**ALASKA STATE LEGISLATURE**
**HOUSE JUDICIARY STANDING COMMITTEE**
May 5, 2003
3:15 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**

SENATE JOINT RESOLUTION NO. 10
Relating to the Pledge of Allegiance.

- MOVED HCS SJR 10(JUD) OUT OF COMMITTEE

SENATE BILL NO. 87
"An Act relating to principal and income in the administration of trusts and decedents' estates and the mental health trust fund; adopting a version of the Uniform Principal and Income Act; and providing for an effective date."

- MOVED HCS SB 87(JUD) OUT OF COMMITTEE

CONFIRMATION HEARING

Commission on Judicial Conduct

Richard L. Burton - Ketchikan

- CONFIRMATION ADVANCED

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."

- MOVED CSHB 245(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 4
Proposing an amendment to the Constitution of the State of Alaska relating to the duration of a regular session.

- SCHEDULED BUT NOT HEARD

HOUSE JOINT RESOLUTION NO. 20
Proposing amendments to the Constitution of the State of Alaska repealing the prohibition on dedicated funds.

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 145
"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

- BILL HEARING POSTPONED

**PREVIOUS ACTION**

BILL: SJR 10
SHORT TITLE:PLEDGE OF ALLEGIANCE RESOLUTION
SPONSOR(S): SENATOR(S) GREEN

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 03/10/03 | 0449 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/10/03 | 0449 | (S) | STA |
| 03/18/03 | | (S) | STA AT 3:30 PM BELTZ 211 |
| 03/18/03 | | (S) | Moved Out of Committee |
| 03/18/03 | | (S) | MINUTE(STA) |
| 03/20/03 | 0550 | (S) | STA RPT 4DP |
| 03/20/03 | 0550 | (S) | DP: STEVENS G, COWDERY, DYSON, GUESS |
| 03/20/03 | 0550 | (S) | FN1: ZERO(S.STA) |
| 03/26/03 | 0593 | (S) | RULES TO CALENDAR 3/26/2003 |
| 03/26/03 | 0593 | (S) | READ THE SECOND TIME |
| 03/26/03 | 0593 | (S) | ADVANCED TO THIRD READING UNAN CONSENT |
| 03/26/03 | 0593 | (S) | READ THE THIRD TIME SJR 10 |
| 03/26/03 | 0593 | (S) | PASSED Y19 N- A1 |
| 03/26/03 | 0595 | (S) | TRANSMITTED TO (H) |

| | | | |
|---|---|---|---|
| 03/26/03 | 0595 | (S) | VERSION: SJR 10 |
| 03/28/03 | 0664 | (H) | READ THE FIRST TIME - REFERRALS |
| 03/28/03 | 0664 | (H) | JUD |
| 03/28/03 | 0689 | (H) | CROSS SPONSOR(S): LYNN, WILSON |
| 04/07/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 04/07/03 | | (H) | <Bill Hearing Postponed> |
| 05/02/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 05/02/03 | | (H) | <Bill Hearing Postponed to 5/5> |
| 05/05/03 | 1333 | (H) | CROSS SPONSOR(S): HOLM |
| 05/05/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |

BILL: SB 87
SHORT TITLE:PRINCIPAL AND INCOME
SPONSOR(S): SENATOR(S) SEEKINS

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 02/28/03 | 0298 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/28/03 | 0298 | (S) | JUD |
| 04/14/03 | | (S) | JUD AT 1:00 PM BELTZ 211 |
| 04/14/03 | | (S) | Moved Out of Committee -- MINUTE(JUD) |
| 04/15/03 | 0858 | (S) | JUD RPT 3DP 2NR |
| 04/15/03 | 0858 | (S) | DP: SEEKINS, THERRIAULT, ELLIS; |
| 04/15/03 | 0858 | (S) | NR: OGAN, FRENCH |
| 04/15/03 | 0858 | (S) | FN1: ZERO(LAW) |
| 04/16/03 | 0876 | (S) | RULES TO CALENDAR 4/16/2003 |
| 04/16/03 | 0876 | (S) | READ THE SECOND TIME |
| 04/16/03 | 0877 | (S) | ADVANCED TO THIRD READING 4/17 CALENDAR |
| 04/17/03 | 0893 | (S) | READ THE THIRD TIME SB 87 |
| 04/17/03 | 0894 | (S) | PASSED Y17 N- E3 |
| 04/17/03 | 0894 | (S) | EFFECTIVE DATE(S) SAME AS PASSAGE |
| 04/17/03 | 0895 | (S) | TRANSMITTED TO (H) |
| 04/17/03 | 0895 | (S) | VERSION: SB 87 |
| 04/22/03 | 1045 | (H) | READ THE FIRST TIME - REFERRALS |
| 04/22/03 | 1045 | (H) | JUD |
| 05/02/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 05/02/03 | | (H) | Scheduled But Not Heard |
| 05/05/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |

BILL: HB 245
SHORT TITLE:SUITS & CLAIMS: MILITARY/FIRE/DEFENSE
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 04/04/03 | 0777 | (H) | READ THE FIRST TIME - REFERRALS |
| 04/04/03 | 0777 | (H) | MLV, JUD, FIN |
| 04/04/03 | 0778 | (H) | FN1: ZERO(LAW) |
| 04/04/03 | 0778 | (H) | FN2: ZERO(DNR) |
| 04/04/03 | 0778 | (H) | FN3: INDETERMINATE(ADM) FORTHCOMING |
| 04/04/03 | 0778 | (H) | GOVERNOR'S TRANSMITTAL LETTER |
| 04/08/03 | 0859 | (H) | FN3: INDETERMINATE(ADM) RECEIVED |
| 04/11/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 04/11/03 | | (H) | <Bill Hearing Postponed> |
| 04/15/03 | | (H) | MLV AT 3:00 PM CAPITOL 124 |
| 04/15/03 | | (H) | Moved CSHB 245(MLV) Out of Committee |
| 04/15/03 | | (H) | MINUTE(MLV) |
| 04/16/03 | 1007 | (H) | MLV RPT CS(MLV) NT 1DP 2DNP 1NR 2AM |
| 04/16/03 | 1007 | (H) | DP: LYNN; DNP: GRUENBERG, CISSNA; |
| 04/16/03 | 1007 | (H) | NR: MASEK; AM: WEYHRAUCH, FATE |
| 04/16/03 | 1008 | (H) | FN1: ZERO(LAW) |
| 04/16/03 | 1008 | (H) | FN2: ZERO(DNR) |
| 04/16/03 | 1008 | (H) | FN3: INDETERMINATE(ADM) |
| 04/16/03 | | (H) | JUD AT 8:00 AM CAPITOL 120 |
| 04/16/03 | | (H) | <Bill Hearing Postponed> |
| 04/28/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 04/28/03 | | (H) | Heard & Held -- Meeting Postponed to 2:00 PM -- MINUTE(JUD) |
| 04/30/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 04/30/03 | | (H) | Heard & Held Mtg. Postponed to after Maj. Caucus MINUTE(JUD) |
| 05/02/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 05/02/03 | | (H) | Scheduled But Not Heard |
| 05/05/03 | | (H) | JUD AT 1:00 PM CAPITOL 120 |

**WITNESS REGISTER**

JACQUELINE TUPOU, Staff

to Senator Lyda Green
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SJR 10 on behalf of Senator Green, sponsor.

BRIAN HOVE, Staff
to Senator Ralph Seekins
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 87 on behalf of Senator Seekins, sponsor.

DAVID G. SHAFTEL, Attorney
Anchorage, Alaska
POSITION STATEMENT: Assisted with the presentation of SB 87 and responded to questions.

PHIL YOUNKER, SR., Chair
Executive Committee
Board of Trustees
Alaska Mental Health Trust Authority ("The Trust")
Fairbanks, Alaska
POSITION STATEMENT: During discussion of SB 87, raised the question of whether changes suggested by The Trust have been incorporated into Version U, and encouraged passage of the bill.

STEPHEN E. GREER, Attorney
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 87.

RICHARD BURTON, Appointee
Commission on Judicial Conduct
Ketchikan, Alaska
POSITION STATEMENT: Testified as appointee to the Commission on Judicial Conduct.

GAIL VOIGTLANDER, Assistant Attorney General
Special Litigation Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 245, on behalf of the administration, provided comments on the proposed amendments and responded to questions.

SAM JOHNSON, Assistant Commissioner
Office of Homeland Security
Department of Military & Veterans' Affairs (DMVA)
Fort Richardson, Alaska
POSITION STATEMENT: During discussion of HB 245, responded to questions.

BRIGADIER GENERAL CRAIG E. CAMPBELL, Adjutant General/Commissioner
Department of Military & Veterans' Affairs
Fort Richardson, Alaska
POSITION STATEMENT: During discussion of HB 245, responded to questions.

**ACTION NARRATIVE**

**TAPE 03-50, SIDE A**
Number 0001

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at 3:15 p.m. Representatives McGuire, Anderson, Ogg, Samuels, Gara, and Gruenberg were present at the call to order. Representative Holm arrived as the meeting was in progress. Chair McGuire noted that Representative Anderson had to leave right then in order to chair the House Labor and Commerce Standing Committee.

SJR 10 - PLEDGE OF ALLEGIANCE RESOLUTION

Number 0075

CHAIR McGUIRE announced that the first order of business would be SENATE JOINT RESOLUTION NO. 10, Relating to the Pledge of Allegiance.

Number 0103

JACQUELINE TUPOU, Staff to Senator Lyda Green, Alaska State Legislature, said on behalf of Senator Green, sponsor, that SJR 10 provides that the Alaska State Legislature supports a review by the U.S. Supreme Court of the Ninth Circuit Court of Appeals 2002 decision in Newdow v. U.S. Congress. In Newdow, the Ninth Circuit Court of Appeals ruled that the words "under God" in the Pledge of Allegiance violate the establishment clause when recited by students in public schools. She mentioned that the U.S. Supreme Court had this case on its April 30 docket, and

that a petition for a [writ of certiorari] has been filed and a response is expected back on May 30.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SJR 10. She then complimented Ms. Tupou and Senator Green on a well-written resolution; without making political statements, SJR 10 is factual and "speaks to things that have occurred throughout history."

REPRESENTATIVE GARA said he agrees with Chair McGuire. Noting that the U.S. Supreme Court denies most [petitions for a writ of certiorari], he asked whether there is any indication that this case will be accepted.

MS. TUPOU said she didn't care to speculate on that issue.

Number 0387

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to add the solicitor general to the list of those who will get a copy of SJR 10. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE OGG said he would like to echo Chair McGuire's comments.

Number 0421

REPRESENTATIVE SAMUELS moved to report SJR 10, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS SJR 10(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 3:22 p.m. to 3:25 p.m.

SB 87 - PRINCIPAL AND INCOME

Number 0455

CHAIR McGUIRE announced that the next order of business would be SENATE BILL NO. 87, "An Act relating to principal and income in the administration of trusts and decedents' estates and the mental health trust fund; adopting a version of the Uniform Principal and Income Act; and providing for an effective date."

