

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 2, 2004

1:10 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

- MOVED CSHJR 9(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 342

"An Act relating to driving while intoxicated; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 227

"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 349

"An Act amending Rule 412, Alaska Rules of Evidence."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HJR 9

SHORT TITLE: CONST AM: APPROPRIATION/SPENDING LIMIT

REPRESENTATIVE(s): STOLTZE

01/31/03	(H)	READ THE FIRST TIME - REFERRALS
01/31/03	(H)	STA, JUD, FIN
02/11/03	(H)	STA AT 8:00 AM CAPITOL 102
02/11/03	(H)	Heard & Held
02/11/03	(H)	MINUTE(STA)
04/04/03	(H)	W&M REFERRAL ADDED BEFORE STA
04/09/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/09/03	(H)	Heard & Held
04/09/03	(H)	MINUTE(W&M)
04/17/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/17/03	(H)	Heard & Held
04/17/03	(H)	MINUTE(W&M)
04/24/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/24/03	(H)	Heard & Held
04/24/03	(H)	MINUTE(W&M)
04/29/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/29/03	(H)	Heard & Held
04/29/03	(H)	MINUTE(W&M)
04/30/03	(H)	W&M AT 8:00 AM HOUSE FINANCE 519
04/30/03	(H)	Heard & Held
04/30/03	(H)	MINUTE(W&M)
05/02/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
05/02/03	(H)	Moved CSHJR 9(W&M) Out of Committee
05/02/03	(H)	MINUTE(W&M)
05/02/03	(H)	W&M RPT CS(W&M) NT 3DP 2NR 2AM
05/02/03	(H)	DP: HEINZE, WHITAKER, HAWKER;
05/02/03	(H)	NR: MOSES, GRUENBERG; AM: KOHRING,
05/02/03	(H)	WILSON
05/06/03	(H)	STA AT 8:00 AM CAPITOL 102
05/06/03	(H)	Scheduled But Not Heard
05/06/03	(H)	JUD AT 5:30 PM CAPITOL 120
05/06/03	(H)	-- Meeting Canceled --
05/06/03	(H)	STA AT 5:30 PM CAPITOL 102
05/06/03	(H)	-- Meeting Canceled --
05/07/03	(H)	STA AT 8:00 AM CAPITOL 102
05/07/03	(H)	Heard & Held
05/07/03	(H)	MINUTE(STA)
05/07/03	(H)	JUD AT 1:00 PM CAPITOL 120
05/07/03	(H)	<Bill Hearing Postponed>
05/08/03	(H)	STA AT 8:00 AM CAPITOL 102

05/08/03 (H) Moved CSHJR 9(STA) Out of Committee
 05/08/03 (H) MINUTE(STA)
 05/08/03 (H) STA RPT CS(STA) NT 3DP 3NR
 05/08/03 (H) DP: SEATON, LYNN, DAHLSTROM;
 05/08/03 (H) NR: GRUENBERG, HOLM, WEYHRAUCH
 05/08/03 (H) JUD AT 3:30 PM CAPITOL 120
 05/08/03 (H) <Bill Hearing Postponed>
 05/09/03 (H) JUD AT 1:00 PM CAPITOL 120
 05/09/03 (H) Heard & Held
 05/09/03 (H) MINUTE(JUD)
 05/12/03 (H) JUD AT 1:00 PM CAPITOL 120
 05/12/03 (H) <Bill Hearing Postponed to Wed.
 5/14/03>
 05/14/03 (H) JUD AT 1:00 PM CAPITOL 120
 05/14/03 (H) Heard & Held
 05/14/03 (H) MINUTE(JUD)
 05/15/03 (H) JUD AT 8:30 AM CAPITOL 120
 05/15/03 (H) -- Meeting Canceled --
 10/29/03 (H) JUD AT 5:00 PM Anch LIO Conf Rm
 10/29/03 (H) Heard & Held
 10/29/03 (H) MINUTE(JUD)
 10/29/03 (H) MINUTE(JUD)
 01/23/04 (H) JUD AT 1:00 PM CAPITOL 120
 01/23/04 (H) Heard & Held
 01/23/04 (H) MINUTE(JUD)
 02/02/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 342

SHORT TITLE: INCREASE DRIVING UNDER INFLUENCE PENALTY
 REPRESENTATIVE(s): GATTO

01/12/04 (H) PREFILE RELEASED 1/2/04
 01/12/04 (H) READ THE FIRST TIME - REFERRALS
 01/12/04 (H) JUD
 02/02/04 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Sponsor of HJR 9.

KELLY HUBER, Staff
 to Representative Bill Stoltze
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During discussion of HJR 9, on behalf of the sponsor, presented Version B.

CHERYL FRASCA, Director
Office of Management & Budget (OMB)
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HJR 9.

REPRESENTATIVE CARL GATTO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 342.

CODY RICE, Staff
to Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as staff to the sponsor of HB 342 and as a former employee of Community Services Patrol in Anchorage.

CINDY CASHEN, Executive Director
Juneau Chapter
Mothers Against Drunk Driving (MADD)
Juneau, Alaska

POSITION STATEMENT: Representing the MADD chapters from Anchorage, Fairbanks, Matanuska-Susitna ("Mat-Su") valley, and Juneau, announced MADD's support of HB 342, provided comments, and responded to questions.

LINDA WILSON, Deputy Director
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Suggested, during discussion of HB 342, that perhaps the committee could review making more incentives for people to obtain treatment rather than imposing more penalties.

ACTION NARRATIVE

TAPE 04-9, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives McGuire, Holm, Ogg, Samuels, and Gruenberg were present at the call to order. Representatives Anderson and Gara arrived as the meeting was in progress.

HJR 9 - CONST AM: APPROPRIATION/SPENDING LIMIT

Number 0057

CHAIR MCGUIRE announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 9, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit. [Before the committee was the proposed committee substitute (CS) for HJR 9, Version 23-LS0435\X, Cook, 1/22/04, which was adopted as a work draft on 1/23/04.]

Number 0063

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, sponsor, indicated that his staff would be presenting a new proposed CS.

Number 0089

REPRESENTATIVE SAMUELS moved to adopt the proposed CS for HJR 9, Version 23-LS0435\B, Cook, 1/27/04, as the work draft.

The committee took an at-ease from 1:12 p.m. to 1:13 p.m.

Number 0109

KELLY HUBER, Staff to Representative Bill Stoltze, Alaska State Legislature, sponsor, relayed that Version B contains some basic changes that were discussed at the resolution's last hearing. For clarification purposes, the title has been changed to correctly reflect the contents of the resolution. On page 2, line 11, the word "natural" has been inserted to reflect that the exemption listed in proposed Section 16(c)(3) of Article IX, Alaska State Constitution, pertains to "a state of natural disaster". Proposed Section 16(c)(6) has been changed such that it no longer pertains to general obligation (GO) bonds. Also for clarification purposes, should the legislature decide to appropriate additional funds via a three-quarter affirmative vote, proposed Section 16(c)(11) states that such would be excluded from the base calculation outlined in proposed Section 16(a). Additionally, proposed Section 16(b) now contains the

language regarding appropriating additional funds via a three-quarter vote. Ms. Huber relayed that the drafter had indicated to her that placing that provision before the one pertaining to the exemptions would satisfy the committee's concerns and help the resolution "read" smoother. And although there had at one point been discussion regarding university tuition, Version B does not contain any other changes.

