

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

May 6, 2004

3:20 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**

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."

- MOVED CSHB 535(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

"An Act relating to the crime of assault."

- MOVED CSSSHB 54(JUD) OUT OF COMMITTEE

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.

- MOVED CSSJR 33(STA) 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

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. 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

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

#### **PREVIOUS COMMITTEE ACTION**

BILL: HB 535

SHORT TITLE: LIMIT STATE AID FOR MENTAL HEALTH CARE  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/08/04	(H)	READ THE FIRST TIME - REFERRALS
03/08/04	(H)	HES, JUD, FIN
03/25/04	(H)	HES AT 3:00 PM CAPITOL 106
03/25/04	(H)	Heard & Held
03/25/04	(H)	MINUTE(HES)
04/13/04	(H)	HES AT 2:00 PM CAPITOL 106
04/13/04	(H)	Scheduled But Not Heard
04/22/04	(H)	HES AT 2:00 PM CAPITOL 106
04/22/04	(H)	Scheduled But Not Heard
04/27/04	(H)	HES AT 3:00 PM CAPITOL 106
04/27/04	(H)	Moved CSHB 535(HES) Out of Committee
04/27/04	(H)	MINUTE(HES)
04/28/04	(H)	HES RPT CS(HES) 1DP 2NR 1AM
04/28/04	(H)	DP: COGHILL; NR: SEATON, WILSON;
04/28/04	(H)	AM: CISSNA
05/03/04	(H)	JUD AT 1:00 PM CAPITOL 120
05/03/04	(H)	Heard & Held
05/03/04	(H)	MINUTE(JUD)
05/05/04	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/04	(H)	Scheduled But Not Heard
05/06/04	(H)	JUD AT 3:00 PM CAPITOL 120

BILL: HB 54

SHORT TITLE: ASSAULT ON SCHOOL EMPLOYEES  
SPONSOR(S): REPRESENTATIVE(S) LYNN

01/21/03	(H)	PREFILE RELEASED (1/17/03)
01/21/03	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	(H)	JUD, FIN
02/09/04	(H)	SPONSOR SUBSTITUTE INTRODUCED
02/09/04	(H)	READ THE FIRST TIME - REFERRALS
02/09/04	(H)	JUD, FIN
05/05/04	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/04	(H)	Scheduled But Not Heard
05/06/04	(H)	JUD AT 3:00 PM CAPITOL 120

BILL: SJR 33

SHORT TITLE: CONGRESSIONAL VOTE ON JUDICIAL NOMINATION  
SPONSOR(S): JUDICIARY BY REQUEST

04/07/04	(S)	READ THE FIRST TIME - REFERRALS
04/07/04	(S)	STA, JUD
04/27/04	(S)	STA AT 3:30 PM BELTZ 211
04/27/04	(S)	Scheduled But Not Heard

04/29/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/29/04 (S) <Pending Referral>  
 04/29/04 (S) STA AT 3:30 PM BELTZ 211  
 04/29/04 (S) Moved CSSJR 33(STA) Out of Committee  
 04/29/04 (S) MINUTE(STA)  
 05/01/04 (S) STA RPT CS 2DP 1DNP 1NR SAME TITLE  
 05/01/04 (S) DP: STEVENS G, COWDERY;  
 05/01/04 (S) DNP: GUESS; NR: STEDMAN  
 05/01/04 (S) JUD AT 5:00 PM BUTROVICH 205  
 05/01/04 (S) <JUD Referral Waived>  
 05/04/04 (S) TRANSMITTED TO (H)  
 05/04/04 (S) VERSION: CSSJR 33(STA)  
 05/05/04 (H) READ THE FIRST TIME - REFERRALS  
 05/05/04 (H) STA, JUD  
 05/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
 05/05/04 (H) Scheduled But Not Heard  
 05/06/04 (H) STA AT 8:00 AM CAPITOL 102  
 05/06/04 (H) <STA Referral Waived>  
 05/06/04 (H) JUD AT 3:00 PM CAPITOL 120

**WITNESS REGISTER**

BILL HOGAN, Director  
 Central Office  
 Division of Behavioral Health (DBH)  
 Department of Health and Social Services (DHSS)  
 Juneau, Alaska  
 POSITION STATEMENT: On behalf of the administration, presented  
 HB 535 and responded to questions.

DAN BRANCH, Senior Assistant Attorney General  
 Human Services Section  
 Civil Division (Juneau)  
 Department of Law (DOL)  
 Juneau, Alaska  
 POSITION STATEMENT: Responded to questions during discussion of  
 HB 535.

ROD L. BETIT, President/Chief Executive Officer (CEO)  
 Alaska State Hospital & Nursing Home Association (ASHNHA)  
 Juneau, Alaska  
 POSITION STATEMENT: Testified in support of HB 535.

RICHARD RAINERY, Executive Director  
 Alaska Mental Health Board (AMHB)  
 Juneau, Alaska

POSITION STATEMENT: During discussion of HB 535, provided comments and responded to questions.

VERNER STILLNER, Legislative Representative  
Alaska Psychiatric Association  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 535, provided comments and urged deletion of Section 2.

ROBERT B. BRIGGS, Staff Attorney  
Disability Law Center of Alaska  
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 535, in particular Section 4, and responded to questions.

REPRESENTATIVE BOB LYNN  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Sponsor of SSHB 54.

VANESSA TONDINI, Staff  
to Representative Lesil McGuire  
House Judiciary Standing Committee  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided a comment during discussion of a proposed amendment to SSHB 54.

BRIAN HOVE, Staff  
to Senator Ralph Seekins  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SJR 33 on behalf the Senate Judiciary Standing Committee, sponsor by request, which is chaired by Senator Seekins.

SENATOR RALPH SEEKINS  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During discussion of SJR 33, spoke as chair of the Senate Judiciary Standing Committee, sponsor by request.

#### **ACTION NARRATIVE**

**TAPE 04-78, SIDE A**  
Number 0001

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting, which had been recessed on 5/5/04, back to order at 3:20 p.m. Representatives McGuire, Samuels, Gara, and Gruenberg were present at the call back to order. Representatives Holm and Ogg arrived as the meeting was in progress.

HB 535 - LIMIT STATE AID FOR MENTAL HEALTH CARE

Number 0092

CHAIR McGUIRE announced that the first order of business would be 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." [Before the committee was CSHB 535(HES).]

Number 0146

BILL HOGAN, Director, Central Office, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), introduced himself.

