

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 5, 2004

4:20 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

CONFIRMATION HEARING

Commission on Judicial Conduct

Thomas G. Nave, Esq. - Juneau

- CONFIRMATION ADVANCED

CS FOR SENATE BILL NO. 288(JUD)

"An Act relating to temporary custody hearings, and to certain determinations concerning placement of a child in child-in-need-of-aid proceedings; and providing for an effective date."

- MOVED CSSB 288(JUD) OUT OF COMMITTEE

SENATE BILL NO. 316

"An Act relating to motor vehicle safety belt violations."

- MOVED HCS SB 316(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 563

"An Act relating to open meetings guidelines applicable to legislators, to the confidentiality of complaints and proceedings involving alleging violations of AS 24.60, and to hearings on formal charges by the Select Committee on Legislative Ethics or its subcommittees."

- MOVED CSHB 563(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 179(FIN)

"An Act relating to criminal history records and background checks; allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development due to a delay in receiving criminal history records; allowing teacher certification for certain persons based on a criminal history background check without fingerprints; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 535

"An Act relating to liability for expenses of placement in certain mental health facilities; relating to the mental health treatment assistance program; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

"An Act relating to the crime of assault."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 338(STA)

"An Act relating to actionable claims against state employees; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 219(JUD) am

"An Act relating to offenses against unborn children."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 354(STA) am(efd fld)

"An Act relating to complaints filed with, and investigations, hearings, and orders of, the State Commission for Human Rights; and making conforming amendments."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 269(CRA)

"An Act relating to access to library records, including access to the library records of a child by a parent or guardian."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE JOINT RESOLUTION NO. 33(STA)

Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 217(JUD)

"An Act relating to genetic privacy."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 284(FIN) am

"An Act making information on a permanent fund dividend application, other than the applicant's name, confidential, and relating to disclosure of that confidential information; and relating to confidential information in voter registration records."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 288

SHORT TITLE: TEMPORARY CHILD CUSTODY HRNGS/PLACEMENT

SPONSOR(S): SENATOR(S) GREEN

02/02/04	(S)	READ THE FIRST TIME - REFERRALS
02/02/04	(S)	HES, JUD
02/09/04	(S)	HES AT 1:30 PM BUTROVICH 205
02/09/04	(S)	Moved CSSB 288(HES) Out of Committee
02/09/04	(S)	MINUTE(HES)
02/11/04	(S)	HES RPT CS 3DP SAME TITLE
02/11/04	(S)	DP: DYSON, GREEN, WILKEN
02/11/04	(S)	FIN REFERRAL ADDED AFTER JUD
02/18/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/18/04	(S)	Heard & Held
02/18/04	(S)	MINUTE(JUD)
02/23/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/23/04	(S)	-- Meeting Canceled --
03/01/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/01/04	(S)	Moved CSSB 288(JUD) Out of Committee

03/01/04 (S) MINUTE(JUD)
 03/01/04 (S) JUD RPT CS 2DP 2NR NEW TITLE
 03/01/04 (S) DP: SEEKINS, OGAN; NR: THERRIAULT,
 03/01/04 (S) ELLIS
 03/09/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/09/04 (S) Moved CSSB 288(JUD) Out of Committee
 03/09/04 (S) MINUTE(FIN)
 03/10/04 (S) FIN RPT CS(JUD) 5DP 2NR
 03/10/04 (S) DP: GREEN, WILKEN, DYSON, BUNDE,
 03/10/04 (S) STEVENS B; NR: HOFFMAN, OLSON
 03/15/04 (S) TRANSMITTED TO (H)
 03/15/04 (S) VERSION: CSSB 288(JUD)
 03/16/04 (H) READ THE FIRST TIME - REFERRALS
 03/16/04 (H) HES, JUD, FIN
 03/30/04 (H) HES AT 3:00 PM CAPITOL 106
 03/30/04 (H) Moved Out of Committee
 03/30/04 (H) MINUTE(HES)
 03/31/04 (H) HES RPT 5DP 1DNP
 03/31/04 (H) DP: SEATON, COGHILL, WOLF, GATTO,
 03/31/04 (H) WILSON; DNP: CISSNA
 04/16/04 (H) JUD AT 1:00 PM CAPITOL 120
 04/16/04 (H) <Bill Hearing Postponed 04/19/04>
 04/19/04 (H) JUD AT 1:00 PM CAPITOL 120
 04/19/04 (H) -- Meeting Canceled --
 04/28/04 (H) JUD AT 1:00 PM CAPITOL 120
 04/28/04 (H) -- Meeting Canceled --
 05/05/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 316

SHORT TITLE: SEAT BELT VIOLATION AS PRIMARY OFFENSE
 SPONSOR(S): SENATOR(S) BUNDE

02/11/04 (S) READ THE FIRST TIME - REFERRALS
 02/11/04 (S) STA, JUD
 02/26/04 (S) STA AT 3:30 PM BELTZ 211
 02/26/04 (S) Moved SB 316 Out of Committee
 02/26/04 (S) MINUTE(STA)
 02/27/04 (S) STA RPT 2DP 1NR
 02/27/04 (S) DP: STEVENS G, COWDERY; NR: STEDMAN
 03/12/04 (S) JUD AT 8:00 AM BUTROVICH 205
 03/12/04 (S) Moved SB 316 Out of Committee
 03/12/04 (S) MINUTE(JUD)
 03/12/04 (S) JUD RPT 1DP 2NR
 03/12/04 (S) DP: SEEKINS; NR: FRENCH, THERRIAULT
 03/19/04 (S) TRANSMITTED TO (H)
 03/19/04 (S) VERSION: SB 316
 03/22/04 (H) READ THE FIRST TIME - REFERRALS

03/22/04 (H) TRA, JUD
 04/23/04 (H) JUD AT 1:00 PM CAPITOL 120
 04/23/04 (H) <Bill Hearing Postponed>
 04/27/04 (H) TRA AT 1:30 PM CAPITOL 17
 04/27/04 (H) Heard & Held
 04/27/04 (H) MINUTE(TRA)
 04/28/04 (H) JUD AT 1:00 PM CAPITOL 120
 04/28/04 (H) Scheduled But Not Heard
 04/28/04 (H) -- Meeting Canceled --
 05/03/04 (H) JUD AT 1:00 PM CAPITOL 120
 05/03/04 (H) Scheduled But Not Heard
 05/04/04 (H) TRA AT 1:30 PM CAPITOL 17
 05/04/04 (H) Moved HCS SB 316(TRA) Out of Committee
 05/04/04 (H) MINUTE(TRA)
 05/05/04 (H) TRA RPT HCS(TRA) 2DP 4DNP 1NR
 05/05/04 (H) DP: KAPSNER, KOOKESH; DNP: MASEK,
 05/05/04 (H) KOHRING, STEPOVICH, HOLM; NR: OGG
 05/05/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 563

SHORT TITLE: LEGISLATIVE PROCEDURE & ETHICS GUIDELINES
 SPONSOR(S): RULES

05/04/04 (H) READ THE FIRST TIME - REFERRALS
 05/04/04 (H) JUD
 05/05/04 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

THOMAS G. NAVE, Esq., Appointee
 Commission on Judicial Conduct (CJC)
 Juneau, Alaska

POSITION STATEMENT: Testified as appointee to the Commission on
 Judicial Conduct (CJC).

JACQUELINE TUPOU, Staff
 to Senator Lyda Green
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented SB 288 on behalf of the sponsor,
 Senator Green.

JOANNE GIBBENS, Program Administrator
 Office of Children's Services (OCS)
 Department of Health and Social Services (DHSS)
 Juneau, Alaska

POSITION STATEMENT: During discussion of SB 288, responded to a question.

VENNIE NEMECEK, Assistant Attorney General
Human Services Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 288, responded to a question.

LAUREN WICKERSHAM, Staff
to Senator Con Bunde
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 316 on behalf of the sponsor, Senator Bunde.

DON SMITH, Administrator
Highway Safety Office
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 316 and responded to questions.

KEVIN E. QUINLAN, Chief
Safety Advocacy
National Transportation Safety Board (NTSB)
Washington, D.C.

POSITION STATEMENT: Provided comments during discussion of SB 316.

RONNI SULLIVAN, Executive Director
Southern Region Emergency Medical Services Council, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 316.

ALLEN STOREY, Lieutenant
Central Office
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 316.

MARTHA MOORE, Trauma Registry Coordinator
Community Health & Emergency Medical Services

Division of Public Health
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 316.

CINDY CASHEN, Executive Director
Juneau Chapter
Mothers Against Drunk Driving (MADD)
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 316.

REPRESENTATIVE NORMAN ROKEBERG
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: As chair of the House Rules Standing
Committee, sponsor of HB 563, explained the bill and responded
to questions.

DENNIS "SKIP" COOK, Vice Chair
Select Committee on Legislative Ethics
Fairbanks, Alaska
POSITION STATEMENT: Provided comments and responded to
questions during discussion of HB 563.

JUSTIN ROBERTS
Alaska Common Cause
Anchorage, Alaska
POSITION STATEMENT: Provided comments and responded to
questions during discussion of HB 563 and proposed amendments.

ACTION NARRATIVE

TAPE 04-75, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing
Committee meeting to order at 4:20 p.m. Representatives
McGuire, Holm, Ogg, Samuels, and Gara were present at the call
to order. Representatives Anderson and Gruenberg arrived as the
meeting was in progress.

CONFIRMATION HEARINGS

Commission on Judicial Conduct

[Not on tape, but reconstructed from the committee secretary's
log notes, was:

CHAIR McGUIRE announced that the committee would first consider the appointment of Thomas G. Nave, Esq., to the Commission on Judicial Conduct.]

Number 0016

THOMAS G. NAVE, Esq., Appointee, Commission on Judicial Conduct (CJC), in response to the question of why he wishes to serve on the CJC, said:

Attorneys have an ethical obligation to help maintain an approved justice system. And as [of] about six years ago, I completed a six-year term on the Alaska Judicial Council, and six years have gone by and I've been relatively inactive, and I just thought it was time to do something else. So ... [serving on the CJC] was suggested to me and it sounded like a wonderful idea, so I immediately said yes.

REPRESENTATIVE GRUENBERG declared a conflict in that Mr. Nave is his family's attorney. He characterized Mr. Nave as an excellent lawyer, and said he recommends Mr. Nave for the CJC.

Number 0108

REPRESENTATIVE SAMUELS made a motion to advance from committee the nomination of Thomas G. Nave, Esq., as appointee to the Commission on Judicial Conduct. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

SB 288 - TEMPORARY CHILD CUSTODY HRNGS/PLACEMENT

Number 0130

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 288(JUD), "An Act relating to temporary custody hearings, and to certain determinations concerning placement of a child in child-in-need-of-aid proceedings; and providing for an effective date."

Number 0170

JACQUELINE TUPOU, Staff to Senator Lyda Green, Alaska State Legislature, sponsor, on behalf of Senator Green, relayed that current law provides that the courts have to determine, within

48 hours of removing a child from the home, that there was probable cause for the child to be removed. However, when making this determination, the courts currently use various language that is often not in compliance with federal requirements for purposes of receiving federal reimbursement. Federal requirements stipulate that when making the determination about continued placement in the home, the language used must contain the phrase, "contrary to the welfare of the child". Senate Bill 288 mandates the use of that phrase by the courts, and it is estimated that passage of the bill will bring in about \$500,000 in "Title IV-E" funding. She noted that this increase in funding is included in the governor's budget for fiscal year (FY) 2005.

MS. TUPOU, in response to a question, said that the legal standard will not change with passage of SB 288; the courts will merely have to conform the language that is used in the aforementioned determinations to federal standards.

