

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

April 15, 2004

9:08 a.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative John Coghill
Representative Lesil McGuire
Representative Carl Morgan
Representative Ethan Berkowitz
Representative Beth Kerttula

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 334

"An Act relating to unlawful exploitation of a minor."

- MOVED CSHB 334(RLS) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 9

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

- HEARD/AVAILABLE FOR CALENDARING

HOUSE JOINT RESOLUTION NO. 26

Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from and inflation-proofing the Alaska permanent fund by establishing a percent of market value spending limit.

- AVAILABLE FOR CALENDARING

HOUSE BILL NO. 298

"An Act relating to the distribution of appropriations from the Alaska permanent fund under art. IX, sec. 15(b), Constitution of the State of Alaska, and making conforming amendments; and providing for an effective date."

- HEARD/AVAILABLE FOR CALENDARING

HOUSE BILL NO. 542

"An Act relating to specialty construction contractors and to construction contractor exemptions."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 334

SHORT TITLE: UNLAWFUL EXPLOITATION OF MINOR

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/12/04	(H)	PREFILE RELEASED 1/2/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	JUD
01/30/04	(H)	JUD AT 1:00 PM CAPITOL 120
01/30/04	(H)	<Bill Hearing Postponed>
02/20/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/20/04	(H)	Scheduled But Not Heard
02/23/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/23/04	(H)	Heard & Held; Assigned to Subcommittee
02/23/04	(H)	MINUTE(JUD)
03/01/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/01/04	(H)	<Bill Hearing Postponed Wed. 3/3/04>
03/03/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/03/04	(H)	Scheduled But Not Heard
03/05/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/05/04	(H)	-- Meeting Postponed to 3/16/04 --
03/16/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/16/04	(H)	Moved CSHB 334(JUD) Out of Committee
03/16/04	(H)	MINUTE(JUD)
03/18/04	(H)	JUD RPT CS(JUD) NT 5DP 1NR 1AM
03/18/04	(H)	DP: SAMUELS, HOLM, ANDERSON, OGG,
03/18/04	(H)	MCGUIRE; NR: GARA; AM: GRUENBERG
04/15/04	(H)	RLS AT 9:00 AM FAHRENKAMP 203

BILL: HJR 9

SHORT TITLE: CONST AM: APPROPRIATION/SPENDING LIMIT

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/31/03	(H)	READ THE FIRST TIME - REFERRALS
01/31/03	(H)	STA, JUD, FIN
02/11/03	(H)	STA AT 8:00 AM CAPITOL 102
02/11/03	(H)	Heard & Held
02/11/03	(H)	MINUTE(STA)
04/04/03	(H)	W&M REFERRAL ADDED BEFORE STA
04/09/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519

04/09/03 (H) Heard & Held
04/09/03 (H) MINUTE(W&M)
04/17/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/17/03 (H) Heard & Held
04/17/03 (H) MINUTE(W&M)
04/24/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/24/03 (H) Heard & Held
04/24/03 (H) MINUTE(W&M)
04/29/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/29/03 (H) Heard & Held
04/29/03 (H) MINUTE(W&M)
04/30/03 (H) W&M AT 8:00 AM HOUSE FINANCE 519
04/30/03 (H) Heard & Held
04/30/03 (H) MINUTE(W&M)
05/02/03 (H) W&M RPT CS(W&M) NT 3DP 2NR 2AM
05/02/03 (H) DP: HEINZE, WHITAKER, HAWKER;
05/02/03 (H) NR: MOSES, GRUENBERG; AM: KOHRING,
05/02/03 (H) WILSON
05/02/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
05/02/03 (H) Moved CSHJR 9(W&M) Out of Committee
05/02/03 (H) MINUTE(W&M)
05/06/03 (H) STA AT 8:00 AM CAPITOL 102
05/06/03 (H) Scheduled But Not Heard
05/06/03 (H) JUD AT 5:30 PM CAPITOL 120
05/06/03 (H) -- Meeting Canceled --
05/06/03 (H) STA AT 5:30 PM CAPITOL 102
05/06/03 (H) -- Meeting Canceled --
05/07/03 (H) STA AT 8:00 AM CAPITOL 102
05/07/03 (H) Heard & Held
05/07/03 (H) MINUTE(STA)
05/07/03 (H) JUD AT 1:00 PM CAPITOL 120
05/07/03 (H) <Bill Hearing Postponed>
05/08/03 (H) STA RPT CS(STA) NT 3DP 3NR
05/08/03 (H) DP: SEATON, LYNN, DAHLSTROM;
05/08/03 (H) NR: GRUENBERG, HOLM, WEYHRAUCH
05/08/03 (H) STA AT 8:00 AM CAPITOL 102
05/08/03 (H) Moved CSHJR 9(STA) Out of Committee
05/08/03 (H) MINUTE(STA)
05/08/03 (H) JUD AT 3:30 PM CAPITOL 120
05/08/03 (H) <Bill Hearing Postponed>
05/09/03 (H) JUD AT 1:00 PM CAPITOL 120
05/09/03 (H) Heard & Held
05/09/03 (H) MINUTE(JUD)
05/12/03 (H) JUD AT 1:00 PM CAPITOL 120
05/12/03 (H) <Bill Hearing Postponed to Wed.
5/14/03>
05/14/03 (H) JUD AT 1:00 PM CAPITOL 120