REPRESENTATIVE GRUENBERG mentioned that he'd met with the interested parties in order to try to reach an accommodation regarding the issues raised at the bill's last hearing, but did not succeed. He elaborated:

It seemed to me, ... as an observer, that the main question in the bill was on Section 2 and some question on Section 8, and the consumers ... really didn't like Section 2 in the bill and they objected to it. And we got talking a bit about the sentence on page 2, lines 17 and 18, ... that reads, "Nothing in this chapter creates an entitlement to financial assistance under this chapter", and their feeling was that that ... conflicts with the language at the top of page 3, line 1, [that] says ... the department shall provide financial assistance. But I'm not totally sure that that's totally correct, and Mr. [Hogan] can give us the opposing view. ... We couldn't come to a meeting of the minds on anything, and I felt my role at that time ... was just to simply see if we could reach an accommodation on anything, and we couldn't.

Number 0302

MR. HOGAN offered the following:

This is a bill related to Designated Evaluation & Treatment services, or DET. We are asking [for] the support of the legislature, for the bill, to ensure that people still receive services through this particular mechanism but only up to the dollars that are allocated by the legislature for this service. ... Designated Evaluation & Treatment services are provided to individuals who are involuntarily committed because of a danger to themselves or others. We have [a] number of hospitals where we have one or two beds that provide this service, and our primary providers are at Bartlett [Regional Hospital], here in Juneau, and Fairbanks Memorial [Hospital/Denali Center].

The concept behind Designated Evaluation & Treatment is to stabilize individuals in their home community, as close to home as possible, particularly those who meet the criteria for involuntary commitment. Over the last two years, from [fiscal year (FY) 01 through FY 03], the cost for this service has increased 100 percent. Part of that has to do with increased utilization, part of it has to do with the increased rate that hospitals receive for the service. What we are proposing in this bill is a management mechanism so that we would have a better capability or better capacity to manage this particular program.

The core requirement is that the hospital would notify us within 24 hours of admission of someone who would qualify or might qualify for this service. Currently, they don't have to let us know until six months after the fact; we frequently get bills several months after the ... hospitalization has ended, and, for the most part, we are obligated to pay that bill. This [legislation] gives us increased management capability ... to be better able to control costs. We also feel like we need the statutory authority to fund DET services up to the appropriation.

What this does, more than anything else, is it puts in place a plan if and when we run out of services [funding] to ensure that that person still receives

service in a safe environment. We have support from the Alaska State Hospital & Nursing Home Association [ASHNHA]. The one sticking point, or rub point if I can use that term, in the bill is Section 2, and it is around that language that says that the service will only be provided up to the appropriation and that the service is no longer considered an entitlement.

Number 0462

MR. HOGAN concluded:

I appreciate Representative Gruenberg's efforts at trying to work out some sort of compromise or ... some sort of middle ground on this, but the commissioner feels strongly that this language needs to remain in the bill, and the [Alaska Mental Health Trust Authority (AMHTA)] and the [Alaska Mental Health Board (AMHB)] particularly [feel], though, [that] the language should be removed. This is the point of disagreement, unfortunately; we have been working for the past two months or more to come up with appropriate language that everyone could agree on, but unfortunately we were not able to reach total agreement. I would be more than willing to answer any question that the committee might have.

REPRESENTATIVE GARA asked whether current law provides patients with rights that would maintain their eligibility for private care.

MR. HOGAN replied:

This service is designed specifically for individuals who have no resources. So if somebody has Medicaid or they have a private third party, then ... the service is reimbursed through that mechanism. If the person has no other funding source, then the state has paid, primarily using general fund [GF] dollars, for the service. There is an enrollment system that's involved, where the individual does actually have to apply for the service, but usually the individual facility or hospital does that on behalf of the individual.

REPRESENTATIVE GARA asked how passage of the bill with Sections 2 and 8 intact will change a person's right to continued private

care once the money runs out. What happens now when the money runs out?

Number 0689

MR. HOGAN responded:

We, fortunately, have not gotten into a situation where we have run out of money for this service. But our budget for FY 05 is about a million dollars less than what we have available in FY 04. The person would still receive care, but the person would have to go to the Alaska Psychiatric Institute, or [the] API, in Anchorage. We anticipate having enough dollars to get us through, I would say, February of the next fiscal year - it's about seven or eight months. We have pledged, through the letter of intent that is attached to the bill, to look at all other funding sources.

One of those options would be Disproportionate Share Hospital, or DSH, dollars; ... these are federal dollars, and some of those dollars are currently going to these facilities. ... The department did get an increase in DSH dollars as a result of the Medicare drug prescription bill, and we do ... anticipate being able to use some of that increase to help pay for this service. But in spite of that, we feel we need the bill because we still may not have enough money to pay for the service.

REPRESENTATIVE GRUENBERG referred to the aforementioned letter of intent, and said:

It seems to me, although you may not be able to predict totally, it ought to be not impossible for you to predict somewhat in advance whether you're going to run out of money. ... And I'm looking at the second part of this letter of intent, which says, "that in the event of a shortfall in appropriations", the DHSS "shall make every effort to identify additional financing sources or reallocate appropriations available for the purpose from lesser priorities to continue these important services for the remainder of the fiscal year".

At the very least, I would like to put something, directory language, like that in the bill itself, so it's not just an obscure letter of intent but we have something to that effect in the bill itself that you shall do that. ... Basically [language along the lines of]: "you shall make every effort to identify additional financing sources or reallocate appropriations available for the purpose from other priorities to continue the services in advance". If we adopted a conceptual amendment like that, would you have heartburn? ...

REPRESENTATIVE GRUENBERG added:

And the second thing [is], ... whether we could put something in there that could maybe give you some access to Mental Health Trust [Authority] money for that, so that ... we wouldn't have a crises but if that happened, that we'd have the money there, at least on an interim basis, to continue the services. Could you ... check on the answers to those two [questions]? ...

CHAIR MCGUIRE noted that HB 535 has been referred to the House Finance Committee, which would analyze the financial issues raised by the bill.

REPRESENTATIVE OGG characterized inserting such language in the bill as akin to micromanaging the [DHSS], and opined that [the DHSS] is perfectly capable of looking for funds on its own and so such language would be unnecessary.

MR. HOGAN remarked that although there has been some Mental Health Trust Authority [MHTA] money supporting this particular service, those dollars stop being available at the end of the current fiscal year, and this is one of the reasons the DBH has such a large deficit.

