ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 23, 2004
2:12 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Jim Holm

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 309(JUD) am
"An Act relating to testing the blood of prisoners and those in custody for bloodborne pathogens."

- MOVED HCS CSSB 309(JUD) OUT OF COMMITTEE

CONFIRMATION HEARING

Board of Governors of the Alaska Bar

Joseph N. Faulhaber - Fairbanks

- CONFIRMATION ADVANCED

HOUSE BILL NO. 551
"An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and to the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

- MOVED CSHB 551(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 545
"An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for

certain state contracts for goods and services; and providing for an effective date."

- MOVED CSHB 545(L&C) OUT OF COMMITTEE

SENATE BILL NO. 316
"An Act relating to motor vehicle safety belt violations."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: SB 309
SHORT TITLE: BLOOD PATHOGENS TESTING OF PRISONERS
SPONSOR(S): SENATOR(S) WAGONER

02/09/04	(S)	READ THE FIRST TIME - REFERRALS
02/09/04	(S)	STA, JUD
03/04/04	(S)	STA AT 3:30 PM BELTZ 211
03/04/04	(S)	Moved SB 309 Out of Committee
03/04/04	(S)	MINUTE(STA)
03/05/04	(S)	STA RPT 3DP
03/05/04	(S)	DP: STEVENS G, COWDERY, STEDMAN
03/17/04	(S)	JUD RPT CS 4DP SAME TITLE
03/17/04	(S)	DP: SEEKINS, FRENCH, OGAN, THERRIAULT
03/17/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/17/04	(S)	Moved CSSB 309(JUD) Out of Committee
03/17/04	(S)	MINUTE(JUD)
03/22/04	(S)	TRANSMITTED TO (H)
03/22/04	(S)	VERSION: CSSB 309(JUD) AM
03/24/04	(H)	READ THE FIRST TIME - REFERRALS
03/24/04	(H)	STA, JUD
04/08/04	(H)	STA AT 8:00 AM CAPITOL 102
04/08/04	(H)	Heard & Held
04/08/04	(H)	MINUTE(STA)
04/15/04	(H)	STA AT 8:00 AM CAPITOL 102
04/15/04	(H)	Moved HCS CSSB 309(STA) Out of Committee
04/15/04	(H)	MINUTE(STA)
04/19/04	(H)	STA RPT HCS(STA) 3DP 2NR
04/19/04	(H)	DP: SEATON, LYNN, HOLM; NR: COGHILL,
04/19/04	(H)	WEYHRAUCH
04/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 551
SHORT TITLE: DRUG FELONY DISQUALIFIES TEACHER
SPONSOR(S): JUDICIARY

04/05/04	(H)	READ THE FIRST TIME - REFERRALS
04/05/04	(H)	EDU, JUD
04/13/04	(H)	EDU AT 11:00 AM CAPITOL 124
04/13/04	(H)	Scheduled But Not Heard
04/15/04	(H)	EDU AT 11:00 AM CAPITOL 124
04/15/04	(H)	Moved Out of Committee
04/15/04	(H)	MINUTE(EDU)
04/19/04	(H)	EDU RPT 1DP 1NR 2AM
04/19/04	(H)	DP: WOLF; NR: OGG; AM: SEATON, GATTO
04/22/04	(H)	FIN REFERRAL ADDED AFTER JUD
04/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 545
SHORT TITLE: STATE LEASE AND CONTRACT EXTENSIONS
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/25/04	(H)	READ THE FIRST TIME - REFERRALS
03/25/04	(H)	L&C, JUD
04/07/04	(H)	L&C AT 3:15 PM CAPITOL 17
04/07/04	(H)	<Bill Hearing Postponed to 4/14>
04/14/04	(H)	L&C AT 3:15 PM CAPITOL 17
04/14/04	(H)	Heard & Held
04/14/04	(H)	MINUTE(L&C)
04/16/04	(H)	L&C AT 3:15 PM CAPITOL 17
04/16/04	(H)	Moved CSHB 545(L&C) Out of Committee
04/16/04	(H)	MINUTE(L&C)
04/21/04	(H)	L&C RPT CS(L&C) NT 5DP 1AM
04/21/04	(H)	DP: CRAWFORD, LYNN, ROKEBERG,
04/21/04	(H)	DAHLSTROM, GATTO; AM: GUTTENBERG
04/21/04	(H)	JUD AT 1:00 PM CAPITOL 120
04/21/04	(H)	<Bill Hearing Postponed 4/23/04>
04/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR TOM WAGONER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 309.

KURT OLSON, Staff
to Senator Tom Wagoner
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 309 on behalf of Senator Wagoner, sponsor, and responded to questions.

PORTIA PARKER, Deputy Commissioner
Office of the Commissioner
Department of Corrections (DOC)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of SB 309.

JOSEPH N. FAULHABER, Appointee
Board of Governors of the Alaska Bar
Fairbanks, Alaska
POSITION STATEMENT: Testified as appointee to the Board of Governors of the Alaska Bar.

RYAN MAKINSTER, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 551 on behalf of Representative McGuire, Chair, House Judiciary Standing Committee, sponsor.

LARRY WIGET, Executive Director
Public Affairs
Anchorage School District (ASD)
Anchorage, Alaska
POSITION STATEMENT: Provided testimony during discussion of HB 551.

BONNIE BARBER, Executive Director
Professional Teaching Practices Commission (PTPC)
Anchorage, Alaska
POSITION STATEMENT: Provided testimony during discussion of HB 551.

LAWRENCE LEE OLDAKER, Chair
Professional Teaching Practices Commission (PTPC)
Auke Bay, Alaska
POSITION STATEMENT: Testified in opposition to HB 551.

VERN JONES, Chief Procurement Officer
Division of General Services
Department of Administration (DOA)
Juneau, Alaska
POSITION STATEMENT: Presented HB 545 on behalf of the administration.

ACTION NARRATIVE

TAPE 04-71, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 2:12 p.m. Representatives McGuire, Ogg, Samuels, and Gara were present at the call to order. Representatives Anderson and Gruenberg arrived as the meeting was in progress.

SB 309 - BLOOD PATHOGENS TESTING OF PRISONERS

Number 0043

CHAIR McGUIRE announced that the first order of business would be CS FOR SENATE BILL NO. 309(JUD) am, "An Act relating to testing the blood of prisoners and those in custody for bloodborne pathogens." [Before the committee was HCS CSSB 309(STA).]

Number 0080

SENATOR TOM WAGONER, Alaska State Legislature, sponsor, indicated that a member of his staff would present SB 309.