05/14/03 (H) Heard & Held
 05/14/03 (H) MINUTE(JUD)
 05/15/03 (H) JUD AT 8:30 AM CAPITOL 120
 05/15/03 (H) -- Meeting Canceled --
 10/29/03 (H) JUD AT 5:00 PM Anch LIO Conf Rm
 10/29/03 (H) Heard & Held
 10/29/03 (H) MINUTE(JUD)
 01/23/04 (H) JUD AT 1:00 PM CAPITOL 120
 01/23/04 (H) Heard & Held
 01/23/04 (H) MINUTE(JUD)
 02/02/04 (H) JUD AT 1:00 PM CAPITOL 120
 02/02/04 (H) Moved CSHJR 9(JUD) Out of Committee
 02/02/04 (H) MINUTE(JUD)
 02/04/04 (H) JUD RPT CS(JUD) NT 1DP 6NR
 02/04/04 (H) DP: MCGUIRE; NR: SAMUELS, HOLM, GARA,
 02/04/04 (H) GRUENBERG, ANDERSON, OGG
 03/15/04 (H) FIN AT 4:00 PM HOUSE FINANCE 519
 03/15/04 (H) -- Meeting Canceled --
 03/16/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/16/04 (H) Heard & Held
 03/16/04 (H) MINUTE(FIN)
 03/17/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/17/04 (H) Heard & Held
 03/17/04 (H) MINUTE(FIN)
 03/22/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/22/04 (H) Heard & Held
 03/22/04 (H) MINUTE(FIN)
 03/25/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/25/04 (H) Heard & Held
 03/25/04 (H) MINUTE(FIN)
 03/29/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519
 03/29/04 (H) Scheduled But Not Heard
 04/06/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/06/04 (H) Failed To Move Out Of Committee
 04/06/04 (H) MINUTE(FIN)
 04/07/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/07/04 (H) Moved CSHJR 9(FIN) Out of Committee
 04/07/04 (H) MINUTE(FIN)
 04/08/04 (H) FIN RPT CS(FIN) NT 2DP 5NR
 04/08/04 (H) DP: MEYER, STOLTZE; NR: HAWKER, FATE,
 04/08/04 (H) FOSTER, HARRIS, WILLIAMS
 04/15/04 (H) RLS AT 9:00 AM FAHRENKAMP 203

BILL: HJR 26

SHORT TITLE: CONST. AM: PERMANENT FUND P.O.M.V.

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT BY REQUEST

04/17/03 (H) READ THE FIRST TIME - REFERRALS
04/17/03 (H) W&M, JUD, FIN
04/22/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/22/03 (H) Heard & Held
04/22/03 (H) MINUTE(W&M)
04/24/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/24/03 (H) Heard & Held
04/24/03 (H) MINUTE(W&M)
04/25/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/25/03 (H) Heard & Held
04/25/03 (H) MINUTE(W&M)
04/29/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
04/29/03 (H) Heard & Held
04/29/03 (H) MINUTE(W&M)
04/30/03 (H) W&M AT 8:00 AM HOUSE FINANCE 519
04/30/03 (H) Heard & Held
04/30/03 (H) MINUTE(W&M)
05/02/03 (H) W&M RPT CS(W&M) NT 5DP 1DNP 1NR
05/02/03 (H) DP: HEINZE, MOSES, WILSON, HAWKER,
05/02/03 (H) WHITAKER; DNP: KOHRING; NR: GRUENBERG
05/02/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
05/02/03 (H) Moved CSHJR 26(W&M) Out of Committee
05/02/03 (H) MINUTE(W&M)
05/06/03 (H) JUD AT 5:30 PM CAPITOL 120
05/06/03 (H) -- Meeting Canceled --
05/07/03 (H) JUD AT 1:00 PM CAPITOL 120
05/07/03 (H) Moved CSHJR 26(JUD) Out of Committee
05/07/03 (H) MINUTE(JUD)
05/08/03 (H) JUD RPT CS(JUD) NT 3DP 3NR
05/08/03 (H) DP: OGG, SAMUELS, MCGUIRE;
05/08/03 (H) NR: GRUENBERG, GARA, HOLM
05/16/03 (H) FIN AT 1:30 PM HOUSE FINANCE 519
05/16/03 (H) Heard & Held
05/16/03 (H) MINUTE(FIN)
01/20/04 (H) FIN AT 0:00 AM HOUSE FINANCE 519
03/16/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/16/04 (H) Heard & Held
03/16/04 (H) MINUTE(FIN)
03/17/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/17/04 (H) Heard & Held
03/17/04 (H) MINUTE(FIN)
03/22/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/22/04 (H) Heard & Held
03/22/04 (H) MINUTE(FIN)
03/25/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/25/04 (H) Heard & Held
03/25/04 (H) MINUTE(FIN)