Number 0511

BRIAN HOVE, Staff to Senator Ralph Seekins, Alaska State Legislature, on behalf of Senator Seekins, sponsor, paraphrased the sponsor statement, which read [original punctuation provided]:

> In 1984 the Alaska legislature adopted an early version of the Uniform Principal and Income Act (located in Statute 13.38). This Act provides rules for the determination of whether a trust's or estate's receipts should be considered income or principal. This distinction is often important because some beneficiaries may be entitled to income distributions, and others may be entitled to principal distributions. Senate Bill 87 updates the existing Statute to the most recent (1997) version of the Uniform Principal and Income Act.
>
> The drafters of the 1997 Uniform Act have recognized that there is a conflict between income and principal beneficiaries, and this conflict creates pressures on the fiduciary. The income beneficiaries want the fiduciary to invest so as to maximize annual income. The principal beneficiaries want the fiduciary to invest for long term equity growth. As a result, a trustee attempting to satisfy both sets of beneficiaries will have to compromise with respect to the choice of investments. Consequently, the total return of the trust will suffer. Two techniques have been adopted to avoid the need for such a compromise. These techniques allow the trustee to choose investment approaches which will maximize the total investment return of the trust.
>
> The first technique is provided by Article 1 of Senate Bill 87, which gives the trustee the discretionary power to adjust. This power allows the trustee to reallocate receipts from income to principal, or vice versa, when the trustee determines that it is fair and reasonable to do so. The second technique is provided by Article 2 which allows the trustee to convert a trust to a unitrust. This is a trust which provides that a certain percentage of its assets--often 4%--will be distributed each year to the income beneficiary.

Both of the above techniques will allow the trustee to choose investment approaches which will maximize the total return. As a result, both the income beneficiary and the principal beneficiary will receive greater distributions. Further, the trustee will not be struggling with the conflict in investment approaches.

As of January 2003, thirty state have adopted the 1997 Uniform Principal and Income Act. Of these, twelve states have included the unitrust provisions. Senate Bill 87 follows the legislation enacted by Pennsylvania, which includes both techniques thereby enabling the trustee to maximize total returns. The State of Washington enacted this version in 2002. Georgia is presently considering it this year.

MR. HOVE, in conclusion, urged passage of SB 87.

Number 0730

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for SB 87, Version 23-LS0366\U, Bannister, 5/2/03, as the work draft. There being no objection, Version U was before the committee.

CHAIR McGUIRE asked whether there are any other aspects of Version U that differ from the Uniform Principal and Income Act.

MR. HOVE mentioned that Version U contains language specific to "our mental health trust fund."

Number 0854

DAVID G. SHAFTEL, Attorney, noted that he and Stephen E. Greer are members of a group of trust and estate attorneys who have worked with legislative staff on SB 87. In addition to reiterating the points provided in the sponsor statement, he noted that Alaska's current laws on this issue are 40 years out of date, and that the changes provided in SB 87 are in keeping with modern-day business practices, investment concepts, and tax codes. He opined that the version of the Uniform Principal and Income Act which is before the committee is the most advantageous version.

MR. SHAFTEL, in response to Chair McGuire's question, relayed that in addition to the unitrust provisions, which aren't part

of the 1997 Uniform Principal and Income Act, Version U contains a provision - page 13, lines 5-9 - dealing with a recent Internal Revenue Service (IRS) regulation change that denies an income tax deduction for interest paid on pecuniary bequests. He explained: "What we have done is, we have repealed our interest statute, and instead we changed this [paragraph 2] so that pecuniary bequests receive a pro rata share of the income earned during the administration of an estate or a trust."

MR. SHAFTEL, regarding other changes to the Uniform Principal and Income Act, said:

> We also have made it clear that this Act [applies] to revocable trusts as well as to estates. That is the intention of the drafters of the [Uniform Principal and Income Act] but several attorneys who've reviewed ... [it] have stated that they thought it would be advantageous to underscore that, so there has been language added which accomplishes that. We also have worked with the representatives of the [Alaska Mental Health Trust Authority] to put in language making this uniform Act inapplicable to the [Alaska Mental Health Trust Authority]; they want to handle principal and income allocations ... according to future regulations that will [be] adopted under that Act.

MR. SHAFTEL, in conclusion, said that all members of the group that worked with legislative staff on this bill feel very strongly that Version U is an excellent version of the Uniform Principal and Income Act, and recommend that it be approved so that "Alaskan residents can have the benefits of these modern concepts."

Number 1149

REPRESENTATIVE GARA asked, "If somebody has a trust agreement that ... specifically defines who gets the principal, who gets the income, and the agreement specifically defines principal and income, would the change in the definition in this Act change that existing agreement?"

MR. SHAFTEL replied that that is an excellent question and [his group] hadn't addressed it. This Uniform Principal and Income Act, like all previous Uniform Principal and Income Acts, only provides default rules. Hence, if the creator of a trust decides that he/she wants different rules to apply regarding principal and income application, the rules in this Act can be

overridden by so saying in the trust instrument. There are many types of allocations of principal and income, and to the extent that the creator of a trust does not provide specific rules for specific types of allocations, the default rules provided by SB 87 will apply if the need for those allocations arises during the administration of the trust or estate.

REPRESENTATIVE GARA said he didn't want passage of SB 87 to disrupt any existing agreements. He asked whether SB 87 would apply retroactively to a trust in which allocation of principal and income has not been defined, thereby disrupting the expectations of an existing trust's beneficiaries.

MR. SHAFTEL said that Senate Bill 87 will provide assistance to the administrator of an instrument that does not address the particular situations that arise when [income and principal allocation] is not covered in that instrument. Specifically, SB 87 will apply to the administration of trusts that are already in existence and [to] estates in the future that [rise] out of wills that are already in existence. But if the person who created that will or trust did not specifically address the particular principal and income allocation in question, then SB 87 will provide the answer, if needed, in the future. But again, if a trust or will already provides for a specific type of income and principal allocation, those provisions will override the defaults in SB 87.

MR. SHAFTEL added that the rules outlined in the Uniform Principal and Income Act were arrived at by the National Conference of Commissioners on Uniform State Laws (NCCUSL); the NCCUSL has approved these rules and recommends them for enactment in all states. He mentioned that approximately 35 states have either adopted these rules or are considering their adoption.

Number 1407

REPRESENTATIVE GARA replied:

> I still want to be very careful that we're not changing the amount of money that people are receiving in income and principal distributions .... I understand what you said, which is that agreements will provide the allocation between interest and income that somebody is entitled to as a beneficiary. But in paragraph one of the sponsor statement, it says here that we are also redefining the terms "income"

and "principal" so that if somebody is entitled to income distributions, we're specifically defining what an income distribution is, and if somebody is entitled to principal distributions, we're specifically defining what a principal distribution is.