CHAIR McGUIRE noted that HJR 9 has been referred to the House Finance Committee, which, she suggested, might be the more appropriate venue for discussion of certain aspects of the resolution. She expressed a preference for allowing the bill to move on to that committee for further review.

REPRESENTATIVE STOLTZE expressed his appreciation to the committee for its time, efforts, and debates on HJR 9.

Number 0395

REPRESENTATIVE SAMUELS again moved to adopt the CS for HJR 9, Version 23-LS0435\B, Cook, 1/27/04, as the work draft.

Number 0411

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

MS. HUBER, in response to a question, confirmed that the language in proposed Section 16(b) of Version B is the same language in proposed Section 16(c) of Version X. She relayed that there were no substantive changes made to that language; instead, it was merely moved to a different location for clarity. She relayed that the drafter is of the opinion that the language itself is sufficiently clear, and moving it to its current location in Version B would assist voters in understanding how the process would work.

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR McGUIRE asked whether there were further objections to adopting Version B as the work draft. There being none, Version B was before the committee.

Number 0541

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

p 2

Line 26 after ;

new line 27 new #(11)

an appropriation of money from tuition of the
University of Alaska;

renumber (11) to (12)

Number 0582

CHAIR McGUIRE objected for the purpose of discussion. She noted that at the resolution's last hearing, the representative from the Office of Management & Budget (OMB) had commented that there is a tendency, when exemptions are created, to shift money into those exemptions.

REPRESENTATIVE STOLTZE said he understood the motivation behind Amendment 1 and relayed that he doesn't have a lot of problems with it as an individual change. He pointed out, however, that he is not sure what such a change could lead to, and predicted that the issue would be taken up again in the House Finance Committee.

CHAIR McGUIRE said she did not have a lot of problems with Amendment 1, and surmised that many members are supportive of the university.

Number 0686

CHERYL FRASCA, Director, Office of Management & Budget (OMB), Office of the Governor, noted that at a prior hearing, she'd cautioned against using the term, "university receipts" because it would create a much broader category of exemption. She surmised that Amendment 1 appears to be specific to tuition. She pointed out, however, that from a policy point of view, Amendment 1 appears to be saying that it's okay for university tuition to "go up greater than the change in the escalators for the limit itself."

CHAIR McGUIRE indicated that the legislature probably has an interest in seeing Alaska's state-run university be successful. She surmised, though, that if tuition went up too high, then enrollment would drop.

REPRESENTATIVE SAMUELS expressed a concern that in the future, monies might be called tuition simply so that they would be excluded from the calculation. He asked Ms. Frasca whether "tuition" is currently defined.

MS. FRASCA said she did not know whether "tuition" is currently defined, but opined that the [meaning of the word] is pretty well understood. She suggested that that issue be researched before the resolution gets to the House Finance Committee in order to ensure that the intent of Amendment 1 is maintained.

REPRESENTATIVE OGG, in response to an inquiry, said:

In court decisions, [the university has] been recognized ... as a quasi branch of the government, so they're not like an agency; they're a little different. So, like the [Alaska] Court System, the executive, and like the legislature, they have a special place in the [Alaska State] Constitution. ... It says is that there shall be a University of Alaska, that [the] University of Alaska shall be governed by a board of regents, and that [that] board of regents will hire a president who shall be the executive officer of the board. ...

Number 0901

And what does that actually mean in terms of how the university operates? It means that the university really has, [on] its own, ... legislative powers, ... a taxing power, and ... judicial powers. And underneath their taxing powers, the issue of tuition comes up. They also have the ability to set their own fees, not subject to the state. And the philosophical underpinnings of these are that if you want your university to have a certain independence from the political process, [when you] start to change the [Alaska State] Constitution as to appropriations and put limits on appropriations - which is the power of the legislature, to appropriate - and you spread it across the whole spectrum, then you start to impact the different parts in the [Alaska State] Constitution.

And the way we read this, the other day, it impacts the taxing power of the university to independently fund itself [with] tuition. And tuition is a word of

art that the university gives worth to, and it's the charge per credit hour that a student will pay for, and it's set on an annual basis. And it's not ... an easy thing to set that tuition rate because you have to balance ... how much folks can pay, and if you go too high, then less folks will attend the university, and [so] we don't want that cost to be too high. However, you have to have a university that has [the] ability to respond to events that takes place economically in the state, and if you take this ability away from them, you're starting to hamper their ability to respond independently to actions of the legislative branch of ... government.

REPRESENTATIVE OGG concluded:

So, I think that the university does have a clear idea of what tuition is. It's different than fees - they have a category for fees. They also have receipts, ... and federal receipts and those kinds of things are fairly undefined ... [as are] fees But if we narrowed this amendment down to tuition, then it's fairly clear what we're talking about So I think it's appropriate to put it in here as an exception; [Amendment 1] allows the university to continue the work that they've been defined to do under the [Alaska State] Constitution.

Number 1063

REPRESENTATIVE GRUENBERG, noting that endowments can assist in making universities largely self sufficient, asked whether the sponsor would accept a friendly amendment to broaden Amendment 1 so that it would pertain to revenues such as endowments. If such is not done, he warned, then those funds would simply go into the general fund (GF), rather than to the university as intended, and this would undercut the university's ability to raise money and possibly largely free itself from state funding.

REPRESENTATIVE OGG indicated that he would prefer to limit the exemption to tuition.

CHAIR MCGUIRE suggested that Representative Gruenberg speak with Representative Eric Croft, a member of the House Finance Committee, about possibly exempting endowments.

Number 1271

CHAIR McGUIRE removed her objection to Amendment 1, adding that she does not support broadening it. She asked whether there were further objections to Amendment 1. There being none, Amendment 1 was adopted.

Number 1394

REPRESENTATIVE GARA made a motion to adopt Amendment 2, a handwritten amendment that read [original punctuation provided]:

Delete at p. 1 line 8 ,
"fifty percent of"

Number 1400

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA, in explanation of Amendment 2, said:

[Amendment 2] addresses what I think is a structural problem with this spending cap proposal. ... You can enact policy, as the public's elected representatives, through logic or by formulas. And I think there's a problem when you decide to do things by inflexible formulas. Right now, the spending cap proposal, the way it works, says that no matter how high inflation is, spending must fall behind inflation. So assuming you have even population growth, this spending cap proposal says spending can only go up to reflect half the rate of inflation. Conceptually, I think that will result in schools that are more and more stressed every single year. I think it will result in public safety services that are more and more stressed every single year. And the argument that I hear repeatedly is, "We don't have a fiscal plan, but when we do have a fiscal plan, then we can stop reducing services to our schools ... [and] public safety services."