Number 0304

JOANNE GIBBENS, Program Administrator, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), in response to a question, offered that a portion of the proposed new language reads:

If a court determines that continued placement in the home of the child's parent or guardian would not be contrary to the welfare of the child, the court shall return the authority to place the child to the child's parent or guardian pending a temporary custody hearing under (e) of this section

Number 0446

VENNIE NEMECEK, Assistant Attorney General, Human Services Section, Civil Division (Anchorage), Department of Law (DOL), added that the main goal of this language is to be consistent in using the phrase, "contrary to the welfare of the child". The DOL does not want to change that phrase at all because that is the phrase that is used in the federal law. Thus, if the court declines to make that finding - that continued placement in the home is contrary to the welfare of the child - then the court returns the authority to place the child to the parent. He opined that the proposed language is the cleanest way to say what is meant.

Number 0518

REPRESENTATIVE GRUENBERG moved to report CSSB 288(JUD) out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSSB 288(JUD) was reported from the House Judiciary Standing Committee.

SB 316 - SEAT BELT VIOLATION AS PRIMARY OFFENSE

Number 0540

CHAIR McGUIRE announced that the next order of business would be SENATE BILL NO. 316, "An Act relating to motor vehicle safety belt violations." [The committee had before it both SB 316 and HCS SB 316(TRA).]

Number 0549

LAUREN WICKERSHAM, Staff to Senator Con Bunde, Alaska State Legislature, sponsor, on behalf of Senator Bunde, relayed that the bill changes current seatbelt law such that a violation will become a primary offense. Although current law requires all individuals riding in a car to wear a seatbelt, law enforcement may only cite an individual for failure to wear a seatbelt if that individual is being pulled over for another reason. This will change with adoption of the bill in that it will allow law enforcement to pull an individual over for failure to wear a seatbelt.

MS. WICKERSHAM predicted that passage of the bill will increase seatbelt use by up to 15 percent in the first year, and that this will translate into saving 10-12 Alaskan lives. Additionally, Alaska will gain federal funds for highway repairs and education campaigns, as well as other [federal] monies that are currently withheld due to noncompliance with safety requirements. She estimated that Alaska will receive close to \$4 million in the first year. Alaskan residents spend millions of dollars annually on motor vehicle crashes, and the bill will save Alaskans thousands of dollars in the first year alone, she relayed, adding that 85 percent of all costs involved in crashes are borne by citizens who had nothing to do with those crashes; those costs include emergency services, medical and rehabilitative treatments, health and auto insurance premiums, and other related costs.

MS. WICKERSHAM said that regardless of whether those costs are covered by private services, members of society pay for the

accidents that they are not directly involved in; for example, the average cost for Alaskans last year was \$820 per person. Employers pay even more for motor vehicle crashes in that they pay increased taxes, health insurance costs, and workers' compensation costs. Surveys - both national and Alaskan - indicate that individuals support a primary seatbelt law; for example, according to a telephone survey conducted by the Alaska Injury Prevention Center, 67 percent of 800 Alaskans support a primary seatbelt law. In conclusion, she said that the bill will save money and lives, and relayed that Senator Bunde requests the committee's support.

Number 0739

CHAIR McGUIRE, in response to a question, read the language currently in AS 28.05.095(e):

(e) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless the peace officer has probable cause to stop or detain the motor vehicle other than for a violation of (a) of this section.

REPRESENTATIVE HOLM noted that four members of the House Transportation Standing Committee voted "do not pass" when the bill was reported from that committee, and predicted that many legislators will think it is inappropriate to make a violation of the seatbelt law a primary offense.

REPRESENTATIVE GARA said, "If we were making this a crime, I would be very worried, but it's just a violation." He said he doesn't have any concerns about allowing law enforcement to pull a car over just to issue "the equivalent of a speeding ticket." Currently, law enforcement can pull someone over for speeding, for running a red light, for having a non-working "blinker," and for driving with a broken taillight; the bill simply puts a violation of the seatbelt law in that same category. He opined that it is a more compelling reason to pull someone over than the aforementioned violations, and again pointed out that the bill would not be making a violation of the law a crime. He said he would like to move the bill out of committee and allow it to get heard on the House floor.

REPRESENTATIVE GRUENBERG predicted that the bill will be used by law enforcement as a pretext for pulling people over and performing searches.

CHAIR McGUIRE noted that HCS SB 316(TRA) proposes to change AS 28.05.095(e) such that it will only apply to vehicles that are not being operated on a highway. She relayed that she would like the committee to discuss the issues raised by the bill before adopting either version as the working document.

Number 0976

REPRESENTATIVE SAMUELS asked whether the definition of "highway" would include the roads around areas like Bethel, Nome, Naknek, King Salmon, and Dutch Harbor.

MS. WICKERSHAM relayed that although the definition of a highway is relatively broad, the change proposed via HCS SB 316(TRA) is intended to apply only in urban areas. Additionally, she offered her belief that the current seatbelt law is only applicable on car models made after 1960.

CHAIR McGUIRE noted that AS 28.05.095(c)(4) provides an exception if the vehicle is not equipped with seatbelts. In response to a comment she surmised that AS 28.05.095(e) currently makes no distinction between vehicles driven on a highway and vehicles driven elsewhere. She offered her belief that HCS SB 316(TRA) simply creates the caveat that if it's the primary offense, it pertained only to a vehicle on a highway.

REPRESENTATIVE GRUENBERG opined that addition of the phrase, "not being operated on a highway" creates a "negative implication."

REPRESENTATIVE GARA predicted that HCS SB 316(TRA) won't be applicable in many situations because the vast majority of instances in which people are not wearing seatbelts are those in which they are driving slowly, for example, while they are driving in neighborhoods. By making the violation primary just on a highway, it will be a primary offense only in places where law enforcement won't notice [the violation] anyway, he remarked, suggesting that the change proposed via HCS SB 316(TRA) will be ineffective.

MS. WICKERSHAM reiterated, however, that the definition of "highway" - found in AS 19.45.001 - is incredibly broad; it reads:

(9) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;

REPRESENTATIVE HOLM posited that the reason the House Transportation Standing Committee altered the original bill was to address the concerns of members who didn't want the bill to apply equally to all areas of the state, for example, in the Bush areas. He suggested that it is not realistic to expect that the bill will have safety applications across the state given that HCS SB 316(TRA) is intended to not apply in rural areas of the state.

Number 1276

DON SMITH, Administrator, Highway Safety Office, Division of Program Development, Department of Transportation & Public Facilities (DOT&PF), said that [the department] is very much in support of the bill. The bill is going to save lives, he predicted, adding that the department is willing to accept the language in HCS SB 316(TRA) as a compromise.

CHAIR MCGUIRE remarked that nothing in the current definition of "highway" appears to differentiate between urban and rural.

MR. SMITH concurred, and offered his belief that the current definition is so broad it could mean almost anything including a snow machine trail.

REPRESENTATIVE SAMUELS asked what would happen in cases where the seatbelt doesn't work.

MR. SMITH replied, "If you've got a supposedly installed seatbelt, you better go down to the dealer and get it fixed, but if you've got a car that doesn't have a seatbelt, you're not [subject to] the law."

REPRESENTATIVE SAMUELS argued, however, that not all areas of the state have a place to get seatbelts repaired.

MR. SMITH offered:

My feeling about this bill is [that] it's more an issue of perception than [of] officers running around ticketing people. ... What we're really after in this bill is to reach the 16- to 26- or 30-year-old guy that's running around in his pickup truck thinking he's going to live forever and doesn't buckle [up], and suddenly he's going to wake up one morning and read about the fact that there is a law that he could get a ticket.

It's only a \$15 ticket unless you get stopped in Anchorage; then it's a ... [\$60 ticket]. ... My guess is, [in] a lot of the rural communities, they're not going to have [a] trooper or someone that's even going to be out ticketing. ... I don't know how the application will be, but in Anchorage and Fairbanks and the major communities in Alaska, it'll have an impact. And it's estimated that 10 percent more will buckle [up] based on the fact that you have a primary seatbelt law in your [state]. I just hope you pass it out.

Number 1408

KEVIN E. QUINLAN, Chief, Safety Advocacy, National Transportation Safety Board (NTSB), offered the following testimony:

We're the independent accident investigation agency, we've investigated lots of crashes in Alaska, mostly in aviation, and we make recommendations to the states as to what works and what doesn't work. We made this recommendation to the state of Alaska in 1996 and 1997, and it does work. Mr. Smith said [there'd be] about a 10 percent increase in [seatbelt] use; well, that's the low end - it could be as high as a 15 percent increase. That saves lives, saves money, and there's a new study out that says that this kind of law will actually affect young drivers, including those who use alcohol.

And I think the point is that this is a very effective measure; it is on the [NTSB's] list of most wanted safety recommendations, right up with things like airplane fuel tank mixtures to prevent airplanes from exploding. So we think this is the most important

thing that you can do in highway safety this year. It will reduce ... serious injuries and fatalities, and the cost savings could be very significant. ... Thank you for allowing me to speak to the committee and I'd be glad to handle any questions you may have.

Number 1505

RONNI SULLIVAN, Executive Director, Southern Region Emergency Medical Services Council, Inc., after relaying that her organization serves 132 communities in Southcentral and Southwestern Alaska, said that when speaking about traffic crashes, her organization speaks from the perspective of often being first on the scene. She said she wanted to speak strongly in support of the bill; the legislation will be good for the people of Alaska, it will allow her organization to put its efforts towards prevention, rather than just towards reacting to tragedy. According to statistics compiled from the statewide trauma registry, vehicle occupants in Alaska who aren't buckled up are 19 times more likely to die in a crash. "I think the numbers speak for themselves and we should do what we can to move this bill through the session," she concluded.

Number 1582

ALLEN STOREY, Lieutenant, Central Office, Division of Alaska State Troopers, Department of Public Safety (DPS), said that the DPS strongly supports passage of SB 316 because the bill is an important element in highway safety and preventing injuries and deaths on the roadway. There are a lot of safety devices on modern vehicles, but they are all built around the concept of a person being secured in his/her seat with a seatbelt, he reminded members.

Number 1610

MARTHA MOORE, Trauma Registry Coordinator, Community Health & Emergency Medical Services, Division of Public Health, Department of Health and Social Services (DHSS), said simply that the DHSS supports SB 316, and that she would be happy to provide the committee with statistics and answer any questions.

Number 1633

CINDY CASHEN, Executive Director, Juneau Chapter, Mothers Against Drunk Driving (MADD), said that MADD supports SB 316, because a seatbelt is the best defense against drunk driving.

Adults who do not buckle up are sending a message to children that it is alright not to use seatbelts. The probability of a fatally injured child being unrestrained are more than twice as likely when the adult driving was unrestrained, she remarked, adding that studies have found that states with primary seatbelt laws increase average seatbelt usage by 9-14 percent.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 316.

Number 1676

REPRESENTATIVE ANDERSON moved to adopt HCS SB 316(TRA) as the working document. There being no objection, it was so ordered.

REPRESENTATIVE HOLM expressed doubt regarding the veracity of the proffered statistics, characterizing them as subjective. He said he doesn't agree with the argument that the change the bill proposes is acceptable simply because a violation will only result in a citation, because the bill will provide law enforcement with more opportunities to pull people over. He suggested that if safety is the primary goal of the bill, then 100 percent of the monies obtained as a result of a primary seatbelt law being enacted should be spent on educating the public regarding seatbelt use. He relayed that while growing up on a homestead, and later, when employed as a truck driver, he didn't use seatbelts, and opined that seatbelt use in such circumstances is unsafe.

REPRESENTATIVE SAMUELS said he'd like to offer the following additional language: "This subsection does not apply where a seatbelt is inoperable and there is no business that can repair the seatbelt along the road system where the automobile is located". He posited that such language would address situations in which someone living in a small community doesn't have access to a place where seatbelts can be repaired.

MS. WICKERSHAM remarked, "Because of the unique demographics of Alaska, I think that the sponsor would not have a problem with [that additional language]."

Number 1957

REPRESENTATIVE SAMUELS made a motion to adopt the forgoing as [Conceptual Amendment 1]. He remarked, however, that he would willing to accept alternative language that gets to the same point.