Number 0083

KURT OLSON, Staff to Senator Tom Wagoner, Alaska State Legislature, sponsor, relayed that currently, Alaska law allows only rape victims to request the testing of prisoners for bloodborne pathogens; SB 309 would allow correctional officers who have been exposed to blood or other bodily fluids to request testing of the prisoner responsible for the exposure. Specifically, AS 18.15 would be amended to include five new sections: proposed AS 18.15.400 authorizes the process of testing; proposed AS 18.15.410 provides consent provisions; proposed AS 18.15.420 addresses testing without consent; proposed AS 18.15.430 addresses confidentiality issues and provides penalties for unauthorized disclosure; and proposed AS 18.15.450 defines the terms used in proposed AS 18.15.400 - 18.15.440.

MR. OLSON remarked that last year, 41 correctional officers were potentially exposed to bloodborne pathogens; in most of these cases the exposure was intentional. He noted that Senator Wagoner first became aware of this problem when it was brought

to his attention by a correctional officer from Wildwood Correctional Center. Mr. Olson offered his understanding that the correctional officer had been bitten by a prisoner who told the correctional officer that he was sick but refused to say what with. In such situations, when the exact illness is not known, correctional officers undergo treatment with a variety of medications and are sometimes not fit for duty for a period of time because of side effects and drug interactions. In the aforementioned instance, the correctional officer was unable to work for two and a half weeks, and the cost of the medications given was approximately $3,000.

Number 0307

MR. OLSON explained that there are two zero fiscal notes attached to SB 309, one from the DOC and one from the Division of Risk Management, Department of Administration (DOA). The latter fiscal note makes reference to a possible savings to the state should the legislation pass, but that savings is not quantifiable. In conclusion, he remarked that passage of SB 309 will bring Alaska in line with 24 other states and the federal government, all of which have similar provisions. He offered his belief that SB 309 is supported by the DOC, and mentioned that a representative from the DOC would be testifying.

REPRESENTATIVE SAMUELS noted that he's toured facilities in both Alaska and in Arizona, and concurred that there are instances where inmates intentionally attempt to spread bloodborne pathogens to guards. He characterized SB 309 as a pretty good protective measure that might mitigate the results of the problem.

REPRESENTATIVE GARA asked whether the state, when trying to prove a criminal case, is allowed to take someone's blood without his/her consent.

SENATOR WAGONER said that such can only be done with a court order, and relayed that there is such a provision in the bill.

REPRESENTATIVE GARA noted that according to that provision, a physician must state that he/she needs the information that would be provided by the test.

Number 0501

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner, Department of Corrections (DOC), noted that the provisions of

the bill preclude test results from blood that's collected for this purpose from being used in a criminal proceeding.

REPRESENTATIVE OGG mentioned that federal law on this issue states: "(d) The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding."

REPRESENTATIVE GARA pointed out that there is a provision on page 2 [lines 5-13] requiring that notice be given to the prisoner and that that notice must include similar language.

CHAIR McGUIRE noted that language on page 5 [lines 4-16] provides penalties for unauthorized disclosure; unauthorized disclosure being disclosure for any purpose other than what's provided in the bill.

MS. PARKER offered her belief that the protection against using the test results in civil or criminal proceedings is located on page 2. She added that this is the DOC's intent; it does not want the results used in civil or criminal proceedings.

CHAIR McGUIRE surmised, then, that the language on page 2 works together with the language on page 5.

REPRESENTATIVE GRUENBERG shared his concern that the bill does not specifically provide protection to third parties who might be exposed to a bloodborne pathogen, for example, the spouse of a correctional officer who gets bitten by a prisoner. He said he would want the spouse or the spouse's physician to be informed of the results of the test.

Number 0869

MS. PARKER pointed out, however, that the DOC must follow Health Insurance Portability and Accountability Act (HIPAA) and Occupational Safety and Health Administration (OSHA) regulations with regard to disclosing information, particularly any kind of medical information.

REPRESENTATIVE GRUENBERG said he would like something inserted into the bill that would ensure that the maximum protections allowed under HIPAA and OSHA are extended to third parties.

MS. PARKER relayed that she would have the DOC's medical director address that issue either via teleconference or in writing.

REPRESENTATIVE GRUENBERG noted that Doug Bruce, Director, Central Office, Division of Public Health, Department of Health and Social Services (DHSS), has provided the committee with a bill analysis wherein he suggests some changes to the [original version of the] bill.

REPRESENTATIVE GARA directed attention back to the language on page 2 regarding the notice provision's requirement that the prisoner be informed that test results are not to be used in criminal or civil proceedings, and asked whether test results could be provided to the prosecution informally even if the results are not to be used as evidence in court.

MR. OLSON offered his belief that that issue is addressed on page 2, lines 26-29, which says in part: "The department shall disclose the prisoner's existing bloodborne pathogens test results to the correctional officer without the prisoner's name or other uniquely identifying information.".

REPRESENTATIVE GRUENBERG, directing attention to Mr. Bruce's suggested changes [to the original version of the bill], read one of them as follows [original punctuation provided]:

> Page 2, Line 12 indicates that test results "may not be used as evidence in any criminal proceedings or civil proceedings." In some cases, it could be appropriate to charge a prisoner in an institution who has intentionally attempted to infect a staff member. Test results would be necessary evidence.

Number 1088

REPRESENTATIVE GRUENBERG [referring to HCS CSSB 309(STA)] indicated that he agrees with DHSS's analysis of this issue, and said he is prepared to offer an amendment that would delete, on page 2, lines 12-13, the words: "and may not be used as evidence in any criminal proceedings or civil proceedings." He opined that inclusion of that language does not constitute good policy, and added, "It seems to me that if somebody bites somebody else, and they have to take a blood test as a result of that, ... they can hardly complain if that evidence comes in and is used in a legitimate judicial or administrative proceeding."

MS. PARKER [referring to HCS CSSB 309(STA)] responded:

> The reason that we actually prefer it to be this way is, we think that there will be more problems with the blood test that we have done, by the Department of Corrections, where ... the correctional officer has asked that the sample be taken for medical purposes; we would rather have it done again by their own doctor and to have it done so [that] there is a chain of evidence with that if it's going to be used in a court proceeding.

MS. PARKER, in response to a comment, said that the DOC has no objection to the collection of the blood; rather, its concern centers on the fact that once the DOC collects it and stores it, questions may arise regarding the validity of the sample. She added, "We would prefer that if it's going to be used in a court proceeding, that the blood be drawn independently of us."

REPRESENTATIVE GRUENBERG indicated that his concern is now satisfied. He then directed attention to another of Mr. Bruce's suggested changes [to the original version of the bill] that read as follows [original punctuation provided]:

> Page 2, Line 25 indicates that the facility "must first attempt to get existing test results under this subsection before taking any steps to obtain a blood sample or to test.[sic]" This seems unnecessary, as previous test results are most likely irrelevant - current test results are what's needed. And, even current test results could be irrelevant, given that a person could still be infected with HIV, for example, and the test would not show it right away. At a minimum, there should be a timeframe associated with the prior test result.