And what I'm wondering is, if there are existing agreements out there where somebody is an income beneficiary or a principal beneficiary and they haven't defined those terms specifically, and if we're now redefining those terms a little bit, then are we going to start increasing or actually, for some people, decreasing the amount of money they're receiving under a trust? That's my big concern.

MR. SHAFTEL said that while he understands the theory of the concern, he doesn't think it should be a realistic concern. He elaborated:

I think that there are really several categories that we have to deal with. There are a number of general categories dealing with certain types of assets and the allocation of the proceeds of those assets between income and principal. Then there is another classification which is what we call a unitrust. ... And that is perhaps an area where, at least theoretically, Representative Gara's concerns would be more justified in that what happens there is, if you convert to a unitrust, what the Act provides is that instead of receiving the net income from a trust, the beneficiary will receive 4 percent of the assets of the trust.

Number 1539

MR. SHAFTEL continued:

But before there can be a conversion, the trustee has to notify all the beneficiaries. And if they object and feel that it would be unfair, then they're entitled to have the matter brought before the court and reviewed by the court as an abuse of discretion on the part of the [trustee]. But this (indisc.) of converting to a unitrust (indisc.) the concept of the power to adjust really are designed, not to reduce returns for income and principal beneficiaries, but rather to maximize the returns to both. And this is

allowing the trustee to invest for a total return on all the assets, and then dividing up that total return between the income and the principal beneficiaries in a fair and reasonable manner.

So, I really think the answer, Representative Gara, to your question is: that is a change in the law that hasn't existed before. It (indisc.) carefully thought out, and has a number of safeguards in the [proposed] statute by way of giving notice to the beneficiaries, allowing them to object, and allowing for judicial review. In most situations, the income and principal beneficiaries are going to be very happy to see that kind of approach taken by the trustee, because it's going to be a better return for both of them, rather than a mediocre compromise approach, which a trustee is [now] forced to take and which results in mediocre returns for both income and principal beneficiaries.

Number 1629

MR. SHAFTEL went on to say:

Now, the other aspect of your question, Representative Gara, would be ..., and this goes to that other category that we talked about, and that is, is there a particular kind of asset that a particular trust has that would result in a different allocation of income and principal under the '97 Act than under the ['62] Act, and would this disrupt the expectations of a person who created a trust and who was relying upon the '62 Act. And I guess that's conceivable. But ... there are a couple of things to consider there.

[In the] first place, the person who created that trust evidentially didn't feel strongly enough about it to put in a particular allocation and override the '62 Act or confirm the '62 Act. And, if they did not do that, then what they're doing is - [the] people who draft these instruments ... - [they] are saying: "We are comfortable in adopting what state law is and will be, as considered by the National Conference of Commissioners on Uniform State Laws, who draft these Uniform Principal and Income Acts. And if the law is changed with respect to [an] allocation which we have not chosen to specifically override or reaffirm, then

> we are comfortable with what the [NCCUSL is] choosing."
>
> And I really think that is the best way to approach this problem. And it would be unfair to, for example, limit application of this Act to only trusts or estates drafted under documents executed after this date, because all of those settlors and all of those individuals who directed that their wills or trusts be drafted would not have the benefit of these modern updates that the [NCCUSL has] included in this '97 version of the Act.

CHAIR McGUIRE indicated that it is important to have this kind of debate whenever updates to existing trusts are considered.

Number 1811

PHIL YOUNKER, SR., Chair, Executive Committee, Board of Trustees, Alaska Mental Health Trust Authority ("The Trust"), asked whether the changes suggested by The Trust have been considered yet.

MR. HOVE indicated that the changes recommended via an April 21, 2003, letter from The Trust's executive director, Jeff Jessee, have been incorporated into Version U of SB 87.

MR. YOUNKER relayed that those changes will make a big difference in how The Trust is able to do business in the future. He thanked the committee for the opportunity to speak and the sponsor for bringing this issue forward and working with The Trust on its concerns. He said that as an individual, he is very pleased to see SB 87 because it is difficult to arrange, in the present time, for the future allocation of interest and principal of many of the assets that go into his personal trust. He concluded by encouraging passage of Version U.

Number 1939

STEPHEN E. GREER, Attorney, said simply that he strongly urges passage of SB 87, that it has been long overdue, and that he is a bit embarrassed that Alaska's current principal and income Act is over 40 years old.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 87.

The committee took an at-ease from 4:00 p.m. to 4:01 p.m.

Number 2004

REPRESENTATIVE SAMUELS moved to report the proposed (CS) for SB 87, Version 23-LS0366\U, Bannister, 5/2/03, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS SB 87(JUD) was reported from the House Judiciary Standing Committee.

CONFIRMATION HEARING

Commission on Judicial Conduct

Number 2029

CHAIR McGUIRE announced that the committee would next consider the appointment of Richard L. Burton to the Commission on Judicial Conduct. She noted that members have Mr. Burton's resume in their packets.

Number 2038

RICHARD L. BURTON, Appointee, Commission on Judicial Conduct, remarked simply that he has spent his "entire" life in the criminal justice field, and that he thinks he has something to offer that would be of service to the state.

REPRESENTATIVE GRUENBERG opined that Mr. Burton is well qualified.

CHAIR McGUIRE agreed.

Number 2087

REPRESENTATIVE GRUENBERG made a motion to advance from committee the nomination of Richard L. Burton to the Commission on Judicial Conduct. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

HB 245 - SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

Number 2100

CHAIR McGUIRE announced that the final order of business would be 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." [Before the committee was CSHB 245(MLV).]

CHAIR McGUIRE, after ascertaining that the representatives from the Department of Law and the Department of Military & Veterans' Affairs wished to comment on proposed amendments and that no one else wished to testify, closed public testimony on HB 245.