REPRESENTATIVE OGG questioned whether [Conceptual Amendment 1] would encourage people living in such areas to simply destroy their seatbelts.

CHAIR McGUIRE suggested to Representative Samuels that he withdraw [Conceptual Amendment 1] and research possible alternative language that could be offered as an amendment on the House floor.

REPRESENTATIVE SAMUELS agreed to do so. [Conceptual Amendment 1 was treated as withdrawn.]

Number 1999

REPRESENTATIVE ANDERSON moved to report HCS SB 316(TRA) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS SB 316(TRA) was reported from the House Judiciary Standing Committee.

HB 563 - LEGISLATIVE PROCEDURE & ETHICS GUIDELINES

Number 2025

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 563, "An Act relating to open meetings guidelines applicable to legislators, to the confidentiality of complaints and proceedings involving alleging violations of AS 24.60, and to hearings on formal charges by the Select Committee on Legislative Ethics or its subcommittees."

Number 2030

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, speaking as Chair of the House Rules Standing Committee, sponsor of HB 563, relayed that he is the House majority member on the Select Committee on Legislative Ethics. He said that HB 563 pertains to the issues of open meetings, jurisdiction, legislators' conduct relating to open meetings, and the lack of any current guidelines for the Select Committee on Legislative Ethics regarding jurisdiction and adjudication of complaints.

REPRESENTATIVE ROKEBERG mentioned that earlier [last] year, Representative Croft requested Legislative Legal and Research Services to provide an opinion on whether the Select Committee on Legislative Ethics has jurisdiction of complaints regarding open meetings violations. Additionally, the Select Committee on

Legislative Ethics had requested a legal opinion from its own legal counsel on this issue. Both opinions, in the main, agreed that the Select Committee on Legislative Ethics does have jurisdiction regarding open meetings violations. As a result of the legal opinion it received from its own counsel, the Select Committee on Legislative Ethics voted to assert jurisdiction in this area.

REPRESENTATIVE ROKEBERG mentioned that he'd voted in favor of that because he believes that the Select Committee on Legislative Ethics' jurisdiction on this issue exists within statute and needs to be asserted should any complaints arise. He added:

I can say on the record [that] there is at least one complaint on this particular issue that's become public information. I'd just remind the committee that I'm unable to speak about anything if, in fact, there are any complaints on this issue, because of the confidentiality that's required by statute. So I'd ask the committee [to] respect that and try not to couch any questions in such a manner that would put me in a position where I would be breaking the law. Whether there is or not [a complaint] is beside the question.

Number 2147

REPRESENTATIVE ROKEBERG said that in spite of the fact that for the last 10 years the Select Committee on Legislative Ethics has been statutorily required to submit open meetings guidelines to the legislature for ratification, the legislature has yet to ratify any of the proposed guidelines that have been submitted. He noted that the current statute regarding this issue says that adoption of initial guidelines shall be undertaken by the Select Committee on Legislative Ethics, and that a legal opinion from Tam Cook, Legislative Legal and Research Services, indicates that initial guidelines are to be submitted to the legislature for approval. Furthermore, according to Ms. Cook's opinion, once guidelines are adopted, the legislature cannot review any revisions to those guidelines. In other words, he remarked, the Select Committee on Legislative Ethics could make modifications to the guidelines and the legislature would have no control over those modifications.

REPRESENTATIVE ROKEBERG characterized this aspect as being similar to what occurs with regard to regulation writing, and as

a defect in the current statute's construction, suggesting that it is one of the reasons that guidelines have yet to be adopted. He mentioned that members have in their packets a copy of the latest proposed guidelines - dated August 28, 2003 - from the Select Committee on Legislative Ethics, though these proposed guidelines have not yet been adopted by the current legislature. In response to a question, he relayed that the Select Committee on Legislative Ethics did present proposed guidelines to the legislature by the statutorily set deadline of January 16, 1995, but the legislature never approved them, nor has the legislature approved any of the proposed guidelines that have been submitted since then.

REPRESENTATIVE ROKEBERG mentioned that in 2000, the Select Committee on Legislative Ethics "recognized the futility" of the efforts in drafting guidelines, and sent a letter to the legislature indicating that the Select Committee on Legislative Ethics' efforts on this issue were not meeting with consensus [from the legislature] on what those guidelines should be and was therefore recommending to the legislature that the legislature adopt its own guidelines. He relayed that he sits on a Select Committee on Legislative Ethics' subcommittee, the purpose of which is to again draft guidelines for submission to the legislature; the subcommittee has been meeting for approximately three months, but has yet to find consensus among its members regarding the definitions of "political strategy," "meetings," and other basic terms. So although he has made recommendations to the subcommittee, many of which have found favor in large part, he noted, there is still a lack of consensus.

REPRESENTATIVE ROKEBERG opined that since the Select Committee on Legislative Ethics has yet to agree on proposed guidelines for submission to the legislature, it is incumbent on the legislature to resolve this issue by passing statutory guidelines as was suggested by the Select Committee on Legislative Ethics in 2000.

TAPE 04-75, SIDE B

Number 2369

REPRESENTATIVE ROKEBERG opined that doing so will ensure that members of the legislature will know what those guidelines are. Currently there is a statutory outline, but there are no guidelines giving direction regarding legislators' conduct. "We don't know, frankly, whether or not we are even in breach of anything - it's a matter or conjecture - so we need some

guidelines and, frankly, even the latest iterations are relatively broad," he remarked. He relayed that with HB 563, he has endeavored to simplify the issue by keeping the proposed guidelines to minimum - defining what a meeting is and what political strategy is, and specifying certain types of meetings that might take place which should be exempt from any scrutiny under the open meetings provisions - and keeping in mind the spirit of the current statute.

REPRESENTATIVE ROKEBERG relayed that there are some proposed amendments to HB 563, one of which he agrees should be adopted after being modified as it has the potential to strengthen [the bill]. He mentioned that his intent with HB 563 is to reflect current practices in the context of the current statute - AS 24.60.037 - which reads in part: "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed". He observed that the problematic aspect of this provision is in determining what kind of conduct can take place in the aforementioned closed meetings. Guidelines would address this problem, he opined, adding that he has endeavored to have HB 563 specify what constitutes political strategy; currently, page 2, lines 3-9, of HB 563 reads:

For purposes of this subsection, "political strategy" includes organization of the houses, assignment of committee membership, scheduling of bills, vehicles for adoptions, House-Senate relations, other procedural matters, caucus operations, meetings between majority and minority caucus leaders, meetings between majority and minority caucus leaders of both houses, meetings with the governor, deliberations with regard to strategy, and discussions of issues in the context of strategy.

Number 2272

REPRESENTATIVE ROKEBERG mentioned that HB 563 currently defines what a meeting is - "For purposes of the legislative open meetings guidelines, a meeting occurs when a majority of the members of a legislative body is present and action, including voting, is taken" - and what a meeting is not - "a gathering of members of a legislative body for purely ministerial or social purposes where there is no deliberation of policy issues; or ... forums where members of a legislative body have been invited to address a group on legislative issues or concerns".

REPRESENTATIVE ROKEBERG offered:

One of the problems you have to keep in mind, if you look back at even the original proposed guidelines, was that this situation becomes very difficult to try to enforce when, in fact, if you have numbers of people - if you have like three or, for example, this committee, if you had four people that were members of this committee - that happened to be talking in the hallway together, you ... could tripwire a complaint were you not careful. And that's where ... it became a problem and I think why the initial guidelines were rejected, because they were so tightly drafted that it ... prohibited, ... conversation between various members on anything related to public policy.

I think [we] all have our ... policy wants and [are] interested in political activity, and so to chill our First Amendment ... right [to] discuss things, I don't think is intended. As a matter of fact, we even have ... constitutional immunities provided ... in our own [Alaska] State Constitution and the [U.S.] Constitution and case law And there's a reason for that - we should be able to conduct [ourselves] in such a way [so as] to formulate public policy. This comes into conflict when the concept of open meetings is discussed and [of] what should be done behind closed doors.

REPRESENTATIVE ROKEBERG continued:

In my opinion, the open meetings principles, which I think has guided us, is, we do not make final decisions in the form of votes, or take votes, ... behind closed doors. The votes that occur in this particular building are done in the light of day, and it becomes a very difficult thing to try to draw ... statutory bright lines to say what should be closed and what isn't, and be able to have [it] so your conduct isn't scrutinized in some "Big Brother" type [format].

Number 2178

[As a] matter of fact, there [were] two proposals brought before the subcommittee ... this year, ... one of which indicated they thought there should be a

videotape camera in the caucus rooms, and that those videotapes could be made public after the session. ... I ... really resented even the suggestion. ... And another [proposal] was to have [caucuses] tape recorded [so] ... someone could oversee what we were doing. ... The fact of the matter is, the public should elect ethical people to public office; that's the number one ... [way to] have good, ethical conduct.

REPRESENTATIVE ROKEBERG observed that finding a balance can be very difficult. He said he believes that the open meetings principles that the legislature follows should be enforced, and that making certain decisions behind closed doors should be prohibited. At the same time, however, there should also be forums in which certain discussions can take place free from public scrutiny, such as discussions pertaining to political strategy and organization of the houses. Discussion and voting on matters of state policy should be done in the light of day, he remarked, adding that the concept of committee hearings is the foundation of the Alaska State Legislature. He offered his belief that the original statute left open the question of whether the legislature could even organize before the start of the legislative session, and opined that the legislature should have the ability to do so and that there should be at least a modicum of confidentiality in that process.

REPRESENTATIVE ROKEBERG listed several procedural activities that the legislature engages in which could be considered political strategy, such as committee membership assignment, scheduling of bills in committee, choosing legislative vehicles for adoption, and moving up and down the calendar. In spite of the fact that almost anything could be considered political strategy, it is still important to define that term so as to allow the legislature to continue to conduct business. He characterized the budget process as one that allows a greater participation by the minority than can be found in any other state, and mentioned some of the different informal coalitions that can form during a legislative session.

Number 1935

REPRESENTATIVE ROKEBERG said of the aforementioned that they are historic, traditional elements of the legislature, and opined that they are not well served by opening their discussions to public scrutiny. He warned the committee that a couple of the issues that must be addressed are what is meant by "action" and

the concept of voting: "what is the decision-making matrix that we're dealing with when we're going to try to proscribe activities, or allow [them]." These things must be clear in order for members of the legislature to understand them and know what conduct is and isn't permitted. He offered his understanding that the courts had indicated that they did not have jurisdiction over the legislature's internal activities; instead, it was left up to the legislature itself to fashion a method by which to oversee its members' conduct and, hence, the Select Committee on Legislative Ethics was formed.

REPRESENTATIVE ROKEBERG called the open meetings provision of statute an important provision, even though it has yet to be fully enforced. He predicted that adoption of HB 563 will engender some modifications of legislators' conduct, but not many; in the main, he posited, the current statute has been followed, over the years, to the best of the ability of the various caucuses and House and Senate leadership. He mentioned that he would never participate in voting during a caucus meeting because he believes doing so would clearly be against the law, but allowing for the free exchange of ideas is very important in a caucus setting.

REPRESENTATIVE ROKEBERG opined that passing HB 563 this year is very important because members of the legislature will know what is expected of them, and it will enable the Select Committee on Legislative Ethics to do its work and will give it the authority to enforce the law. He mentioned that members' packets include the aforementioned legal opinion that the Select Committee on Legislative Ethics requested from its legal counsel, and that one of the issues addressed in that opinion is what would be used for guidelines if the legislature had not yet approved any that the Select Committee on Legislative Ethics had proffered to date. The opinion states in part: "In short, it is within the Committee's sole discretion to determine what the "open meeting principles" are that apply to the Alaska Legislature ... it is our opinion that the Committee may develop and rely on any criteria that it determines appropriate to decide the merits of a complaint alleging a violation of the open meetings law."