Number 1240

REPRESENTATIVE GRUENBERG [referring to HCS CSSB 309(STA)] called the forgoing suggestion a well-taken point, and said he is considering offering an amendment that would delete from page 2, lines 24-26, the words: "The department must first attempt to get existing test results under this subsection before taking any steps to obtain a blood sample or to test for bloodborne pathogens.".

MR. OLSON suggested that the DOC's medical director could address the issue of relevancy of test results.

REPRESENTATIVE SAMUELS said he would hate to force the DOC to do a search for existing test results if those results can't be used anyway because they are found to be too old.

CHAIR McGUIRE indicated that she wanted to hear from the DOC's medical director.

REPRESENTATIVE GRUENBERG mentioned that he also wanted to address the rest of Mr. Bruce's suggested changes [to the original version of the bill].

REPRESENTATIVE GARA, turning to Representative Gruenberg's concern regarding third parties and HIPAA and OSHA regulations, offered his belief that if a correctional officer is bitten, for example, and then requests that the prisoner get tested, the correctional officer can then share the results of that test with his/her spouse.

REPRESENTATIVE GRUENBERG pointed out, however, that the correctional officer, for whatever reason, may not share that information with his/her spouse; therefore, he said he would like to see something inserted into the bill that would ensure that needed information is relayed to the spouse and his/her physician.

Number 1449

CHAIR McGUIRE announced that SB 309 would be set aside. [SB 309 was heard again later in this same meeting.]

CONFIRMATION HEARING

Board of Governors of the Alaska Bar

Number 1457

CHAIR McGUIRE announced that the committee would next consider the appointment of Joseph N. Faulhaber to the Board of Governors of the Alaska Bar.

Number 1471

JOSEPH N. FAULHABER, Appointee, Board of Governors of the Alaska Bar, in response to the question of why he wished to serve on the Board of Governors of the Alaska Bar, relayed that he has already served over seven years, and that he'd initially become involved with the Board of Governors of the Alaska Bar because

he'd "had a cause," a desire, stemming from a frivolous lawsuit filed against him, to see changes in the Alaska Rules of Civil Procedure. He added, "At any rate, I guess I sort of became converted and infatuated with the legal process ..., so I've enjoyed it and I'd like to think I've contributed something." He shared his belief that the members of the Board of Governors of the Alaska Bar and its staff are some of the finest people he's met, adding that he has enjoyed working with them.

REPRESENTATIVE GRUENBERG asked Mr. Faulhaber whether he feels that there should be mandatory continuing legal education (CLE).

[Chair McGuire turned the gavel over to Vice Chair Anderson.]

MR. FAULHABER mentioned that several years ago, he and other members of the Board of Governors of the Alaska Bar were responsible for [instituting the continuing legal education program].

REPRESENTATIVE GRUENBERG said he strongly supports continuing legal education.

MR. FAULHABER said he believes that the public expects lawyers to have continuing legal education, and that the public has a right to demand a given level of expertise. He noted, however, that the current continuing legal education program is voluntary due to [a ruling by] the Alaska Supreme Court.

REPRESENTATIVE GRUENBERG posited that many members of the Alaska Bar support continuing legal education.

Number 1683

MR. FAULHABER, on the issue of "Bar dues," relayed:

> The cost of the Bar can be paid for by yesterday's lawyers, today's lawyers, or tomorrow's lawyers. ... We inherited an aggressive dues structure that was meant to build a fund and then kind of use it until it diminishes as costs increase due [to] inflation. Well, I would make the argument that in a mandatory Bar, the Board of Governors should, first of all, determine that all the services are necessary and that we're meeting our mission statement and that we're doing it ... in a fiscally responsible manner. Second, you take what it costs and you divide it by the number of members, and you have a breakeven budget

every year. And then I guess the third point that I would make is, it's not the end of the world that we do have some money in the bank, because, if you've got less than one year's costs in the bank, I don't think that means that you're too fat.

[Vice Chair Anderson returned the gavel to Chair McGuire.]

REPRESENTATIVE GRUENBERG said he agrees.

REPRESENTATIVE GARA offered his understanding that Alaska's Bar dues are the highest in the country.

MR. FAULHABER said he did not see that argument as relevant; if an organization starts out with "a zero-based budget" every year and wants to accomplish its mission statement, then what it costs to do that is what it costs.

REPRESENTATIVE GARA opined that the high rate of Bar dues is relevant, and said his concern centers on whether the Board of Governors of the Alaska Bar is operating as efficiently as possible, and whether such high Bar dues are really necessary.

MR. FAULHABER said that during the budget process this year, the Board of Governors of the Alaska Bar was brutal in its examination of the budget, and that he is satisfied that there didn't seem to be any waste to cut.

Number 1944

REPRESENTATIVE GARA offered the suggestion that eliminating the quarterly newspaper the Board of Governors of the Alaska Bar puts out or allowing members to stop receiving it would be one place to cut expenses, surmising that about $50 of every member's Bar dues goes towards publishing and distributing that newsletter. After mentioning that he is no longer an active member of the Bar because for a while he only did volunteer work and didn't want to pay $600 a year in Bar dues to continue that practice, he said he has approached the "Bar Association" about providing an exemption from Bar dues to lawyers who only do volunteer work, but was told, "No." Now, he relayed, as an inactive member he only pays $100 a year and he is not regulated. All of these points, he remarked, lead him to believe that perhaps the Board of Governors of the Alaska Bar is not being run as efficiently as possible.

MR. FAULHABER said that he used to have similar thoughts about the aforementioned newspaper, The Alaska Bar Rag, but after an investigation of the matter, came to the conclusion that it "was run cheap." Because the Board of Governors of the Alaska Bar is required to publish changes in Bar rules as well as publish "a number of other things," continuing to publish and distribute The Alaska Bar Rag is probably the cheapest way to go about it. He remarked, however, that perhaps looking into an electronic format for those required items might prove to be cheaper and more efficient, and offered to research that issue. He then asked Representative Gara how long ago he'd raised the issue of eliminating or reducing fees for those who only do pro bono work.

REPRESENTATIVE GARA offered his recollection that he'd approached the Alaska Bar Association with this issue in 2001-2002. He elaborated: The response was that you had to show that you were doing something like 40 hours a month of free work, ... and frankly all I was doing was about 5 hours a month, ... so I didn't meet the time threshold."

MR. FAULHABER offered his understanding that currently, if someone only does pro bono work and does it through Alaska Legal Services, the membership is either free or Bar dues have been reduced considerably. He said he would research that issue further and inform the committee of his findings.

Number 2103

CHAIR McGUIRE said that one of her concerns centers on the fact that when people get out of law school they are often short of money and have no income but are still required to pay to take the Bar exam, which, she relayed, is assessed a very high fee, by far one of the highest in the nation surpassing even the New York Bar exam fee. She asked Mr. Faulhaber to consider looking into ways in which the costs of and for the Bar exam could be reduced, and to particularly keep in mind those with limited resources who are fresh out of law school. She added that she thinks the current Bar dues are too high and that she has heard similar thoughts from other practicing attorneys.

