally withhold full cooperation. So, you've been asked for 5,000 documents, you're on the verge of going on a family vacation, you're trying to leave town; to fully cooperate, you should stay in town and produce those 5,000 documents. Now, it would be good faith for you to say ..., "I'll get to it when I get back," but it will be a crime for you to go on vacation, under this statute the way we read it. If we sat here for five hours we could come up with 500 more examples of where we're criminalizing reasonable conduct. So, without the term "good faith", my concern is not satisfied.

TAPE 03-40, SIDE B
Number 2388

CHAIR McGUIRE pointed out that there are multiple steps prior to a situation ever reaching the point where the provisions of SB 45 would apply.

REPRESENTATIVE GRUENBERG indicated that he preferred the term "full cooperation". He asked Mr. Branchflower whether he is

aware of any criminal statute that uses the standard of "good faith".

MR. BRANCHFLOWER said he is not aware of any criminal statutes that have "good faith" as an element of the offense. He offered that perhaps this is because it is just not definable for that purpose.

REPRESENTATIVE GRUENBERG surmised that because it is such a subjective term, it would be a difficult to prosecute somebody if "good faith" were used as a criminal standard.

Number 2256

A roll call vote was taken. Representative Anderson was not present for the vote. Representative Gara voted in favor of Amendment 3. Representatives Ogg, Holm, Samuels, Gruenberg, and McGuire voted against it. Therefore, Amendment 3 failed by a vote of 1-5.

Number 2241

REPRESENTATIVE GARA made a motion to adopt Amendment 4, on page 2, line 4, after "furnishing" insert "relevant".

Number 2239

CHAIR McGUIRE objected.

Number 2215

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

Number 2205

REPRESENTATIVE SAMUELS moved to report the proposed HCS for SB 45, Version 23-LS0205\U, Luckhaupt, 4/8/03, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HCS CSSB 45(JUD) was reported from the House Judiciary Standing Committee.

REPRESENTATIVE OGG complimented Senator Green on her efforts.

HB 102 - CONCEALED DEADLY WEAPONS LEGAL

Number 2179

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 102, "An Act relating to concealed deadly weapons."

Number 2164

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, sponsor, explained that HB 102 would change the concealed carry law to adopt the Vermont style of concealed carry law, which generally repeals the criminal prohibitions. He pointed out that the committee packet should include a document entitled, "How HB 102 Will Affect Alaska's Concealed Carry Laws," which compares the differences between current Alaska law and Alaska law as amended under proposed HB 102.

REPRESENTATIVE CROFT informed the committee that as he and Representative Stoltze wrestled with the issues surrounding reciprocity, the more frustrating and unnecessary Alaska's permitting law seemed. Under the current law, a fisherman who carries a large knife under his/her coat when in town would be carrying a concealed deadly weapon, which is illegal. However, the law includes an exception when one is engaged in recreational activities and thus it would be acceptable for a fisherman to carry a concealed knife on his/her boat. Under current law, permit holders of a concealed deadly weapon have the obligation, when stopped by an officer, to inform the officer that he/she is carrying a concealed weapon. If the office so desires, the permit holder has the obligation to allow that officer to secure the weapon during the conversation. However, the obligation to inform and hand over the concealed weapon is placed only on permit holders. Therefore, if one is out hunting and stopped by an officer, that individual technically has no obligation to inform the officer of [the concealed weapon]. There is a similar exemption if one is on his/her own property.

REPRESENTATIVE CROFT directed attention to page 2 of the document entitled, "How HB 102 Will Affect Alaska's Concealed Carry Laws" in which the following question is posed: "Can I legally carry a sheath knife under my coat?" Under current law, one wouldn't be able to carry a sheath knife under his/her coat, whereas under HB 102, one would be able to carry a sheath knife in such a manner. Moreover, under the current law, those carrying a sheath knife wouldn't be legally obligated to inform

police officers, but under HB 102, they would be required to inform police officers that they are carrying a concealed weapon. This situation, he said, led him to want to place the constitutional right to carry [a concealed weapon] in a more rational system.

REPRESENTATIVE CROFT emphasized that great care has been taken in an attempt to not change the underlying gun law at all. Therefore, HB 102 doesn't make it legal to carry a gun anywhere in which doing so is currently prohibited. The legislation simply erases the distinction between having a permit and not having a permit.