Number 1812

REPRESENTATIVE ROKEBERG offered his belief that that portion of the opinion means that the Select Committee on Legislative Ethics, having asserted jurisdiction, can take up any complaint it wishes and make up its own rules. He characterized this as being contrary to the statute, and urged the committee to adopt

guidelines so as to give the Select Committee on Legislative Ethics direction. He posited that the guidelines encompassed in HB 563 follow the spirit of the original law and are consistent with how the legislature wants to conduct itself and with its current practices.

REPRESENTATIVE GARA, on the issue of "chit sheets," said: "To me, the worst kind of closed meeting is the one that results in a predetermined vote, so that we know before the House floor [session] starts how people are going to vote. And would you consider amending this to prevent people from binding themselves to a vote before they actually vote on the House floor?"

REPRESENTATIVE ROKEBERG said no, adding:

That's not a vote. ... It's in large part a matter of educational representation and a part of the process of acquiring votes in order to take a bill to the floor. As [House Rules Standing Committee] chairman, I require a chit sheet to make sure that we have adequate votes for a bill to go on the floor normally. Not on every bill, as you know, but [I do it] because of the order of business and the magnitude of business. Well over a thousand bills have been introduced in this legislature, and there's the committee process to go through; once those bills are vetted through the committee process, before we put them on the floor, we want to make sure that there's adequate support - to not take up the time of the legislature to debate those on the floor. ...

Number 1741

I have been here long enough to see bills fail on the floor notwithstanding a belief that there [were] ... adequate votes. And we also have had the pleasure, this year, of having several major issues come forward without predetermined results. I can appreciate perhaps your frustration as a member of the minority, Representative Gara, in this regard, but this whole concept of chit sheets being a bad thing is a misconception about how the process works here and what they're meant to do. They're ministerial in practice only, and have to do with how the members here can cooperate and interact with each other; they're educational, and they are administrative. They are not a matter of binding anybody in a formal

sense other than their own word. ... It's a traditional practice we've used and [it] is relatively informal.

REPRESENTATIVE GARA said he disagreed and that he respected the disagreement. "Though I think the worst scenarios are where somebody is convinced on the floor to vote another way but they've already [a] signed chit and [so] they can't, and we hear that all the time," he added.

REPRESENTATIVE HOLM said he'd sent around a chit sheet recently and several members of the minority had signed it but told him they weren't sure if they would actually vote for the bill in question. Therefore, he opined, signing a chit sheet is not a vote, and offered his belief that a chit sheet is used for the purpose of getting a bill calendared.

REPRESENTATIVE GARA argued, however, that many legislators use chit sheets to bind members to a vote. He said he would respect the use of a chit sheet to poll members about whether they feel a particular bill should go to the floor for debate.

REPRESENTATIVE ROKEBERG said, "A chit sheet represents a promise between two legislators."

REPRESENTATIVE GARA, on the issue of caucuses, offered his belief that the bill says a meeting is not an open meeting if it involves the discussion of issues in the context of strategy or if it involves less than a majority of the body. He asked whether the closed majority caucuses that occur now would still be allowed under the bill.

Number 1561

REPRESENTATIVE ROKEBERG said that in the main, both majority and minority closed caucuses would still be permitted "with the exception of certain areas which I consider educational." He offered the following example: "Just the other day, we had a visit from a Senator who wished to talk about a bill; that is not political strategy, in my opinion, and that should be open." He remarked that another issue to consider is the timing of when caucuses are called, since they are spontaneous meetings. He said he agrees, however, that certain types of activities that sometimes occur during closed caucuses perhaps should "be open" when there isn't any "true" political strategy [discussion] going on. Notwithstanding this, there is still the practical

problem of deciding at what point during a caucus should the door be opened and when should it be closed.

REPRESENTATIVE ROKEBERG pondered whether that decision should fall to the presiding officer of the caucus and whether such a stipulation should be put in statute. He surmised that many of the legislature's activities are a matter of custom and tradition and should probably not be set in statute. He posited that adoption of HB 563 will cause only some slight changes with regard to caucuses.

REPRESENTATIVE OGG asked about the terms "discuss" and "deliberate".

REPRESENTATIVE ROKEBERG offered that "discussing" issues or subjects is part of the original statute, and that he is relying on the dictionary definition of that term. He offered his belief that "deliberation" seems to imply advocacy for an issue. He suggested that the meaning of those terms is expressive of certain conduct, and relayed that the original statute only addresses the act of discussion. He opined that the act of deliberating should also be allowed and addressed in statute.

REPRESENTATIVE OGG asked for clarification about what is meant by the phrase, on page 2, line 8, "deliberations with regard to strategy".

REPRESENTATIVE ROKEBERG indicated that that could be read to mean, "deliberations with regard to political strategy", and mentioned that he would accept an amendment to that effect.

REPRESENTATIVE OGG asked whether the same could be said of the phrase, on page 2, lines 8-9, "discussions of issues in the contest of strategy".

REPRESENTATIVE ROKEBERG said yes.

REPRESENTATIVE OGG asked whether "policy issues", as used on page 3, line 17, means the same thing as "political strategy", as defined on page 2, lines 3-9.

Number 1353

REPRESENTATIVE ROKEBERG offered his belief that it does not mean the same thing; rather, the term "policy issues" would encompass situations in which, for example, "you have a social purpose and you're debating the merits of seatbelts and whether they're good

or bad - that's a deliberative discussion on policy ... and it shouldn't be prohibited." He elaborated on that example, "If you have ... the quorum of this committee at a reception at the Baranof [Hotel], and you were talking about seatbelts, ... we don't want to give rise a complaint; it doesn't amount to a closed meeting." He indicated that subparagraph (B), on page 3, lines 18-19, addresses similar situations.

REPRESENTATIVE OGG surmised, then, that "political strategy" is not the same as "policy issues".

REPRESENTATIVE ROKEBERG remarked, "It can be, though." He added, "You should only be able to talk about those in the context of 'political strategy'."

REPRESENTATIVE OGG offered his understanding that "you want to be able to talk about political strategy and perhaps have discussion of issues, which may not be political strategy."

REPRESENTATIVE ROKEBERG said, "If somebody wants to come to our caucus and give a pitch on the seatbelt law, that's not political strategy."

REPRESENTATIVE GARA said, "To me there's a bright line of: if we meet in caucus to discuss the merits of an issue and there's back and forth, to me that should be open." He asked Representative Rokeberg whether he agrees.

REPRESENTATIVE ROKEBERG replied:

If it's going to be closed, it should be discussed within the context of a political strategy. But it's hard to get a bright line there because, when you're discussing [an] issue, many times you ... talk about it in a political context. But if it was purely deliberative, like presentational or something, and/or there was even discussions about it in terms of ... questions from the audience and so forth, then it becomes deliberative. Then that should be open. But it's hard to draw that line.

Number 1239

REPRESENTATIVE GARA responded: "Forget about an audience. It's just a group of ... 21 legislators ... and they're debating the merits of a bill. Some people are arguing it's a good idea for these reasons, some people are arguing it's a bad idea for these

reasons, [and] there's back and forth ... on the issue. Shouldn't that be open?"

REPRESENTATIVE ROKEBERG replied:

Yes. However, here's what happens: you can discuss something in a political context, and then you drop over to deliberative type back and forth, then you drop back into the political thing. So there's problems there. ... It's because these types of exchanges and these discussions can be both ... meritorious and/or strategic. So it's hard to draw a bright line there. ... It's so intertwined. ... I suggest ... [limiting it to] strictly informational type things and things of that nature that are basically like that. ... If there is a member standing up pitching his own bill in a caucus, that should be open. ... I think we need to adopt these guidelines and [adapt] our practices to meet them, and I think we can make progress there and build public credibility.

REPRESENTATIVE HOLM said:

I object somewhat to the idea that we're up to some kind of skullduggery because we discuss something; I just really ... find that an outrageous accusation that we get in the press and different places. Just because we are discussing something doesn't mean we're trying to pervert the system or (indisc. - paper shuffling) create some kind of a bad situation and policy for the state of Alaska. I think it's just outrageous that we get that accusation. ...

Number 1015

DENNIS "SKIP" COOK, Vice Chair, Select Committee on Legislative Ethics, relayed that the Select Committee on Legislative Ethics has been submitting proposed guidelines, annually, as required by statute, but has never received any feedback from the legislature. He added, "We expected that they might take the guidelines, debate them, have public hearings on them, and develop a final set of guidelines, but that really didn't happen." In the year 2000, after six years of submitting proposed guidelines, since there had been no action by the legislature, the Select Committee on Legislative Ethics sent the letter dated August 11, 2000, suggesting that the legislature develop it's own guidelines.

MR. COOK mentioned that until this year, there weren't any complaints regarding open meetings. When those complaints came forth, it raised the question of whether the Select Committee on Legislative Ethics even had jurisdiction over such complaints. He concurred that the aforementioned legal opinions both said that the Select Committee on Legislative Ethics does have jurisdiction over complaints pertaining to open meetings and has a statutory obligation to respond to such complaints. These opinions lead to a renewed effort to develop guidelines, he remarked, adding that the Select Committee on Legislative Ethics is right in the middle of doing that. The current efforts attempt to address the definitions of, among other things, "political strategy", "discussion", and "meetings".

MR. COOK offered that as far as the [Select Committee on Legislative Ethics] is concerned, in some ways it would be easiest if the legislature would either approve some proposed guidelines or create its own and provide them to the Select Committee on Legislative Ethics so that it had something concrete. However, he remarked, "The problem I see here is that ... right while we're in the middle of it, and the legislature's wrapping up its session, well suddenly there's a bill, and ... there really isn't time for that bill to be fully debated." He noted that he has only just seen the bill today, and suggested that there are some problems.

Number 0749

MR. COOK elaborated:

One that just came up a moment ago that I sort of see is that Representative Rokeberg ... seemed to be saying that ... meetings with deliberations in them should be open whereas meetings with discussions, maybe of political strategy, shouldn't be, but on page 2, in subsection (c), he's introduced the word "deliberation" into what can happen in a closed caucus. Whereas the current statute, with which we've been working over the years - [AS] 24.60.037 - ... doesn't talk about deliberations being allowable in closed meetings; it only talks about "discussion". So then you get the fine line of where do the deliberations start in [the] discussion. I think introducing "deliberations" into subsection (c) is going to cause a lot of confusion that wasn't there before.

And there are some other points that I think Joyce Anderson might address. One of them, that is at page 4, on the proceedings of the [Select Committee on Legislative Ethics] being confidential, the language ... proposed at the end by Representative Rokeberg ... adds, "Except to the extent that the confidentiality provisions are waived by the subject of the complaint, if a complainant violates any confidentiality provision, the committee shall immediately dismiss the complaint." Well, ... in the current law, there aren't any confidentiality statutes with regard to the complainant; they all relate to the committee, and our proceedings ... relating to the complaint (indisc.) are confidential.

CHAIR MCGUIRE asked, "But don't you instruct the complainants?"

MR. COOK said that according to the Select Committee on Legislative Ethics' interpretation of current law, it can only inform the complainant that the complaint is confidential once it is brought to Select Committee on Legislative Ethics. "What I'm saying is that right now, there is no specific, in the law, ... confidentiality of the complainant; it would have to be added somewhere else than the way it's added here, I believe," he remarked.

Number 0587

CHAIR MCGUIRE responded:

But isn't it true, though, that you ... have made the leap, in any event, in practice, that because the law ... dictates that the complaint will remain confidential ... once it's in the [Select Committee on Legislative Ethics'] hands, that you've made that leap to instruct complainants, and those who might be complained against, to keep it confidential.