MR. FAULHABER responded:

> I guess the question I would ask [is], ... who should pay for the costs? The charges for the Bar exam [are] cost-driven, so it's not a thing that we make money on. So the question is, would you be willing, as a

> sitting attorney, as a member, to subsidize the Bar exam for new lawyers or new [want-to-be] lawyers? ... If the membership wanted that, I probably wouldn't have a problem with it, but in my heart of hearts I think that any time you can actually nail down the cost of a service and pass it on to the recipient, it's probably a way (indisc.).

CHAIR McGUIRE pointed out, however, that currently the Bar associations in all other states, even small states like Wyoming, find ways to "make it work more efficiently" and keep costs down. She reiterated her request for the Board of Governors of the Alaska Bar to look into ways of reducing the cost of administering the Bar exam. For example, holding the Bar exam at a cheap or donated location, rather than holding it at the Egan Center; or shorting the Bar exam to two days, rather than keeping it at two and a half days; or focusing on "standardization," rather than subjective essay questions. She remarked that for people fresh out of law school, having to contemplate spending [nearly] $1,000 to take the Bar exam can be rather daunting. Perhaps having an external audit conducted for the purpose looking at ways to reduce the costs of and for the Bar exam might be in order, she suggested.

REPRESENTATIVE ANDERSON added that if a person fails the Bar exam and then waits three years to retake it, he thinks it is unfair to charge him/her the full amount; instead, the fee should remain the same as it is for those who retake it right away. The aforementioned would be one way to contain the cost of taking the Bar exam.

REPRESENTATIVE GRUENBERG suggested allowing the Bar exam fee to be paid over time.

TAPE 04-71, SIDE B
Number 2369

MR. FAULHABER, in response to questions, remarked that the cost of taking the Bar exam is "$800-plus."

REPRESENTATIVE GRUENBERG suggested allowing that fee to be paid in two years.

MR. FAULHABER relayed that in the past, he has been a proponent of accepting payment via credit card.

REPRESENTATIVE GRUENBERG pointed out, however, that credit card interest can be quite high. On a different issue, he remarked that he and others whom he knows like receiving The Alaska Bar Rag.

REPRESENTATIVE OGG declared a possible conflict in that he is an active member of the Alaska Bar. He said he would like to see Bar dues lowered for those who don't practice in the large urban areas of the state. He asked about the possibility of allowing sitting legislators to obtain CLE credit for their legislative service to the state.

MR. FAULHABER said he would propose that suggestion to the Board of Governors of the Alaska Bar.

REPRESENTATIVE GRUENBERG suggested also allowing legislative staff to obtain CLE credit.

MR. FAULHABER indicated that that makes sense and would propose that suggestion as well.

REPRESENTATIVE OGG said he appreciates Mr. Faulhaber's willingness to serve.

Number 2162

REPRESENTATIVE GARA said he feels that Bar dues should be waived or reduced for those who only practice law on a volunteer basis, even if the volunteer work is not done through Alaska Legal Services. He noted that he has already made suggestions to the Alaska Bar Association about changing aspects of the Bar Exam, and opined that the Alaska Bar Association was not as responsive to suggestions for change as it ought to have been, that it seemed to go out of its way to resist change. One of the things he suggested to the Alaska Bar Association in the past was that on the standardized portion of the test, if it is taken and passed elsewhere in the country, it should not need to be retaken when a person then takes the Alaska Bar exam, opining that to require such is a waste of time and money; the response to this suggestion was, "No." In fact, he was told that no other states do that, and yet his later research found that such was not true. He asked Mr. Faulhaber to raise this issue with the Board of Governors of the Alaska Bar.

MR. FAULHABER indicated that he would do some research regarding: retaking the standardized portion of the Bar exam; the fee that's charged for retaking the Bar exam; waiving or

reducing Bar dues for those who only do pro bono work; and allowing CLE credits for legislative service.

CHAIR McGUIRE reminded Mr. Faulhaber to also research the issues of reducing the cost of and for the Bar exam - specifically, if ways are found to reduce the cost of administering the exam, that savings should then be passed on to those taking the exam - and of allowing the Bar exam fee to paid over time in hardship cases. She remarked that the current fee for taking the Alaska Bar exam is twice that of the Bar exam in some other states, and opined that that is unreasonable.

MR. FAULHABER asked whether the committee would like to see the Bar exam fees lowered even if it means requiring the current membership to subsidize the cost.

CHAIR McGUIRE said that is not her intent, and relayed that other committee members are indicating that they are not in favor of that option either. Instead, efficiencies should be found to reduce the cost of administering the Bar exam and then those savings should be passed on to those that take it.

REPRESENTATIVE GARA mentioned that he is not in favor of allowing CLE credits to be obtained for legislative service, because practicing lawyers do a lot more legal research than legislators and legislative staff and yet do not get CLE credit for that work. In conclusion, he asked Mr. Faulhaber to look into the issue of making the Alaska Bar Association a little more flexible and responsive.

CHAIR McGUIRE recapped for Mr. Faulhaber the issues the committee wanted the Board of Governors of the Alaska Bar to consider, and again suggested perhaps having an outside audit conducted to look for efficiencies.

MR. FAULHABER agreed to bring those issues to the Board of Governors of the Alaska Bar.

Number 1779

REPRESENTATIVE ANDERSON made a motion to advance from committee the nomination of Joseph N. Faulhaber as appointee to the Board of Governors of the Alaska Bar. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

REPRESENTATIVE ANDERSON reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

CHAIR McGUIRE thanked Mr. Faulhaber for his willingness to serve.

SB 309 - BLOOD PATHOGENS TESTING OF PRISONERS

Number 1748

CHAIR McGUIRE announced that the committee would resume the hearing on SB 309, CS FOR SENATE BILL NO. 309(JUD) am, "An Act relating to testing the blood of prisoners and those in custody for bloodborne pathogens." [Before the committee was HCS CSSB 309(STA).]

Number 1731

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner, Department of Corrections (DOC), remarked that SB 309 merely codifies the DOC's current policies regarding "protection from, documentation of, and response to occupational exposure," and, thus, there is a zero fiscal note. She relayed that most prisoners volunteer to give a blood sample or notify the DOC that they have some kind of condition. When a prisoner does not volunteer, the DOC is able to get a court order reasonably quickly and then draw the sample.