CHAIR McGUIRE offered that if something is legalized, it can then be regulated. She surmised that those committing heinous crimes with guns are doing so with guns that aren't registered. Therefore, any restriction placed on individuals who have decided to register could be categorized as onerous.

Number 1850

BRIAN JUDY, Alaska State Liaison, Institute for Legislative Action, National Rifle Association of America (NRA), began by noting support for HB 102. He said that law-abiding citizens shouldn't have to obtain permission to provide a means of self-protection. Article I, Section 19, of the Alaska State Constitution provides for the individual's right to keep and bear arms. However, Alaska's current concealed weapon permit law essentially places a price on Alaskans' right to keep and bear arms and their natural right to provide a means of self-protection.

MR. JUDY noted that currently, Alaskans don't need to obtain permission to carry arms either loaded or unloaded openly, or concealed when engaged in lawful outdoor activities. If an Alaskan covers the firearm or isn't dressed in a manner that is compatible with open carry or the individual is engaged in any other activity other than a lawful outdoor activity, then one must obtain a concealed weapon permit. He said that it really makes no sense to have to pay a fee, deal with the bureaucracy, be fingerprinted, get the permission of the government, and be included on a list of law-abiding gun owners simply to dress in a certain manner or to carry in a manner different than when carrying openly.

MR. JUDY returned to the notion that [HB 102 proposes] a Vermont style of carrying. Currently, Vermont is the only state that

doesn't require a permit to carry a concealed weapon. Vermont's crime rate is extraordinarily low and ranks either 48th or 49th in all categories of violent crime. The same situation exists in Montana where one only needs a permit to carry if carrying within city limits. Therefore, in 99.8 percent of the state one doesn't need a permit to carry a concealed weapon. Again, Montana is much like Vermont with regard to the lack of incidents of misadventure in the areas outside the city limits. Therefore, he opined, the states with this type of law are working. Also, as pointed out earlier, law-abiding citizens in Alaska are the only ones obtaining permits. Allowing these folks to carry without a permit isn't going to change the fact that these individuals are law-abiding. Criminals currently carry concealed firearms without permits and will continue to do so.

Number 1729

MR. JUDY predicted that the opposition to HB 102 would fall into two general categories. First, there would be individuals who are concerned that allowing people to carry without obtaining a permit will generate problems. This argument was voiced back in 1994 when the original concealed permit law was considered. He asserted that an analysis of Alaskan crime statistics illustrates that violent crime was increasing in the early '90s, but the year after Alaska's concealed weapon permit was adopted, violent crime decreased and has continued to do so since. Therefore, he opined, this proposed legislation would continue the trend of decreasing violent crime.

MR. JUDY said that the other general concern is with regard to training. Under existing law an applicant has to go through a mandatory training course. He reiterated that it makes no sense to restrict this one method of carrying a weapon because any law-abiding citizen can carry openly, loaded or unloaded, anywhere in the state without going through training. He pointed out that of the 43 states that issue permits to law-abiding citizens, there are a wide range of requirements in the area of training. For example, Washington has no training requirement. He asserted that the empirical evidence from all of the states that [issue permits] illustrates the same thing: law-abiding citizens who are carrying firearms, regardless of their level of training, aren't causing problems. He relayed, however, that although the NRA supports training, the NRA believes that it shouldn't be required. He concluded by asking for the committee's support of HB 102.

CHAIR McGUIRE asked why [the NRA doesn't support] a training requirement, which would result in having better trained gun owners.

MR. JUDY, in response, simply reiterated that the NRA believes that the training for firearm owners should be voluntary, and that there is a broad array of training requirements among the states. Concealed weapon permit holders are operating as safely and responsibly in the states requiring no training as in those states requiring extensive training, he posited, again asseting that empirical evidence shows that law-abiding firearm owners take responsible steps.

Number 1521

CHAIR McGUIRE said that she didn't disagree with all of Mr. Judy's comments, although lawmakers do place requirements in statute to ask people to act smarter than they might otherwise act. Such is done in a lot of other areas. She remarked that one might say that [training] laws are written for the minority who aren't smart enough or aware enough to voluntarily obtain training. She raised the issue of Vermont's crime rate.

MR. JUDY said that it varies. For total violent crime, Vermont ranks 49th out of the 50 states. However, the District of Columbia, which has the most restrictive gun laws in the country, ranks number 1 in violent crime. Vermont ranks 48th in murders, 47th in robbery, and 48th in aggravated assault. Alaska falls in the middle to the low end. Mr. Judy highlighted that Vermont, from which Alaska is modeling its legislation, isn't experiencing any crime problem in relation to firearms or otherwise. Therefore, he suggested, Alaska's experience would be similar to that of Vermont if [HB 102 were implemented].

