

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 11, 2003

8:00 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 9

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

- HEARD AND HELD

HOUSE BILL NO. 52

"An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense."

- MOVED HB 52 OUT OF COMMITTEE

HOUSE BILL NO. 64

"An Act relating to court approval of the purchase of structured settlements."

- HEARD AND HELD

OVERVIEW: EXISTING AND PROSPECTIVE REVENUE SOURCES FROM DNR DEVELOPMENT

- HEARD [See 9:50 a.m. minutes for this date]

PREVIOUS ACTION

BILL: HJR 9

SHORT TITLE: CONST AM: APPROPRIATION/SPENDING LIMIT

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

Jrn-Date	Jrn-Page		Action
01/31/03	0102	(H)	READ THE FIRST TIME - REFERRALS
01/31/03	0102	(H)	STA, JUD, FIN
02/11/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 52

SHORT TITLE: SEX CRIME AND PORNOGRAPHY OFFENSES

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

Jrn-Date	Jrn-Page		Action
01/21/03	0045	(H)	PREFILE RELEASED (1/17/03)
01/21/03	0045	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0045	(H)	STA, JUD
01/29/03	0089	(H)	COSPONSOR(S): LYNN, CRAWFORD, HOLM
01/31/03	0107	(H)	COSPONSOR(S): KAPSNER, STOLTZE, CISSNA,
01/31/03	0107	(H)	WEYHRAUCH
02/03/03	0120	(H)	COSPONSOR(S): WILSON
02/11/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 64

SHORT TITLE: PURCHASE OF STRUCTURED SETTLEMENTS

SPONSOR(S): REPRESENTATIVE(S) FOSTER

Jrn-Date	Jrn-Page		Action
01/27/03	0075	(H)	READ THE FIRST TIME - REFERRALS
01/27/03	0075	(H)	STA, JUD
02/11/03		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HJR 9.

VIRGINIA "GINGER" BLAISDELL, Staff
to Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the sponsor of HJR 9, answered questions regarding grants and bonds.

REPRESENTATIVE MCGUIRE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 52.

THERESA WILLIAMS, President
Pissed Off Parents (POP)
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of POP to ask that penalties be enacted in keeping with crimes relating to child pornography, and told the committee about other states' laws and a federal Act, during the hearing on HB 52.

MARK POESHEL, Police Officer
University of Alaska Fairbanks Police Department;
Founder and Coordinator
Alaska Forces
Fairbanks, Alaska

POSITION STATEMENT: Testified to explain the work that those in the task force do and to answer a question regarding broadening forfeitures, during the hearing on HB 52.

JANET BROWN, Co-founder
Pissed Off Parents (POP)
Juneau, Alaska

POSITION STATEMENT: Testified as a mother whose life has been affected by a sexual predator, and asked the committee, for the sake of her daughter and any future victims, to support HB 52.

MATTHEW LEVEQUE, Lieutenant
Alaska State Troopers
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the troopers in support of HB 52, and offered to answer questions.

KRIS MILLER, Lieutenant
Anchorage Police Department
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the department in support of [HB 52].

PAUL LaBOLLE, Staff
to Representative Richard Foster
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the sponsor and answered questions during the hearing on HB 64.

WILLIAM AZAR, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 64.

RANDY DYER, Executive Vice President
National Structured Settlement Trade Association (NSSTA)
Washington, D.C.

POSITION STATEMENT: Offered a detailed explanation regarding structured settlements, periodic payments, and federal legislation parallel to HB 64.

JOHN GEORGE
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the American Council of Life Insurers (ACLI) in support of HB 64.

ACTION NARRATIVE

TAPE 03-06, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:00 a.m. Representatives Holm, Seaton, Lynn, and Weyhrauch were present at the call to order. Representatives Dahlstrom, Berkowitz, and Gruenberg arrived as the meeting was in progress.

HJR 9 - CONST AM: APPROPRIATION/SPENDING LIMIT

Number 0097

CHAIR WEYHRAUCH announced that the first order of business was HOUSE JOINT RESOLUTION NO. 9, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

Number 0133

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, as sponsor of HJR 9, told the committee that he thinks that everyone recognizes the need for a fiscal plan for the State of Alaska. He noted that there has been discussion on a number of other components in the fiscal plan, including use of the Alaska Permanent Fund and taxes. A spending limit is one issue that hasn't come to the forefront, he said. In addition to a fiscal gap, he opined, there is also a confidence gap in the public.

REPRESENTATIVE STOLTZE recognized that attempting to pass a constitutional amendment is a long process, and he said, "This is just the first shot, today." He stated that [HJR 9] is a conservative approach to state government. He added, "It recognizes that we're probably not going to achieve reductions, but if we can just hold the line, I think we'll be making progress." He explained that the basic component of [HJR 9] is that it is a flat funding of the budget, with the ability to raise it by up to 2 percent with a super-majority vote of three-fourths.