So what [Amendment 2] says is, if you have inflation, we recognize it; and, if inflation causes costs to go up just to provide the same level of services the next year, we allow that to happen. So, ... in the simplest circumstance, the way this [resolution] works right now is, if we have 8 percent inflation next year and zero population growth, to account for the 8 percent inflation, this [resolution] allows spending

to go up 4 percent. So we will have to lag 4 percent behind inflation. This [amendment] says that we shouldn't have to keep lagging behind inflation every single year. So I would appreciate your support for [Amendment 2]. Thank you.

REPRESENTATIVE STOLTZE in response said:

I agreed with the 50 percent amount; I'm pretty much death on indexing, but I think this was a compromise It does use factors but inflation isn't one of them, so ... I don't know if that's particularly germane

REPRESENTATIVE GARA clarified: "I'm sorry. When I said inflation, I meant to say -- instead of using inflation, you've indexed it to growth and personal income, and I meant growth and personal income."

Number 1517

REPRESENTATIVE STOLTZE, noting that the indexing aspects of the resolution were incorporated from the governor's proposal, asked Ms. Frasca to comment.

MS. FRASCA offered that the change between 2001 and 2002 in personal income was 4 percent, whereas inflation was 2 percent. Additionally, the change between 2000 and 2001 in personal income was 5 percent, whereas inflation was 3 percent. She suggested that using personal income as an aspect of the calculation would allow for a growth in inflation. She elaborated: "Part of the challenge is, ... your revenues don't automatically come in, under our fiscal regime, at the rate of inflation." Some bodies in other states, she noted, can simply raise a tax to correspond with what they want to spend, but under Alaska's current system, that has not been the option taken. She added:

So I don't know if it's as logical to always associate what we want to spend with automatically bringing in more revenues to allow us to do that. This requires, if we're not keeping up with the rate of inflation or a desired rate of spending, it means that we have to make choices because we simply don't have more money to keep spending more. And so, as a result, you have to make priorities, and education certainly has been

evidenced to be one, since we spend about 35 percent of our entire budget on education

REPRESENTATIVE OGG said that he didn't like [the concept of] an appropriation limit because it is the duty of the legislature to appropriate, "and the check [and balance] is at the ballot box." Speaking to Amendment 2, he said that if the language regarding the 50 percent is removed, then an increase in military personnel could cause an increase in population and personal income without a corresponding increase in the need for services. He opined that such could result in an increase to the size of government and spending "because you add those two together and you don't divide them." He opined that Amendment 2 could lead to things getting way out of hand depending on any given year's circumstances. He expressed opposition to Amendment 2.

Number 1648

REPRESENTATIVE GARA said that Representative Ogg is correct in that there will be various circumstances in the future: unanticipated high inflation; unanticipated high population growth; unanticipated high insurance cost increases "because when insurance companies do terrible in the stock market, they pass the cost off along to us, and stuck with flat funding, that just means, to pay insurance costs, we have to cut services even further." Representative Gara said he agrees with Representative Ogg's premise, which is why he thinks that running government by formula "is not a wise move." If the proposed spending cap passes, he remarked, he said he wants it to reflect the reality that there might be very high inflation costs in the future and the legislature might not want to cut services even further in order address those higher costs.

REPRESENTATIVE GARA relayed that if members evinced any support for Amendment 2, he would be willing to amend it for the purpose of addressing Representative Ogg's concern regarding a possible increase in military personnel. In response to Ms. Frasca's statement that education has been a priority and which he surmised was a suggestion that the legislature shouldn't worry about education funding continuing to lag behind inflation, Representative Gara said:

The last year of the Knowles Administration, education ... appropriations were \$739 million, last year they went down to \$729 million, and this year the governor proposes \$722 million. In actual dollars, spending is

going down while inflation ... [and] insurance costs are going up. And I would suggest to you that without [Amendment 2], that course will continue. At some point, maybe education spending won't continue to go down, but ... if we keep knocking it down and then we hold it stable in the future, we've institutionalized failure. I'm not willing to do that, so I would appreciate support for [Amendment 2].

Number 1761

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 1. Representatives Holm, Samuels, Anderson, Ogg, and McGuire voted against it. Therefore, Amendment 2 failed by a vote of 2-5.

Number 1773

REPRESENTATIVE GARA made a motion to adopt [Conceptual Amendment 3, a handwritten amendment that read [original punctuation provided]:

Rewrite Section 16(a) to allow appropriations to reach the FY 2003 level, adjusted for inflation and population growth.

Number 1781

CHAIR MCGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA, in explanation of Conceptual Amendment 3, said:

This is a different approach. The argument that we have received, that we have heard many times, is that ... we need to cut education funding, need to cut this kind of funding and that kind of funding because we don't have a fiscal plan yet. And you know what? If we keep not coming up with a fiscal plan, I might be able to buy that argument, but one of these days we'll get our act together and we'll have a fiscal plan. And the premise is that we have to cut because we don't have a plan yet. At some point we will have a plan, and [Conceptual Amendment 3] says we should [have] the base year's appropriation as being FY 2003: we should allow spending to keep up with inflation in relation to that benchmark year - 2003.

... Another problem with the way the spending cap is written right now is that it doesn't reflect this reality. It says, if next year we decide to cut the budget by \$100 million because we found some real savings that are temporary - ... for example, for some reason fewer people get sick and we need to spend less money on Medicaid, or for some reason we have a temporary plummet in the number of students but the following year they go up - the way the spending cap works is, if we economize by cutting costs in response to real cost-saving possibilities that we have one year, but they're only temporary cost savings and we have to go back to the same level again the following year, we can't do that. It says that if you economize one year as a legislature and cut the heck out of things because you found some one-time opportunities to do that, then you're stuck at that level the next year.

REPRESENTATIVE GARA continued:

Number 1837

That's the problem we have in Anchorage; it is a huge problem in Anchorage. In Anchorage, we gave away property tax relief one year and we couldn't go back to the prior year's appropriation level, adjusted for inflation, again. It's hampered the city of Anchorage very much to have this kind of provision in here that doesn't reflect reality. So I think you should have a [base] year and you should live within your means based on that base year's appropriations adjusted for inflation. But if you're smart one year or able to find temporary cost savings but not able to do it the next year, the [proposed] ... spending cap doesn't allow you to deal with the reality of the following year. It says you're stuck at the level of spending that you engaged in, in the year that you found the temporary savings. ... Again, running government by a formula instead of by logic, I think, is a problem. But if we're going to do it, I think we need to get rid of that glitch in the spending cap.