CHAIR McGUIRE offered her belief that Mr. Judy is saying that concern [with regard to weapon permits] is merely a perception. She pondered whether a law on the books actually has any impact as far as behavior is concerned. She also pondered whether the passage of HB 102 would send the message that everyone can carry the weapon of their choice or, instead, will people take it to mean that the same laws in existence now would continue with the exception that obtaining a permit through the government wouldn't be required.

CHAIR MCGUIRE relayed her belief that [requiring permits] doesn't addresses folks who follow rules. She questioned what impact this legislation would have on [those who aren't informed

or don't follow the rules]. And although crime statistics are important, she said, she believes it's dangerous to make assumptions that Alaskan citizens are like Vermont citizens and that concealed carry permit requirements have anything to do with a state's rate of crime. She informed the committee that she has long been a proponent of concealed carry [laws] and she supports Representative Stoltze's legislation; however, HB 102 is a major difference.

Number 1207

MR. JUDY commented that laws are passed and those who tend to comply with laws are the law-abiding citizens. He echoed his earlier statement that law-abiding citizens follow the law and obtain permits, while criminals ignore the law and carry [concealed weapons] without permits. Mr. Judy said that he didn't believe that with [passage of HB 102], more people would carry [concealed weapons]. Based on an individual's circumstances, people determine whether it's necessary for them to carry firearms. With passage of HB 102, he predicted that the only change will be that those who wish to carry won't have to pay a large fee and go through the bureaucracy to exercise that right. Furthermore, he predicted, the "bad guys" are still going to be carrying. Moreover, HB 102 doesn't change the underlying law in that one must still be 21 to carry a concealed weapon and one can't carry in areas where it's currently illegal to do so. Therefore, HB 102 simply removes the [bureaucratic] burden from those law-abiding citizens, he opined.

CHAIR McGUIRE inquired as to why the concept in HB 102 isn't applied to driver's licenses as well. She inquired as to why the government tests drivers and issues a card that has now evolved into more of an identification card.

MR. JUDY answered that keeping and bearing arms is a right, and defending one's self is a natural right, whereas driving a car is a privilege. Furthermore, every time one gets inside a car and turns the key, that individual is operating the vehicle. However, probably 99.9 percent of the time when one exercises his/her fundamental right to keep and bear arms and one's natural right to defend himself or herself, that firearm won't have to be used even though it's being worn. Mr. Judy said that the mere fact that criminals know law-abiding citizens have firearms and have the ability to defend themselves would deter crime. There is a major difference between driving and using a firearm for self-defense, he opined.

CHAIR McGUIRE turned to the area of vocational rights and background checks. She said that she continues to come up against the notion that those who have committed a felony and aren't 21 years of age should know that they can't carry a weapon. However, she pointed out, there are a number of felons who should know that they shouldn't be operating a state-licensed childcare facility, for example, but they still come in and swear that they aren't a felon when in fact they are. More specifically, those who commit a felony in the areas of child abuse or molestation certainly can't be a childcare provider, so why do these individuals apply [to be childcare providers], she asked. The same situation applies for concealed weapons as well, she opined

Number 0873

MR. JUDY offered his belief that right know, there are about 17,000-18,000 permit holders and the number of denials is remarkably low, with only about 17 permits denied each year. He said that he didn't believe that there is a tremendous number of convicted felons who are trying to obtain permits. He pointed out that under state law, a convicted felon is prohibited from owning and possessing a firearm. Therefore, a convicted felon can't even take the first step to carry a firearm, either openly or concealed. Mr. Judy said that he didn't see the [childcare worker] analogy as pertinent nor did he believe there would be a problem should HB 102 become law.

CHAIR McGUIRE explained that her line of questioning was meant to point out that there is a role for the government, although determining that role is often very difficult. She stated:

> We could just set up a stack of statutes and say, "Here's the rules folks," ... and everybody just ought to know it. "Let's not even put in artificial permits and licenses and background things ..., you should just know it." And yet we don't do that. We don't do it for a reason.

CHAIR McGUIRE relayed her belief that there is a precedent, in certain areas, for requiring the government to come in and send a message. She emphasized her belief that it's a constitutional right [to carry and bear arms], but noted that she also believes there is a place for governmental guidelines regarding this issue.