Number 2212

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

Page 4 line 15
delete "clear + convincing"
add "preponderance of the"

Number 2220

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE OGG, in support of Amendment 1, pointed out that existing statute speaks to "wilful misconduct, gross negligence, or bad faith", but in Section 7, proposed AS 26.20.140(b) is changing that to "malice or reckless indifference". He opined that doing this already appropriately raises the standard and, therefore, it is excessive to additionally make it so that the plaintiff must show clear and convincing evidence. He offered that it is only proper to leave the standard of proof as a preponderance of the evidence.

Number 2296

GAIL VOIGTLANDER, Assistant Attorney General, Special Litigation Section, Civil Division (Anchorage), Department of Law (DOL), in response, said that the court has defined the difference between "a preponderance of the evidence" and "clear and convincing evidence" as follows. A preponderance of the evidence must induce a belief in the minds of the jurors that the asserted facts are probably true, whereas if clear and convincing proof is required, there must be induced a belief that the truth of the asserted facts is highly probable. The reason for proposing the language of clear and convincing evidence, she explained, is

because being able to move successfully for summary judgment in a civil lawsuit is increasingly difficult in Alaska.

MS. VOIGTLANDER additionally explained that summary judgment allows civil cases to be resolved without jury trials and attendant costs. However, under Alaska's summary judgment standard, the court may consider summary judgment only if there are no genuine issues of material fact; furthermore, even if a fact is undisputed but there could be different inferences drawn from the undisputed facts, the case has to go to a jury trial. Therefore, many times, particularly with regard to immunity cases where it is not an absolute immunity, the individual defendants are forced to go all the way through trial.

**TAPE 03-50, SIDE B**
Number 2380

MS. VOIGTLANDER offered the following statistics to illustrate the costs incurred by the state in its own defense. In the case pertaining to the "Miller's Reach" fire, defense costs to date are $2.5 million. In the [Kiokun] case, defense costs to date are $250,000. In the case which has in part engendered the intramilitary tort immunity provisions of HB 245, defense costs to date are $1 million. She offered that immunity is a concept that is used to protect two things: immunity from liability, and immunity from suit. So, although any lawsuit can be filed as long as the filing fee is paid, attorneys that represent immune defendants want the ability to move quickly for a judgment on the issue of immunity, and the method by which to do that is via summary judgment.

MS. VOIGTLANDER posited that by having a clear and convincing evidence standard, it is more likely that a trial court will be more comfortable in ruling on a summary judgment, since the standard would be whether or not a jury would believe that the asserted facts are highly probable.

REPRESENTATIVE GARA noted that he supported Amendment 1.

REPRESENTATIVE GRUENBERG mentioned that courts are very reluctant to grant summary judgment, particularly if there's a jury, which, he added, is more often requested by the defense than the prosecution. He noted that there is a strong "policy" in Alaska of people helping each other, adding that this is one of the things that makes Alaska an attractive place to live, and that [proposed AS 26.20.140(a)] provides the state immunity from civilian defense workers who may be seriously injured or even

killed while going out of their way to help other Alaskans in times of crises. He opined that erecting a "clear and convincing evidence" barrier hurts the wrong group of people. People won't come forward to help if they think that if they're injured they won't get recompense, he predicted, adding "we want to encourage people to help the state and other Alaskans in time of crises." "I think we should have just a regular, typical tort standard for these folks; they're a good group of people, and I don't want to erect another barrier for them," he remarked in conclusion.

Number 2209

REPRESENTATIVE OGG, referring to Ms. Voigtlander's comments, said his concern is that the first thing that a person would have to prove under proposed AS 26.20.140(b), even if the case goes to summary judgment, is that the individual working on behalf of the government acted with malice or reckless indifference to the interests or safety of others. Malice is an intentional-type tort wherein scienter must be proven, which is difficult in and of itself. That's the first hurdle that someone has to get past; then it must also be proven by clear and convincing evidence. He again opined that that having to also do the latter creates too high a hurdle.

REPRESENTATIVE SAMUELS, turning to Representative Gruenberg's comment, said he disagreed; according to his interpretation of [proposed AS 26.20.140(b)], it would protect the individuals who are lending assistance.

REPRESENTATIVE GRUENBERG noted, however, that those are the people who are likely to be injured because they are more often in harm's way; therefore, although they could be defendants, they could also end up being plaintiffs.

CHAIR McGUIRE offered her belief that there is too much frivolous litigation, and that there is tremendous cost to the state - and, thus, Alaskans - because of it. She said that she agrees with Ms. Voigtlander's comments, and posited that having a standard of clear and convincing evidence will force someone bringing a legitimate suit to show that real harm was done.

REPRESENTATIVE GARA argued, however, that although he agrees that frivolous lawsuits should be deterred, the provision being addressed by Amendment 1 appears to instead punish those that bring valid lawsuits against the state by taking away their remedy. "I don't think it's right to take those rights away to

protect against a different class of claims," he added. With regard to Representative Samuel's comments, Representative Gara indicated that he agreed that neither volunteer workers nor people who get paid should be subject to claims against them for merely doing their job, even if they do it negligently, though that is something to guard against. Current law, however, says that employers are to be held responsible for the conduct of employees who do their job negligently. That is why, largely, there are no million-dollar verdicts against individual firemen, for example, or other individual employees, he surmised, and thus volunteers are not, largely, going to be held liable either.

CHAIR McGUIRE pointed out, however, that it is the state and, ultimately, Alaskan citizens who wind up paying for these lawsuits in one way or another. She said that she disagrees with the characterization that having a standard of clear and convincing evidence is punishing those that bring valid claims; instead, she considers such a standard to be reasonable. She relayed that she is maintaining her objection to Amendment 1 [text provided previously].

Number 1869

A roll call vote was taken. Representatives Gruenberg, Ogg, and Gara voted in favor of Amendment 1. Representatives Holm, Samuels, and McGuire voted against it. Therefore, Amendment 1 failed by a vote of 3-3.