Number 0988

DAN BRANCH, Senior Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law (DOL), said it would be highly unusual and inappropriate to add that type of restriction on the executive branch in a bill such as HB 535; that's why the language is used in the letter of intent instead.

REPRESENTATIVE GRUENBERG asked why they shouldn't include such language in the bill itself, since the purpose of many pieces of legislation is to set priorities for the executive branch and provide it with legislative direction. Why is this bill any different?

MR. BRANCH replied, "I think it crosses into the area of separation of powers."

Number 1081

ROD L. BETTIT, President/Chief Executive Officer (CEO), Alaska State Hospital & Nursing Home Association (ASHNHA), expressed the ASHNHA's support for HB 535. He went on to say:

We worked hard to get to where we are with it. The original form, we were not happy with, but some accommodations have been made to take out some language and to make some clarifications. I think it's pretty clear that this program is going to be short of money, to the tune of around a million dollars by my calculations, which is about a third of their funding. If it's not made up with the management provisions that are in the bill to look at the patient care, there's going to be a real shortfall.

And what I think Section 2 does - and others have heartburn with it but in my opinion it is better to have Section 2 in the bill - ... [is it says], in the event of a shortfall, the commissioner will take the following action, which I think he has the authority to do anyway and the responsibility to do to balance his budget, and then further sets out that if that occurs, that community hospitals, who will have these patients because they'll be involuntarily admitted there in the beginning during the evaluation phase, will have the department work with them to, as quick as they can and as soon as is medically safe, ... move those patients to [the] API, which is what this is all about - that they will get care, they won't get it in their community hospital if it's otherwise available, but be transferred to [the] API where that care will be given, and it will be good care.

And I think it's preferable to having a vacuum there in terms of what will happen if this should occur.

Now, the commissioner has said he'll look for other money - he won't go for a supplemental. If, in fact, they run out as early as February or March, I think there'll be huge pressure on the commissioner to find other money or to come back to you and ask for a supplemental because I think this will be an untenable situation to continue indefinitely like this. So I think it creates the perfect box to put the commissioner in: it says that he's not going for a supplemental; that he's committed to making sure these patients get care at [the] API; ... that the unfunded mandate on communities is not allowed to grow and grow; and that if that doesn't work, he'll come back with some other solution.

MR. BETIT concluded:

So, again, we support the bill, we think it's reached a compromise that we can live with. Some have characterized it that the hospitals are not getting hurt by this, that's not at all true, there will still be days provided for free under this scenario, but it won't go on indefinitely. I'd be happy to answer any questions.

REPRESENTATIVE GARA asked whether the program only covers involuntarily committed patients.

MR. BETIT said that is his understanding.

Number 1215

RICHARD RAINERY, Executive Director, Alaska Mental Health Board (AMHB), indicated that he would be attempting to provide the committee with the consumer's point of view. He offered the following comments:

I want to give you a very brief history lesson. The Alaska Mental Health Board was founded in 1987; virtually from the day the board came into existence, one of its primary goals was downsizing [the] API and shifting the focus of mental health care in Alaska to local options - least restrictive is the philosophy. One of those local options is Designated Evaluation & Treatment; the sole purpose of that service is to divert people from going to [the] API, which was the

only option prior to the institution of those services.

So it's a philosophical issue for us; we believe that these services should be provided locally, that folks have a right to [a least] restrictive level of care close to their families, close to their support networks. And I want to remind you that these are folks who are involuntarily committed - they don't have an option. If they don't get into a local hospital, they are going to [the] API.

MR. RAINERY concluded:

So we do have a difference with the Section 2 language, we prefer the language that's in the letter of intent. And the last thing I want to mention is that ... this change is coming up when [the] API is being downsized - it's going to be a smaller institution with less capacity to handle additional patients. It's also going to be a therapeutically different institution; it's not going to be as simple to go over census as it is in the current hospital. There won't be room, and the therapeutic milieu is quite different than the one you see at [the] API today. ... I would be happy to answer any questions.

CHAIR McGUIRE said that although she agrees with Mr. Rainery philosophically, the state no longer has the money to provide local care in private facilities to those who are involuntarily committed. "If you have any thoughts about how these community hospitals are going to absorb these high costs on top of all the other things that they're absorbing, I'd be interested in hearing [them]," she remarked.

Number 1387

MR. RAINERY responded:

First off, this program has, historically, a number of times, exceeded the original appropriation, and the department has always found a way to make sure that services were given to these folks. And that's the rub there, because by keeping Section 2 in there, we're absolving them from that responsibility, although I certainly believe that they've offered the letter of intent in good faith and intend to do that,

but we all know that a letter of intent is not binding on anybody, particularly ... if administrations change at some point in the future.

The answer to how the community hospitals absorb this is the section that was added to Section 2, where there's a guarantee that the department will move these folks out to [the] API or to another program as expeditiously as possible. Whether there is another program other than [the] API is ... open to question because these folks are being committed because they're a danger to self or others - they wouldn't be at the hospital if there was another local program that could handle them.

CHAIR McGUIRE noted, however, that Mr. Rainery is objecting to Section 2, which includes the aforementioned guarantee. "If we decided as a committee, for example, to remove Section 2, then what would be the relief for the community hospital?" she asked.

MR. RAINERY offered his belief that if Section 2 is removed, the department would do as the letter of intent proposes and find other funding for the program. In response to another question, he said that according to his understanding, patients currently do have the right to appeal a decision to stop funding private treatment at local hospitals.

Number 1512

REPRESENTATIVE GARA surmised, then, that under current law, even if the department runs out of funds for this program, a person can maintain his/her right to continued treatment, which forces the department to find additional money.

MR. RAINERY offered that the current law says that the department shall pay for these services and does not include a restriction on appeals which are based on exhaustion of the appropriation.

REPRESENTATIVE GARA asked whether the DET program provides those who live in Anchorage with treatment in private facilities.

MR. RAINERY said no, adding "it's a part of the long term plan that has been put together over the last few years to have those sorts of beds available in Anchorage, [but] this bill will likely make development of those beds a question."