MR. COOK replied:

No, ... I don't believe we've gone that far, because we didn't feel the law could. We've debated on whether we ... can do that, and decided that the most we could [do] was to cite the statute that says we are bound by confidentiality - within the committee. Part of the problem I see here is, ... even if we passed a

law that said the complainants will keep it confidential, does that mean that if they're going to make a complaint to the Select Committee on Legislative Ethics, they cannot speak to anybody about it ever, they can't discuss that with a friend? I don't know how you'd -- where do you draw the line then? ...

We did, in one opinion, sort of speak with disapproval of signing a complaint on television, which ... is the extreme. On the other hand, I'm not sure we would ever get a complaint before us that had not been discussed by the complainant with somebody before it got ... filed. And if that automatically causes dismissal, we'd have a lot (indisc.) work going on to find out if anybody ever knew about that complaint before it was filed.

CHAIR MCGUIRE asked Mr. Cook whether he could suggest some alternate language that would address extreme situations in which a complainant does not maintain confidentiality.

MR. COOK said he'd not thought that through, but acknowledged that there should be discussion about where that line ought to be drawn; he suggested that the Select Committee on Legislative Ethics would have that discussion while developing proposed guidelines.

Number 0353

CHAIR MCGUIRE suggested viewing a breach of confidentiality by the complainant in much the same light as a breach of the Fourth Amendment, wherein search and seizure can only be conducted with probable cause or the evidence gathered therein will be thrown out. She indicated that she wants something put in place to discourage breach of confidentiality by the complainant; without some assurance that future complainants will not go to the media to showcase their complaints, the role of the Select Committee on Legislative Ethics will be reduced to one of being a political weapon.

REPRESENTATIVE SAMUELS offered: "I would think that before a complaint is filed, it's just friends talking politics, ... but after the complaint is filed, ... it seems there has to be some confidentiality going both ways or [the television situation] just happens over and over again; ... it becomes, then, a

political tool" He asked what other states do in this regard.

MR. COOK responded:

I agree with you that once the complaint is filed (indisc.) the committee, then proceedings before the committee are confidential. And, to the extent that the complainant is a party to those proceedings, they cannot go out and talk about what [is] happening in the committee process. In a way, in my own mind, I have to sort of liken it to the closed hearings I've participated [in, in] court (indisc. - member speaking over) an adoption hearing or a child proceeding that is closed in so far as the court proceeding: ... the public isn't allowed in, people are not supposed to talk outside about what happened in that proceeding although people outside may know the proceeding is going on, they may know that ... there is something going on in that forum that is closed.

... I think part of the desire here is that legislators don't want people to know that there have been complaints made, and I can understand that. But until the complaint hits our office and gets stamped in, it's not part of what the original statutory language covers because the statutory language [refers to] ... proceedings before the committee, (indisc.) so ... there has to be some new legislation prohibiting conduct before it gets to us. And then you get into all sorts of free speech issues, and I don't know quite ... where that would go.

REPRESENTATIVE OGG asked whether the current statute precludes considering deliberations as part of discussion.

TAPE 04-76, SIDE A

Number 0001

MR. COOK said it may not. He, too, relayed that AS 24.60.037 currently says in part, "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed", but noted that it doesn't say, "discussed and deliberated". He remarked that proposed AS 24.60.037 is broader than current statute, but suggested that if "discussion" were to be defined in the bill as including "deliberation", then discussion could also mean

deliberations. He noted that the Select Committee on Legislative Ethics has not yet debated the issue of broadening the statute in that fashion.

REPRESENTATIVE OGG asked Mr. Cook whether creating guidelines during an investigation of a complaint will result in ex post facto laws or guidelines.

MR. COOK said the Select Committee on Legislative Ethics is considering that issue.

REPRESENTATIVE GARA relayed that he would like to revisit the issue of chit sheets.

Number 0231

CHAIR MCGUIRE recessed the meeting at 6:00 p.m. for the purpose of attending a House floor session.

Number 0239

CHAIR MCGUIRE called the House Judiciary Standing Committee back to order at 8:50 p.m. Representatives McGuire, Ogg, and Samuels were present at the call back to order. Representatives Anderson, Holm, Gara, and Gruenberg arrived as the meeting was in progress.

CHAIR MCGUIRE relayed that the committee would accept written testimony on HB 563 from those who were unable to testify earlier during the meeting.

Number 0310

JUSTIN ROBERTS, Alaska Common Cause, offered the following:

We believe that open meetings is the single most important factor in a healthy democracy, and not because of suspected skullduggery, but because, as evidenced tonight, ... there's sincere debate that would genuinely impress the public, that ... the public ought to see. We believe that this bill has a potential to help open the political process to Alaskans. And while we would have liked it to have gone through the [Select Committee on Legislative Ethics], which has both public and legislative members, I think that the bill, if it passes tonight, will do something significant by having, for the first

time, guidelines in place, since 1995. And I guess basically we see the opportunity ... here to clarify what is now an ambiguous system and to (indisc. - paper shuffling) guidelines in place.

We do have some concerns with the bill as it's currently drafted, and we've been working [with] Representative Rokeberg on some of those changes. The most important one, as far as I'm concerned, is on page 1, line 12, of the bill, and that's the definition of a meeting. And the problem is that the way the bill is written, ... in [subsection] (a) it says that ... meetings of the legislature must be open, and then it defines a meeting in subsection (b) to require that a vote is taken. So if a vote's not taken, it's not a meeting, it's not subject to the guidelines at all. So any deliberations, any, like, what we were talking about earlier, with somebody from the Senate coming over and talking about a bill, it's not a meeting unless there's a vote, so it's not subject to the guidelines. ...

MR. ROBERTS added:

The real problem area is ... this lines 12 and 13: "and action, including voting, is taken". And we're trying to figure out some way to do it to say, "and action, including voting, is or could be taken" - or ... something like that, where it doesn't require that an actual vote was taken, where it's just the fact that you have a quorum of members there who ... could be making decisions on legislation - and then it's a meeting. And then, at that point, you look to the exceptions in subsection (c) on whether or not it's political strategy or something else.

Number 0509

CHAIR McGUIRE offered, "So, an action was or could be taken." She mentioned that there is a forthcoming amendment that might address that issue, via use of the phrase "and discusses pending legislation", but pointed out that she has some concern regarding the amendment's present wording. She noted that at a recent social function hosted by a legislator, at which a majority of legislators were present, there was discussion of pending legislation.

REPRESENTATIVE GARA remarked:

The concerns actually go all over the place. I mean, really, in just an informal caucus meeting, technically, you ... aren't really taking action, or really you're probably polling - you're not really voting because you're not pressing a red or a green button. So I don't know that ... even use of the words "action" or -- I think that this really narrowly defines ... when an open meeting would be required, because I think technically you could argue [that] any caucus meeting, where you're sitting there discussing issues, if you're not going to take an action or vote, is closed because you're not taking an action or voting. ... I think the "action" and "voting" parts are problematic.

MR. ROBERTS noted that if the Uniform Rules weren't in place, the same thing would apply to a committee; in other words, the committee could discuss all the bills on its calendar and, as long as no votes were taken, it wouldn't be a meeting and therefore wouldn't have to be open to the public.

CHAIR McGUIRE acknowledged that point.

REPRESENTATIVE ROKEBERG indicated that he and Mr. Roberts would work on that issue.

Number 0601

MR. ROBERTS went on to say:

The other section that I -- and we'd kind of talked about this before, on page 2, lines 8 and 9, ... where it refers to "deliberations with regard to strategy, and discussions of issues in the context of strategy", I guess part of it is [that] ... I'm not totally clear what it means ... because political strategy is defined as discussions regarding strategy. [This] seems kind of circular and hard for me to -- I guess I just don't understand how that would be interpreted in practice.

CHAIR McGUIRE asked Mr. Roberts whether he is concerned about the definition of "political strategy".

MR. ROBERTS said he did not know whether those first items - organization of the houses, assignment of committee membership, scheduling of bills - are examples of political strategy, and whether the section on deliberations and discussions is referring back to those items. He then referred to page 3, lines 10-11, and noted that it says a committee or group of legislators meeting with the governor or staff from the governor's office isn't a legislative body. According to his interpretation, he said, such a meeting wouldn't be subject to the open meetings guidelines since such a meeting wouldn't be a meeting of a legislative body [as defined on page 1, subsections (a) and (b)]. In other words, simply by inviting someone in from the governor's office, voting could take place in a closed caucus. He surmised that such was not the intent of the sponsor.

REPRESENTATIVE ROKEBERG indicated that a forthcoming amendment would address that issue.

MR. ROBERTS concluded:

The only other thing [is], ... the committee had talked about some system of monitoring, and I know there are major issues with the taping or independent monitors ..., but one suggestion that had been raised was whether or not ... you could do the same thing as with an executive session, where you'd go in and say "this" is what we're going to talk about and then vote on whether or not you'd go into a closed caucus for a certain reason. ...

Number 0704

REPRESENTATIVE OGG asked for clarification.

MR. ROBERTS said:

I guess what I was thinking is that you'd have the caucus come together and the initial ... starting of the meeting would be open, and ... then, at that point, ... there'd be a motion to go into closed session for a certain type of political discussion, which would be listed in one of these ... lines outlined in subsection (c): that "we're going to close session to discuss political strategy on the assignment of committee membership," or "closed session to discuss ... political strategy on caucus

operations." ... I guess I was just thinking that at that point you'd have a record of what was discussed on a certain day and what the exceptions were.

CHAIR McGUIRE remarked:

One of the things that's so difficult about this is, at some point, regardless of any bill that we do or how detailed it is, there'll be a certain amount of trust that goes into it. And that's inherent ... in the political process in general; ... you'll elect your representatives and hope that they will abide by the laws and act in your best interest. What would be nice about this is to have something to refer to, because I personally know that I don't, and I know that my colleagues here don't, engage in any of this on purpose.

... A lot of this has not been defined, and customs of the legislature have been developed over the years, and, in many cases, knowledge of the rules are passed from one ... group of legislators to the next, and sometimes without any real understanding of where they came from. ... We have these interesting debates on the floor ..., and you go to [Mason's Manual of Legislative Procedure], and you realize that there isn't a rule ..., [but] a custom [has] ... been developed through the legislature through the years. So I understand your point, and we'll see where we can go, but I think at some point, regardless, ... we're going to have leave off, with [an] amount of trust, somewhere.

Number 0984

REPRESENTATIVE SAMUELS asked how Mr. Robert's suggestion would work as a practical matter, for example, for meetings of the Bush caucus when the issue being discussed involves capital projects for rural Alaska.

MR. ROBERTS clarified that his suggestion would apply in the context of majority or minority caucuses. He reiterated that he envisions a caucus meeting being open to begin with and then the caucus could vote on whether to close it for the purpose of addressing an issue as described in subsection (c). In response to comments, he noted that a legislative body includes a caucus.

REPRESENTATIVE GARA added that legislative body is defined [in subsection (g)(1)(A)]. He expressed a preference for having Mr. Roberts's suggestion only apply to majority and minority caucus meetings. He went on to say:

One of my problems with the bill is, it talks about all the things that aren't open meetings but ... we really need a statement of what is an open meeting. And ... I think we would all generally agree that what we want is for the public to be able to listen as legislators discuss the merits of an issue before the legislature. And certainly, over coffee, ... you might talk about family, 500 other things, and then mention an issue; that's ... not what the public is talking about. What the public is talking about is when [a] primary purpose of the meeting is to discuss the merits of issues. ...

So I think we need a statement in here that says, "where a primary purpose of the meeting is to discuss the merits and demerits of an issue before the legislature with legislation, amendments, potential legislation, potential amendments, then that's open". ... I think ... we have to have a flat statement of what's open, because, otherwise, all you have to do, the way the bill's written right now, is have a discussion about the issues that the public wants to hear about and then throw in something about strategy for a second or so, and all of a sudden it's closed.