MS. PARKER said that the problem that SB 309 proposes to fix is not a huge problem; rather, the correctional office involved in the incident that generated this legislation simply felt that the normal process wasn't quick enough and that he wasn't taken care of. She mentioned that the DOC's medical director is currently out of state, but had noted in his analysis of SB 309 that the DOC is already doing what is outlined in the bill. Referring to a couple of the suggested changes [to the original bill] offered by Doug Bruce - Director, Central Office, Division of Public Health, Department of Health and Social Services (DHSS) - [text previously provided in the first portion of today's minutes on SB 309], she said:

> The first one about evidence, I think we've discussed that and why we would prefer that not be changed. ... As far as testing and looking at results that exist,

we don't store the blood that's been drawn previously, but we do have a record of the results, and so the [DOC doesn't] really have a preference on that, whether it's a new blood sample or [not] .... The reason we would like to look at existing results is because it may be faster to find out when someone does have some kind of a bloodborne pathogen. If you go and look at a result and they had hepatitis or [acquired immunodeficiency syndrome (AIDS)] three months ago, they probably still have it.

Now, it's not going to tell you what they have right now; even a test right now may not tell you what they have right now. So not everything is going to be guaranteed even if you immediately draw blood, because some people will have something that will not show up in that test yet but it may two months from now. So ... nothing is guaranteed; what we do is try to provide the best protection we can. Now, if there was a result where nothing was shown six months ago or a year ago, the officer can still request, "I want blood drawn now - I've ... had [an] exposure, my physician thinks it's necessary to draw, this blood sample is too old, the results are too old - I want to have a new blood sample to make sure I have not had an exposure." And we feel that that's covered. If there are concerns, then we address that, but that's basically what we're doing right now, in practice, without this [proposed] statute.

Number 1565

REPRESENTATIVE GRUENBERG said his concern is that the language on page 2, lines 24-26 - The department must first attempt to get existing test results under this subsection before taking any steps to obtain a blood sample or to test for bloodborne pathogens - seems to [require] the DOC to get existing test results before taking a new sample, and he did not want the DOC impeded in taking a new sample; therefore, that sentence ought to be removed.

MS. PARKER reiterated that the DOC doesn't have an opinion on that language either way; if it is the will of the committee that a new sample be drawn immediately, that would be fine. She then turned attention to another of Mr. Bruce's suggested changes [to the original version of the bill] that read as follows [original punctuation provided]:

On Page 5, Line 14, providing test results to the officer's physician without specific identifying information is really not a true safeguard. Obviously, the physician will communicate the results to the officer who will then know the results of the test and [whom] the test is associated with.

MS. PARKER [referring to HCS CSSB 309(STA)] said:

I don't think that there is anything that we can do about that. I believe - and I will get this answer definitively - ... that we cannot release ... an officer's medical records without their consent; unless the other party gets a court order to release that information, we can't even release medical information on offenders or inmates. It's very restrictive on what we can do with any test results or medical information disclosed to anyone, even people who are employed in the facility. So I think there are restrictions there that are in federal law that we simple have to abide by.

Number 1449

REPRESENTATIVE GRUENBERG [referring to HCS CSSB 309(STA)] offered the following about page 5, proposed subsections (b), lines 9-11, and (c), lines 12-16:

Many of these prisoners are very litigious and will look at anything possible to goof up the system ... by bringing all kinds of lawsuits, since they have a lot of time on their hands. ... This seems to invite some lawsuits. [For proposed subsection (c)], I guess maybe I didn't understand what [Mr. Bruce meant]; I was more looking at [proposed subsection (b)], where you invite the prisoner to bring a lawsuit, almost. It looks to me like ... we might want to tighten that down. If somebody is bringing a lawsuit for good cause -- I don't know, maybe I'm speaking too soon. It says releases - maybe you want to put "knowingly" or "recklessly" or something, because you could have just an inadvertent release.

REPRESENTATIVE SAMUELS commented: "'Malice'."

Number 1357

KURT OLSON, Staff to Senator Tom Wagoner, Alaska State Legislature, sponsor, [referring to HCS CSSB 309(STA)] offered his belief that the wording [in proposed subsections (b) and (c)] has been tested in other states, particularly Wisconsin, "or at least modeled after that, and we didn't feel like we had to reinvent the wheel on (indisc.)." In response to a question, he said he did not know whether federal language contained anything pertaining to civil action for the unauthorized releasing of information.

CHAIR McGUIRE indicated that at a minimum, there ought to be a mental intent.

REPRESENTATIVE GRUENBERG referred to language on page 5, lines 15-16, and noted that the standard specified is "a good faith effort" to comply with the statutes. However, no such standard is currently on page 5, lines 9-11.

REPRESENTATIVE OGG opined that SB 309 is a fairly well crafted bill. Referring to federal law, he offered his belief that it requires testing of anyone convicted and sentenced for a period of six months or more. He remarked that this requirement seems like a good health and safety measure, and asked whether Alaska could adopt something similar.

MS. PARKER offered her belief that the DOC is not currently testing every prisoner for the presence of bloodborne pathogens, one reason being that it would be very expensive to test every prisoner. However, if there is "any indication" or medical reason to test, then a test is done.

REPRESENTATIVE OGG opined that testing all prisoners could save money in the long run because, if it is already known what bloodborne pathogens any given prisoner has, "you could isolate that somehow."

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 309.

REPRESENTATIVE GRUENBERG asked whether the sponsor has any objection to having the words, "The department must first attempt to get existing test results under this subsection before taking any steps to obtain a blood sample or to test for bloodborne pathogens." removed from page 2, lines 24-26. He suggested that such a change would give the DOC the discretion to "move quickly."

Number 1088

SENATOR TOM WAGONER, Alaska State Legislature, sponsor, said that is a good point, but added that much would depend on how recently an existing test result is.

REPRESENTATIVE GRUENBERG remarked, "This just gives them the discretion to do it or not."

CHAIR McGUIRE offered her understanding that removing that language doesn't mean that the DOC won't use existing test results.

Number 1032

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to delete from page 2, lines 24-26, the words, "The department must first attempt to get existing test results under this subsection before taking any steps to obtain a blood sample or to test for bloodborne pathogens.". There being no objection, Amendment 1 was adopted.

Number 1017

REPRESENTATIVE GRUENBERG referred to page 5, line 9-11, and indicated that he wanted to offer a conceptual amendment that would alter the language so that it would read, in part, something along the lines of: "A prisoner may bring a civil action against a person who releases the prisoner's name or other uniquely identifying information with the test results or otherwise releases the test results if there is no good faith effort made to comply with AS 18.15.400 - 18.15.450."

REPRESENTATIVE SAMUELS suggested instead that they just add something like, "knowingly and with malice", after "who" on line 9, page 5.

REPRESENTATIVE GRUENBERG indicated that he did not want the provision to include a mental state of "malice", but that perhaps adding "knowingly" would be sufficient. Currently, he opined, it seems to imply an absolute - it doesn't even have to require a negligence standard."

CHAIR McGUIRE remarked, "Strict liability, almost."