Number 1597

VERNER STILLNER, Legislative Representative, Alaska Psychiatric Association, characterized HB 535 as an unfunded mandate of the emergency medical mental health system of Alaska. It's not just services that will be affected, he remarked, but also emergency mental health services. He went on to say:

Unfunded mandate because, one, the fiscal note that is attached has an 18 percent decrement in the funding over this year. Secondly, the funding under Section 2 is managed through a letter of intent, which to me has never been done before. I don't know of a single jurisdiction in [the] United States where the state or the local jurisdiction does not become the payor of last resort for involuntary admissions. An involuntary admission is someone that is deemed dangerous to self or others, because of mental illness, or gravely disabled. A doctor or a licensed mental health professional can petition the court, the petition is given, the police can pick the individual up and take him to the local ... Designated Evaluation & Treatment facility.

So this is really a lifesaving piece of legislation and a system that has worked very well, and I would not like to see it threatened because it deals with our communities and with our patients, our relatives, and our family members. So therefore, I think we need to do everything to support this system; I think the bill has very good provisions in it for the management of this program that heretofore has not been managed very well, and I know that from a day-to-day basis - and there's some very good administrative tools in it. But I'm strongly opposed to Section 2 and I would urge you to consider deleting that and funding this emergency mental health system as it is funded elsewhere in the nation.

Number 1691

MR. STILLNER continued:

Secondly, what will happen when monies run out? Right now, there are transport monies that are in this bill, so that the transport monies that require an escort to take the individual from Fairbanks Memorial

[Hospital/Denali Center] or from Ketchikan General [Hospital] to the nearest Designated Evaluation [& Treatment facility] will also simultaneously run out, so that the patient may have a difficult time getting to the API. Now, I doubt if the [Alaska State] Troopers are going to be taking these individuals when they don't have a contract or they don't have an obligation to escort the individual that is dangerous to self or others to the API.

The API is also downsizing to 74 beds - their average daily census currently is running around 69 - I don't see how they can accommodate these additional patients, especially during their high peaks, so that I'm afraid that the mental health individual - the mentally ill [person] that is [dangerous] to self or others - will end up in detainment in the correctional facility nearby. And I don't like to see that happen, I don't think any of us in this room would like to see that happen. So therefore, I think that the bill is a very good bill other than Section 2 and Section 8 - the appeal process - and I would urge you to amend those two and delete them.

Number 1745

ROBERT B. BRIGGS, Staff Attorney, Disability Law Center of Alaska, relayed that he's had some experience with the Designated Evaluation & Treatment program prior to passage of the 21st legislature's SB 97; he was the attorney of record in a lawsuit challenging the state's practice regarding administration of the DET program because it was felt that the state was not uniformly providing a state-funded benefit to people involuntarily committed to mental health facilities or voluntarily committed in lieu of involuntary commitment. As a result of that lawsuit's settlement, SB 97 was introduced and passed in the 21st legislature; he noted that he'd assisted with crafting the language of that bill.

MR. BRIGGS went on to say:

One thing that I've heard today that I disagree with is the statement that this bill ... before you today - House Bill 535 - only affects involuntary commitments. One of the themes of our lawsuit and one [of] the themes of SB 97 was that this medical assistance program would [also be] provided to people who are

admitted in lieu of involuntary commitment. And the reason for that was to promote voluntary mental health treatment and to prevent unnecessary expense of involuntary commitment proceedings, because if somebody was presented with the prospect of having a huge bill for mental health treatment, they would be much less willing to go voluntarily if they knew that they could get the state to pay for an involuntary commitment.

The system [has never been adequately] administered or adequately funded to provide a full array of community mental health services. I think the fact that this bill is before you demonstrates that the state has asked, too often, for private providers to fund the costs of mental health treatment that indigent people could not afford, a cost that the state should, over time, ... be bearing. The fourth point I want to make, though, about this bill, is that my initial reaction to the concept of requiring patients to register prior to being eligible for a benefit is ... that [it] immediately raises potential equal protection and due process red flags.

Number 1861

MR. BRIGGS continued:

People with mental illness, especially someone who's suffering from paranoia, may refuse to allow themselves to be registered because suddenly their name is in a state coffer somewhere. The system has been administered ... since the 21st legislative session ... without this registration requirement, and I'm not really sure what the need for it is. I suspect what is really going on is, as another witness has testified, ... the administration wants to try to move as many of these patients from private beds to [the] API, which I suggest is a violation of the Americans with Disabilities Act [ADA] least restrictive mandate and is in contradiction to the current state mental health plans, which call for providing mental health treatment in the community where the individual resides or as close to the community where the individual resides as possible.

When someone is admitted to a mental health treatment facility, it is very difficult to have successful replacement in the community without involving that person's family. And time and time again, in this state, people are shipped off to [the] API, then a treatment and discharged plan is formed, but it just does not get carried out for one reason or another. We believe, as an organization, ... that treatment programs are going to be much more effective when treatment is provided in the community mental health setting closest to where that person resides.

So we oppose this bill, but in particular we oppose the registration provision of Section 4. I apologize for providing this testimony without written backup; ... we've been short-staffed. We recognize that this is an administration bill and it has the support of the [Alaska State Hospital & Nursing Home Association], so I'm not expecting this bill necessarily to be held up. But I do urge each member of this committee to support mental health treatment funding; it's surprising ... how small our community is when I see people I know who are state employees ... [with] decompensating episodes.

Number 1965

MR. BRIGGS concluded:

I guess one other point I want to make about the registration program, and something I think this committee could fruitfully do, is expand the registration time. The current form of the bill ... says that the registration must take place within 24 hours of admission, ... and I would urge changing that to a minimum of 72 hours. When a patient is admitted to the mental health hospital, often extremely decompensated, [he/she] may not know what resources are available or even where they're from or what their name is. I think it places a burden on the hospital to try to assist that individual in deciding whether they have adequate assets to cover the hospitalization; within 24 hours, a treatment plan may not have even been formulated, whereas by 72 hours, ... the patient may very well have cleared and be able to remember things and point out assets and insurance coverage where the hospital ...

CHAIR McGUIRE interjected and, after determining that no one else wished to testify, closed public testimony on HB 535. She then directed attention to a handwritten amendment with corrections that read [original punctuation provided]:

- 1) Strike page 2 lines 15 (after "notification.") through line 20
- 2) Strike page 2 lines 28 through line 30
- 3) Strike page 5 lines 3-6. Strike Section 8.
- 4) on page 2 line 28 insert  
"(2) make every effort to secure additional funding and reallocate available appropriations to fund financial assistance under this chapter."

CHAIR McGUIRE requested that this proposed amendment be divided.