REPRESENTATIVE HOLM said:

I'm getting [a] little upset by the constant talk of a fiscal plan ... when no one knows what it means, nor does no one propose one. And so to argue that we don't have a fiscal plan, when no one has one and no other state has one, I know that my personal fiscal plan is that my expenditures meet my revenue. The state of Alaska, in the reverse, says we need to match our revenue to our expenditures. And because of that, I think it's very inappropriate for us to pass [Conceptual Amendment 3], so ... that's my reality check.

Number 1943

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

Number 1954

REPRESENTATIVE GARA made a motion to adopt Amendment 4, a handwritten amendment that read [original punctuation provided]:

Insert@ p.2 line 28

"(12) an amount that exceeds the prior years budget needed to reduce kindergarten through 12th Grade class sizes."

Number 1960

CHAIR MCGUIRE objected.

Representative GARA, in explanation of Amendment 4, said:

[Amendment 4] is designed to protect our ability to educate our children in a proper way. Across the state we've heard school districts say that they've got to fire teachers [and] that class sizes have to [increase], and I see no end in sight in this trend. [Amendment 4] says that if you need to add an appropriation to help reduce class sizes, you can do that outside of the spending cap. National organizations, ... from the federal government on down, have recognized that kids really thrive in small class sizes, especially in lower grades, between 15 to 18 kids. We can't do that in Anchorage anymore at

today's budget amount, and in many places across the state, we can't do that. And, instead of actually getting closer to the 15-to-18-student-per-class class limit, we're getting further away from it.

On top of that, I know [Chair McGuire] and other members of this legislature did statewide education hearings a number of years ago, and what they also heard is that we're having a hard time attracting new teachers to the state because our salaries are starting to lag. That's a problem we can't even begin to address. Of the other problems we're dealing with [regarding] education, that's one that is so far off our radar screen, our ability to address at this point, it seems like it will never be addressed. So, ... I don't like the trend in education funding in the state, I don't like the fact that it's been going down, and if we're ever going to reverse that trend and ever going to give children equal opportunities to succeed in life, we're going to have to give small class sizes at some point. We can't do that the way the spending cap is written, and so I urge passage of [Amendment 4].

Number 2022

REPRESENTATIVE ANDERSON relayed that he is very supportive of lower classroom sizes, but remarked that he did not think that Amendment 4 would accomplish what its sponsor intends and would instead debilitate the resolution. He offered his belief that Amendment 4 is ambiguous in terms of the way money is spent for education. Representative Anderson surmised that Representative Stoltze has indicated that classroom and education funding can still be elevated using the equation laid out in HJR 9 without Amendment 4.

REPRESENTATIVE STOLTZE pointed out that education funding is a formula, and surmised that reductions have occurred, not because the legislature hasn't put extra money in the education budget, but because it is a population/enrollment derived formula. He said that he supports education and believes in prioritizing. Historically, he suggested, the legislature has prioritized education funding even when oil revenues were low, and said he couldn't imagine the legislature ever not having a commitment to addressing education [funding] "balanced higher than all other needs." He went on to say that he is not sure that Amendment 4 does what the sponsor intends as artfully as it could.

CHAIR McGUIRE remarked that one of the frustrations of serving in state government is that when constituents complain about the lack of money going into the classroom, in point of fact, the legislature does not get to choose how funds are spent; funding is based on a formula and monies are dispersed by the school districts - by the school boards themselves. She noted that the legislature has instituted a requirement that at least 70 percent of funds must go to the classroom. After expressing agreement with the sentiment behind Amendment 4, she pointed out that it ends up being ambiguous because it is really difficult to determine what monies will reduce classroom size, especially given that the legislature cannot micromanage where those monies actually go. Noting that some would argue that a certain amount of money must go toward school administrative costs and that it would be difficult to separate those funds from others, she suggested that this, too, contributes to Amendment 4's ambiguity.

Number 2199

CHAIR McGUIRE predicted that many suggestions for reducing classroom size will be made without any proof that those ideas will actually accomplish that goal. Because education funding is done by formula, she remarked, perhaps members' efforts would be better spent in attempting to modify that formula - established by the 20th legislature's SB 36 - adding that she and many others think that it is a flawed formula [because] it is based on population. Thus, she mentioned, although it appears that school funding has been reduced by \$7.8 million, according to the formula, this merely reflects a reduction in population. In conclusion, she said she felt that Amendment 4 is flawed, suggested that members' votes on it are not a reflection of their feelings regarding classroom sizes, and posited that all House Judiciary Standing Committee members would like to reduce classroom sizes K-12.

REPRESENTATIVE GARA opined that Amendment 4 is not vague; rather, it gives the legislature the opportunity to direct more money toward teachers so that classroom size can be reduced. It says that the legislature shall have the discretion to appropriate an amount that exceeds the prior year's budget if that money goes to reducing classroom size, and that, he predicted, would be accomplished by hiring more teachers or teacher aids. Education is not funded by formula, he opined, adding that although the law is a formula law, ultimately the legislature is responsible for deciding whether to fund it.

According to a Legislative Legal and Research Services memorandum, he explained, of the roughly \$7 million reduction in education funding proposed by the governor this year, only \$2 million is related to decreased student enrollment and the other \$5 million is not.

Number 2279

REPRESENTATIVE GARA went on to say:

We know from the [Legislative Legal and Research Services] report that since 1998, school funding - in real dollars adjusted for inflation - has gone down by about \$45 million. That doesn't reflect \$45 million worth of fewer students ...; most of it is other factors apart from declining student enrollment. Since 1992, if you take into account inflation and adjustments for inflation, according to the [Legislative Legal and Research Services] report, education has fallen by \$30 million; again, that doesn't reflect a \$30 million decrease in student enrollment, [though] some of it does - ... most of it is a decrease in funding just generally, in real dollars. So I guess I cannot accept the [sponsor's] view [of], "Don't worry about education, we'll always fund it just right." I mean, even without this ... constitutional amendment that we have here, we've just let education funding fall behind inflation. We just have; it's just not arguable.

REPRESENTATIVE GARA indicated that he agrees with Chair McGuire's point that it is frustrating to not be able to control what school districts do with education funding after it is appropriated. Additionally, aside from the aforementioned 70 percent requirement, he predicted that there is probably not a lot more the legislature could do in that regard. "The bottom line is," he concluded, "if we appropriate less money in real dollars every single year, class sizes are going to go up; that's all there is to it." He asked members to support Amendment 4.

REPRESENTATIVE OGG noted that vagueness is in the eye of the beholder, and offered his belief that if one is going to craft something for placement in the Alaska State Constitution, one needs to be very careful and precise with the wording. He opined that Amendment 4 could be read a couple of ways, and he surmised that the legislature did not want to be handing

citizens and future legislatures an argument as to exactly what such a provision would mean. He said he would be opposing Amendment 4.

REPRESENTATIVE HOLM said he agrees with Representative Ogg's comments.