REPRESENTATIVE GARA said that adding "knowingly" makes sense.

REPRESENTATIVE GRUENBERG suggested adding, "in knowing violation of".

CHAIR McGUIRE suggested, "knowingly".

REPRESENTATIVE GRUENBERG suggested, "who knowingly violates". He added, "That's conceptual," and posited that with such a change, a civil action may be brought against a person who knowingly violates the provisions of the bill. [This version of the suggested change became known as Conceptual Amendment 2, and was treated as moved.]

SENATOR WAGONER indicated that such a change is fine with him.

REPRESENTATIVE GRUENBERG, in response to comments, said: "The Act itself says ... who you can release the information to, and what I want to prevent is a correctional official getting sued because somebody technically violates this in non-knowing way."

CHAIR McGUIRE offered her belief that [Conceptual Amendment 2] "does get us there." She added, "We'll leave it conceptual for the drafter, but [have it contain] the mental intent of knowingly violates it and [have it be] as tight as you can make it so that the person [who] innocently releases it isn't punished."

Number 0781

CHAIR McGUIRE asked whether there were any objections to [Conceptual] Amendment 2. There being none, Conceptual Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG turned attention to page 2, lines 12-13, which says in part, "and may not be used as evidence in any criminal proceedings or civil proceedings." He said he is wondering "if there would be any circumstance where you, for some reason, would have to use a blood sample." For identification purposes after a fire, for example, or if a prisoner escapes.

SENATOR WAGONER opined that in extenuating circumstances, a court order might be the route to take.

REPRESENTATIVE GRUENBERG asked whether the aforementioned language would prevent a court order from being obtained.

REPRESENTATIVE SAMUELS pointed out, however, that the aforementioned language refers to use in civil and criminal proceedings and thus would not apply in instances of identifying someone.

REPRESENTATIVE GRUENBERG said he just wanted to be sure that there isn't some circumstance wherein those test results need to be used.

CHAIR McGUIRE asked whether the DOC has any objection to deleting the aforementioned language.

MS. PARKER said the DOC does not, but added: "The problem is, is that we have been warned that it will cause undue challenges and litigation if it's used in criminal or civil proceedings; that's been the experience in other jurisdictions, and this is really for the protection of the inmates ...."

REPRESENTATIVE GRUENBERG said he is considering this issue from the prosecution's point of view and wants to be careful that they are not, in some manner, causing the DOC some harm. In response to comments, he added, "It might be important to be able to establish the fact of testing, to prove that you had tested and ... [that] the results had come back negative [and] so there was no need to treat."

SENATOR WAGONER opined that this latter point is moving away from the purpose of the bill. "There's been a lot of work go into this and I think we're on pretty firm ground," he concluded.

Number 0432

REPRESENTATIVE SAMUELS moved to report HCS CSSB 309(STA), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS CSSB 309(JUD) was reported from the House Judiciary Standing Committee.

HB 551 - DRUG FELONY DISQUALIFIES TEACHER

Number 0411

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 551, "An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and to the issuance of

limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

CHAIR McGUIRE, speaking as Chair of the House Judiciary Standing Committee, sponsor of HB 551, surmised that the committee would be amending the bill such that the new language being inserted [on page 1] would only reference misconduct involving a controlled substance in the first degree - AS 11.71.010.

REPRESENTATIVE GARA indicated that he would also like to try to keep in some of those second, third, and fourth degree crimes by defining them; for example, keeping in and defining the crimes involving a school zone.

CHAIR McGUIRE suggested that such a change could be done conceptually.

Number 0318

RYAN MAKINSTER, Staff to Representative Lesil McGuire, Alaska State Legislature, presented HB 551 on behalf of Representative McGuire, Chair, House Judiciary Standing Committee, sponsor of HB 551. He said that recent news articles have highlighted the fact that there have been a few teachers who have been convicted of drug convictions. And although there is no desire to have a person's youthful mistakes keep him/her from pursuing the goal of being a teacher, or to punish great teachers for youthful mistakes, HB 551 does focus on the issue of felony drug convictions. He acknowledged that members have a desire to alter the bill such that it will focus specifically on first degree crimes involving controlled substances, which, he surmised, involve activities at a "criminal enterprise" level or manufacturing activities, or activities with the intent to distribute.

MR. MAKINSTER relayed that HB 551 does not pertain to "personal use or private possession." He posited that Representative Gara has the right idea in wanting to retain reference to some second and third degree crimes involving controlled substances because there is specific language in those statutes that addresses drug offenses [occurring on or near] school zones and [involving minors].

CHAIR McGUIRE referred to Amendment 1 and said she liked it; Amendment 1, a handwritten amendment with handwritten corrections, read [original punctuation provided]:

At page 1 line 10
delete
"- 11.71.040"

At Page 1 line 11 after "subsection, [sic]" insert "or under AS 11.71.020 - .040 if the conviction is for Distribution, or for possession or manufacturing with the intent to distribute, or in violation of AS 11.71.030(a)(3)(A) or AS 11.71.030[sic](a)(4).

Number 0201

REPRESENTATIVE GARA offered to explain Amendment 1. He said:

Ideally what we want to do is get at people who are selling drugs, people who are manufacturing or possessing with the intent to sell drugs, and the school zone things also. ... So, we can clearly do [crimes in the] first degree, we can clearly do the school zone things because those statutory provisions are very identifiable, [but] where my proposed amendment gets a little vague is [where] I also add any of the second through fourth degree [crimes] that involve possession or manufacturing with the intent to distribute. [That's because] distribute could be sharing with the person next to you - distribute isn't defined as sales.

And so we could be a little overbroad and say manufacture or possess with the intent to distribute, but we would, arguably, possibly, be getting into people who are sharing in a room with a bunch of friends when they're 19 years old, because that is distribute under the statute. So then I thought about saying distribute with the intent to sell, but the truth is, the way the criminal process works, when you get convicted of a crime - let's say you get convicted of [a] second or third degree crime ... - the records will show you were convicted under that statute [but] it's going to be very hard to figure out what the conduct was that you were convicted of. We won't know whether you were trying to sell or not sell.

And so there's really no perfect answer, to trying to answer those questions, for those people who do second or third or fourth degree crimes, whether they were trying to make money off of it or not. So we could be

under broad and just be safe and do first degree [crimes] and then the school zone violations and the school bus violations, or we could try [to] figure out a way to do this ... thing about second and third and fourth degree manufacturer and distributions, but we'll never know whether those were sharing distributions or sales distributions. ... I don't really know what to do about those. My sense is, leave them out, we flag it for the school district, and the school district doesn't hire them ... - but maybe they do. ... I don't have the perfect answer.

TAPE 04-72, SIDE A
Number 0001

MR. MAKINSTER, in response to a question, said that a person's teaching certificate could be revoked if he/she is [convicted], whether for a current offense or a past offense that has come to light; being convicted could also prevent someone from obtaining a teaching certificate.