REPRESENTATIVE GRUENBERG agreed, and relayed that he wished to change item 3 such that it deleted both Section 7 and Section 8; therefore, item 3 of the proposed amendment would delete language starting on page 4, line 27, through page 5, line 6. He noted that Section 7 is merely a conforming change related to the change proposed via Section 8, and opined that it should be deleted as well. [Although no formal motion was made, no objection was stated, and item 3 was treated as amended.] In response to comments, he indicated that he would withdraw item 4, and suggested that items 1, 2, and 3 [as amended] be treated as a single amendment.

Number 2103

CHAIR McGUIRE agreed, and referred to items 1, 2, and 3 [as amended] as Amendment 1:

- 1) Strike page 2 lines 15 (after "notification.") through line 20
- 2) Strike page 2 lines 28 through line 30
- 3) Strike page 4 line 27 through page 5 line 6.  
Strike Sections 7 and 8.

[Although no formal motion was made, Amendment 1 was treated as having been moved for adoption.]

REPRESENTATIVE SAMUELS objected, and asked Mr. Hogan to comment.

MR. HOGAN said that [the DHSS] is opposed to deleting lines 15-20 from page 2.

REPRESENTATIVE SAMUELS relayed that he would be maintaining his objection.

REPRESENTATIVE GRUENBERG suggested amending Amendment 1 such that it also deletes "(1)" from page 2, line 24.

CHAIR McGUIRE suggested instead just allowing the drafter the latitude to renumber accordingly.

REPRESENTATIVE GRUENBERG agreed.

REPRESENTATIVE GARA said that according to his recollection, it has been represented that the proposed cuts to funding will not have an impact on patient care. However, he remarked, "it appears to me that if we don't adopt [Amendment 1], then we will have adopted a cut based upon a promise of no impact to patient care, when, in fact, we know it's going to have an impact [on] patient care."

CHAIR McGUIRE agreed and said she would be supporting Amendment 1. She added:

I don't want to have a guarantee in there per se, but I think when people are committed involuntarily, it's a very delicate situation and, frankly, the closer they are to their support systems and their communities, the better off they are. And if you have a letter of intent that's already saying you're going to do that, I have grave troubles with putting new law on the books; the letter of intent, as you well know, is not binding in any way, and so if the intent is to continue to fund it, I don't think ... these sections are necessary for now ....

Number 2214

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

Number 2238

CHAIR McGUIRE [made a motion to adopt] Amendment 2, on page 4 [lines 2-3] replace "24 hours" with "72 hours". There being no objection, Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG raised the question of possibly creating an exemption to the registration provision.

MR. BRIGGS offered his belief that because a third party may apply for assistance on behalf of someone, and because hospitals often are the entities that ultimately make the applications for very decompensated individuals, it is not necessary to include an exemption to the registration provision.

**TAPE 04-78, SIDE B**

Number 0001

REPRESENTATIVE GRUENBERG asked Mr. Briggs to provide the committee with a legal opinion supporting his comment that the bill may violate the ADA and therefore be unconstitutional.

MR. BRIGGS agreed to provide a legal opinion.

Number 2304

REPRESENTATIVE SAMUELS moved to report CSHB 535 (HES), as amended, out of committee with individual recommendations and the accompanying fiscal note.

REPRESENTATIVE GARA objected.

Number 2282

A roll call vote was taken. Representatives Ogg, Gruenberg - after first voting "no" and then changing his vote to "a reluctant 'yes'" - Samuels, Holm, and McGuire - noting that she did so reluctantly - voted in favor of moving CSHB 535(HES), as amended, out of committee. Representatives Gara voted against it. Therefore, CSHB 535(JUD) was reported from the House Judiciary Standing Committee by a vote of 5-1.

CHAIR McGUIRE mentioned the letter of intent. [HB 535 was heard again later in the meeting.]

Number 2267

CHAIR McGUIRE recessed the meeting at 4:10 p.m. to a call of the chair.

CHAIR McGUIRE called the House Judiciary Standing Committee back to order at 5:40 p.m. Representatives McGuire, Samuels, Gara, and Gruenberg were present at the call back to order. Representatives Anderson and Ogg arrived as the meeting was in progress.

HB 54 - ASSAULT ON SCHOOL EMPLOYEES

Number 2259

CHAIR McGUIRE announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54, "An Act relating to the crime of assault."

Number 2242

REPRESENTATIVE BOB LYNN, Alaska State Legislature, sponsor of SSHB 54, said that current law imposes penalties on persons who assault law enforcement officers, firefighters, correctional officers, and emergency medical technicians, ambulance attendants, paramedics, and other emergency responders. The bill proposes to add school employees to the list of persons for which someone may be penalized for assaulting. He mentioned that SSHB 54 has been recommended as priority legislation by the Anchorage School District (ASD). As a former employee in many of the aforementioned fields, he said he could relate to the need for this legislation. If teachers are to keep children safe, he opined, the least that the legislature can do is help protect teachers and other school employees. He noted that members' packets include a letter of support from the National Education Association (NEA) - Alaska. In conclusion, he asked members to support SSHB 54.

CHAIR McGUIRE, in response to a question, read the statute referenced in SSHB 54 on page 1, lines 11-13, and on page 2, lines 2-4 - AS 11.41.230:

Sec. 11.41.230. Assault in the fourth degree.

(a) A person commits the crime of assault in the fourth degree if

(1) that person recklessly causes physical injury to another person;

(2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument; or

(3) by words or other conduct that person recklessly places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor.

CHAIR MCGUIRE surmised that the bill pertains only to the crime of assault in the fourth degree and that the bill's reference to the aforementioned statute is merely setting mandatory minimum sentences.

Number 2098

REPRESENTATIVE GARA remarked that the bill appears to punish reckless assault and verbal assault, and asked why it didn't focus on intentional assault.

REPRESENTATIVE LYNN offered that the language in the bill merely mirrors current statute with regard to assaulting law enforcement officers, firefighters, correctional officers, and emergency medical technicians, ambulance attendants, paramedics, and other emergency responders. Basically, the bill adds school employees to that list.

REPRESENTATIVE GARA said he is troubled by mandating minimum sentences for the crimes referenced in the bill, and suggested leaving the sentencing up to the judge's discretion.

CHAIR MCGUIRE pointed out, however, that the current statute being altered by SSHB 54 stipulates a mental state of knowingly and already provides mandatory minimum sentences for the crimes referenced in the bill. She noted that all the persons listed, both in the current statute and in the bill, must be engaged in the performance of official duties in order for an assault on them to be considered a crime under this proposed statute. In response to a question, she reread AS 11.41.230(a)(3): "(3) by words or other conduct that person recklessly places another person in fear of imminent physical injury". She predicted that a "reasonable person" standard would be used.