Number 1213

REPRESENTATIVE GARA concluded:

So I think we have to say, "whatever the exceptions are, the rule is, if a primary purpose of a meeting is to discuss issues before the legislature" - and those issues would be legislation, amendments, potential legislation, potential amendments, the substance of issues - "that's open", or else I don't think this bill gets us anywhere. And ... these qualifiers that say it's not an open meeting unless action and voting are taken, ... this doesn't open any meetings, the way it's written.

REPRESENTATIVE HOLM reiterated his earlier comments about perceived "skullduggery," and predicted it would be difficult to

have any kind of strategy if all meetings were open, that the same level of discussion wouldn't take place. He mentioned the costs of running for and holding political offices, costs both financial and emotional, and gave examples of how times have changed with regard to how legislators conduct themselves. He indicated that he is offended and outraged that someone could accuse a legislator of wrongdoing and the legislator would have no recourse.

MR. ROBERTS responded:

As far as I'm concerned, the (indisc. - paper shuffling) issue is not skullduggery as much as it is the public being able to see the deliberative process, and constituents being able to see the way the representatives stand on issues. And I think that applies both to the caucus system as well as seeing what happens on the floor of the House and the committee process. I think all three are involved deliberations and involve watching to see what your representatives believe on certain bills or certain issues. But I don't think the point is skullduggery.

CHAIR McGUIRE noted that the issues raised are not unique to Alaska, adding that the government is becoming more open, more accessible; many things are available on the Internet, meetings can be streamed live on the Internet, and there are now cameras in many committee rooms. According to conversations she's had with members, she relayed, when cameras first came into committee rooms, it was very controversial and a lot of members felt it was an affront. Times are changing, however. With regard to HB 563, she said, "This is a good idea, ... let's get it finalized and get it out."

Number 1482

REPRESENTATIVE ROKEBERG mentioned that under the Uniform Rules, the legislature and any formal group recognized by the Uniform Rules has the ability to go into executive session. Therefore, he opined, it would be redundant to include language stating that such could be done by caucuses. Offering that the Uniform Rules are "a creature of our constitution," requiring a two-thirds vote, he pointed out that one of the provisions of HB 563 states that the Uniform Rules take precedent over any guidelines. Mason's Manual of Legislative Procedure is a part of the Uniform rules, so the procedural elements that exist within the legislature's rulemaking doctrine are superior to

anything that the Select Committee on Legislative Ethics can come up with, he added.

REPRESENTATIVE ROKEBERG offered his belief that the guidelines should be consistent with the law, and relayed that the issue of notice provisions for caucus meetings has been discussed by the Select Committee on Legislative Ethics and its subcommittee. He, too, pointed out that caucuses are included in the definition of "legislative body", and can consist of any people grouped together for a common, philosophical purpose.

CHAIR MCGUIRE mentioned that at a luncheon attended by female legislators of both bodies, there had been discussion regarding whether a women's caucus should be formed. Such a caucus would meet monthly to discuss women's issues. The question arose regarding what would be considered a women's issue: would it be legislation that one or more members of the caucus felt was important to women as a whole, would it be what it is like to serve as a female legislator in somewhat of a minority role in the legislature? She asked, "Is that considered, then, a caucus, and would we, then, be subject to those rules?"

REPRESENTATIVE ROKEBERG replied, "By your description, I would say yes." He noted that the language on page 3, lines 16-17, specifies that a gathering of members for ministerial or social purposes can be closed only if there is no deliberations of policy issues.

CHAIR MCGUIRE asked whether holding a caucus meeting in a public venue, such as a restaurant, would count as an open meeting.

REPRESENTATIVE ROKEBERG said that if there is, in fact, a grouping of likeminded people forming a caucus, then by definition, they would need to take care regarding their conduct.

Number 1749

REPRESENTATIVE SAMUELS asked whether such a caucus could meet at a member's house and talk about whether to [sponsor] legislation pertaining to a women's issue.

REPRESENTATIVE ROKEBERG opined that the issue in question is whether the meeting is open or closed, rather than where the meeting takes place.

MR. ROBERTS posited that Representative Samuels's is questioning whether such a group would fall under the definition of legislative body as listed in subsection (g)(1)(A)(vi). If the definition of caucus does not specify majority and minority caucuses, "then it reaches into all the smaller caucuses," he surmised.

REPRESENTATIVE GARA offered his belief that Representative Rokeberg did a good job in defining what a legislative body is. He suggested, however, that the provision regarding caucuses should pertain only to majority and minority caucuses, not other caucuses, because that is where public interest lies.

REPRESENTATIVE ROKEBERG said he absolutely objects to having only the majority and minority caucuses qualify as a legislative body; "if we're going ... to have a bright line or try to have a rule that applies to caucuses, it should be applied to everybody."

CHAIR McGUIRE asked how such a rule would be applied, for example, if [hypothetically], without calling themselves a women's caucus, she invites the female legislators of both bodies to her house, serves dinner, and they discuss legislation regarding contraception.

REPRESENTATIVE ROKEBERG replied: "I think in terms of the application of open meetings principles, which is contained in the bill and in the intent language within the statute, ... you should not try to create a subterfuge around it." If a meeting contains a discussion regarding political strategy, then the group would have a right to exclude the public, and the alternative would be to invite members of the public, perhaps members of the fourth estate, to the aforementioned hypothetical dinner.

Number 1888

REPRESENTATIVE GARA remarked:

It's circular to say, "That's a caucus" and "That's not a caucus" if we're not going to define what a caucus is. ... "I know it when I see it," isn't going to work in this bill. So we have to make the threshold decision [regarding] what it is we think the public wants to see. We know they want to see what the majority and the minority do and what committee's do and what task [force's] do and what the House does

and what the Senate does. We know they want to see that, and that would be a big improvement if we could come up with laws on those subjects. Maybe they also want to know what's happening at [the hypothetical] dinner; I mean, I suppose there's a fair chance they want to know that, but that's going to require a lot more thought than we're going to engage in between now and whatever time we gavel out of this committee.

REPRESENTATIVE ROKEBERG said that other states have already dealt with this issue; in addition, there is case law, legislative law, and the minutes pertaining to this bill and similar legislation from past years. Therefore, there shouldn't be any difficulty finding a solution.

REPRESENTATIVE GARA suggested, then, that there should be a definition of what a caucus is.

REPRESENTATIVE ROKEBERG said that is a good point, and mentioned that the Select Committee on Legislative Ethics' subcommittee has taken up that issue, which has been a main point of discussion. He suggested that any definition of what a caucus is should be a generic definition, offering as an option, "an affiliation of likeminded philosophies". He also suggested that any forthcoming definition should not specify a particular number of members; rather, referring to a majority or a quorum of the members of a legislative body should be sufficient.

CHAIR MCGUIRE said she'd like members to now focus debate on the proposed amendments.

Number 2015

REPRESENTATIVE GRUENBERG directed attention to Amendment 1, which read [original punctuation provided]:

Page 1, line 12, delete "and action, including voting, is taken" and insert "and discusses pending legislation."

Page 2, line 2, after "strategy" add "but no action, including voting, may be taken."

REPRESENTATIVE GRUENBERG explained that the first part of Amendment 1 would change the bill such that subsection (b) wouldn't require that action be taken, because that's too restrictive, and that the second part of Amendment 1 would

provide that a meeting could be closed while discussing and deliberating political strategy so long as no action, including voting, is taken. He noted that during his prior service as a legislator, during a time when he was a member of the majority, "these were basically the rules" and they worked very well.

REPRESENTATIVE OGG observed, however, that the language in the first part of Amendment 1 - "and discusses pending legislation" - could also apply when a majority of legislators attend a social function hosted by a lobbyist and pending legislation is discussed.

CHAIR McGUIRE suggested that perhaps they could add language to the effect that the primary purpose of the gathering would be the discussion of pending legislation.

REPRESENTATIVE ROKEBERG offered instead that perhaps it would be more suitable to alter the first part of Amendment 1 such that the language on page 1, lines 12-13, would say, "and action, including voting, is taken or could be taken".

MR. ROBERTS relayed that the only concern he has with that proposal is that it's still not clear what is meant by the terms "action" and "voting". In other words, isn't voting something that only occurs on the floor?

REPRESENTATIVE GRUENBERG remarked that voting also occurs in caucus.

CHAIR McGUIRE suggested using the term "polling".

REPRESENTATIVE ROKEBERG expressed disfavor with using that term.

Number 2147

CHAIR McGUIRE, remarking that Mr. Roberts has a good point, surmised that the term "polling" could refer to requests for a general showing of hands.

REPRESENTATIVE GARA suggested altering the first part of Amendment 1 such that it ends the sentence on page 1 [line 11-13] with the word "present". After that, they could contemplate defining an open meeting such that a primary purpose of the meeting is to discuss issues of legislation, potential legislation, and the like. He went on to say, "I don't want to work within the construct of working around and keeping the words "action" and "voting", because, technically, you really

can't do those things in an informal meeting, so I think we just need to get rid of those words and work a different definition."

REPRESENTATIVE ROKEBERG explained that in developing HB 563, he'd tried to stay close to the Select Committee on Legislative Ethics' previously proposed suggestions for guidelines. He indicated that what he has proposed is also similar, with just some modification, to Minnesota law. He suggested having the first part of Amendment 1 alter page 1, line 12, to say, "and action is taken or could be taken".

REPRESENTATIVE GRUENBERG said he would consider such a change [to the first part of Amendment 1] to be a friendly amendment.

REPRESENTATIVE ROKEBERG offered his belief that such a change would just define what a meeting is under the open meetings provisions.

Number 2239

REPRESENTATIVES GRUENBERG and ROKEBERG suggested that the two parts of Amendment 1 be divided into Amendment 1a and Amendment 1b. [Although no formal motion was made, no objection was stated, and Amendment 1 was treated as divided.]

REPRESENTATIVE GRUENBERG expressed a desire to have Amendment 1a add the phrase, "or could be taken" after "taken" on page 1, line 13. [Although no formal motion was made, no objection was stated, and Amendment 1a was treated as amended to that effect.]

Number 2250

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1a [as amended]. There being no objection, Amendment 1a [as amended] was adopted.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1b [text provided previously].

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE ROKEBERG suggested changing Amendment 1b such that it alter page 2, lines 1-2, to read in part, "Legislators may only meet in a closed caucus or in a private, informal meeting to discuss and deliberate on political strategy." He opined that this would make the language more consistent with current statute.

MR. ROBERTS expressed acceptance of such a change.

REPRESENTATIVE GRUENBERG asked whether there are any other reasons for allowing legislators to meet in a closed caucus.

REPRESENTATIVE ROKEBERG indicated that if there are any other reasons, they could be addressed in the definition provision.

Number 2307

REPRESENTATIVE GRUENBERG expressed a desire to have Amendment 1b altered such that it would add "only" after "may" on page 2, line 1. [Although no formal motion was made, no objection was stated, and Amendment 1b was treated as amended to that effect.]

REPRESENTATIVE ANDERSON surmised that [Amendment 1b, as amended] would address Chair McGuire and Representative Samuels's hypothetical gatherings.

TAPE 04-76, SIDE B

Number 2360

REPRESENTATIVE GRUENBERG added that it would not prohibit members from meeting socially; it would instead only address political caucuses pertaining to political strategy. He remarked, "That's traditionally the way the bodies have worked around here; it's worked well, and I think that's a very reasonable proposal."

REPRESENTATIVE ROKEBERG offered: "The current law ... says guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. ... What we're doing is basically restating that, and we're clarifying what that means." He also remarked, "If the women's caucus met in this building, you would have to face the issue about whether or not it would be open or closed, and the fact that you meet at your home or another setting makes no difference legally."

REPRESENTATIVE OGG asked whether, if five members of the House Judiciary Standing Committee met to play cards, that would be allowed.

REPRESENTATIVE ROKEBERG opined that it would be allowed.

MR. ROBERTS offered his belief that such would be allowed because of the language on page 3, lines 15-17, which reads in part, "(2) 'meeting' does not include ... a gathering of members of a legislative body for purely ministerial or social purposes where there is no deliberation of policy issues".