REPRESENTATIVE SAMUELS said he didn't think that a person should necessarily have something he/she did when younger held against him/her; however, if one is already a teacher and is convicted of selling a controlled substance, he/she should lose his/her job.

REPRESENTATIVE GARA responded:

I think that's the hard part [about] addressing [this issue]; you do want to get all the people who sell, but this statute's not defined in terms of [selling]. The first degree [crime] ... is defined in terms of [selling] - so hard drugs, if you sell them, you're disqualified - but in the second and third and fourth degree, the crime is for distribution. And distribution [wouldn't have to] be sales, it could be passing [a controlled substance] around a room. ... I think also the second, third, and fourth degrees are different drugs, [and] I don't know the difference between any of them [just by] looking at the statute.

I can't tell you ... what a [schedule IA, IIA, or IIIA] drug is. ... This is one of those areas where you either get overbroad and bring in too many things, or don't bring in enough. I don't know how to bring in exactly the number, unless we said at the end, for

> purposes of this bill, [that] distribution is only distribution for financial gain. ... I think that's what we would want, but I don't think we're going to be able to know [just] by looking at the conviction whether that was a distribution for financial gain - we'll get a record [showing that a person was] convicted of AS 11.71.020, and we won't know what the conviction was for.

REPRESENTATIVE SAMUELS reiterated his belief that should a teacher be convicted of selling or distributing [a controlled substance] to a minor, that teacher should lose his/her teaching certificate.

Number 0312

REPRESENTATIVE GARA offered his belief that such behavior is covered under the statute pertaining to misconduct involving a controlled substance in the first degree. In response to a question, he noted that the bill includes the language, "or a law or ordinance in another jurisdiction with elements similar to an offense described in this subsection", and that this is not a new provision. "It's done in the criminal law now; ... in various circumstances, something that you do outside, depending on the elements, can count towards a higher sentence or ... extradition," he added.

REPRESENTATIVE OGG indicated that he is inclined to have the bill pertain to all felons [who are convicted of this type of crime], and offered his belief that someone who just shares a small amount of a controlled substance, as opposed to selling it, would be a misdemeanant, not a felon.

REPRESENTATIVE SAMUELS asked where the line would be drawn regarding the amounts being distributed.

CHAIR McGUIRE noted that the bill currently applies to all felons who are convicted of this type of crime, but that testimony in the House Special Committee on Education indicated that there would be more comfort with the bill if it only applied to first and second degree convictions or even just first degree convictions.

REPRESENTATIVE OGG noted that the chair of the Professional Teaching Practices Commission (PTPC) is present to testify.

CHAIR McGUIRE indicated a preference for narrowing the scope of the bill before taking public testimony. She noted that AS 11.71.030(a)(2) also pertains to delivering a controlled substance to a minor, and asked Representative Gara whether he intended to include a reference to that provision in Amendment 1.

REPRESENTATIVE GARA posited that they probably ought to add that reference.

CHAIR McGUIRE noted that crimes involving marijuana are referenced in the statute pertaining to misconduct in the fourth degree - AS 11.71.040; that there is a court opinion that affirms a person's right, under the Alaska State Constitution's privacy clause, to grow marijuana for personal use and smoke it in the privacy of one's own home; and that with regard to misconduct involving marijuana, the bill pertains only to felony level crimes.

REPRESENTATIVE GARA recommended either having the bill pertain to crimes of misconduct involving a controlled substance in the first degree and those connected with schools and minors, or having the bill, as proposed via Amendment 1, pertain to all crimes that are "possession or distribution in amounts that are reflective of the intent to distribute" but know that it might be difficult to determine such by just looking at what level of crime a person is convicted of. With the latter option, he surmised that they would have to rely on school districts to screen teachers and prospective teachers appropriately.

Number 0759

REPRESENTATIVE GARA made a motion to amend Amendment 1 such that it includes at the end: ", or AS 11.71.030(a)(2)". There being no objection, Amendment 1 was amended.

Number 0776

REPRESENTATIVE GARA made a motion to adopt Amendment 1 [as amended].

REPRESENTATIVE OGG asked why AS 11.71.030(a)(3)(B), which pertains to possession on a school bus, isn't included in Amendment 1 [as amended].

REPRESENTATIVE GARA said leaving it out is a mistake; therefore, Amendment 1 [as amended] should include reference to AS 11.71.030(a)(2) and AS 11.71.030(a)(3).

CHAIR McGUIRE suggested that Amendment 1 [as amended] be withdrawn and reoffered, as a new Amendment 1, to that effect.

REPRESENTATIVE OGG noted that currently there is no AS 11.71.030(a)(4).

REPRESENTATIVE GARA acknowledged that error and explained that "AS 11.71.030(a)(4)" should instead read "AS 11.71.040(a)(4)".

REPRESENTATIVE GRUENBERG asked whether just saying "AS 11.71.040(a)(2)-(4) would be sufficient.

REPRESENTATIVE GARA said no.

CHAIR McGUIRE concurred, and pointed out that the intent is to have reference to AS 11.71.030(a)(2) and (3) and AS 11.71.040(a)(4); therefore, Amendment 1 should read:

> At page 1 line 10
> delete
> "- 11.71.040"
>
> At Page 1 line 11 after "subsection, [sic]" insert "or under AS 11.71.020 - .040 if the conviction is for Distribution, or for possession or manufacturing with the intent to distribute, or in violation of AS 11.71.030(a)(3), or AS 11.71.030(a)(2), or AS 11.71.040(a)(4).

Number 1050

CHAIR McGUIRE asked whether there were any objections to adopting the foregoing as a new Amendment 1. There being none, Amendment 1 was adopted.

Number 1066

LARRY WIGET, Executive Director, Public Affairs, Anchorage School District (ASD), noted that members should have in their possession the Anchorage School District's position statement regarding HB 551. He went on to say:

> Currently the law prohibits the [Department of Education and Early Development (DEED)] from issuing a teaching certificate to a person who has been convicted of a crime - or an attempt, solicitation, or conspiracy to commit a crime - involving a minor. The proposed revisions to HB 551 would not require that a crime had any connection (indisc. - microphone interference) that there was a nexus to the classroom or teaching. Drug convictions have [been] singled out from other felonies [into] class by themselves without any ability to look at the totality [of] individual situations. ...
>
> I believe it would be the preference of the ASD to follow more along the guidelines that [are being] suggested in a letter that I just received this afternoon ... from the Professional Teaching Practices Commission, in which the commission has asked its executive director to draft a regulation that would expressly include felony level crimes involving possession of a controlled substance to the list of crimes of moral turpitude. This regulation provides guides to school districts in making employment decisions regarding (indisc.) The commission believes that this will address the concern that prompted the proposed amendment to HB 551 - that's basically our position ....