REPRESENTATIVE GARA said he isn't sure whether that standard would be used.

REPRESENTATIVE GRUENBERG suggested that the bill need not propose the addition of a new paragraph (2) to current statute; instead, it could merely add, "an employee of an elementary, junior high, or secondary school" to the list set forth in paragraph (1) of the bill, the list that is already part of current statute. Much of the language in proposed paragraph (2) is already part of current statute, he noted. He also suggested that they tighten the title.

Number 1889

REPRESENTATIVE LYNN indicated he would view Representative Gruenberg's suggestion as a friendly amendment.

REPRESENTATIVE GRUENBERG suggested debating AS 11.41.230(a)(1), (2), and (3) separately, since they are three separate crimes.

CHAIR MCGUIRE agreed, and reread AS 11.41.230(a)(1): "(1) that person recklessly causes physical injury to another person;".

REPRESENTATIVE GRUENBERG said he has no problem providing for a mandatory minimum sentence of 60 days when that crime has been committed against a school employee, and characterized it as a reasonable sentence.

CHAIR MCGUIRE reread AS 11.41.230(a)(2), which says in part: "(2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument;".

REPRESENTATIVE GRUENBERG said he has no problem with providing for a mandatory minimum sentence of 60 days when that crime has been committed against a school employee.

CHAIR MCGUIRE again reread AS 11.41.230(a)(3): "(3) by words or other conduct that person recklessly places another person in fear of imminent physical injury". She suggested that they take the reference to that crime out of SSHB 54, since it only requires proof of recklessness.

REPRESENTATIVE GRUENBERG said he could envision criminalizing reckless behavior committed against a school employee, and opined that people shouldn't be treating teachers in that fashion. He, too, predicted that a "reasonable person" standard used be would.

CHAIR McGUIRE, in response to a question, noted that violation of AS 11.41.230 constitutes assault in the fourth degree, which is a class A misdemeanor.

REPRESENTATIVE OGG, using the example of doctors and hospital employees, pointed out that aside from perhaps correctional officers and law enforcement officers, no one expects to be assaulted while doing his/her job, and so if they are going to single out school employees, they might as well just provide for a mandatory minimum sentence when anyone gets assaulted as described in AS 11.41.230. He said he has a problem elevating one particular group of people over other groups.

Number 1627

REPRESENTATIVE LYNN argued, however, that in addition to helping people and being required to protect students, school employees are also government employees; thus attacking a school employee is akin to attacking the government.

REPRESENTATIVE OGG questioned, then, whether all government employees, for example, legislators, should be included under the provisions of the bill.

REPRESENTATIVE LYNN opined that teachers, whom he suggested act as agents of the parents, deserve the extra protection that would be afforded via passage of SSHB 54. Characterizing school as a dangerous place, he mentioned some of his experiences as a teacher having to confront angry parents.

REPRESENTATIVE SAMUELS, on the issue of doctors and government employees, noted that some doctors are also government employees but some are not, and the same could be said of pilots - in any given profession, people are doing the same job though they may or may not be employed by the government; therefore, the law should not provide some people extra protection based solely on whether they are government workers. He questioned why the bill only proposes to add school employees to the list, why not also doctors, nurses, and pilots.

REPRESENTATIVE GARA remarked that Representative Ogg has a good point. He offered his understanding that in the two instances of assaults on teachers that were included in members' packets as examples, the perpetrators got longer sentences than what is being proposed in SSHB 54. What is the problem that the bill proposes to correct, he asked.

REPRESENTATIVE LYNN said simply that the goal of the bill is to make it safer for teachers to do their job without fear of reprisal from angry parents. Teachers deserve this type of protection, he again opined.

REPRESENTATIVE GARA again pointed out that the courts are already sentencing people to more jail time than is being proposed via SSHB 54. He said that since this conduct is already a crime, he is a little wary about establishing a minimum sentence when the conduct doesn't constitute intentional assault. He suggested altering the bill so that it provided a minimum mandatory sentence for intentional assault.

REPRESENTATIVE LYNN opined that "we need to have something more than we have now," adding that he wouldn't have problem with changing the bill as Representative Gara suggests.

REPRESENTATIVE OGG asked Representative Lynn whether he has any evidence - for example, statistics from other jurisdictions - which shows that a mandatory minimum sentence of 60 days will act as a deterrent.

REPRESENTATIVE LYNN said he did not, but offered his belief that "this is done in other jurisdictions," and that various school [districts] support SSHB 54.

CHAIR McGUIRE, in response to comments, noted that members' packets include a memorandum from Legislative Legal and Research Services that details other states' statutes pertaining to this issue.

Number 1296

REPRESENTATIVE GARA made a motion to adopt Amendment 1: after "sentenced" on page 2, line 1, add the words, ", if the assault was intentional,;" and place a period after "(1)" on page 2, line 2, and delete the remainder. The proposed language would then read in part:

(d) A defendant convicted of assault in the fourth degree who knowingly directed the conduct constituting the offense at ...

(2) an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the

assault shall be sentenced, if the assault was intentional, to a minimum term of imprisonment of  
(A) 60 days if the defendant violated  
AS 11.41.230(a)(1).

Number 1289

CHAIR MCGUIRE objected [for the purpose of discussion].

REPRESENTATIVE GARA said he is willing to establish a mandatory minimum sentence in instances of intentional assault on a teacher, but is not thrilled about establishing a mandatory minimum sentence in instances where the assault is not intentional or where it's just a verbal assault. He offered his belief that the latter kinds of assault can be dealt with via existing statute and a judge can use his/her discretion with regard to sentencing. Amendment 1 would change the bill such that it would only deal with intentional physical assaults on school employees.

REPRESENTATIVE LYNN said he is comfortable with Amendment 1.

Number 1217

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, mentioned that by adding the mental state of intentional, Amendment 1 would make the provisions regarding this new crime of assaulting a school employee similar to the provisions pertaining to assault in the first degree and assault in the second degree.

REPRESENTATIVE GARA noted that the bill only alters the statute pertaining to assault in the fourth degree. He offered: "If something is a recklessness crime, you can charge intent as a recklessness crime, because intent is more serious than recklessness; so you would be saying to the jury, 'It was at least reckless if not intentional,' and so you just get your 60 days by charging it as fourth degree assault."