03/29/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519
 03/29/04 (H) Heard & Held
 03/29/04 (H) MINUTE(FIN)
 04/06/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/06/04 (H) Moved CSHJR 26(FIN) Out of Committee
 04/06/04 (H) MINUTE(FIN)
 04/07/04 (H) FIN RPT CS(FIN) NT 2DP 2DNP 2NR 3AM
 04/07/04 (H) DP: HAWKER, FOSTER; DNP: CHENAULT,
 04/07/04 (H) FATE; NR: CROFT, WILLIAMS; AM: STOLTZE,
 04/07/04 (H) JOULE, HARRIS
 04/15/04 (H) RLS AT 9:00 AM FAHRENKAMP 203

BILL: HB 298

SHORT TITLE: DISTRIBUTIONS OF APPROPS FROM PERM FUND
 SPONSOR(S): WAYS & MEANS

05/05/03 (H) READ THE FIRST TIME - REFERRALS
 05/05/03 (H) W&M, FIN
 05/06/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
 05/06/03 (H) Heard & Held
 05/06/03 (H) MINUTE(W&M)
 05/08/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
 05/08/03 (H) Heard & Held
 05/08/03 (H) MINUTE(W&M)
 05/14/03 (H) W&M AT 7:00 AM HOUSE FINANCE 519
 05/14/03 (H) -- Meeting Canceled --
 03/17/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
 03/17/04 (H) Moved CSHB 298(W&M) Out of Committee
 03/17/04 (H) MINUTE(W&M)
 03/18/04 (H) W&M RPT CS(W&M) NT 5DP 1DNP 1NR
 03/18/04 (H) DP: WEYHRAUCH, GRUENBERG, WILSON, OGG,
 03/18/04 (H) HAWKER; DNP: KOHRING; NR: ROKEBERG
 03/18/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/18/04 (H) Heard & Held
 03/18/04 (H) MINUTE(FIN)
 03/22/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/22/04 (H) Heard & Held
 03/22/04 (H) MINUTE(FIN)
 03/25/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/25/04 (H) Heard & Held
 03/25/04 (H) MINUTE(FIN)
 03/29/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519
 03/29/04 (H) Scheduled But Not Heard
 04/06/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/06/04 (H) Moved CSHB 298(FIN) Out of Committee
 04/06/04 (H) MINUTE(FIN)
 04/07/04 (H) FIN RPT CS(FIN) NT 1DP 2DNP 4NR 3AM

04/07/04 (H) DP: HAWKER; DNP: CROFT, CHENAULT;
04/07/04 (H) NR: MOSES, FATE, FOSTER, WILLIAMS;
04/07/04 (H) AM: STOLTZE, JOULE, HARRIS
04/15/04 (H) RLS AT 9:00 AM FAHRENKAMP 203

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 334.

SUZANNE CUNNINGHAM, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of the sponsor of HB 334.

REPRESENTATIVE RALPH SAMUELS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained that auto waiver as it applies to HB 334.

REPRESENTATIVE MIKE HAWKER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Discussed his suggested amendment to CSHJR 9(FIN).

ROBERT STORER, Executive Director
Alaska Permanent Fund Corporation
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 298, recommended that the draw downs for government occur on 12 equal payments throughout the year.

ACTION NARRATIVE

TAPE 04-2, SIDE A

Number 0001

CHAIR NORMAN ROKEBERG called the House Rules Standing Committee meeting to order at 9:08 a.m. Representatives Rokeberg,

Coghill, McGuire, Morgan, Berkowitz, and Kerttula were present at the call to order.