REPRESENTATIVE ROKEBERG agreed.

REPRESENTATIVE OGG argued, however, that legislators discuss policy issues whenever they meet, regardless of whether it's just a social gathering.

CHAIR MCGUIRE agreed, and relayed that she would be offering an amendment to address that issue.

REPRESENTATIVE GARA indicated agreement with Representative Ogg.

MR. ROBERTS, in response to questions from Representative Holm, reiterated his affiliation, detailed his organization's tax status and funding sources, and stated that his organization has a political agenda but does not advocate for any political parties.

REPRESENTATIVE GRUENBERG asked whether there was still an objection to the adoption of Amendment 1b [as amended].

Number 2205

REPRESENTATIVE ANDERSON removed his objection.

Number 2200

CHAIR MCGUIRE asked whether there were any further objections to Amendment 1b [as amended]. There being no objection, Amendment 1b [as amended] was adopted.

Number 2191

REPRESENTATIVE ROKEBERG suggested amending the sentence on page 2, lines 1-2, to include, at the end of the sentence, language along the lines of: ", but this provision does not prohibit the discussion of pending issues and legislation, provided members do not act to approve or disapprove the legislation".

CHAIR MCGUIRE called the forgoing suggestion Amendment 1c.

Number 2119

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1c.

Number 2114

REPRESENTATIVES GARA and ANDERSON objected.

MR. ROBERTS asked whether this additional language would apply within the context of political strategy.

REPRESENTATIVE ROKEBERG indicated it would.

MR. ROBERTS said it seems as though Amendment 1c would define political strategy such that it would allow discussion of pending issues.

REPRESENTATIVE ROKEBERG said that appears to be the case, and suggested that perhaps [Amendment 1b, as amended] isn't necessary.

CHAIR MCGUIRE concurred.

Number 2051

REPRESENTATIVE GRUENBERG withdrew Amendment 1c.

Number 2042

REPRESENTATIVE GRUENBERG made a motion that the committee rescind its action in adopting Amendment 1b [as amended]. There being no objection, it was so ordered.

CHAIR MCGUIRE offered her belief that Amendment 1c is not necessary now that Amendment 1b [as amended] is no longer part of the bill.

Number 1991

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, which read [original punctuation provided]:

Page 2, line 8, after "governor" add "discussions about a bill among potential co-sponsors"

Number 1969

REPRESENTATIVE SAMUELS objected [for the purpose of discussion].

REPRESENTATIVE GRUENBERG relayed that he'd offered Amendment 2 on behalf of Mr. Roberts.

MR. ROBERTS explained that Amendment 2 would have been appropriate had the committee taken out the reference to voting in subsection (b). He indicated that perhaps Amendment 2 is no longer necessary, since Amendment 1a, as amended, did not remove the reference to voting.

REPRESENTATIVE GRUENBERG said he is a little concerned about Amendment 2, and remarked that it might apply in cases where a bill's sponsor goes seeking co-sponsors for his/her bill.

MR. ROBERTS said Amendment 2 would provide another exception to what would be considered an open meeting.

REPRESENTATIVE ROKEBERG offered his belief that Amendment 2 isn't necessary, remarking that the exception provision is not intended to be a laundry list.

Number 1908

REPRESENTATIVE GRUENBERG withdrew Amendment 2.

Number 1874

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, which contained additional handwritten language and read [original punctuation provided]:

Page 4, line 21, after "if" add "the committee finds that"
page 4, line 21 delete "violates" and insert "has violated"

REPRESENTATIVE ROKEBERG indicated that he didn't have a problem with Amendment 3.

Number 1847

REPRESENTATIVE GRUENBERG again made a motion to adopt Amendment 3. There being no objection, Amendment 3 was adopted.

REPRESENTATIVE OGG directed attention to Amendment 4, which read [original punctuation provided]:

Page 1, line 13: After "voting, is" INSERT "or could be"

Page 2, line 8: after "regard to" INSERT "political"

Page 2, line 9: after "context of" INSERT "political"

REPRESENTATIVE OGG said he wants to modify Amendment 4 such that the first proposed change is stricken, since Amendment 1a, as amended, has the same effect. [Although no formal motion was made, no objection was stated, and Amendment 4 was treated as amended to that effect.]

Number 1830

REPRESENTATIVE OGG made a motion to adopt Amendment 4 [as amended]. There being no objection, Amendment 4 [as amended] was adopted.

REPRESENTATIVE GARA directed attention to Amendment 5, a handwritten amendment which read [original punctuation provided]:

Insert at p. 2 line 10

"(d) a meeting under this section shall be open if a primary purpose of the meeting is the discussion of the merits of legislation, potential legislation or changes to legislation."

Number 1825

[Although no formal motion was made, Amendment 5 was treated as moved for adoption]

REPRESENTATIVE GARA indicated that he wants Amendment 5 to be altered such that the text would be inserted at page 1, line 13, after the sentence ending with "taken" and such that "(d) A" is replaced with "a". [Although no formal motion was made, no objection was stated, and Amendment 5 was treated as amended to that effect.] He explained that Amendment 5 [as amended] would fit into the provision that outlines what constitutes a meeting that is subject to the open meetings guidelines, and would stipulate that a meeting shall be open if the primary purpose is the discussion of legislation, potential legislation, or changes to legislation. He opined that Amendment 5 [as amended] would address the hypothetical card game, dinner party, and other social functions, while letting people know that most onsite caucus meetings, wherein the primary purpose is the discussion

of legislation regardless of whether action or voting takes place, must be open meetings.

Number 1768

REPRESENTATIVE ANDERSON objected to the adoption of Amendment 5 [as amended].

CHAIR McGUIRE suggested altering Amendment 5 [as amended] to say, "A gathering where the primary purpose of the meeting is the discussion of the merits of legislation, potential legislation or changes to legislation.". She remarked that currently, Amendment 5 [as amended] "kind of creates this weird thing where you're saying "open" "closed" in a place where you're just defining meeting."

REPRESENTATIVE GARA suggested, then, that perhaps they should just revert to the original form of Amendment 5, which would add a new subsection (d).

REPRESENTATIVE ANDERSON objected, and opined that discussion of the merits of legislation should be permitted in a closed caucus.

REPRESENTATIVE ROKEBERG suggested that [Amendment 5 is redundant] because of language in subsection (a), which reads in part: A meeting of a legislative body is open to the public in accordance with the open meetings guidelines established in this section."

REPRESENTATIVE GARA argued, however, that although the bill starts out saying that a meeting shall be open to the public, it then goes on to list all the instances in which a meeting is closed to the public.

REPRESENTATIVE ROKEBERG noted that the exceptions to an open meeting are listed in subsection (c).

REPRESENTATIVE GARA remarked:

This is a threshold question of where we're going to go with this bill. If the bill says that you can discuss all the merits of legislation in a closed caucus and keep it closed just because at the end of the day you don't take a vote or a particular action, then we're no further along than where we are today. ... The way the bill is written right now, my caucus

could meet, we could sit there and discuss all the merits of legislation, demerits, argue back and forth, and then at the end say, "Yeah, this is a good idea," "It's a terrible idea," "I oppose it," or ... "I think I might support it." All of that is closed unless a vote is take or action is taken. And I want an open meetings law that says, when we have these substantive discussions about policy, those are open. ... So the way the bill is written right now, those won't be open.

REPRESENTATIVE ROKEBERG concurred.

Number 1623

CHAIR McGUIRE suggested altering Amendment 5 [as amended] such that it adds, on page 1, line 13, after the word "taken", the phrase: "and a primary purpose of the meeting is the discussion of [the] merits of legislation, potential legislation or changes to [legislation]." She surmised that this would be adequate to define "meeting", since the exceptions are listed on page 2.

REPRESENTATIVE GARA said:

That would work with only one little change/exception though. This whole thing of, ... it's not an open meeting unless action could potentially be taken, I mean what action can ... really be taken in an informal meeting? So if you can't really take any action in an informal meeting of non-powerful legislators, then you can essentially talk about whatever you want ...

Number 1569

CHAIR McGUIRE interjected to suggest that they replace "and" with "or" as the first word in her suggested change to Amendment 5 [as amended]. She relayed that subsection (b) would then read in part:

For purposes of the legislative open meetings guidelines, a meeting occurs when a majority of the members of a legislative body is present and action[, including voting,] is taken or could be taken, or the primary purpose of the meeting is the discussion of the merits of legislation, potential legislation [or] changes [to legislation].

CHAIR McGUIRE posited that the foregoing adequately states what a meeting is, and the list of exceptions details the circumstances under which a meeting may be closed.

REPRESENTATIVE GARA agreed.

CHAIR McGUIRE remarked that a meeting is not something that only occurs when action is taken. She restated how the first sentence in subsection (b) would read if Amendment 5 [as amended] is amended in that fashion and adopted.

REPRESENTATIVE ANDERSON opined that discussions regarding legislation, potential legislation, and changes to legislation should be allowed in closed meetings because such would qualify as discussions of political strategy.

CHAIR McGUIRE said no, and reiterated that changing the bill as she suggests will define what a meeting is, and that the exceptions on page 2 list the circumstances under which a meeting may be closed. She opined that Representative Gara is correct in that a meeting consists of more than just taking action or potentially taking action.

REPRESENTATIVE SAMUELS said his only concern with Chair McGuire's suggested change revolves around the term "potential legislation", because "everything in this room is potential legislation"; in other words, any topic that is discussed has the potential to engender legislation.

Number 1414

REPRESENTATIVE SAMUELS suggested altering Chair McGuire's proposed change by putting a period after the words, "merits of legislation". He added, "The substance of the issue is what we're trying to get at; [if we] talk about the substance of an issue, [the] door needs to be open."

CHAIR McGUIRE offered her belief that changes to legislation would be included under the term "legislation".

REPRESENTATIVE SAMUELS concurred.

REPRESENTATIVE GARA indicated that he would accept Representative Samuels's suggestion as a friendly amendment to Chair McGuire's proposed amended version of Amendment 5 [as amended].

REPRESENTATIVE ROKEBERG pointed out, however, that "it's not just discussions of the merits of legislation; it could be discussions of substantive policy issues."

REPRESENTATIVE GARA offered as an alternative the words, "discussion of the merits of legislation, or issues within the purview of the legislature".

REPRESENTATIVE ROKEBERG suggested not using the words, "merits of legislation and issues within the purview ..."

REPRESENTATIVE ANDERSON interjected to state, "Throw in football."

REPRESENTATIVE ROKEBERG said, "It's a meeting of anything."

REPRESENTATIVE SAMUELS opined that using the term, "merits of legislation" gets them where they really want to go.

Number 1336

REPRESENTATIVE ANDERSON suggested deleting "merits", and having it read in part, "discussion of legislation".

REPRESENTATIVE GRUENBERG offered his belief that that would work.

REPRESENTATIVE GARA indicated acceptance of Representative Anderson's suggestion to delete "the merits of" as part of the proposed changes to Amendment 5 [as amended].

CHAIR McGUIRE surmised, then, that the text of Amendment 5 [as amended] would be altered to read:

[, or] the primary purpose of the meeting is the discussion of legislation."

REPRESENTATIVE GARA indicated a willingness to move the foregoing, but suggested that they end it with the words, "legislation or state policy".

REPRESENTATIVE GRUENBERG said that would be okay.

CHAIR McGUIRE expressed a preference for using the words, "legislation or state policy".

REPRESENTATIVE GRUENBERG clarified that with the adoption of Amendment 1a [as amended], the language being proposed via an amended version of Amendment 5 [as amended] would be inserted after the second "taken".

[Although no formal motions were made, several of the foregoing suggested changes to Amendment 5, as amended, were treated as adopted such that the following became Amendment 5, as amended.]