Number 1188

CHAIR MCGUIRE asked whether there were any further objections to Amendment 1. There being none, Amendment 1 was adopted.

Number 1170

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to make the title as narrow as possible to conform to what the committee has done.

CHAIR MCGUIRE added, "Specifically the mental intent, ... and to educational folks ...."

Number 1148

CHAIR MCGUIRE asked whether there were any objections to Amendment 2. There being none, Amendment 2 was adopted.

REPRESENTATIVE OGG, referring to the aforementioned memorandum from Legislative Legal and Research Services, noted that most of the statutes that other states have adopted apply to students who assault teachers, and that none appear to impose a mandatory minimum sentence of 60 days or 30 days. He opined that the length of sentence should be left up to the judge's discretion, and remarked that he did not see a deterrent component to SSHB 54.

REPRESENTATIVE SAMUELS said he didn't know why they are not also including emergency room doctors, for example, and other persons who work in occupations where there is a high risk of coming in contact with angry individuals.

CHAIR MCGUIRE asked whether aggravators would apply.

REPRESENTATIVE GARA said he is not sure. He indicated that he would not be comfortable imposing a mandatory minimum sentence of 60 days on a student who loses control and assaults a teacher.

REPRESENTATIVE LYNN, in response to questions, offered his belief that SSHB 54 would apply to students who are 18 years old, and in instances wherein a coach gets assaulted. He asked that the committee consider moving the amended version of the bill from committee.

CHAIR MCGUIRE, in response to a question, mentioned that the bill has been referred to the House Finance Committee.

Number 0903

CHAIR MCGUIRE moved to report SSHB 54, as amended, out of committee with individual recommendations and the accompanying

fiscal notes. There being no objection, CSSSHB 54(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 6:11 p.m. to 6:15 p.m.

HB 535 - LIMIT STATE AID FOR MENTAL HEALTH CARE

Number 0890

CHAIR McGUIRE announced that the committee would again take up 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."

Number 0880

CHAIR McGUIRE made a motion to rescind the committee's action that day in moving CSHB 535(JUD) from committee. There being no objection, CSHB 535(HES), as amended, was back before the committee.

REPRESENTATIVE GRUENBERG made a motion to rescind the committee's action that day in failing to adopt Amendment 1:

- 1) Strike page 2 lines 15 (after "notification.") through line 20
- 2) Strike page 2 lines 28 through line 30
- 3) Strike page 4 line 27 through page 5 line 6.  
Strike Sections 7 and 8.

REPRESENTATIVE SAMUELS objected.

A roll call vote was taken. Representatives Gara, Gruenberg, Anderson, and McGuire voted in favor of rescinding the committee's action in failing to adopt Amendment 1. Representatives Ogg and Samuels voted against it. Therefore, the committee rescinded its action in failing to adopt Amendment 1 by a vote of 4-2.

CHAIR McGUIRE stated that the question of whether to adopt Amendment 1 was back before the committee, and asked whether there were any objections to adopting Amendment 1.

REPRESENTATIVE SAMUELS objected.

A roll call vote was taken. Representatives Gara, Gruenberg, Anderson, and McGuire voted in favor of Amendment 1. Representatives Ogg and Samuels voted against it. Therefore, Amendment 1 was adopted by a vote of 4-2.

Number 0749

REPRESENTATIVE GRUENBERG moved to report CSHB 535(HES), as [newly] amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 535(JUD) was reported from the House Judiciary Standing Committee.

SJR 33 - CONGRESSIONAL VOTE ON JUDICIAL NOMINATION

Number 0741

CHAIR MCGUIRE announced that the final order of business would be 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.

Number 0665

BRIAN HOVE, Staff to Senator Ralph Seekins, Alaska State Legislature, presented SJR 33 on behalf of the Senate Judiciary Standing Committee, sponsor by request, which is chaired by Senator Seekins. He said that SJR 33 urges U.S. Senators to work towards allowing a timely vote on all judicial nominations, and requests that the U.S. Senate move forward with President George w. Bush's judicial nominations. Mr. Hove went on to say:

Our U.S. Constitution provides the President with the power to nominate qualified candidates for federal judicial positions with the consent of the [U.S.] Senate, but many of these nominations are currently being blocked through parliamentary delay tactics carried out by a minority of Senators. This has created needless hardship within the judiciary branch of our government. In fact, the Administrative Office of the United States Courts has classified 24 judgeships as judicial emergencies. Many of President Bush's nominees are intended to fill these seats. Senate Joint Resolution 33 requests [that] the U.S. Senate move forward with these nominations, thus

allowing the judicial branch to function as the [U.S.] Constitution intended. Therein ends my testimony.

REPRESENTATIVE GRUENBERG characterized SJR 33 as a partisan resolution that speaks to a problem which has also occurred in previous administrations. He said:

Now, if you want to take a partisan swipe at the Democrats, you can do it, but you can't expect my support any more than you could if I took a partisan swipe at the Republicans. Now, my question to you, on behalf of your Senator, is, [do] you want to clean this up and make it a nonpartisan statement or do you want to keep it partisan like it is? I will work with you to deal with the problem if you want to make it a nonpartisan [resolution] and really get at the problem. But I'll oppose it if you keep it partisan. Your choice.

MR. HOVE said he is sensitive to the fact that this issue is not new. "We don't believe that any nomination ought to be held up irrespective of which administration happens to be in office; this has been an ongoing strategy, apparently, [and] this resolution requests that we just move forward."

Number 0480

REPRESENTATIVE GRUENBERG remarked: "I haven't had an answer to my question. Do we want to clean it up, make it nonpartisan and deal with it? Or do we want to have a partisan fight on the House floor? Your choice."

MR. HOVE argued that there was very little time left to deal with this issue. He added, "If we had more time in this session, then I would probably be amenable to working some language through."

REPRESENTATIVE GRUENBERG said:

I want you to consider that our time on the House floor is valuable too. My question to you all on the committee is, do you want 12 Democrats ragging this bill around. I don't think that's good policy, I don't think it [speaks] well for the bill, I think it's going to take up time, and I urge you to reconsider your position. Your choice.

CHAIR McGUIRE asked whether there were any amendments.

REPRESENTATIVE GRUENBERG said he would be happy to offer amendments as long as they were viewed as friendly amendments. He suggested that he and Mr. Hove meet and come up with some proposed amendments that Mr. Hove would be in favor of. He offered: "What I would suggest conceptually is that we say, that through the past several administrations, groups of members of the [U.S.] Senate have not been cooperative in getting appointments confirmed, and we would urge that they work together to do so."