TAPE 04-9, SIDE B

Number 2391

REPRESENTATIVE HOLM concurred that the current system does not allow the legislature to dictate to school districts how to spend their money. Instead, money goes to a city or borough government, which in turn distributes that money to its school districts based on their budgets and, therefore, it is the school districts themselves that determine classroom size. He went on to say:

We, as a society, have done a lot of things to stop classroom sizes from being small. We have added ADA [Americans with Disabilities Act] programs, which completely dictate how monies are spent in different areas. We've added a lack of discipline in classrooms, which really dictate how carefully people can learn; sometimes they can't learn at all because one or two students in the room take the teacher's time 100 percent, and so the ones who are going to produce something in society, many times, are the ones that are the most hurt. So, a lot of the things that we do in our zeal to protect our education system sometimes, I might argue, really work in the reverse. But as a practical matter, ... we can't make those specifications as to the number of children that are in classrooms in the [Alaska State] Constitution, nor should we.

MS. FRASCA, in the issue of education funding, said:

We tend to look at what we're getting for the \$722 million that we are investing as opposed to what we're not getting for the \$40 million that we're not spending. But I'd also like to point out that the formula is written so that communities, those that could afford it, participate in the cost of education. And under the existing formula, Anchorage ..., for example, ... could be, under the state law, contributing [\$12.5 million] more than it currently

is. Juneau [and] Kenai are currently ... just about up to the max that they could contribute. So, for those with a community that education [is] of such a high priority, they might look to see what they're capable of doing, as well. Thank you.

CHAIR MCGUIRE said, "Point taken."

REPRESENTATIVE GARA relayed that if members are in opposition to Amendment 4 because of its current wording, then he would be willing to accept an amendment to Amendment 4 for the purpose of clarifying the language. If, however, members have "substantive" opposition, then he understands. He, too, acknowledged Ms. Frasca's point, and asked whether she is suggesting that Anchorage should increase its taxes.

MS. FRASCA said no; rather, she is simply pointing out that the current education funding formula recognizes local community contributions.

REPRESENTATIVE SAMUELS, turning to the issue of the requirement that 70 percent of the funds that school districts receive must go into the classroom, remarked that some of the same school districts consistently ask for a waiver from the state, and the state keeps granting those waivers. "So we can't kid ourselves; we passed a law that we're very proud of, and then we had a waiver and everybody's percentage stays the same," he added.

Number 2233

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 4. Representatives Anderson, Ogg, Holm, Samuels, and McGuire voted against it. Therefore, Amendment 4 failed by a vote of 2-5.

Number 2217

REPRESENTATIVE ANDERSON moved to report the proposed CS for HJR 9, Version 23-LS0435\B, Cook, 1/27/04 [as amended] out of committee with individual recommendations and the accompanying fiscal notes.

Number 2199

REPRESENTATIVE OGG objected for the purpose of discussion. He went on to say:

It's tough. It's tough to put a limit on appropriations, and it is very hard for me, given the history of America: that we fought very hard that decisions would be made by the majority. And when ... our Founding Fathers did that, they said ... appropriation power: 51 percent, ... or one past half. And I think the [founders] of the Alaska [State] Constitution did exactly the same thing, and the first section in the taxing power says that there shall now [be] no limits on taxing in this state by the legislature's power to do that. And I think that's an important power that the people have given to us, the legislature; that's a responsibility.

Unfortunately, in the past, when we had an overflow of oil money, some of the legislators felt the pressure that we're spending too much and put in an appropriation limit ... that does put a limit, however ineffective as it is. But it was the legislature that tied their own hands at that point, not trusting their ability to make decisions that the public and the people who voted in our constitution said, "This is your responsibility." My concern ... is that when we set appropriation limits, we do not give ourselves, as a legislature representing the people of this state, the ability to respond to events as they occur. And I think that that's what our [Alaska State] Constitution has been set up for, is to give us that ability, and we are the representatives of the people - we're a republican form of government - and it is our duty.

And should we do our duty wrong, [then] every two years - at least the House members - we're subject to the vote of the people. And if we spend too much, then the folks will say your doing that, and they will take you out of office and somebody else who's a little more fiscally responsible will be elected. I think that's the power that I recognize, when we move this through committee, we're giving up; we're giving up that responsibility to the voters. I have real problems with [proposed Section 16(b)], which shifts it to ... three-fourths of the members of each house.

Number 2109

REPRESENTATIVE OGG continued:

It can be viewed a couple ways. It can be viewed that some folks in a majority feel that their viewpoint isn't getting across, and so in order to tie the hands of the majority, you increase that power a little higher in order to vote yourself the ability to respond to circumstances. That's one edge of the sword. The other edge of the sword is that with the Constitutional Budget Reserve, we are actually empowering a minority, and all we have to do is look south to California - they have a two-thirds requirement to pass their annual budget - and look at the state of their financial affairs if you give up to the minority. And so when you put this three-quarter vote in here, you're asking for "Christmas trees."

It's very difficult. I can see doing this for a period of time, and I think that the ... sponsor does address that [in] six years, but to put it in the hands of the public and not in the hands of the legislature, to renew this, seems to be giving up our authority again on taxing and appropriation. And I'd much prefer to see something that says in here that this would be good for six years and then the legislature would have to decide on their own whether they wanted to reenact this. This is called sort of a hard date and not a soft date; this just happens over time. I won't be making those amendments here, but I want it to be clear on the record that these are problems for me, and I think they should be problems for the legislature.

When we change the [Alaska State] Constitution I think we need to be very careful [because] you start to shift the relationship between the legislature and the people of this state and our form of government, and I have great concerns that this goes down a road that says, "We the legislature don't trust ourselves; we need to handcuff ourselves because we have all this money." ... It seems the big problem is that [when] we have excess oil monies, we've put it into a permanent fund and we're wrestling with how to fund state government out of that, and perhaps a way to do this is to narrow this to appropriations from that fund and [thereby] not impact our ability to tax.

Number 2014

REPRESENTATIVE OGG concluded:

I don't think there's any question about our ability to tax. You tax too much, they'll have somebody else in your seat So that balance is in the [Alaska State] Constitution. But the only thing that's out of balance is this permanent fund; we have such excess of money. So as this thing goes through, I certainly hope that that issue will be addressed ... Perhaps we can just narrow this to the permanent fund itself and not to the whole spectrum of our powers of taxation and appropriation.

CHAIR MCGUIRE offered her belief that all of the committee members have struggled with the very concerns raised by Representative Ogg. The power to appropriate is the legislature's one power, and if the constitutional amendment proposed by HJR 9 is adopted by the voters, then that power would be eliminated, at least in part. She said she hopes that more improvements will be made to the resolution as it goes through the process. Alaska is one of the few states that has continued to reduce government spending over the last decade, she remarked, and relayed that her concern centers around the possibility that a future legislature will reverse that trend; thus HJR 9 is just a small measure towards, yes, tying the hands of future legislatures.