Number 0634

REPRESENTATIVE GARA said he, too, was on the fence with this legislation. He remarked that the statistics would be more persuasive to him if they showed him that after the changes in the laws in Washington, D.C., and Vermont, that those changes caused the state to either become a more a dangerous place or a safer place. He surmised that Washington, D.C., was a dangerous place before and thus it developed a very restrictive gun ownership role. He also surmised that Vermont has historically been a very safe place and thus it developed a very unrestrictive gun role. Representative Gara opined that the aforementioned probably explains the statistics, rather than the laws themselves making the areas safer or more dangerous.

REPRESENTATIVE GARA turned to Chair McGuire's point and agreed that if [currently law] merely regulated good NRA members, then it wouldn't be necessary. The question is what to do about those folks who aren't that bright and who just don't think things through. He asked, "Are we going to start missing people who would otherwise not think about taking a gun safety course or [who would] not be responsible enough to take a gun safety course?"

MR. JUDY reiterated his earlier opinion that there is no difference between states with no training requirement [and those with a training requirement]. For example, Washington has approximately 250,000 licensed permit holders who haven't been required to take a safety course, and there is no problem with permit holders in Washington. With regard to whether the laws of Vermont and Washington, D.C., have an impact on the crime rates, Mr. Judy said he thought Representative Gara raises a good point. He acknowledged that there are probably a lot of demographic differences between Vermont and Washington, D.C., which probably impact the crime rate.

MR. JUDY reiterated his assertion that in the early '90s, Alaska's violent crime rate was on a steep increase and the year after the concealed weapon permit law took affect, the [rate of violent crimes] made a steep decrease. When law-abiding citizens had a means of protection, crime dropped, he opined, adding that he believes such will continue with the passage of HB 102.

REPRESENTATIVE GARA directed attention to the document entitled, "How HB 120 Will Affect Alaska's Concealed Carry Laws". He referred to the question pertaining to whether an individual could carry a sheath knife under his/her coat under current law

versus HB 102. He inquired as to the circumstances under which a sheath knife could be carried under HB 102 but not under existing law.

Number 0266

REPRESENTATIVE CROFT explained that AS 11.61.220 generally says that people are prohibited from carrying a concealed deadly weapon. The definition of a deadly weapon includes what one would expect, but excludes an ordinary pocketknife or defense weapon such as mace. Therefore, a knife that couldn't be characterized as an ordinary pocketknife would be a deadly weapon and couldn't be carried concealed anywhere. In further response, Representative Croft explained that [under HB 102, a sheath knife] would generally be allowed, and any place in which it is currently illegal to have a deadly weapon at all, remains so. Representative Croft specified that [HB 102] isn't changing the entire gun or deadly weapon law, rather the distinction for carrying concealed is being eliminated.

REPRESENTATIVE CROFT turned to the driver's license analogy and said that [the legislature] has chosen two different paths on guns versus driving. With regard to driving, it's being done all the time and thus a certain proficiency is required. With gun ownership, there are a lot of disqualifications and that isn't changed by HB 102. Therefore, by federal law, one can't possess a firearm, concealed or openly, if that individual has been convicted of a [felony] crime, is a fugitive from justice, or is a user of a controlled substance. When one obtains a driver's license, that individual isn't asked whether he/she is a user of a controlled substance or has been dishonorably discharged from the armed forces. Therefore, there is the desire to know whether someone is allowed to carry a gun and certain categories of people are prevented from doing so. "The qualification for continuing to exercise your right is the way we view it," he said.

TAPE 03-41, SIDE A
Number 0001

CHAIR McGUIRE interjected to say that she was sure that Representative Croft didn't mean to say that the one or two minutes one is firing a gun is any less important than the time spent driving a car everyday. In those few minutes in which an individual is in a situation of defending oneself or using a firearm it's imperative and just as important to know what one is doing.

REPRESENTATIVE CROFT noted that he has a concealed carry permit and the level of accuracy required isn't very high. Of Alaska's 18,000 [concealed carry permits], only about 17 are revoked. He said that it's not so much shooting like in the movies as it is the judgment about when to shoot. Again, it returns to the fundamental distinction of trusting people with the right [to carry a concealed weapon] and continuing to disqualify those who have proven that they can't "handle it" through the prohibitions on possession.