REPRESENTATIVE GARA said to Ms. Voigtlander, "First of all, one of the protections that a defendant receives is that before a plaintiff wins, they have to receive a majority jury verdict."

MS. VOIGTLANDER noted that for a jury of twelve, ten must agree to the verdict; for a jury of six, four must agree.

REPRESENTATIVE GARA noted that there has been considerable testimony during HB 245's previous hearings regarding second guessing decisions that are made by the government during search and rescue operations, civil defense operations, and firefighting activities. However, he pointed out, juries are specifically instructed to not second-guess. He asked whether it is correct to say that in cases involving emergency situations, juries are specifically instructed to look at all the circumstances in order to determine whether the state acted reasonably.

MS. VOIGTLANDER said that although it would be difficult to address the specific jury instructions given in any particular case, because instructions are highly variable depending on what is advocated by both sides and agreed to by the judge, in the case involving the Miller's Reach fire, the jury was simply instructed to consider whether or not the defendant - the Division of Forestry - breached the standard of care of a reasonable person.

REPRESENTATIVE GARA posited, though, that the jury in that case was also instructed, in deciding whether the state was reasonable, to consider "all of the circumstances." That's how juries are commonly instructed, he concluded.

Number 1710

MS. VOIGTLANDER, indicating that there are different standard jury instructions, said that she did not know which, specifically, was used in that case, or whether it contained anything specific to emergency situations. She acknowledged, though, that in terms of "the usual instruction, it would be taking all the evidence that's presented to the jury and then for the jury to make a decision based upon the evidence that is allowed in at trial."

REPRESENTATIVE GARA surmised, then, that Ms. Voigtlander would not disagree that a jury is ultimately instructed to consider all the circumstances and that if there was an emergency situation, that would be one of the relevant circumstances that would be considered.

MS. VOIGTLANDER replied that she is not comfortable agreeing with that summation.

REPRESENTATIVE GARA asked whether, in any of the aforementioned cases, the state was prevented from having the jury consider the fact that a case involved an emergency situation.

MS. VOIGTLANDER said that although there were some issues that were taken away from the jury in the [Kiokun] case, she couldn't say whether the fact that it was an emergency situation was one of them, or whether, in any of the other cases, that fact was kept from the jury. She added:

> Beyond that, ... all I can say is that as a general concept, I would assume that generally, the instructions are for the jury to consider all the

evidence that's before it and answer the questions, which they are given as special verdicts, based upon legal concepts. And those legal concepts are highly variable, depending on what's advocated by both sides. It's very difficult to generalize about jury instructions in specific cases because, my experience is, they are highly variable.

Number 1604

CHAIR McGUIRE noted that at the request of Representative Holm, the attorney general's office has sent a request that the committee limit its discussion of cases.

REPRESENTATIVE OGG asked Representative Gara what the relevance of his line of questioning is.

REPRESENTATIVE GARA indicated that his goal is to illustrate to the committee that although the administration, in requesting that the laws be changed to provide immunity to the state for negligence conduct in emergency situations, is using the argument that it doesn't want juries second-guessing decisions made at the time those situations are occurring, it is not a fair argument because juries currently aren't allowed to do that anyway without parameters. Instead, there is a "pattern jury instruction" in emergency cases, he relayed, and this instruction says in part: "In an emergency, the person is not expected or required to use the same judgment and care that is required in calmer and more deliberate moments." Thus juries do take the circumstances of an emergency into account; they do take the relevant circumstances into account.

REPRESENTATIVE GARA, after some discussion on the difficulty of discussing a bill and/or portions of a bill that relate to specific cases without also being able to discuss those cases, turned attention to Section 2 of HB 245, and surmised that it would exempt the state from liability for its negligent conduct during a search and rescue [situation]. In other words, if HB 245 is adopted with Section 2 as written, the state can no longer be held liable for failing to reasonably respond in a search and rescue [situation], or even when it is negligent in responding to a search and rescue request. He then began discussion of a couple of the facts that the jury found persuasive in the [Kiokun] case, for which that verdict against the state is a matter of public record. Representative Gara began:

In the case involving the Denali Highway failure, ... three people, for whatever reason - and it seems odd to me ... - ended up driving along the Denali Highway in the middle of the winter and they got stuck. And that's not a big surprise to anybody; they drove in the middle of the winter and they got stuck. On that day that they got stuck, a snow machiner came by and they saw the word "HELP" written in the snow, and they didn't see anybody in the car. And within a matter of two hours, and this was undisputed, they went back to the trooper station and said, "I just saw this 'HELP' sign located next to a vacant car, there are subzero temperatures, and I didn't see the people in the car anymore." This was undisputed.

Number 1342

REPRESENTATIVE GARA continued:

And it took three days for the troopers to send a helicopter to the Denali Highway to look for these folks. And ultimately, when the helicopter arrived, within a couple of hours they found three frozen bodies. The jury found that the state didn't respond in time. It was undisputed that two of the troopers involved were reprimanded. It was undisputed that the trooper chief appropriately said, "We could have done a much better job." The jury found that that was a negligent response and they held the state liable. There was other evidence, that the jury didn't necessarily believe, that supported the other side.

But these are the kinds of cases we're going to prevent from being brought in the future. And I would suggest that there was a beneficial result of that case. ... The beneficial result of that case is, it sent a message within the troopers that, at least in this case, they could have done a better job. And I suspect [that] within the troopers maybe there are better, stronger precautions to prevent this kind of thing from happening again in the future. That's not to say that there was a great reason for the family to drive along the Denali Highway in the first place ... in the middle of the winter.

But I'm very uncomfortable telling the state that it's not liable for this kind of conduct in the future,

because I think it sends a message to the state that if it's not going to be held responsible, and not held accountable for conduct like this, then it will be okay for the state to engage in conduct like this again in the future. So, I don't have an amendment, I just ... don't think I can support the bill. But I just needed to get this discussion out on the table because this is the context; this is the reality of the kinds of case we're going to prevent from being filed in the future, and I think there are positives and negatives of preventing people from filing claims like this.