REPRESENTATIVE STOLTZE noted that there is a sunset [clause]; after six years, if the provision [in HJR 9] has not been successful, it would automatically be put on the ballot "so the public can assess whether or not it's been a good exercise in fiscal policy and good government." He stated that there is a lot of detail [in the resolution], but the crux of it is the attempt to achieve a sustainable level of spending.

Number 0372

REPRESENTATIVE HOLM said that he doesn't ever recall seeing a guideline, wherein there would be an amendment that would have a timeframe like [that in the proposed HJR 9], where the issue would go back to the people. He asked Representative Stoltze if there is any precedence to that.

REPRESENTATIVE STOLTZE stated that he thinks the provision whereby the Alaska State Constitution goes before the voters every 10 years is similar. He indicated that there was a similar provision in a "resolution proposing an amendment that passed the other body last year." He added, "I thought it had some merit."

Number 0463

REPRESENTATIVE SEATON referred to [page 1, lines 6-8], which read as follows:

Section 16. Appropriation and Spending Limit.

(a) Appropriations made for a fiscal year shall not exceed the amount appropriated for the fiscal year two years preceding the fiscal year for which the appropriations are made.

REPRESENTATIVE SEATON asked if there was a reason for that.

REPRESENTATIVE STOLTZE answered yes. He explained that it would give members of both houses a number that they could grasp with certainty, to "know what we'd be dealing with in the future."

REPRESENTATIVE SEATON asked if it's true that there is no accounting for inflation or population growth.

REPRESENTATIVE STOLTZE answered that that's correct; however, [the proposed resolution] would provide for 2 percent growth. He stated that he thinks that [Alaska's] inflation has been below 2 percent. He admitted, "There's an arbitrariness to it, but I think we have to start at some point, and that's what I chose after discussion with people who know more about these things than I do." In response to a question by Chair Weyhrauch, he noted that the language regarding 2 percent growth is found on page 2, lines 11-13.

Number 0680

CHAIR WEYHRAUCH asked Representative Stoltze to define "the confidence gap."

REPRESENTATIVE STOLTZE stated that [the public] doesn't believe that [the legislature] wants to, is able to, or will cut state spending.

CHAIR WEYHRAUCH said he understands there is a five-year "cutting program." He asked Representative Stoltze for his opinion regarding that.

REPRESENTATIVE STOLTZE replied that he thinks it has been a worthy effort. He opined, "It's been more holding the line than an actual reduction." He mentioned "shifting to other funds." He said, "Given the past administration's efforts to raise the budget, I think ..., if you hadn't [had] that force moving [in] that direction, we'd be in a lot worse shape than we are." He said he cannot say anything but positive things about the five-

year "effort," but said he is not sure that the public really believes that it was an actual reduction.

CHAIR WEYHRAUCH asked Representative Stoltze if he has considered two-year budgeting.

REPRESENTATIVE STOLTZE responded that he has only done a cursory [analysis] of [two-year budgeting]. He said that [the state] probably doesn't have the stability in revenue sources. He said he does not know "how to do it without some forward funding," and he doesn't like some of the implications of forward funding - of where that funding might come from.

Number 0823

REPRESENTATIVE STOLTZE, in response to a question by Representative Seaton regarding appropriations, answered that there are a number of exemptions [listed in the resolution, beginning page 1, line 10]. He indicated the Alaska Railroad. He stated that he thinks that there was "a desire to leave the railroad's ability to provide bonding and financing for a gas line project." He said that any bonds that the voters approved would be exempted. He added, "There's a lot of holes in this thing - it's not a perfect document."

Number 0905

CHAIR WEYHRAUCH asked if [HJR 9] is tied to any sort of revenue-raising measure, and that without a spending limit like this, revenue measures like taxes, for example, should not be considered.

REPRESENTATIVE STOLTZE responded that that is an accurate assessment. Furthermore, he stated that he is not trying to "create a linkage to bring on taxes," but taxes are going to "come to the front." He said he thinks that his constituents, among others, are afraid that any new funds that come in - through windfalls, for example - will add fuel to the fire. He added, "And they want some control." He said that he may not be speaking for everybody's districts, but said, "We want a tool that, if taxes, or other revenue use does come in, there's going to be a limit and control of how much."

Number 1020

CHAIR WEYHRAUCH said that it seemed to him that there's a large debate at the federal level about the spending limit to force

congress to "live within its means." He stated that a lot of that was just "substance over form," because the legislature would then just ignore its own provision." He said that there must be some of that sentiment in this measure, and he asked if that was the reason that "this" is a constitutional amendment.