REPRESENTATIVE CROFT stated that he wasn't making a causative argument between concealed carry laws, HB 102, and crime rates. However, if Vermont can [do this], Alaska can as well, particularly when one views Alaska's geographic situation of Canada on one side and water on the other. In such a geographic situation, Representative Croft predicted that there will be a lot less difficulty in Alaska with people driving through the state. Representative Croft said this is a matter of whether one believes there should continue to be a dramatic distinction between openly carried weapons or concealed weapons. If one thought that Alaskans should have a permit before carrying at all, then [HB 102] would be a major change in [his] view.

Number 0316

REPRESENTATIVE SAMUELS moved to adopt CSHB 102, 23-LS0515\I, Luckhaupt, 4/2/03, as the work draft. There being no objection, Version I was before the committee.

CHAIR McGUIRE, in response to Representative Gruenberg, confirmed that Version I was the version that passed out of the House State Affairs Standing Committee. [The House State Affairs Standing Committee inadvertently reported out Version D, however, although the committee intended to report out Version I. Subsequently, the House State Affairs Standing Committee reported out a corrected CS, Version I, on 4/22/03.]

REPRESENTATIVE HOLM directed attention to page 1, proposed AS 11.61.220(a)(1)(B). This provision requires that a person has to request permission of the resident to bring a concealed weapon into the residence. Therefore, Representative Holm surmised, residency supercedes the right to protect one's self. If one has the right to protect himself/herself, then why, he asked, would one have to request permission of anyone who happens to be a resident of an apartment. Representative Holm posed a situation in which a father wants to access the property

because his children live there with his ex-wife. In such a situation, Representative Holm inquired as to when an individual loses his right to protect himself, under the guise of having to request permission to express his right.

REPRESENTATIVE CROFT answered that subparagraph (B) on page 1 was included because it's a current restriction on permit holders. Therefore, this legislation doesn't change any of the substantive requirements on what people with concealed carry [permits] have to do or not do. Whether or not to keep this language is up to the committee, he said.

REPRESENTATIVE HOLM suggested that current law refers to the owner of the property, while [Version I] refers to a resident of the property. Representative Holm relayed that it has been proposed to him that a right is something that no one can take away while a privilege is something that someone gives. Therefore, the right to protect oneself is different than the right to pack a gun. "So, if you have a right to protect yourself, that's different than a right to pack a gun, and so they aren't exactly rights; you have a right to protect yourself, but you don't have a right to have a gun on yourself in certain circumstances," he stressed.

CHAIR McGUIRE asked why the change from owner to resident was made.

REPRESENTATIVE CROFT said that it wasn't an intentional distinction. He noted that he wanted to mirror the current law as much as possible.

Number 0690

The committee took an at-ease from 10:05 a.m. to 10:07 a.m.

CHAIR McGUIRE relayed that during the brief at-ease Representative Croft confirmed that the language mirrors what is currently in law.

REPRESENTATIVE HOLM pondered when the right is changed from the person's right [to carry a concealed weapon], to the resident's right of self-protection. He inquired as to how this provision is enforced.

REPRESENTATIVE CROFT explained that permit holders look for buildings that are posted, but also know, as a general requirement, that in places where people live, permit holders

have an additional obligation to inform the resident that they are carrying [a concealed weapon]. Representative Croft relayed that the idea is that [a permit holder should inform] the person who lives in the residence, not the person with technical title of ownership. This was a tremendous issue for the domestic violence community and some Senators during the original concealed carry legislation.

CHAIR McGUIRE, after noting that HB 102 would be held over to Wednesday, April 23, 2003, explained that she is trying to say that if the notion that [the right to bear arms] is a constitutional right and those who commit crimes aren't law-abiding citizens, then why place this false construct between concealed carry and open carry and why include exceptions.

REPRESENTATIVE CROFT pointed out that current restrictions pertain to possession, and therefore [HB 102] only eliminates the distinction between concealed carry and open carry. However, there has been the restriction that one can't carry concealed or open in certain areas, such as a federal building. Representative Croft said that he believes eliminating the distinction is important, although specifying which people shouldn't have guns and which places individuals shouldn't be able to carry guns, concealed or not, continues to make sense.

Number 0977

REPRESENTATIVE SAMUELS interjected to say that the true test is with regard to when to use the weapon.

[HB 102 was held over.]

ADJOURNMENT

Number 1026

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 10:13 a.m.