Number 1212

CHAIR McGUIRE relayed that she appreciated Representative Gara's point and his putting it on the record.

REPRESENTATIVE SAMUELS said he disagrees that stopping such cases is a bad thing. He opined that people should accept personal responsibility for their actions and not put the onus on [the state] to come and rescue them.

REPRESENTATIVE GARA suggested, however, that such decisions should not be made in a vacuum, and although Representative Samuels is correct in that there should be personal responsibility and people should be held accountable for their own failures, the law is not that ignorant. The truth, he surmised, is that if one causes his/her own harm - for example, driving along the Denali Highway in the middle of winter when that should probably not be done - the jury is asked to apportion negligence. The jury is asked, in making its determination: Did these people who drove along some particular highway in the middle of the winter, were they negligent for doing that? Did they lead to their own death? And if the actions of those people also contributed to their death, the jury is then asked to attribute a percentage of negligence to the people who got themselves in trouble and a percentage of negligence to the people who failed to help them.

REPRESENTATIVE GARA reiterated that the jury is asked to look at all of the circumstances, adding that before the committee changes the law, it should understand what the current law is. For example, under current law, if the state doesn't have the staff to conduct a search and rescue operation, it is not held liable for those budgetary constraints; a jury can't second-guess the state when the state has budgetary constraints and

doesn't have staff. So, to the extent that there were no search and rescue people available, the state wouldn't be held liable for failing to send people out; to the extent that there were search and rescue people available, then the state might be held responsible, he concluded.

REPRESENTATIVE SAMUELS remarked that had the [Kiokun] trial been held in Paxson or Cantwell, he would probably have "a little less heartburn with the results."

Number 1021

REPRESENTATIVE HOLM brought attention to what ultimately became known as Amendment 2, which read [original punctuation provided]:

Amendment 1

> On page 3, line 31 to line 1 of page 4: Delete "**or homeland security**"
> Page 4, lines 8,9: delete both "**or homeland security**" occurrences.

Amendment 2 (conceptual)

> All other references to "homeland security" workers which would be effected by the deletions in section 7, should be removed from HB 245.

Number 1014

REPRESENTATIVE HOLM made a motion to adopt [the first part of] Amendment 2 [that portion labeled "Amendment 1"].

Number 0994

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE HOLM said that he wants to remove "homeland security" from "this same group of folks who are being given this high level of evidence [standard], to lessen the evidence [standard] to probable cause." He then read as follows from [a document that apparently summarized Sec. 802 of] the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 ("USA PATRIOT Act"):

> Section 802 of the Act, borrowing from the definition of international terrorism contained in 18 U.S.C. 2331 creates the federal crime of domestic terrorism. Among other things, this section states that acts committed within the United States "dangerous to human life that are a violation of the criminal laws" can be considered acts of domestic terrorism if they "appear to be intended ... to influence the policy of a government by intimidation or coercion" or "to intimidate or coerce a civilian population".

REPRESENTATIVE HOLM went on to say:

> Now, ... because people who come and help us that are [firefighters], police, military, search and rescue folks [perform] services that are demanded by the people, we have one set of circumstances. But homeland security is largely a service that's been thrust upon the people of the United States by the federal government. And I suspect that ... the two are not of the same motivation. If the ambulance or police or fire department show up, you probably called them. In the course of their requested duties they should have proposed protections in this bill, and I agree with those.
>
> But if armed homeland security workers stop and search your car, or enter your home without a warrant, or prohibit you from travel, you probably didn't call or request it. And so, if your rights are trampled or you are injured in that process, you should have maximum recourse. And so, Madame Chair, I respectfully submit that the probable cause is a lesser ... evidence requirement that should be in place so that people would protect their personal rights.

Number 0820

SAM JOHNSON, Assistant Commissioner, Office of Homeland Security, Department of Military & Veterans' Affairs (DMVA), in response to a question by Chair McGuire, said that the roles of homeland security and emergency services are almost identical in the response phase of an event, be it an earthquake or an anthrax scare - or an actual event. The things that are different are the mitigation pieces that happen before the

event. In the case of an earthquake, tsunami, et cetera, the community is prepared; plans, including evacuation plans, are written; and in the case of floods, dykes and other things of that nature may be built. In the case of homeland security, the process is much the same, although infrastructure and similar aspects are looked at with the goal of protecting and hardening those that are most critical.

MR. JOHNSON offered the following:

> For example, we would prioritize those assets in the state that were most critical, then we would write a plan to harden those facilities with added security measures such as lights, camera, and fences. And then we would write a plan to increase security. For example, the pipeline: there are a number of security personnel on the pipeline in condition "yellow," but when we go to condition "orange," if the circumstances so dictated, we would use either the Alaska Defense Force or the National Guard to provide those security measures. If we went to condition "red" on a particular asset such as the pipeline, and we got into a defensive role, then we would most likely use the National Guard asset.
>
> Day to day, however, ... homeland security people do not carry guns. We do not arrest, detain, seize, search, nor do investigations, nor intelligence; we have no internal intelligence mechanisms or surveillance. Yes, we do interface with those agencies that do have those capabilities as their core competencies: The FBI [Federal Bureau of Investigation], the CIA [Central Intelligence Agency], the OSI [Office of Special Investigations], the attorney general, et cetera.

Number 0795

> But we would not be those people, in the Office of Homeland Security, that would go listen to a wiretap, or would surveil someone's home, or surveil anything of any nature. And we would never be the person at your door knocking with the intention of taking you into custody. That is not our role. Our role is to identify potential threats to minimize the capability of the enemy to attack us at critical infrastructure, and then work with those first responders - fire,

> rescue, medical, state troopers, et cetera - to make sure that we have a coordinated effort to protect the citizens of Alaska.

CHAIR McGUIRE asked whether Transportation Security Administration (TSA) workers would be considered homeland security workers under HB 245.