HB 334-UNLAWFUL EXPLOITATION OF MINOR

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 334, "An Act relating to unlawful exploitation of a minor."

Number 028

REPRESENTATIVE COGHILL moved to adopt CSHB 334, Version 23-LS1246\Q, Luckhaupt, 4/6/06, as the working document. There being no objection, Version Q was before the committee.

Number 037

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor of HB 334, remarked that initially the intent of HB 334 was simple in that the intent was to change the criminal status of exploitation of a minor from a class B felony to a class A felony. As a member of Standing Together Against Rape (STAR) and the father of two young daughters, Representative Meyer mentioned that he may have a conflict of interest on this matter. He pointed out that in Anchorage there have been some high profile cases in which people have been abusing minors and making child pornography. Representative Meyer clarified that "sexual exploitation" doesn't involve any sexual contact with [minors], rather it's the making of photographs, film, or video of minors.

REPRESENTATIVE MEYER recalled the hearings on this legislation in the House Judiciary Standing Committee where the discussion turned to the question of what is worse: making child pornography or selling it. Representative Meyer opined that making child pornography is worse because without making it there is nothing to sell. Furthermore, some people make child pornography for their own use and don't actually sell it. He recalled that Representative Gruenberg felt that the selling of child pornography is as bad as making child pornography. Therefore, Representative Gruenberg proposed an amendment to change the distribution of child pornography to a class A felony after the second offense. The aforementioned amendment was adopted. Although the past criminal code reveals that there aren't many circumstances in which [minors] were actually charged with this, the difficulty arose when the committee began to pose "what if" scenarios. For example, what if an 18-year-

old boy takes [naked] photographs of his 17-year-old girlfriend that are ultimately placed on the Internet and the girl's father files charges against the boy. The father could do the aforementioned now and [the boy] could be charged with a class B felony. The question is whether to make it a class A felony, to which Representative Meyer announced that is not his intention.

REPRESENTATIVE MEYER clarified that he isn't [targeting the minors] who are having consensual sex rather [the legislation intends] to target those adults who are enticing [minors] and unlawfully exploiting them. He recalled that the House Judiciary Standing Committee accepted making this a class A felony, but the desire was to attach a letter of intent. After he and Representative Gruenberg worked on a letter of intent, the two realized that people don't really pay attention to letters of intent. Therefore, the discussion turned to the possibility of making the second offense of unlawful exploitation of a minor a class A felony. He suggested that if minors in the situation laid out above are charged with a class B felony, those minors probably deserve a class A felony for a subsequent offense. Representative Meyer characterized the change of the second offense to a class A felony as a reasonable compromise. Representative Meyer pointed out that the committee packet should include a breakdown of offenses. A class B felony, first offense receives one to four years while a class B felony, second offense receives four years. However, a class A felony, first offense receives five years. Therefore, one is gaining a year of punishment by raising the second offense of unlawful exploitation of a minor to a class A felony.

Number 120

REPRESENTATIVE McGUIRE inquired as to why Version Q is being proposed.

SUZANNE CUNNINGHAM, Staff to Representative Kevin Meyer, Alaska State Legislature, explained that [in Version Q] the second offense of unlawful exploitation of a minor is a class A felony.

REPRESENTATIVE McGUIRE asked if the auto waiver is addressed [in Version Q].

REPRESENTATIVE MEYER confirmed that the auto waiver was left out of [Version Q]. He noted that Representative Samuels was comfortable with [leaving the auto waiver out] since the second offense is [increased to] a class A felony.

REPRESENTATIVE KERTTULA surmised then that there has been no automatic waiver, and therefore it wouldn't matter whether it was a second offense for a juvenile [because that juvenile] wouldn't be in the adult system. She asked if she is correct.

MS. CUNNINGHAM answered that for the second offense, a juvenile would be waived into adult court for the class A felony.

REPRESENTATIVE KERTTULA inquired as to other crimes in which the automatic waiver of a juvenile occurs.

REPRESENTATIVE McGUIRE turned attention to the auto waiver statute, AS 47.12.030. The auto waiver statute says that for a class A felony or unclassified felony, or a felony against a person, there is an auto waiver of a minor to adult court if the minor is 16 years of age. Representative McGuire explained that when [unlawful exploitation of a minor] was going to be made a class A felony on the first offense, she was concerned about a scenario as laid out earlier between a boyfriend and girlfriend. She recalled that the desire was to make an exemption to the auto waiver. However, [Version Q] specifies that [unlawful exploitation of a minor] would be a class A felony on the second offense. Therefore, the auto waiver isn't included.