REPRESENTATIVE STOLTZE answered yes. He stated that he is also concerned about [the State of Alaska's] existing spending limit, because it was drafted before the existence of the [Alaska Permanent Fund] and its dividend, and before the existence of many public corporations, and because it doesn't work. He said, "It passed under ... duress." He stated that "we're" ignoring the provisions. He indicated that there's a provision that requires one-third expenditure for capital projects. He said, "It's offensive to have a section of our constitution that's not being enforced." In response to a question by Chair Weyhrauch, Representative Stoltze confirmed that it is a constitutional spending limit, which has a capital budget component to it.

CHAIR WEYHRAUCH asked why that was adopted by the voters and what the sales pitch on "that amendment" was.

REPRESENTATIVE STOLTZE commented that he had been about 18 years old at the time. He stated that he thinks Governor Hammond vetoed a large portion of the capital budget and "did some arm twisting to get the 27th vote." He recalled that it was passed during a special session in 1981, and ratified by the voters in 1982. He noted that the issue was on the ballot the same year as the capital move, subsistence, abortion, and veterans' bonds.

Number 1200

REPRESENTATIVE SEATON offered an example, whereby [the state] receives an appropriation of \$100 million from the federal government for "village safe water." He asked Representative Stoltze to show him which exemption in [HJR 9] would apply to that example.

REPRESENTATIVE STOLTZE referred to page 2, line 4, paragraph (7), which read as follows:

(7) an appropriation of money received from
the federal government;

Number 1255

REPRESENTATIVE SEATON mentioned [the Alaska Housing Finance Corporation] (AHFC) and "the Technology Foundation." He asked where their expenditures "come in."

REPRESENTATIVE STOLTZE stated his understanding that "those are all available for appropriation at any time." He added that any money "spent out of those" would have to be underneath the spending limit.

REPRESENTATIVE SEATON mentioned loans and grants, and he asked if those are included in [HJR 9].

Number 1330

VIRGINIA "GINGER" BLAISDELL, Staff to Representative Bill Stoltze, sponsor of HJR 9, told the committee one of the concerns is that state corporations be able to continue "in some of their growth projects," like bonding. She pointed out that beginning on [page 1, line 16], paragraph (5), there is an exemption [which includes] revenue bond proceeds. She also referred to paragraph (6), which read as follows:

(6) an appropriation required to pay obligations under general obligation bonds, revenue bonds, and certificates of participation issued by the State;

MS. BLAISDELL stated that those are "fairly significant dollar amounts that our corporations rely on [for] the ability to leverage their funds to continue corporate growth." She noted that their operating expenditures would fall under this appropriation limit.

Number 1381

REPRESENTATIVE SEATON, for purposes of clarification, asked if [Science and] Technology Corporation grants, for example, would be included in "this."

MS. BLAISDELL responded that the Science and Technology Foundation grants would be included under part of the spending appropriation.

CHAIR WEYHRAUCH asked if increases to the University [of Alaska's] budget would be limited under "this provision."

REPRESENTATIVE STOLTZE answered yes, but not the federal largesse they receive, which has been a large part of their (indisc.).

CHAIR WEYHRAUCH referred to the previously read paragraph (7), on page 2, line 4. He noted that, often, money received from the federal government requires "state matches." He said that funds from the federal government might be limited to "2 percent of the state," under [HJR 9].

REPRESENTATIVE STOLTZE answered that's correct. He stated his assumption that the 5 percent match would be part of the value judgment "of our body." In response to a follow-up question by Chair Weyhrauch, he concurred that that potentially could be subjected to the three-fourths vote. He added, "Or within the budget itself."

CHAIR WEYHRAUCH asked the following:

Let's say the budget comes to the floor of the House, and there's an asterisk by certain provisions which require three-fourths vote, because it would violate this spending cap - like the federal matching fund. And ... so those things ... could be voted on separately, but the entire budget would require just a 51 percent vote out of ... either body.

REPRESENTATIVE STOLTZE responded that that is a possibility. He stated that he could see voting on the fiscal note separately, for example.

CHAIR WEYHRAUCH said, "Anytime you limit spending this way, it raises significant policy questions that you need to start jumping into."

Number 1591

REPRESENTATIVE SEATON asked - if state parks were to raise user fees in order to maintain the parks and keep them open - if that would "fall under this," and take a three-quarter vote "to do it."

REPRESENTATIVE STOLTZE answered that, as [HJR 9] is written now, he believes it would. He indicated that the legislature's deliberations over what should be exempt would be a policy call.

Number 1644

REPRESENTATIVE HOLM mentioned that the idea of having a provision of dedicating some gas tax to public maintenance has been "bantered around." He asked Representative Stoltz to comment on that, in regard to HJR 9.