MR. JOHNSON said that they are not, since they work for the federal government rather than the state. Additionally, he indicated that TSA workers would not be considered contractors as described in proposed AS 26.20.140(c)(3).

REPRESENTATIVE HOLM asked whether the term "members of the organized militia", as used in Section 3, would be "akin to the Alaska Defense Force."

MR. JOHNSON said yes, adding, "in those definitions [they] would be army, air, naval militia, and state defense force."

REPRESENTATIVE HOLM pointed out, however, that contrary to Mr. Johnson's statement that homeland security workers do not carry guns, the Alaska Defense Force is an armed body. He remarked:

> Because it is an armed body and there are no requirements for heavy degrees of police academies and those types of things, ... there is a much ... less qualified ... group of folks to act in the capacity of protecting the rights of the citizens of Alaska, in the zeal to do their job.

Number 0542

BRIGADIER GENERAL CRAIG CHRISTENSEN, Assistant Adjutant General Army Director, Alaska Army National Guard (AK ARNG), Department of Military & Veterans' Affairs (DMVA), said that Representative Holm is correct in that the organized militia (indisc.) state defense force does not have the proficiency and training of a law enforcement officer of the state such as a state trooper or a municipal law enforcement officer. However, in previous engagements, members of the state defense force and members of the National Guard have been required to go through law enforcement training and "rules of engagement" prior to being on the streets or engaged in those types of activities.

REPRESENTATIVE HOLM indicated that he is questioning whether, as a general policy for Alaska, homeland security workers ought to

be included on the same level as other state employees with regard to immunity from suit during the course of their duties.

REPRESENTATIVE OGG asked where the Coast Guard fits in.

MR. JOHNSON relayed that the U.S. Coast Guard would fall under the federal office of homeland security because it is a federal agency.

CHAIR McGUIRE mentioned that her concern with the homeland security provisions of HB 245 revolves around the fact that the definition of homeland security worker still seems too broad and nebulous. She noted that there are a lot of concerns on the part of Alaskans with regard to the USA PATRIOT Act and how far things are going in the area of homeland security. She referred to Section 8, which defines who could be considered a homeland security worker, and indicated that proposed AS 26.20.140(c), especially paragraph (2), seems overbroad.

MS. VOIGTLANDER, in an effort to allay Chair McGuire's concern, observed that Section 10 of HB 245 describes what the duties of a homeland security worker would entail. In addition, all those listed in proposed AS 26.20140(c) would be acting in an official capacity or at the direction of the state. She surmised that homeland security workers would simply be doing as Mr. Johnson indicated, that is, assisting first responders and performing identified missions with regard to critical infrastructure issues.

**TAPE 03-51, SIDE A**
Number 0050

CHAIR McGUIRE pointed out, however, that the language in Section 10 also refers to detection, prevention, preemption, and deterrence. She asked, therefore, whether an individual hired to enforce the USA PATRIOT Act in Alaska's libraries - to monitor the Internet activities of Alaskan citizens and which books they check out - would be included in the definition of homeland security worker. If such an individual committed a tort against someone, is that individual engaged in homeland security and thus immunized by HB 245?

MS. VOIGTLANDER replied that according to her understanding of the USA PATRIOT Act, "its authorization is to the federal government." So if the federal government were to hire someone to work at its request, he/she would be a federal employee rather than a state employee. House Bill 245, in contrast, is

"looking at state and local types of entities, rather than federal entities." She added that although HB 245 would limit some types of tort lawsuits, it would not and could not limit an individual's right to file a civil-rights action against whoever has abridged his/her federally guaranteed constitutional rights.

REPRESENTATIVE GARA pointed out, though, that a civil-rights action is quite a difficult action to prove; one has to prove more than just negligence.

REPRESENTATIVE HOLM said that he is becoming more and more convinced that he would like to see all reference to homeland security removed. He opined that the definition of homeland security is too vague, and mentioned that he did not want the citizens of the state to be subject to the same type of onerous restrictions as are currently placed on people who travel by air.

Number 0297

CHAIR McGUIRE removed her objection to Representative Holm's motion to adopt the first portion of Amendment 2.

REPRESENTATIVE GRUENBERG requested that both portions be combined to form Amendment 2.

REPRESENTATIVE HOLM said he had no objections to doing so.

Number 0360

REPRESENTATIVE HOLM made a motion to adopt Amendment 2 [in its entirety; text provided previously]. There being no objection, Amendment 2 was adopted.

REPRESENTATIVE GARA, on the issue of HB 245, said he is wondering if the problem the bill is purported to be in response to really exists. He asked whether there have really been enough cases to justify such legislation, specifically as it pertains to military workers.

REPRESENTATIVE GAIL relayed that there have been two cases pertaining to intramilitary tort, and that in one of those cases, the state's cost to defend was $1 million and its share of the judgment was $2.75 million. She surmised that in the past, the Feres doctrine has prohibited such cases, but because of a recent Alaska Supreme Court decision, which takes the state

in the opposite direction, the administration is anticipating more such cases.

REPRESENTATIVE GARA, on the issue of whether the aforementioned claims were frivolous, noted that if the state is being required to pay a portion of a judgment, it is because the claim against the state was valid.

REPRESENTATIVE OGG, remarking that the vote on Amendment 1 was a close vote, requested that the bill be held over so that the full committee could vote on Amendment 1.

CHAIR McGUIRE denied the request, and suggested instead that Representative Ogg offer the amendment on the House floor, where it could be voted on by the entire body.

Number 0681

REPRESENTATIVE SAMUELS moved to report CSHB 245(MLV), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

Number 0692

REPRESENTATIVE GRUENBERG objected.

A roll call vote was taken. Representatives Ogg, Holm, Samuels, and McGuire voted in favor of reporting the bill from committee. Representatives Gara and Gruenberg voted against it. Therefore, CSHB 245(JUD) was reported out of the House Judiciary Standing Committee by a vote of 4-2.

**ADJOURNMENT**

Number 0731

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