REPRESENTATIVE BERKOWITZ pointed out that the auto waiver statute applies to any felonies against a person and unlawful exploitation against a minor is a crime against a person. He asked if currently the auto waiver isn't [available].

REPRESENTATIVE MEYER specified that currently unlawful exploitation against a minor carries a class B felony. He related his understanding that the auto waiver only refers to class A felonies.

REPRESENTATIVE KERTTULA remarked that she wasn't sure.

REPRESENTATIVE BERKOWITZ turned to the auto waiver statute, AS 47.12.030, and pointed out that it says in part "in which the minor is alleged to have used a deadly weapon in the commission of the offense". There isn't a deadly weapon used in [the unlawful exploitation of a minor].

Number 176

REPRESENTATIVE KERTTULA inquired as to the broadness of the [definition] of "exploitation of a minor." If the aforementioned language refers to 15-16 year olds having sex,

then she remains concerned that [the second offense being a class A felony] is too harsh.

MS. CUNNINGHAM pointed out that AS 11.41.455 defines the crime of unlawful exploitation of a minor. She noted that [the sponsor] worked fairly close with the Division of Juvenile Justice, which had the same concern as Representative Kerttula. However, after the division compiled a 10-year history with regard to the minors who have committed this crime and discovered that none of them were second offenders.

REPRESENTATIVE KERTTULA inquired as to the definition of "exploitation."

REPRESENTATIVE McGUIRE specified that the definition refers to photographs, videos, and the making of [pornography]. She clarified that "exploitation" doesn't refer to consensual sex, rather "exploitation" involves enticing a minor into a situation in which pornography is made.

REPRESENTATIVE KERTTULA highlighted the language "knowingly induces" in AS 11.41.455. She reiterated her concern with regard to consensual behavior rising to a class A felony.

REPRESENTATIVE MEYER informed the committee that this legislation was brought forward [on behalf of] STAR and the Council on Domestic Violence & Sexual Assault, entities that frequently apply for federal grants. Representative Meyer indicated that the committee packet should include documents showing that Alaska's criminal [statutes], as compared to federal [statutes], are very liberal for this particular offense. The aforementioned impacts the above-mentioned entities when trying to obtain federal [grants].

REPRESENTATIVE BERKOWITZ recalled that the original legislation back in 1978 included the component that [the unlawful exploitation of a minor] was being done for commercial purpose. He mentioned the aggravator section of Title 12, and recalled that if one commits a crime for commercial purposes, it constitutes an aggravator. Therefore, the sentences could be increased above the norm. Representative Berkowitz opined that the sentences Representative Meyer specified earlier are the standard realms, but the courts have the ability to deviate from those in exceptional cases.

Number 224

CHAIR ROKEBERG related his understanding that Representative Kerttula is concerned with regard to whether there could be multiple charges by a vigorous district attorney. He surmised that one couldn't necessarily be charged with assault and exploitation [of a minor] unless it fits the fact pattern. He asked if that is correct.

REPRESENTATIVE BERKOWITZ surmised that Chair Rokeberg was asking if, in a continuing course of conduct, there could be multiple charges in that continuing course of conduct.

CHAIR ROKEBERG interjected, "Oh, yeah you could ... if it was a continuing course of conduct. But ... I think you're ... concerned about isolated incidence or ..."

REPRESENTATIVE KERTTULA stated that she is concerned about the auto waiver with which she didn't agree, even for a second offense. "We're talking about kids and I just don't see a reason why you don't have a hearing before a judge about whether they should be waived or not," she explained. She stressed that it would be a step and the waiver could occur with judicial involvement. She surmised that CSHB 334(JUD) took out the auto waiver.

REPRESENTATIVE MCGUIRE explained that Section 3 of CSHB 334(JUD) addresses the auto waiver. On page 2, line 14, of CSHB 334(JUD) the felonies that would be included under the unlawful exploitation of a minor were taken out of the auto waiver. She related her understanding that Version Q takes the auto waiver out and only increases the crime to a class A felony on the second offense. Representative McGuire clarified, "Representative Rokeberg, Mr. Chairman, just to be clear: it ... cannot be within the same first offense, it has to be previous conviction of an unlawful exploitation of a minor in either this jurisdiction or another."