CHAIR MCGUIRE mentioned her approval for the provision requiring voter reauthorization every six years. She opined that "this whole sweep with the CBR [Constitutional Budget Reserve]" is not working as intended, "where we're bribing votes and ... pushing the budget up beyond what we thought it would be and certain people who give those votes get a little bit more in their community for capital projects, and I think it's appalling." "I know for sure that's not how it was intended," she added. She mentioned that she could envision the three-quarter vote requirement of HJR 9 engendering the same sort of situations that are occurring with the CBR, thereby rendering the resolution ineffectual.

CHAIR MCGUIRE relayed that her constituency simply does not trust the legislature to not spend more money than it needs to. She noted that when oil revenues were high in 1980s, the legislature spent money on ridiculous things; so now, when the legislature is trying to do worthwhile things like reduce classroom size, the public doesn't trust the legislature. Should a gas pipeline be built or the Arctic National Wildlife

Refuge (ANWR) be opened, she predicted, in order to get to a percentage of market value or to a consideration of a broad-based tax, the concept embodied in HJR 9 will have to be in place.

Number 1821

REPRESENTATIVE GRUENBERG remarked:

People talk about wanting to have a legislature, but yet they tie the legislature's hands. But if you were to say, "Let's not have a legislature," people would be really upset about that. So the question is, when is it enough, when is it too much. And I think that we have to trust the wisdom of the system of government [that] we have - that's a representative democracy; we obviously all do because we're all here, and if we didn't like it, we'd live out in the woods and wouldn't care and wouldn't live under anybody's law. ... People do vote, more or less, and I think we have to trust their good judgment, and trust our good judgment in the future, and trust the people who served in the past - I was here in the middle of the '80s and, sure, there were some mistakes made, but we did some good things too - and trust the fact that [future legislatures] need to have the ability to make these decisions.

And if we take their ability away from them, that not only mistrusts them but it mistrusts the people who vote for them, because it says, "You don't have the sense to elect good people ... and your kids won't have the good sense to elect good people; we know more, not only than you do now," if we pass this out, "but we know more than you'll ever know because we won't let you ever do it - ever, ever do it." And I've got real problems with this kind of a thing. To paraphrase Patrick Henry, "I may disagree with how they vote, but I will defend to the death their right to vote."

CHAIR McGUIRE remarked that the good news about HJR 9 is that [if it is passed by the legislature] it will go before the voters; perhaps they will decide that what it proposes is unnecessary.

Number 1704

REPRESENTATIVE GARA said:

The frustrating thing today is the same frustration each of us share during the course of the legislative session. It's that good policy, what's right for the community, doesn't fit into a two-sentence sound bite. Unfortunately, the media says that we have to explain our policy in a sound bite. Campaigns say that we have to explain our policy [on] a little card, and ... people who train people how to run say, "Two sentences, anything more and nobody is going to read it." And at some point I think as leaders we have to stand up and say, "We have to do what's right even if we can't explain it in two sentences, even if we can't explain it on Channel 2 news or Channel 11 news or Channel 13 news if they don't have enough time to give us more than two sentences."

So ... the sound bite, "Cut government" or "leave spending the same" ... will generally resonate. And it's generally, frankly, what this body has done over the last number of years. If you don't duck your head in the sand, and take a look at spending compared to inflation - so real dollars spending - it really hasn't been out of whack this last decade. But we're playing to the sound bite It's so hard to say, "Spending hasn't been out of whack in these last number of years," and it's so easy to say, "Let's impose a spending limit" - that sounds so good.

Here are some of the real problems, though. As leaders, we have to recognize there are going to be years where insurance costs skyrocket, and in order to deal with that, under a spending cap, you're probably going to have to find some cuts in some very unpopular areas. You're going to have to deal with time when pension costs skyrocket, ... to no fault of anybody's, and that's happening this year; municipalities, for example, are facing an extra \$35 million, roughly, in pension costs that they have to cover under the [Teachers' Retirement System (TRS)] and [Public Employees' Retirement System (PERS)]. They didn't ask for it; it's a stock market thing. You can't write a spending cap that deals with unforeseeable consequences without making the spending cap useless.

And so I guess I do agree that our job is to lead, and our job is to take flack if we've done it wrong. But our job is not to come up with only those policies that we can sell in a two-second sound bite. And because the realities are much more complex than the factors that are addressed in this version of the spending cap, I can't support it. And frankly, if a spending cap were written properly, which essentially would say, "Leave the legislature the discretion to deal with unforeseen circumstances," it wouldn't mean anything. I guess you'd be left at a place where the legislature makes those decisions. I don't see that as a bad thing; I see that as democracy. And I agree with Representative Ogg, that if my constituents decide that I've done this irresponsibly, they'll throw me out of office.

Number 1565

REPRESENTATIVE OGG withdrew his objection to the motion to report the proposed CS for HJR 9, Version 23-LS0435\B, Cook, 1/27/04 [as amended] out of committee.

Number 1559

CHAIR McGUIRE asked whether there were further objections. There being none, CSHJR 9(JUD) was reported from the House Judiciary Standing Committee.

HB 342 - INCREASE DRIVING UNDER INFLUENCE PENALTY

Number 1531

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 342, "An Act relating to driving while intoxicated; and providing for an effective date."

Number 1517

REPRESENTATIVE CARL GATTO, Alaska State Legislature, sponsor of HB 342, explained that [through this legislation] he hopes to "delineate" the person who drinks and drives. Representative Gatto related that about 50 percent of the crashes involving fatalities also involve [an individual with] a blood alcohol concentration (BAC) of 0.15 and greater. Furthermore, he related that most accidents are single-vehicle crashes and if an individual has a BAC of 0.15 or higher, that individual is 385

times more likely to be involved in a single vehicle crash. He pointed out that often, these single vehicles have additional passengers. Representative Gatto highlighted that there is no fiscal note for HB 342. However, if there are serious injuries as a result of these accidents, one must realize that millions of dollars of medical and life costs are incurred. Therefore, the increase in fines proposed by HB 342 may save the state money.

REPRESENTATIVE HOLM asked if there is some methodology other than using a "breathalyzer" to determine one's BAC. He related his understanding that a "blood draw" would provide a more reliable BAC than a "breathalyzer."

[Note to the reader: Since July 2003, law enforcement agencies in Alaska have been using the DataMaster cdm (compact datamaster); this and similar units are often referred to by the generic name of "breathalyzer."]

REPRESENTATIVE GATTO posited that when there are accidents, a blood draw is usually done, which would result in an exact BAC. However, he stressed that [DataMaster] tests are fairly accurate when compared to blood draws.

REPRESENTATIVE HOLM related that he was fairly familiar with a recent case in Fairbanks in which the breathalyzer test result was quite a bit off. Therefore, he expressed the need to be sure to gauge [the BAC] in the most reliable way possible.

REPRESENTATIVE GATTO said doing so made sense to him.