REPRESENTATIVE STOLTZE responded that that wouldn't [be included] under [HJR 9]; it would have to be a separate initiative.

Number 1700

REPRESENTATIVE GRUENBERG asked Representative Stoltze to explain [paragraph] (8), on page 2, line 6, which read as follows:

(8) a reappropriation of money already appropriated under an unobligated appropriation that is not void under Section 13 of this article;

REPRESENTATIVE STOLTZE clarified that it is money that the legislature has already appropriated once; it is "not double counting money."

[Ms. Blaisdell nodded in agreement.]

REPRESENTATIVE GRUENBERG asked, "Is there something that's going to be voided by this, under another article in the constitution?"

REPRESENTATIVE STOLTZE answered that he did not believe so.

REPRESENTATIVE GRUENBERG stated his understanding of "the way this thing works," as follows:

If there's to be an appropriation, it cannot be greater than the appropriation [from] not the last year, but the previous year, unless three-quarters of each house vote yes, and then it can only go up by 2 percent. Is that the gist of the amendment?

REPRESENTATIVE STOLTZ concurred.

REPRESENTATIVE GRUENBERG asked, "What if there is national inflation above that amount? How do we get around that, without having to go for a vote of the people to change this amendment, which couldn't occur until the next general election?"

REPRESENTATIVE STOLTZ responded that he doesn't necessarily want to get around it. He stated that he wants to avoid the need for greater taxes and delving into the [Alaska] Permanent Fund sooner than he says he thinks the public wants. He said, "Sometimes you have to look at the need to live within a leaner mean than you would perhaps like to."

REPRESENTATIVE STOLTZE said that he doesn't like the idea of indexing. He indicated that "the whole idea of putting a spending limit on it" he does with "a little bit of squeamishness." He said that he would hate to further "tie our hands with [consumer price indexes] and things like that." He stated that it is only with a lot of reluctance and after soul searching that he pushed this [resolution] forward.

Number 1882

REPRESENTATIVE GRUENBERG offered the following hypothetical situation: If there is national inflation that exceeds any amount, Alaska may be caught in an economic situation that's way beyond its control. He suggested that what "this" might do is cause state spending to dramatically decrease. He asked Representative Stoltze if he has fully considered that possibility. Representative Gruenberg asked how the state would meet its needs, because the real buying power of the same dollar amount in the given appropriation year might be insufficient to meet the same level of expenditures. He said that there are so many other types of expenditures that are exempted from this "cap" that it might cause the whole budget to go out of whack. He asked Representative Stoltze how he would meet that problem.

REPRESENTATIVE STOLTZE stated that he thinks the budget is going out of whack on its own. He said that he has confidence in his colleagues and in those who succeed him in being able to establish priorities to meet the high end. He clarified that he thinks [HJR 9] will force [the legislature] to meet and fund [the state's] highest priorities and make value judgments about what should be funded. He indicated the legislature back in the 80s and stated that he thinks that, [even] under the state's leanest budgets, education and public safety were always close to fully funded. He questioned whether income tax should be used to fill the [budgetary] gap, for example. He added, "I don't know how that solves people's problems."

Number 2046

REPRESENTATIVE BERKOWITZ stated the following:

I'm wondering what it is about the experience of the last eight years, where you've had people whose primary mission has been to cut the budget - where we actually have cut the budget - why you think the budget is currently out of whack?

REPRESENTATIVE STOLTZE responded, "That's fine chat for someone who doesn't understand a three-quarters vote of the CBR and some of the things that have caused increases in the budget." He explained that he pushed [HJR 9] forward because it's tough for sixty people in a bicameral system to cut the budget, and that's why he thinks the enforced discipline is needed. He opined that the administration of the last eight years wanted to increase the budget by an excess over what it currently is, and he stated that he is not afraid to compliment the [legislature] of the last eight years for holding the line. He said, "We were fighting an uphill battle." He indicated that people were going in opposite philosophical directions, with procedural tools that forced spending increases.

Number 2137

REPRESENTATIVE BERKOWITZ said that he would like to point out a couple of things: First, the legislature writes budgets, the governor does not. Second, he stated that he is very interested in seeing how the current administration does, in terms of holding the line, because every transitional report he has seen has called for increased spending, with one exception. He told Representative Stoltze, "You may tout this as a philosophical difference - I think that's easy camouflage to hide behind - but that's simply political rhetoric." He suggested to Representative Stoltze that, if he intends to move legislation through the legislature, particularly constitutional amendments, he might refrain from insulting people on the opposite sides of the [table].

Number 2175

CHAIR WEYHRAUCH interjected, "We all have to be courteous, and kind, and calm." He stated that he appreciated Ms. Blaisdell's clarifications to the committee. He told Representative Stoltze that he thinks that brainstorming these kinds of concepts within the context of the budget is not harmful. He added, "As we've noticed, it stimulates some vigorous debate."