Number 260

REPRESENTATIVE RALPH SAMUELS, Alaska State Legislature, turned to the auto waiver, and explained that it only applies to those age 16 and 17. "To get caught, go through the system, get caught again, ... they'd have to know what they're doing," he remarked. In such a situation, he opined that "you'd want to come down on them." For the very young, say 15 years of age, those minors do not ever get auto waived because there is always a waiver hearing. He said that since the auto waiver only

applies to those 16 and 17 years of age, the window for a second offense is almost nonexistent.

REPRESENTATIVE MEYER pointed out that a first offense would be a class B felony, which is a fairly serious offense. If the individual hasn't learned from that, then he agreed that he or she deserves the class A felony. Representative Meyer opined that Version Q is a good compromise.

REPRESENTATIVE MCGUIRE inquired as to why this wasn't addressed in the House Judiciary Standing Committee.

REPRESENTATIVE MEYER reiterated that [CSHB 334(JUD)] was reported from the House Judiciary Standing Committee with the understanding that he and Representative Gruenberg were going to continue to work on the legislation and make the amendment on the House floor. However, he felt that the change encompassed in Version Q is too large to do on the House floor. Therefore, he requested a House Rules Standing Committee hearing.

Number 310

REPRESENTATIVE KERTTULA announced that she is more comfortable with CSHB 334(JUD) because she believes there could be some difficult situations.

CHAIR ROKEBERG opined that Representative Samuels' and Meyer's arguments are very compelling. The [possibility] of this falling unjustly on some teenager is slim, and furthermore the judicial discretion would address that.

REPRESENTATIVE KERTTULA pointed out that [under Version Q] the problem is that it will be done automatically, without any judicial involvement. She remarked that she has seen teens be charged with things that are surprising.

CHAIR ROKEBERG commented, "This is the second offense."

REPRESENTATIVE BERKOWITZ pointed out that the committee packet includes documents from the Division of Juvenile Justice, which specify the number of youth charged with this conduct. He related that the document specifies that in 2004 there was one 18-year-old charged who was waived. In 2003 there was one 13-year-old for whom the waiver wouldn't matter. In 1999, four [minors] were charged and the cases were dismissed. Therefore, he concluded that there just aren't a lot of cases that impact juveniles. He opined that getting hung up on the juvenile

waiver issue isn't focusing on the appropriate issue. However, he expressed concern with the legislature tinkering with what judges do. He noted that currently [unlawful exploitation of a minor] is a class B felony that a judge can ramp up for second and subsequent offenses. In essence, this legislation reaches into the judiciary and instructs the judges with regard to sentencing. Although Representative Berkowitz related his belief that harsher sentences for this type conduct are appropriate, [the legislature] should be mindful of the separation of powers issue.

Number 0356

REPRESENTATIVE COGHILL moved to report CSHB 334, Version 23-LS1246\Q, Luckhaupt, 4/6/06, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE BERKOWITZ highlighted that all the fiscal notes are zeroed out, which he interpreted to mean this legislation is completely ineffective or else people aren't "being straight" with the fiscal notes. Therefore, he expressed the need to be vigilant of zeroed fiscal notes.

Number 368

CHAIR ROKEBERG, upon determining there were no objections, announced that CSHB 334(RLS) was reported from the House Rules Standing Committee.

HJR 9-CONST AM: APPROPRIATION/SPENDING LIMIT

CHAIR ROKEBERG announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 9, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

CHAIR ROKEBERG explained his intention to bring up HJR 9 in order to have a very minor discussion. He noted that the committee packet should include a suggested amendment by Representative Hawker, who he wanted to explain the amendment. He announced that HJR 9 would be set aside without taking up the amendment.

Number 372

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, spoke to his suggested amendment, which read:

Page 3, line 17:
Delete "**Reconsideration**"
Insert "**Repeal**"

Page 3, lines 25 - 30:
Delete all material.
Insert "Section 16 of Article IX (appropriation limit)
is repealed July 1, 2009."

REPRESENTATIVE HAWKER explained that the amendment would provide a hard sunset to HJR 9 so that it didn't constitutionally bind future legislatures. Although Representative Stoltze, the sponsor of HJR 9, is very receptive to the discussion of the issue, he would prefer that it occur on the House floor rather than through a House Rules Standing Committee hearing, Representative Hawker related. Representative Hawker explained that this resolution would place a constitutional amendment before the voters to limit future appropriations by a formula. Therefore, the concern is the inability to prognosticate the future with any particular accuracy or to anticipate what future legislatures may face. Some believe the aforementioned is [acceptable] because they don't want to allow spending in the state to expand very far. However, others don't want to bind future legislatures inappropriately due to the inability to predict the future. Representative Hawker related that the public has expressed the need to have reassurance that the legislature wouldn't embark upon a campaign of frivolous spending. To that end, HJR 9 was introduced.