Number 1268

CODY RICE, Staff to Representative Carl Gatto, Alaska State Legislature, sponsor, informed the committee that as a former employee of Community Services Patrol in Anchorage, he has had the opportunity to administer a [DataMaster] test and compare it with a blood draw from the same individual. Although sometimes there was a slight discrepancy, when [DataMasters] are calibrated regularly their readings are very accurate. In response to Chair McGuire, Mr. Rice related his experience that the [DataMaster] test result is lower than the blood draw result.

CHAIR MCGUIRE said that is important because this is an increased penalty for those who have a BAC level that is higher. Therefore, if there is an error in the test that would lower the

individual's BAC level and the subsequent penalty, then she said she wasn't as concerned about any possible discrepancy.

REPRESENTATIVE GARA asked if the reference to the testing a person's breath is referring to use of a [DataMaster] or use of a portable breath tester (PBT), [the results of] which even cause law enforcement concern. He further asked if the fine increase would be based on the PBT too.

MR. RICE replied yes, adding that although he believes "law enforcement would tend to disagree," he can't speak for law enforcement because "that is the case and it is still legal for them to use [PBTs]."

REPRESENTATIVE GARA noted that the courts rely on [DataMaster] results, which he agreed can be very accurate when calibrated. Representative Gara said he didn't worry about requiring that the [BAC level] be determined by a blood draw because that would cost the state; moreover, defendants do have the right to request a blood draw when given a [DataMaster] test. Representative Gara said he didn't see why the PBT would be allowed since law enforcement doesn't rely on it for a conviction. In reading the language of the legislation itself, he said he has difficulty determining exactly what the increase in fines would be.

Number 1037

MR. RICE specified that the sole purpose of HB 342 is to double fines associated with [driving under the influence (DUI)] convictions. On page 4, paragraph (1) specifies that if the trier of fact determines that the BAC was 0.16 to 0.24, then the fines will be doubled. Paragraph (2) on page 4 specifies that if the BAC was 0.24 or greater, the fines will be quadrupled. In response to Representative Samuels, Mr. Rice noted his agreement that this legislation merely means that if one's BAC is higher, that individual pays more.

REPRESENTATIVE GARA, in response to Representative Samuels, explained that law enforcement carries around a PBT and if law enforcement suspects the individual is drunk, then a [DataMaster] test is also administered. He noted that the [DataMaster] results are relied upon for a conviction.

CHAIR McGUIRE suggested that the above distinction should be clarified.

REPRESENTATIVE GATTO noted that many people attempt to delay testing in the hope that their BAC levels will drop.

CHAIR McGUIRE requested that a law enforcement representative be available at the bill's next hearing to explain how it would work in real life.

MR. RICE pointed out that HB 342 doesn't make any changes with regard to the legality of using PBTs, [DataMasters], or blood draws. The legislation only changes the fines.

Number 0858

REPRESENTATIVE OGG indicated the need to clarify the term "chemical test" on page 4, line 2. Also on page 4, line 4 refers to "0.16", whereas other language in the legislation refers to "greater than 0.15", which suggests inconsistency. With regard to the fines and sentencing provisions, Representative Ogg opined that there needs to be some fine-tuning between Section 1, subsection (b)(1), and Section 2, subsection (n)(1), which currently appear to conflict with each other.

CHAIR McGUIRE said that one could envision a case in which a judge attempts to thwart the intent behind the legislation and deliberately sets the fine lower and then doubles that.

REPRESENTATIVE GATTO offered his hope that some discretion is given to the judges. He offered his belief that all the legislation does is double [the fines].

REPRESENTATIVE OGG reiterated that there should still be more clarity regarding Sections 1 and 2.

CHAIR McGUIRE suggested that an opinion from the drafter would be appropriate on this matter. She noted her agreement with Representative Gatto that some judicial discretion should be preserved.

REPRESENTATIVE GARA said that he certainly supports increasing the fine for those with higher BAC levels, but he wasn't sure that there is a mandatory minimum for a misdemeanor DUI charge. He remarked that quadrupling a \$10,000 fine seems to be excessive.

REPRESENTATIVE GATTO pointed out that it takes an excessive amount of exposure to previous fines in order to reach that

[\$40,000] fine [and thus these would be] repeat, chronic offenders.

REPRESENTATIVE GARA said he agreed with the concept of making the fines stiffer in order to reflect the society's interest in this matter. However, he requested that Representative Gatto consider whether the DUI fine should be increased from \$10,000 to \$40,000. He mentioned that it's a small minority of people who are repeat offenders. He posed a situation in which [a repeat offender] doesn't understand that he or she needs alcohol treatment until the second, third, or fourth DUI, and by increasing the fine to \$40,000, the individual will never go to alcohol treatment. Therefore, he said he wasn't sure that society was being made better by increasing a fine that will probably never be paid and, if it was paid, it might come from funds that would've been used to attend a treatment facility.

REPRESENTATIVE GATTO suggested that some people could be deterred when they realize there is a considerable penalty attached to a repeat DUI conviction, though he acknowledged that there are simply people who don't care, and hence raising the fines simply won't reach those people.

Number 0274

REPRESENTATIVE ANDERSON acknowledged the difficulty in this matter and noted his support in limiting DUI incidents. He highlighted the importance of looking to other states with regard to how many states have a tiered fine system similar to that proposed in HB 342. Representative Anderson indicated his agreement with Representative Gara in regard to the notion that there needs to be a balance between the penalties and the group of individuals who will face the penalties. He mentioned the need to encourage proactive measures as well. Although Representative Anderson said he understands MADD's punitive position, he feels that sometimes MADD doesn't look at alternative measures, which are also helpful to review.

REPRESENTATIVE GATTO informed the committee that 31 states plus Washington, D.C., and American Samoa have legislation [that increases the fines for DUIs].

TAPE 04-10, SIDE A

Number 0126

REPRESENTATIVE HOLM recalled a newspaper article in which a gentleman was picked up at a bar for sleeping in his car.

Representative Holm noted his agreement with Representative Anderson in that one must look at things with respect to the damage to the person committing [the crime] as well as the threat to society. He said that he has never understood how someone warming up his or her car could be considered driving, especially in Alaska's cold climate. Representative Holm noted his appreciation of Representative Gatto's idea that there should be consequences for one's actions, adding that too often the legislature legislates such that people don't pay the consequences for their actions.

Number 0285

CINDY CASHEN, Executive Director, Juneau Chapter, Mothers Against Drunk Driving (MADD), began by informing the committee that today she is representing the MADD chapters from Anchorage, Fairbanks, Matanuska-Susitna ("Mat-Su") valley, and Juneau. She noted that she is also a victim of drunk driving. Ms. Cashen announced that MADD supports HB 342. She mentioned that MADD views [the legislature] as being more punitive. She pointed out, however, that the proponents of treatment claim that MADD is punitive, while the proponents of jail time claim that MADD is treatment friendly. This legislation is just one part of the puzzle, she remarked.