Number 1165

BONNIE BARBER, Executive Director, Professional Teaching Practices Commission (PTPC), clarified that the PTPC currently views possession of a controlled substance for the purpose distribution as a crime of moral turpitude, and noted that the PTPC has revoked the teaching certificate of someone convicted of such a crime. However, although this is the PTPC's current practice, the current regulation does not specifically include such a crime in its list of what constitutes moral turpitude. Because of this lack, she relayed, the PTPC has asked her to draft an amendment to add felony possession to the current regulation pertaining to moral turpitude.

CHAIR McGUIRE indicated that the committee is focusing on a statutory fix and would not be opposed to the PTPC also addressing the issue via a change in regulations.

REPRESENTATIVE GARA concurred, adding, that the legislature certainly has every intention of letting the PTPC decide that there is additional conduct for which it will not hire a teacher or for which it will terminate a teacher.

Number 1265

LAWRENCE LEE OLDAKER, Chair, Professional Teaching Practices Commission (PTPC), after mentioning that he is a professor emeritus at the University of Alaska Southeast, noted that he is providing members with a formal written statement by the PTPC. He went on to say that the PTPC opposes the [change proposed via HB 551] because although the PTPC does not countenance felony behavior involving controlled substances, the PTPC is capable of handling such matters on an individual basis without making such behavior something for which a person would automatically have his/her teaching certificate revoked for life.

MR. OLDAKER, too, mentioned that the PTPC is considering altering the current regulation regarding acts of moral turpitude in order to bring it more in line with what is being proposed via HB 551, and indicated that although the PTPC does not condone felony behavior involving controlled substances, it is willing to take into account that a person can change over time and, thus, having a felony conviction for actions taken when he/she is young might not necessarily be a sufficient reason to revoke a teaching certificate for life.

CHAIR McGUIRE remarked that the comments from testifiers are well taken, and that the committee is endeavoring to limit HB 551 so that it applies only to the most serious conduct.

MR. OLDAKER noted that since 1990 there have been five revocations related to felony convictions involving a controlled substance, and eight revocations related to other behavior. "So we have taken ... effective steps," he opined.

CHAIR McGUIRE agreed, but added that as a matter of state policy, she feels it is appropriate to include the proposed change in statute while still allowing the PTPC the latitude to address issues regarding behavior that constitutes moral turpitude. "We're just trying to draw the line at those really serious offenses and the ones that it sounds like you already take action on anyway," she concluded.

MR. OLDAKER, in response to comments, clarified that the PTPC is considering adding felony possession of a controlled substance to the list of conduct that is considered moral turpitude.

REPRESENTATIVE GARA relayed that some members of the legislature are reluctant to make possession, even felony possession, cause for precluding someone from teaching later on in life.

MR. OLDAKER agreed to keep that in mind. At the request of Representative Gruenberg, on an unrelated topic, Mr. Oldaker mentioned some changes to the PTPC's rules of operation that he'd like to see instituted.

Number 1737

REPRESENTATIVE GRUENBERG moved to report HB 551, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 551(JUD) was reported from the House Judiciary Standing Committee.

HB 545 - STATE LEASE AND CONTRACT EXTENSIONS

Number 1750

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 545, "An Act relating to the extension under the State Procurement Code of terms for leases for real estate and certain terms for certain state contracts for goods and services; and providing for an effective date." [Before the committee was CSHB 545(L&C).]

Number 1765

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration (DOA), said that the state's procurement code currently allows the state to negotiate extensions of real estate leases for up to 10 years in exchange for rent reductions. House Bill 545 would increase the state's ability to negotiate lease extensions by changing the requirement threshold from a 10-15 percent reduction in existing lease rates to a 10 percent reduction in the current market rate. Existing statutory restrictions on these negotiations have hampered the state's ability to negotiate lease extensions, he opined, and relayed that the increase in the real estate market in Alaska combined with the way the state structures its

leases often makes it so that a 10-15 percent reduction in existing lease rates is unattainable.

MR. JONES posited that tying the reduced rates to a percentage below the current market is a more reasonable approach, adding, "we believe [it] will allow us to negotiate successfully more often, and the more frequently we're able to do that, the more we can avoid the lengthy, costly re-procurement process, not to mention the cost and disruption of moving large numbers of state offices and state employees as well as the disruption to the public." Referring to a chart, he said that a substantial part of lease costs are for tenant improvements and upfront construction. These costs are typically financed and amortized by lessors over the initial term of a lease, and oftentimes the lessor will offer the state dramatically lower priced lease rates for renewal periods.

MR. JONES said that in those cases, at the end of initial lease periods, there is already a reduced rate, and so attempting to negotiate an additional 15 percent reduction as is required by current law is often unachievable. He added that the DOA feels that this bill would remedy that situation, would change that requirement from a 10-15 percent reduction of the already reduced rate to a 10 percent reduction of market rate, and market rate, as defined in CSHB 545(L&C), would be established either by an assessment of value or a real estate appraisal of rental value.

MR. JONES, in response to a question, said that CSHB 545(L&C) now contains a definition of market rate, stipulates a minimum cost savings of 10 percent, and only applies to office space or real estate leases.

Number 1932

CHAIR McGUIRE, after ascertaining that no one else wished to testify, close public testimony on HB 545.

REPRESENTATIVE GARA remarked:

> The bill is fine. It just seems to me, whenever you get in the procurement code, you end up having to write down rules of logic instead of letting people just exercise logic. And so the rule of logic we've come up with is, if the state thinks that they'd actually just save money by not moving, that's not good enough unless they would save 10 percent. Is

that the way the bill reads? I mean, [do] you actually have to save 10 percent or else you have to move?

MR. JONES replied, "You would need to achieve a rental rate of at least 10 percent below market value if you want to avoid moving." If the bill passes, the state could negotiate a rental rate that would be a guaranteed 10 percent below market value and the state could avoid costly moving expenses. If the bill doesn't pass, the state would have to pay moving expenses plus possibly have to pay market rate at a new location. He opined that passage of the bill is a tool that will make the state more efficient and allow it to reduce costs.

REPRESENTATIVE GARA offered his belief that even if the state can't achieve the minimum cost savings of 10 percent below market value, it could still save something by not having to move and go through the whole request for proposals (RFP) process; therefore, perhaps the state should not limit itself to a 10 percent minimum.

MR. JONES, in response, relayed that he agrees with Representative Gara's point, adding, "If I could, I'd use my discretion in every matter, but in the last committee it was decided that ... 5 percent really wasn't enough to avoid the open competitive process that would otherwise be there, so ... it was increased to 10 percent." He noted that moving costs are typically around "$1 a foot" and are not included in calculating the minimum cost savings.

Number 2059

REPRESENTATIVE SAMUELS moved to report CSHB 545(L&C) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 545(L&C) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 2062

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:30 p.m.