REPRESENTATIVE HAWKER acknowledged that the resolution does require that it reappear on the ballot after six years, but noted that it would require an affirmative vote to approve the spending limit. Representative Hawker stated that he subscribes to a theory of a window of constraint to provide assurance to the public and establish credibility to the legislature. However, to make it a permanent change is of concern because to create an algorithm regarding what state spending should be in 15 years is problematic. Out of respect for the sponsor of HJR 9, Representative Hawker requested that the committee consider the debate, but take up the amendment on the House floor.

CHAIR ROKEBERG asked if the House Finance Committee discussed having automatic reconfirmation similar to the state's constitutional convention provision in order to have a review without having to go through the process and the amendment again.

Number 426

REPRESENTATIVE HAWKER said he understood Chair Rokeberg to be referring to a future vote that would be required to reaffirm this particular resolution rather than requiring a vote to negate the resolution. He said the House Finance Committee did discuss that, although it wasn't made as much an issue as was looking at the algorithm.

CHAIR ROKEBERG turned attention to page 1, line 10, of CSHJR 9(FIN), and asked whether the matter of [the appropriation limit being] 75 or 100 percent of the sum is an issue that needs illumination.

REPRESENTATIVE HAWKER stated that the question is probably best directed to the sponsor of HJR 9. However, he offered his view. He recalled that this resolution was introduced and heard in the House Special Committee on Ways and Means, of which he is the chair, last year. The House Special Committee on Ways and Means reported the resolution out with an algorithm creating tiered percentages that required different levels of legislative approval. He explained that [the first] 2 percent [increase] would require a simple majority vote of the legislature while the next 2 percent [increase] would require a two-thirds vote, and the third 2 percent [increase] would require a three-quarter vote. The aforementioned would essentially allow 6 percent inflation in the budget with increasing legislative concurrence. Through the process, the discussion highlighted that there are certain fallacies with the [tiered approach]. Therefore, he suggested that a better bench mark would be to use inflation and the state's population growth. Allowing the state's budget to grow based on inflation and the state's population sounds easy until one attempts to put the concept into words.

REPRESENTATIVE HAWKER pointed out that it would be simple to specify that [the calculation] go back two years and take into account inflation and population and add those two together for one year and say that is what the state's budget can grow for the next year. However, the aforementioned produces a very erratic growth pattern because of the possible variance in spending of any given year. Therefore, the model used by the permanent fund dividend was used and thus an average of three year's percentage changes [is used]. In order to do a look back, one has to go back almost two years in order to reach a year that has closed out [budget] for which the percentages can be used. He recalled that the language specified "the earliest

three of four prior fiscal years". He explained, "We'd leave this year that we're currently in open, but we're budgeting a year hence so there's a two-year gap between the empirical CPI [consumer price index] and population information and the year you're budgeting." Therefore, if the average inflation and population for those three years is taken and applied to the average budget for those three years, an entire year's worth of inflation and population growth isn't being recognized. The aforementioned is tantamount to keeping the inflating factors a year in arrears. The above is the problem with converting a simple idea and turning it to practical, implementable words that don't "box us into some place we don't want to be." Therefore, the formula [in CSHJR 9(FIN)] specifies that if the first three to four years of inflation is added up and 75 percent of it is taken, it would provide a 1.5 factor growth on the numbers from two year's ago.

REPRESENTATIVE HAWKER opined that all the formulas have been equally valid intellectual exercises. However, the decision before [the legislature] is whether there is a "right answer."

CHAIR ROKEBERG announced that HJR 9 would be held over and that he anticipated it being before the full House next week.

HJR 26-CONST. AM: PF APPROPS/INFLATION-PROOFING

CHAIR ROKEBERG announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 26, Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from and inflation-proofing the Alaska permanent fund by establishing a percent of market value spending limit.

CHAIR ROKEBERG informed the committee that HJR 26 will be held for further consideration. He also informed the committee that he anticipated it being before the full House next week.

HB 298-DISTRIBUTIONS OF APPROPS FROM PERM FUND

CHAIR ROKEBERG announced that the final order of business would be HOUSE BILL NO. 298, "An Act relating to the distribution of appropriations from the Alaska permanent fund under art. IX, sec. 15(b), Constitution of the State of Alaska, and making conforming amendments; and providing for an effective date."

CHAIR ROKEBERG related his belief that there is some question about the cash flow incidence with regard to HB 298, and

therefore requested that Mr. Storer speak on the matter. He announced that no further action would be taken on HB 298 today.