CHAIR WEYHRAUCH announced that HJR 9 would be heard and held.

HB 52 - SEX CRIME AND PORNOGRAPHY FORFEITURES

Number 2240

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 52, "An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense."

Number 2260

REPRESENTATIVE McGUIRE, Alaska State Legislature, sponsor of HB 52, told the committee that former Representative Joe Hayes had introduced this bill in the [Twenty-Second Alaska State Legislature]. She said the bill would be a tool to aid law enforcement in cracking down on pedophiles. She paraphrased a section of her sponsor statement [included in the committee packet], which read as follows:

It is becoming far more common for pedophiles to seek new victims through online chat rooms and e-mail and for child pornography profiteers to use these technologies as a means to distribute their materials. HB 52 will provide the state courts and law enforcement agencies another tool to combat these sexual predators by giving the courts additional punitive sentencing options and, in turn, awarding forfeited computer technology back to law enforcement agencies for ongoing monitoring operations.

REPRESENTATIVE McGUIRE noted that the clear focus of the bill is to help the victims in these cases. Furthermore, it would also help law enforcement keep up with ever-changing technology and have the ability to use that technology to figure out how the offenders commit the crimes.

REPRESENTATIVE McGUIRE indicated the following additional names of cosponsors would be added to the bill: Representatives Kapsner, Stoltze, Cissna, Weyhrauch, and Wilson.

Number 2450

REPRESENTATIVE MCGUIRE, in response to questions from Representative Berkowitz, confirmed that [HB 52] is the same bill that was introduced by [former] Representative Hayes.

REPRESENTATIVE BERKOWITZ asked if the substance of [HB 52] is the same as in "the bill that passed the House last year."

REPRESENTATIVE MCGUIRE said yes.

Number 2500

REPRESENTATIVE SEATON referred to the bottom of page 1 [of the bill] and asked Representative McGuire to explain how the confiscation of equipment would effect a public library, for example, if someone used its equipment [to commit a crime].

REPRESENTATIVE MCGUIRE said no, a public library's equipment would not be [confiscated]. She indicated State v. Rice [on page 1, line 13 of HB 52], and said it stood as an example of a case that afforded a person who is "later deemed innocent" the right to get back his/her equipment. She provided a further example: If a family member uses the family computer to commit a crime, the other innocent family members could claim that they use that computer [and get it back].

REPRESENTATIVE SEATON asked Representative McGuire to explain how [the section of the bill currently under discussion] would work in regard to equipment confiscated from businesses.

REPRESENTATIVE MCGUIRE noted that the language of the bill reads, "remission to innocent non-negligent third parties". She said, "The notion would be that [in] that particular business, say, the computer manager didn't have a reason to know." Conversely, she said that if an office manager was negligent - if that person knew that a member of the staff had a pattern of using chat rooms on the Internet to lure children, for example - then she supposed that that [manager] would not be given back the confiscated equipment. She opined that a manager of a business should be certain of what his/her employees are "up to."

Number 2699

REPRESENTATIVE MCGUIRE, in response to questions by Chair Weyhrauch, said that the burden to get back the equipment would be upon the [non-negligent] third party and would be a separate proceeding "under State v. Rice."

Number 2742

REPRESENTATIVE BERKOWITZ noted that, frequently, sexual offenses involve other equipment not mentioned in [HB 52], such as guns and knives. He expressed his concern that a narrowly tailored criminal statute breaks with the tradition that [Alaska] Statutes have of being fairly broad and leaving [room for] interpretation. He mentioned a Michigan Statute that seems to comply better with a more general approach to the criminal code. He said, "It leaves open, sort of, the irony of being able to take someone's computer, but not being able to take someone's knife." He asked Representative McGuire to comment on his remarks.

REPRESENTATIVE MCGUIRE remarked that in the interest of fiscal and legal certainty and of promoting a specific public policy "in the computer child pornography arena," she would like to "keep it narrow."

REPRESENTATIVE BERKOWITZ commented that [HB 52] currently has a zero fiscal note. He stated his hope that [the legislature] would not fall into the bad habit of writing criminal code based on what the potential fiscal note would be, but rather would pursue it based on what's the best policy. He indicated that [Alaska's] criminal code is one of the best in the country, consisting of one volume, rather than many volumes like that of other states. He said he would be willing to take part in discussions to decide whether to stick with the general language, which he stated he thinks is more appropriate, or more specific [language], which he said [Representative McGuire] is advocating for [in HB 52].