MS. CASHEN said that any legislation with a fiscal note isn't going to pass this session, and therefore MADD can't request that a treatment provision be added to HB 342. Fortunately, most of the treatment agencies in Alaska and Washington use a sliding scale; thus, if an individual is charged with fines, he or she won't be prevented from treatment. She explained that MADD supports HB 342 because it has seen so much damage from high risk and chronic drunk drivers. In order to deal with the aforementioned, the state must have a practical operational definition based on objective measures growing out of the drunk-driving enforcement and criminal justice processes. She stressed that the definition can't be left to the screening process that involves subjective elements such as self-reports and professional assessments, even when provided by licensed alcohol treatment specialists. The sanctions need to be in the courtroom.

Number 0419

CHAIR MCGUIRE recalled HB 4, legislation from the Twenty-Second Alaska State Legislature, that at one point tied funding of wellness courts to the newly imposed fines. Chair McGuire said

that there is no question that the wellness courts are working, and therefore she asked whether MADD would support tying the newly generated funding from HB 342 to support wellness courts.

MS. CASHEN replied yes and noted that MADD was on record as supporting that part of HB 4. Furthermore, MADD has also gone on record in support of the wellness court and therapeutic court legislation. She said that MADD has seen the success of [wellness and therapeutic courts] in other states as well as in Alaska. She informed the committee that she was the [first] wellness court case manager in Juneau and thus she has witnessed its success when administered properly and with a sufficient amount of funds.

REPRESENTATIVE GARA surmised that the average person on the street would agree that the fines for DUI and repeat DUIs should be increased. However, at some point he wondered when the increases should stop. Representative Gara announced his support for increasing the misdemeanor fines and adding some to the felony fines. He pointed out that in Alaska, \$40,000 is two years worth of income for some people, and suggested that he is uncomfortable with that high a fine.

MS. CASHEN recalled that about three years ago, when she started with MADD, Alaska was number one in the nation for the number of drunk driving fatalities per capita. Since that time, three new chapters of MADD have formed, and the focus [of all the Alaska chapters] is education. Because of groups such as MADD and legislation such as HB 4, Alaska now ranks 26th [in the number of drunk driving fatalities per capita]. She highlighted that the aforementioned change has occurred over the last three years.

MS. CASHEN informed the committee that she is a recovering alcoholic with over seven-and-a-half years of sobriety. In order for an alcoholic who is also a chronic drunk driver to finally realize he or she has an issue, that person has to reach the bottom, which is at a different spot for each individual. She related that many of the alcoholics with which she has spoken have said that they reached the bottom due to financial sanctions such as those proposed today.

REPRESENTATIVE GARA agreed that reaching the bottom is personal, as is the appropriate sentence for an individual person. He suggested that a \$40,000 fine against someone who makes \$90,000 a year makes more sense than a \$40,000 fine on someone who makes \$10,000 a year and has a family to care for. Representative

Gara opined that justice should be individualized. He pointed out that MADD has done a good job convincing people that sentences have been too light in the past. He suggested that perhaps the fines don't need to be reviewed [and increased] so severely if the jail time has increased, which might bring someone to the bottom more quickly than a \$40,000 fine.

MS. CASHEN said that it has been some time since there was an increase in the jail time due to the cost the state's correctional system. She explained that MADD is trying to look at a comprehensive program for the high-risk driver, and what is being reviewed is sanctions, which serve as a deterrent. If [fines] deter someone from drinking and driving and killing someone, then the state will save hundreds of thousands of dollars.

MS. CASHEN, in response to Representative Anderson, reiterated her belief that fines will deter individuals from driving drunk.

Number 1019

CHAIR McGUIRE mentioned that even with other sections of the criminal code, the deterrent argument is always raised, but another aspect of sentencing is that it is also punitive. She remarked that she believes the suggestion of a sliding scale is a good one and has been done in other states.

REPRESENTATIVE GRUENBERG opined that the problem of drunk driving will never cease. This legislation is one, but not the only, approach to solving this problem. Although the criminal system is used as a means of enforcement and it offers some recompense to society, with the civil system there's a lower standard of proof and the injured victim receives recompense. Representative Gruenberg recommended that one should consider various ways of solving the problem [in order to get to] the best solution.

Number 1178

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration (DOA), related that public defenders recognize that DUI is a serious problem in Alaska. She acknowledged all the efforts by the legislature to make some changes in this area. She pointed out that the statutes in this legislation have been changed numerous times over the past few years. Currently, a first-time offender receives a mandatory jail sentence of three days and a mandatory minimum fine of

\$1,500 and the individual's license is revoked for 90 days. Furthermore, those in prison face a surcharge, which can't be higher than \$10,000, for the cost of imprisonment. Moreover, there is a conviction surcharge of \$75 and the individual may very well lose his/her permanent fund dividend. The individual will have to do some alcohol treatment. This particular legislation raises some concerns because it will likely cause there to be more trials if people are disputing the BAC levels. Page 4 of the legislation says that the [BAC] level will be determined by the trier of fact. In some cases, the BAC level won't be addressed if it's over .08 because the higher level may not matter and the issue may then be with regard to whether the individual is driving or not. Therefore, she predicted that there would be more effort put into establishing or contesting the BAC level when an individual is in the "fringe" area.

MS. WILSON remarked that there is a possibility that this legislation will be challenged on an equal protection basis. For example, if it's a second misdemeanor offense, the current mandatory minimum fine is \$3,000 and quadrupling that would result in a mandatory fine of \$12,000. The amount of \$12,000 is over the maximum fine allowable for a class A misdemeanor and thus the convicted individual will be pulled out of the class in which he or she is convicted and be treated differently than others in that class of offense.

MS. WILSON turned to the benefits of putting money toward treatment versus imposing more penalties. With all the recent changes related to DUIs, she suggested that it would be helpful to wait and see what the benefits would be before drastically raising fines. She reminded the committee that the PDA basically represent the poor. When the fines are doubled or quadrupled in an offense that is already experiencing heightened penalties, people may not seek treatment because of a lack of funds. Ms. Wilson suggested that perhaps the committee could review making more incentives for people to obtain treatment rather than imposing more penalties.

CHAIR McGUIRE reiterated her earlier comments regarding using some of the funds from fines to fund wellness courts.

Number 1433

REPRESENTATIVE SAMUELS remarked that he believes that one wouldn't see the same fatalities when the BAC is .08 versus when the BAC is .28. He acknowledged that he didn't know whether fining someone \$40,000 would help. However, he expressed

concern that there are still those individuals who have been in rehabilitation six times and jail didn't work.

REPRESENTATIVE GARA agreed, adding that that is why he mentioned individualized justice points. Representative Gara asked if Ms. Wilson would be able to provide the committee with a summary of the changes in the fines over the last five years.

MS. WILSON agreed to do so.

[HB 342 was held over.]

ADJOURNMENT

Number 1523

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:15 p.m.