REPRESENTATIVE ANDERSON suggested deleting the language on page 1, line 16, through page 2, line 2, and then moving the resolution forward. He expressed disfavor with the concept of changing that language to reflect that dilatory tactics have been used by both parties throughout several administrations.

Number 0191

REPRESENTATIVE GRUENBERG said one reason for changing the language in that latter fashion is because it is true. He pointed out that the way the resolution is currently written, it implies that this situation has only occurred in President Bush's administration, even though that's not an accurate reflection. He went on to say:

I don't have a problem with the first "whereas" [statement]. I would keep the second ... through the fourth ... more general and say: in the past there have been a number of judgeships classified as judicial emergencies, and in the past several administrations these have been pending, both [U.S.] Court of Appeals and [U.S.] District Court nominations, and that this is not in the public interest, and therefore we resolve that we urge the [U.S.] Senators to work to allow a timely vote on the floor of the [U.S.] Senate on all judicial nominations and to work to improve the system or cure the rules. ... Let's just keep it clean.

MR. HOVE responded: "I think if we all had an opportunity to vote on this resolution in this state, I think that a majority of the folks in this state would vote for it the way it is."

REPRESENTATIVE GRUENBERG countered: "Would they not have voted for it the way it ... is under the previous administration too?"

MR. HOVE acknowledged that that's possible, but added that by looking at the current political make up of the Alaska State Legislature, he believes that gives him a good indication of where the people of Alaska stand on this issue.

CHAIR MCGUIRE said she understands Representative Gruenberg's point, but is reluctant to go through an extensive rewording of the resolution. She noted that this resolution will not change law, and questioned whether anyone even reads this type of resolution. She said that she support leaving SJR 33 as is. She said she would hope that members would not choose to spend several hours on the House floor debating a resolution that some people won't even read.

**TAPE 04-79, SIDE A**

Number 0001

REPRESENTATIVE GRUENBERG said:

The reason I'm saying that is, we have seen, in the past two years, some bills that are like lightening rods and attract us ideologically because we may be pro-business or anti-business, or pro-development or anti-development, [pro-environment or anti-environment], but we have seen very few that are overtly partisan. I mean, there have been some that have had the effect of being that, mainly in this sphere of elections or lobbying or campaigning and stuff like that, but ... I can think of very few that are overtly partisan. We in the House have worked hard at being bipartisan, and I think we've been pretty successful. And I think that's good policy and the people of the state, I think, like it.

I would hate to see the legacy of this House, in the last few days, be misperceived by something like this. And Senator Seekins, I'm being very frank about your bill; you're a friend of mine, but you need to know how I feel about this. And what [I] have suggested to Mr. Hove ... [is] that this is going to turn us, I am afraid, into a very partisan debating society the last few days of this session. I think the point certainly has been made, when you passed it through your [legislative] body, the way your [legislative] body feels.

REPRESENTATIVE ANDERSON opined that even if the language on page 1, line 16, through page 2, line 2, were deleted, there would still be debate on the House floor. He remarked that since a majority of House members will vote to pass it, the committee should just move the bill from committee.

Number 0229

SENATOR RALPH SEEKINS, Alaska State Legislature, speaking as chair of the Senate Judiciary Standing Committee, sponsor by request, said:

There were no accusation on the floor, in the Senate, of this being partisan; it came down to the numbers, basically. I will tell you right up front that I don't care who the President of the United States is, whether it was Bill Clinton, who was not my favorite President, or whether it's George W. Bush, who I like, that the man deserves an up and down vote on his nominations. When either party plays politics with the number of judges that need to sit in the courts across the nation, it is absolutely wrong - there is no doubt in my mind - I don't care if it's Republicans playing ... fast and loose or it's Democrats playing fast and loose. We don't do that here. When the governor brings his nominations, we get an up and down vote on it. That's what this is saying. And right now, quite frankly, we're not getting there because people are closing off on that.

REPRESENTATIVE GRUENBERG responded: "I agree with what you've said. Can we put what you've just said into this [resolution]? That's all I'm asking, to do what you've just said."

SENATOR SEEKINS remarked: "I guess ... it's true, because a minority, whether that is the minority or not, is keeping this; it's ... a fact that a minority of [U.S.] Senators are doing it. And just by number, ... we did not say that it was the minority, we just said a minority."

REPRESENTATIVE GRUENBERG replied:

The reason I'm saying this, Senator [Seekins], is because it uses President Bush, it uses the [U.S.] Senate; what I'd like to do, and I've committed to work with Mr. Hove ... [to] come up with some neutral language that does just what you've said - I don't

really have a problem with the resolve - and let's do it so it can pass with bipartisan support and accomplish just what you've said.

REPRESENTATIVE ANDERSON opined that attempting to alter the resolution will delay it such that it doesn't have time to pass.

REPRESENTATIVE GRUENBERG offered his belief that a solution could be arrived at overnight.

Number 0437

REPRESENTATIVE ANDERSON moved to report CSSJR 33(STA) out of committee with individual recommendations and the accompanying fiscal note.

Number 0440

REPRESENTATIVE GARA objected [for the purpose of discussion]. He said:

We'll pass the resolution out, and certainly it's a fair bill for the Senator to push. This is what happens when people decide to abuse their power. For most of American history, the [U.S.] Senate has confirmed the ... President's nominations. In the 1800s and the 1910s, all the way through the '60s, all the way through the '70s, ... and even all the way through the Regan Administration, some very controversial judges got through. And really I think, frankly, with some of the leaders in Congress in the '90s, this [is] when all of a sudden the [U.S.] Senate started blocking the President's [nominations] with regularity, blocking every single nomination they could block. And both sides have done it, but it started with one party ... feeling their oats and now the other party's feeling its oats, and it's too bad. But it's not a new thing ..., unfortunately, [though] it's a recent thing. It's too bad.

REPRESENTATIVE GRUENBERG said he would not object to moving the resolution from committee.

REPRESENTATIVE GARA withdrew his objection to the motion.

Number 0501

CHAIR McGUIRE announced that CSSJR 33(STA) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 6:36 p.m. to 6:40 p.m.

**ADJOURNMENT**

Number 0520

The House Judiciary Standing Committee meeting was recessed at 6:41 p.m. to a call of the chair. [The meeting was reconvened May 7, 2004.]