Number 2869

REPRESENTATIVE MCGUIRE indicated a precedent for [HB 52] - a law that was passed that allows for the forfeiture of a vehicle [regarding driving under the influence (DUI) cases]. She mentioned "instrumentality" and said there was previous discussion regarding "how far you go." She said, "The decision at that point in time was made to keep it narrow, for some of the reasons that I'm stating today." Representative McGuire noted that [the cost of] collection and storage of items by state troopers, for example, may potentially [result in a] fiscal impact. She concluded, "At the end of the day, what I would like to do is highlight this particular crime in this particular area of concern."

Number 2960

CHAIR WEYHRAUCH indicated an e-mail [from the Naturist Action Committee (NAC), available in the committee packet].

Number 2991

REPRESENTATIVE GRUENBERG stated that he did not know if [Ben T.] Grenade, [Area Representative, Alaska, Naturist Action Committee and the author of the above-mentioned e-mail] would be testifying. He referred to Mr. Grenade's suggestion [on page 2 of the e-mail] to eliminate AS 11.41.460 from the definition of public crime.

TAPE 03-06, SIDE B

Number 2991

REPRESENTATIVE GRUENBERG said that the issue of civil forfeiture has "been around this legislature at least as long as I have been here." There are many equitable and constitutional issues involved, he noted. He said he is looking at [HB 52] as a forfeiture bill, not a pornography bill, because the issues are common to various forfeiture statutes.

REPRESENTATIVE GRUENBERG said that a very unfortunate case arose, indicating the problems that can come from a badly written forfeiture statute. The name of the case is Bennis v. Michigan, a U.S. Supreme Court case. Representative Gruenberg described the case as follows:

A man took the family car and went out and picked up a prostitute. The man was charged ... and the car was forfeited. The wife, who had a community interest in the car, sued to protect her interest. The case went all the way up to the U.S. Supreme Court, and the U.S. Supreme Court said there was no constitutional impediment to forfeiting her interest in this car too, though she was totally innocent.

Number 2914

REPRESENTATIVE GRUENBERG stated that he can [foresee] a family computer being used by a family member to access "something that they shouldn't," and the whole computer being forfeited, which could have numerous educational implications for the rest of the family, for example.

REPRESENTATIVE GRUENBERG called attention to the word "transmit" in subsection (b), page 2, lines 7-12, which read as follows:

(b) In this section, "property" means computer equipment, telecommunications equipment, photography equipment, video or audio equipment, books, magazines, photographs, videotapes, audiotapes, and any equipment or device, regardless of format or technology employed, that can be used to store, create, modify, receive, transmit, or distribute digital or analog information, including images, motion pictures, and sounds.

REPRESENTATIVE GRUENBERG, paraphrasing that subsection, commented that "any equipment ... used to transmit anything" could include an airplane carrying one can of film [used in a sexual offense]. He stated his concern regarding the word "transmit". He said, "[this is] swatting a fly with a cannon." He said that although he cannot solve these problems "off the cuff," they are a concern.

Number 2830

REPRESENTATIVE McGUIRE noted that there is a long history in case law in the State of Alaska that clarifies that a person who is not party to an illegal act "has their day in court."

CHAIR WEYHRAUCH acknowledged that Representative Gruenberg has a significant amount of expertise in the area being discussed.

REPRESENTATIVE GRUENBERG stated that it is sometimes easier to find problems [in proposed legislation] than it is to find the proper solution. He stated his support of the bill. He mentioned that he thinks some of [the issues] have to be addressed to ensure that [unintended negative consequences don't occur].

Number 2780

THERESA WILLIAMS, President, Pissed Off Parents (POP), explained that POP was formed to foster legislation that actively protects children. She mentioned a 1988 [federal] Act protecting children from sexual predators, which allows for the same forfeiture [as HB 52]. Furthermore, it allows for the forfeiture of proceeds. She told the committee that there are

13 other states that have a specific law allowing for forfeiture in these types of crimes.

MS. WILLIAMS indicated [a book she held entitled, "Child Pornography: The Criminal Justice System," published by the American Bar Association, March 2001], which reports that other states have generalized forfeiture statutes "that often apply." It was found in the court of appeals in Texas that computers "fall under" objects that are used to facilitate "these types of crimes," even though [information] can be erased [from them]. Ms. Williams mentioned a behavioral analysis and said that those who seek out children on the Internet are now defined as acquaintances, not strangers, because they get to know the children and the children believe they have a relationship.

MS. WILLIAMS stated that, as parents, [the members of POP] would like help in seeing [these crimes] stopped, or "at least have penalties in keeping with the crime, instead of just a simple slap on the hand." She noted that there are currently 13 individuals in Alaska who are on the registry, who have committed pornography [offenses]. She stated that that is one of the many reasons she [testified].