Number 512

ROBERT STORER, Executive Director, Alaska Permanent Fund Corporation (APFC), Department of Revenue, explained that as HB 298 now stands, it would draw down money for payment for the dividend and for government all on one day. The payment would be withdrawn 14 days after the end of the fiscal year. Mr. Storer acknowledged that as it applies to the dividend, historically there has been a single draw down, which makes sense because the funds are transferred to the Department of Revenue and then the payments go out quickly afterwards. While [APFC] can live with and manage drawing down the money on one day, it believes there are more effective ways to manage the assets of the permanent fund. Therefore, Mr. Storer recommended that the draw downs for government occur on 12 equal payments throughout the year. He explained that when large sums of money are liquidated, material adjustments to the asset allocation of the fund occur. Furthermore, there are significant transaction costs. He pointed out that the act of selling the security comes with a transaction cost. "To the degree one can make it over some systematic payout, the permanent fund can more effectively manage the asset allocation and the assets of the fund," he suggested. Mr. Storer clarified that under the suggestion of government draw downs occurring over 12 equal payments, there [APFC] wouldn't have to make material adjustments to asset allocation, but rather draw down on cash flow every month. Therefore, rather than reinvest cash flow in the equity market, it would be distributed out to the government.

MR. STORER informed the committee that if the draw all goes to the general fund at the beginning of the fiscal year, the general fund would earn interest on that larger sum of money. However, if the funds are retained with the permanent fund for a longer period of time, [APFC] invests for a longer period of time and thus the permanent fund [monies] earn a higher rate of return than the general fund. "On some time basis, one would earn more money in the aggregate at the permanent fund. So, you would not only be mitigating against transaction costs, but you would earn some higher rate of return if the money resided at the permanent fund," he explained.

Number 538

CHAIR ROKEBERG related his understanding that because of the cash flow requirements of the general fund, there are timing issues. He further related his understanding that currently [the legislature] draws down from the constitutional budget reserve fund (CBRF) as part of a cash cushion. The aforementioned draw down is as much as \$400 million of the moving average throughout the year, depending upon the timing of other revenue receipts.

MR. STORER agreed. He recalled that there is a larger draw down of the CBRF in the first quarter of the fiscal year, which diminishes as it goes along. Therefore, maybe there are other alternatives that could be worked out with the Department of Revenue.

CHAIR ROKEBERG inquired as to how the primary liquidation of assets or realized gains necessary to fund the permanent fund dividend are performed. He mentioned his belief that it depends on market conditions. "I recall ... '01 or '02 where ... you caught it on the rise to be able to ... provide the availability of cash flow that most people don't recall now," he asked.

MR. STORER said that's correct. Mr. Storer pointed out that over time it has varied. However, he noted that [APFC] knows fairly well what the obligation, plus or minus \$50-\$100 million, will be to the Department of Revenue well in advance. Therefore, to some degree the asset allocation and the market environment determine the payout and funding. He recalled that it used to be that [APFC] would structure the bond portfolio such that some [investments] matured around the payout. However, the aforementioned is no longer done because the fund is mature and fully invested in the equity markets. Currently, [APFC] makes a recommendation to the Board of Trustees of the Permanent Fund at the June board meeting. The recommendation relates how [APFC] proposes to liquidate the assets, while being mindful of market conditions and asset allocation. Furthermore, staff is driven to reduce transaction costs as much as possible.

CHAIR ROKEBERG inquired as to the period of time those transactions are made.

MR. STORER answered that depending upon the markets, [the transactions] could occur within a month to three months. He specified that it would be over a month because of the timing of the payment to the department. "That's not to say we don't build up some cash in the bond portfolio to mitigate transaction

costs," he explained. The [APFC] reports to the board what it does in terms of liquidation.

CHAIR ROKEBERG surmised, "I think the issue does need to be identified and worked with. You're asking for a 12-month window, basically, for a portion of the draw down, but ... I think you need to have some type of window in which to operate that's not a single day as required in the bill, fundamentally now. Is that correct," he asked.

MR. STORER replied yes, pointing out that the legislation provides 14 days to liquidate the securities. The longer [APFC] has to liquidate the portfolio, the more efficient [APFC] can be in reducing the transaction costs.

Number 579

CHAIR ROKEBERG announced, "Rather than the committee taking any action on this today, I'd like the various bill sponsors and the corporation to massage this ... rather than get too involved in the minutia of this stage of its incubation." Chair Rokeberg announced that HB 298 would be held over and that he anticipated it being before the full House next week.

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 9:53 a.m.