Number 1221

REPRESENTATIVE GARA made a motion to adopt this amended version of Amendment 5 [as amended]:

After the second "taken" at page 1, line 13, insert "
or if a primary purpose of the meeting is the
discussion of legislation or state policy"

Number 1209

CHAIR MCGUIRE asked whether there were any objections to Amendment 5 [as amended]. There being none, Amendment 5 [as amended] was adopted.

REPRESENTATIVE ROKEBERG turned attention to a proposed amendment that read [original punctuation provided]:

Page 3, line 10, delete "(ii) any committee or group
of legislators and the governor or staff of the Office
of the Governor."

CHAIR MCGUIRE and REPRESENTATIVE GRUENBERG said that that proposed amendment was not offered.

REPRESENTATIVE ROKEBERG commented, "Well you should; it's actually a good amendment."

CHAIR MCGUIRE indicated a preference for allowing Representative Gara to finish with his proposed amendments [first].

Number 1103

REPRESENTATIVE GARA made a motion to adopt Amendment 6, a handwritten amendment which read [original punctuation provided]:

At page 2 line 8, after "deliberations" add "and discussions"
Delete remainder of sentence after "strategy".

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA opined that as currently written, lines 8-9 of page 2 are confusing. Amendment 6 would change lines 8-9 to read in part, "deliberations and discussions with regard to political strategy.". He posited that Amendment 6 would prevent the possibility of adding "a little pepper or salt" of strategy in the middle of a discussion on issues in order to avoid the open meetings requirement.

REPRESENTATIVE ROKEBERG said he strongly objects to Amendment 6. He noted that in the Select Committee on Legislative Ethics' subcommittee, there was discussion with regard to the distinction between deliberations and discussions of issues in the context of political strategy. He said the intention of HB 563 is to allow those types of activities: deliberations with regard to political strategy, and discussions of issues in the context of political strategy. He elaborated, "You cannot talk about the political strategy, if you will, without having the proper context of the issues and the understanding of it; so ... those discussions become intertwined, and I don't see how you can have any kind of bright-line test will be ... usable."

REPRESENTATIVE ANDERSON indicated agreement.

Number 0941

REPRESENTATIVE GARA withdrew Amendment 6, but added, "I think ... we have to come up with a way that would prevent somebody from cloaking what should be an open meeting with a little bit of a discussion of strategy at the end of the meeting or in the beginning of the meeting just to find a way to close it."

Number 0895

REPRESENTATIVE GARA made a motion to adopt Amendment 7, a handwritten amendment which read [original punctuation provided]:

At page 3 delete lines 12-13 and renumber

Number 0891

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GARA opined that the way the bill is currently written:

Your meeting doesn't have to [be] open unless you're a legislative body, and then it defines legislative body to be commissions, committees, all that sort of stuff, and then, starting at line 6 on page 3, we have exclusions, and these are things that are not legislative bodies and therefore are not subject to the open meetings Act. And line 12 says, "officers of the legislature" - well, that would be all of us. ... Unless I'm interpreting it wrong, the way that's written ... that just excludes all of us from the open meetings Act.

REPRESENTATIVE ANDERSON offered his belief, however, that the phrase, "officers of the legislature" refers to majority leaders, minority leaders, and the speaker of the House and Senate president.

REPRESENTATIVE ROKEBERG agreed with Representative Anderson's summation.

MR. ROBERTS asked whether the language on page 3, lines 12-13, would allow all committee chairs to meet in the same room without being considered a legislative body.

Number 0732

REPRESENTATIVE ROKEBERG acknowledged that such could be the case and therefore Representative Gara might have a point in that regard. In response to a question, he said he thinks that a closed meeting of leadership should be allowed. He suggested that they could remove committee chairs from the exclusion if the committee feels that would be too broad.

REPRESENTATIVE GRUENBERG suggested changing page 3, lines 12-13, such that the provision would reference only leadership meetings.

REPRESENTATIVE GARA acknowledged that perhaps more work could be done with that provision, but suggested that for the time being they simply remove lines 12-13 from page 3.

REPRESENTATIVE ROKEBERG said he agrees with Representative Gruenberg's suggestion.

CHAIR McGUIRE expressed a preference for addressing Representative Gara's motion and remaining proposed amendments first and then looking at new language.

Number 0683

REPRESENTATIVE ANDERSON removed his objection.

CHAIR McGUIRE asked whether there were any further objections to Amendment 7. There being none, Amendment 7 was adopted.

Number 0669

REPRESENTATIVE GARA made a motion to adopt Amendment 8, a handwritten amendment which read [original punctuation provided]:

At page 3 line 4 insert "minority or majority" after "a".

Number 0657

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GARA offered his belief that they need to define caucus in order to determine which caucuses will be subject to the open meetings Act. Many caucuses are informal, he suggested, and so although more caucuses might be added to the statute later, it should start out listing majority and minority caucuses.

REPRESENTATIVE GRUENBERG objected. He said: "The question is, do we want to have adjectives describing the caucuses, starting with majority and minority? ... If we go down that road, then we've got to get the health caucus, Bush caucus, women's caucus, ... Anchorage caucus, Children's caucus. I think we [should] just leave it the way it [is]."

REPRESENTATIVE ROKEBERG agreed, adding that the open meetings law, in its entirety, is designed to throw an umbrella over "all of these meetings; you can't be renaming yourself as subterfuge."

Number 0531

REPRESENTATIVE GARA withdrew Amendment 8.

Number 0483

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 9, to add "(iii) legislative leadership meetings;" to page 3, after line 11. There being no objection, Amendment 9 was adopted.

Number 0462

REPRESENTATIVE OGG [made a motion to adopt] Amendment 10: on page 3, line 16, delete "purely", and on page 3, line 17, delete "where there is no deliberation of policy issues". Amendment 10 would have the effect of changing page 3, lines 16-17, to read in part: "(A) a gathering of members of a legislative body for ministerial or social purposes;".

Number 0439

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He asked whether the word "primarily" ought to be inserted [after "body"].

REPRESENTATIVE OGG indicated that he would accept the forgoing as an amendment to Amendment 10 as long as Representative Rokeberg agreed.

REPRESENTATIVE ROKEBERG indicated that such a change to Amendment 10 is acceptable.

CHAIR McGUIRE stated that Amendment 10 has been amended; the text being altered by Amendment 10, as amended, now reads in part: "(A) a gathering of members of a legislative body primarily for ministerial or social purposes;".

Number 0394

CHAIR McGUIRE asked whether there were any further objections to Amendment 10, as amended. There being none, Amendment 10, as amended, was adopted.

REPRESENTATIVE ROKEBERG - referring to the previously mentioned proposed amendment that read, Page 3, line 10, delete "(ii) any committee or group of legislators and the governor or staff of the Office of the Governor." - notwithstanding his earlier comment on this issue said, "Actually, I think we should keep

that because it means when we get together with the governor it's not (indisc.) we don't have to go to political strategy; it isn't redundant, I've realized.

MR. ROBERTS said his concern with the language that the aforementioned amendment proposes to delete is that if those described in sub-subparagraph (ii) do not constitute a legislative body, then a meeting of such people would not be covered by the open meetings guidelines at all. And if such a meeting is not covered by the guidelines, then all this talk about voting or deliberations doesn't matter, he opined, and added, "if you have a majority or minority caucus and you invite somebody in from the governor's office, it's no longer a legislative body and you can vote on bills."

REPRESENTATIVE ROKEBERG remarked, "We're not voting on anything in front of the governor."

REPRESENTATIVE GRUENBERG said, "The reason I didn't offer this [proposed amendment] is because, for forever, from what my knowledge is, groups of legislators, including sometimes caucuses, have meetings with the governor, whether it's upstairs or in his house, and those are not open, and I really did not want to get into that."

MR. ROBERTS responded: "That is exempted in [the definition of] 'political strategy' on page 2, lines 7 and 8. It says meetings with the governor are 'political strategy'. So ... under that, the meeting would be allowed to be closed but you couldn't vote on ..."

REPRESENTATIVE GRUENBERG interjected to say, "But that's only with the leaders, and this is broader."

Number 0252

REPRESENTATIVE ROKEBERG said: "That is correct. Representative Gruenberg has got it now, and I'd earlier thought it was redundant but it really isn't, because one speaks more specifically to an exception for political strategy, and the other really is more general membership meeting with the governor."

CHAIR MCGUIRE concurred with Representative Rokeberg's statement that there would be no voting in a meeting with the governor.

REPRESENTATIVE ROKEBERG, on a different topic, said that Representative Gara brings up a good point in that although the bill refers to "caucus", there is no definition in it of what a caucus is. He directed attention to [Conceptual] Amendment 11, which would create a definition section or become part of an existing subsection and would add the words, "For the purposes of these guidelines, 'caucus' means a group of legislators who share a political philosophy and who organize as a group with a common goal."

CHAIR McGUIRE indicated that she did not like that language, remarked that it did not accurately define any caucus she has been a member of, and suggested that alternative language could be offered on the House floor.

REPRESENTATIVE ROKEBERG mentioned that the language [in Conceptual Amendment 11] has been well researched and comes out of case law.

TAPE 04-77, SIDE A

Number 0001

REPRESENTATIVE ROKEBERG suggested amending [Conceptual] Amendment 11 such that "and" is replaced with "or"; the language in [Conceptual] Amendment 11 would then read, "For the purposes of these guidelines, 'caucus' means a group of legislators who share a political philosophy or who organize as a group with a common goal."

CHAIR McGUIRE indicated a preference for having it be "or" rather than "and".

[Although no formal motion was made until later in the meeting, Amendment 11 was treated as amended to that effect.]

REPRESENTATIVE GRUENBERG indicated a preference for considering [Conceptual] Amendment 11 [as amended] on the House floor.

REPRESENTATIVE ROKEBERG mentioned that he would prefer to address this issue before the bill goes to the House floor.

Number 0079

REPRESENTATIVE OGG made a motion to adopt [Conceptual] Amendment 11 [as amended].

REPRESENTATIVE GRUENBERG said he thinks that the language in [Conceptual] Amendment 11 [as amended] is too narrow and wouldn't apply to a health caucus or a women's caucus.

SEVERAL MEMBERS posited, however, that the phrase "who organize as a group with a common goal" would apply to such caucuses.

REPRESENTATIVE GARA asked whether two legislators working on the same bill would be considered a caucus under the language proposed via [Conceptual] Amendment 11 [as amended], for example, when he and Chair McGuire worked together on the bill pertaining to strip clubs.

REPRESENTATIVE ROKEBERG said no, because [Conceptual] Amendment 11 [as amended] refers to "a group".

Number 0175

CHAIR MCGUIRE asked whether there were any objections to [Conceptual] Amendment 11 [as amended].

REPRESENTATIVE GARA surmised that under one portion of language in [Conceptual] Amendment 11 [as amended], a caucus has to be a group of people who organize.

REPRESENTATIVE ROKEBERG agreed.

MR. ROBERTS, making use of the word "or", read a portion of [Conceptual] Amendment 11 [as amended].

Number 0193

REPRESENTATIVE GRUENBERG made a motion, then, to amend [Conceptual] Amendment 11, to replace "and" with "or". There being no objection, [Conceptual] Amendment 11 was [still treated as] amended.

REPRESENTATIVE ANDERSON opined that [Conceptual] Amendment 11 [as amended] could apply to either the majority caucus or the Anchorage caucus.

Number 0232

CHAIR MCGUIRE again asked whether there were any objections to [Conceptual] Amendment 11, as amended. There being none, Conceptual Amendment 11, as amended, was adopted.

REPRESENTATIVE GARA, in conclusion, said he didn't know where he stood with regard to the amended version of HB 563, and suggested that it would be good to have someone review the forthcoming committee substitute (CS).

CHAIR MCGUIRE suggested that the House Rules Standing Committee could do so.

Number 0315

REPRESENTATIVE ANDERSON moved to report HB 563, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 563(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0351

The House Judiciary Standing Committee meeting was recessed at 10:30 p.m., to be continued at 3:00 p.m. on May 6, 2004.