MS. WILLIAMS, in response to a request from Chair Weyhrauch, clarified that she had, during her testimony, pointed to her son, Ivan Michael (ph). She indicated her other children in the room, as well. In response to a question from Representative Berkowitz, she replied that she would not have any objection to "broadening the forfeiture."

Number 2643

MARK POESHEL, Police Officer, University of Alaska Fairbanks Police Department; Founder and Coordinator, Alaska Forces, testified that he was born in Alaska, is a parent of three children, and has a job that is "full-time patrol." He noted that Alaska Forces is a task force for which he handles all of the computer forensic "recovery" for approximately the north half of the state. He added, "My agency represents all of the law enforcement agencies within the Interior, as well as the North Star Borough School District."

MR. POESHEL explained that the task force was basically created [in response to] an offensive sexual murder of a two-year-old in the Fairbanks area. Agencies - including the Alaska State Troopers, the Fairbanks Police, the North Pole Police, the Military Police, and, unofficially, [certain] federal agencies -

joined forces in combating computer crime and attempting to recover evidence when available. Currently, Mr. Poeschel noted, he is the only person involved full-time in the recovery of equipment, for example.

Number 2541

MR. POESHEL told the committee that he had worked closely with [former] Representative Joe Hayes when his bill was drafted, and he thanked Representative McGuire for having the courage to bring this [issue] back. The message to victims through the passage of [HB 52] would be tremendous, he said. He opined that giving back [an offender] the [instrument] of a crime is an offense. He further stated that [adopting HB 52 would send a] message to the defendants that, "We're not going to tolerate this. Our children are off-limits. Our victims are off-limits."

MR. POESHEL said he currently is attempting to figure out how he will "process the volume of computers" he has to give back in a case of child abuse where the offender pleaded only to drug charges, not sex charges. He described the act of removing evidence from some computers as an onerous one, completely time-consuming, especially for someone doing it in addition to another full-time job.

Number 2449

MR. POESHEL stated that the message [that passing HB 52 would give] to the law enforcement community would be that it would get support in continuing to enforce the laws to protect the children, and to acquire better-suited equipment. He noted that the equipment he is currently using is 1.5 years old, at a minimum.

Number 2436

MR. POESHEL addressed Representative Berkowitz's [previous question regarding broadening the forfeitures] by stating his assumption that "most of us would like to see the farm taken." In cases where there is a conviction on a sex offender, he said he would like that person to lose everything and, preferably, have it designated to support a victims' rights group, for example. He said that, realistically, that would be a time- and money-consuming prospect and that tailoring [the bill] to specifics is geared toward keeping it simple.

MR. POESHEL, in regard to innocent people, told the House State Affairs Standing Committee that he currently has a case in which a daughter is charged with a particular crime, but the family did not realize that she used the computer. He said he is working hard to return the computer to that family, because it is not their crime.

Number 2372

REPRESENTATIVE BERKOWITZ referred to Mr. Poeshel's previous comment regarding the offender who "pled down to drug charges," and stated that that is one of the reasons why the Michigan Statute that he mentioned in previous discussion has been "a little bit more successful." He explained, "They've been able to use the instrumentality of a crime language in order to retain the ability to forfeit, even if a case pleads to something somewhat different." He stated his understanding of Mr. Poeshel's concerns regarding simplicity, and he said he is looking forward to working with Representative McGuire to broaden [the language], yet maintain its simplicity.

Number 2325

JANET BROWN, Co-founder, Pissed Off Parents (POP), told the Committee that she lives in Juneau, Alaska, and is a mother whose life has been affected by a sexual predator. She continued to voice her written testimony [included in the committee packet], which read as follows:

My daughter was raped by her father - my husband. During the investigation there was a variety of electronic evidence: Video tapes of children while they slept, showing their private areas; video tapes of an unconscious victim being sexually assaulted and raped; a voyeur-type video taken in my home of a family member taking a shower; audio cassettes of a sexual assault; pictures of unknown females - no faces, just body parts; one scanned picture with enlarged body parts, reprinted over 160 times. This evidence was documented back 20 years.

The computer and video camera, along with a 35-millimeter camera played a big part in fulfilling this predator's fantasies. To return these items to him upon his release from jail would surely be a catastrophe. Being in denial that he has a problem, and with access to these items, will definitely

guarantee a new victim. To return any of these confiscated items needs to be denied.

MS. BROWN asked the committee, for the sake of her daughter and any future victims, to support HB 52; to give sexual predators one less avenue of access to children. She said, "Put the rights of our children first, in deed, as well as thought, making their lives safer and more secure."

Number 2195

REPRESENTATIVE GRUENBERG told Ms. Brown that he appreciates what it took for her to tell the committee what she did. He asked what would prevent [an offender] from buying more equipment.

MS. JONES replied, "Nothing."

REPRESENTATIVE GRUENBERG asked if there was anything in the law that would allow a judge to [tell that offender] that he/she could not own a certain type of equipment. He suggested that a judge should have that power in sentencing.

Number 2147

CHAIR WEYHRAUCH told Ms. Brown that "we all" share her concern and want to do everything possible to stop this kind of thing from ever happening to anybody else.

MS. JONES said, "Theresa gives the statistics. I give the emotion."

CHAIR WEYHRAUCH told Ms. Brown that "it rings through," and he thanked her for who she is and what it took [to share her testimony].

Number 2097

MATTHEW LEVEQUE, Lieutenant, Alaska State Troopers, testified on behalf of the troopers in support of [HB 52]. He told the committee that he is available for questions.

REPRESENTATIVE BERKOWITZ asked Mr. Leveque if he objected to broadening the forfeiture provisions to instrumentalities of the crime.

LIEUTENANT LEVEQUE responded that he is not an attorney and does not know what the implications of broadening it would be. He

said that the only concerns that [the Alaska State Troopers] would have would be in regard to storage.

Number 2056

REPRESENTATIVE SEATON asked if the "proceeds of the crime" is - or could be - covered in [the language of the bill].

LIEUTENANT LEVEQUE said he does not believe that proceeds are specifically covered in [HB 52]. In response to a follow-up question from Representative Seaton, he stated that he does not know if proceeds are currently forwarded, but he does not believe that that's the case.

Number 2011

REPRESENTATIVE GRUENBERG asked if it is known whether there is a general statute that allows the judge to order forfeiture of proceeds of any crime. He mentioned, for example, a criminal enterprise off of which money is made. He clarified that this isn't restitution.

CHAIR WEYHRAUCH mentioned the RICO [Racketeer Influenced and Corrupt Organizations] statute and said he is not sure if it would apply, or not.

Number 1951

KRIS MILLER, Lieutenant, Anchorage Police Department, testified on behalf of the department in support of [HB 52]. She noted that Detective [Richard] Rhea from the Anchorage Police Department's computer crimes unit is available to answer questions.

Number 1919

REPRESENTATIVE HOLM moved to report HB 52 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 52 was reported from the House State Affairs Standing Committee.

HB 64 - PURCHASE OF STRUCTURED SETTLEMENTS

Number 1879

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 64, "An Act relating to court approval of the purchase of structured settlements."

Number 1848

PAUL LaBOLLE, Staff to Representative Richard Foster, Alaska State Legislature, told the committee that HB 64 is a law dovetailing into federal legislation regarding the purchase of structured settlement. It would disallow the purchase of a structured settlement, "without it first being brought through a court for approval." He stated that, apparently, private firms have been buying structured settlements at discounted rates. He mentioned [the state's] Bush constituency and said, "People out in the village don't necessarily understand the discounts that they're being given and whether or not it is a good deal ..., nor what the tax implications of such a lump-sum transfer are." He said that [the proposed legislation] would "stop them from being unduly burdened on that."

CHAIR WEYHRAUCH, in response to a question from Representative Berkowitz, replied that there are witnesses waiting to testify.

Number 1750

REPRESENTATIVE HOLM asked Mr. LaBolle to describe specific settlements to which he is referring, that have caused "this act."

Number 1728

MR. LaBOLLE answered that there are several types of structured settlements, including workers' compensation. He said:

Mostly we're dealing with personal injuries, and the structured settlements are generally set up in cases where it is not felt that the recipient of the payment would be able to handle a large, lump-sum payment and, therefore, it is paid out in increments, so that they will continually have funds and not become a burden on the state.

Number 1698

REPRESENTATIVE HOLM asked if the issue being discussed had more to do with a court-designated schedule than a lottery, for example.

MR. LaBOLLE answered that, in the case of a lottery, "that's where it happens up front." The proposed legislation would not have any effect on how a person chooses to receive payments originally, "it's only after a structured settlement has been assigned and then an approach is made to purchase that structured settlement after it's already been determined," he explained.

Number 1644

REPRESENTATIVE HOLM asked, "What about the idea of a person being able to choose to make a mistake?"

MR. LaBOLLE responded that people are free to make decisions and mistakes; however, they might make bad decisions that effect dependents, for example.

REPRESENTATIVE HOLM stated that he was attempting to get a feeling of why this [legislation] is necessary and how its implications would be manifested.

MR. LaBOLLE responded as follows:

The bill is intended to stop the purchase of awarded settlements from being usurped of their intention. At first, the structured settlements are assigned in order to keep people in a constant stream, so if they can't work because they've been disabled, they have a constant income. And the design of this bill is to keep that from being purchased and then, basically, the money being blown, because the person doesn't know how to deal with a lump sum of cash. And then they're in the hands of the state again, on welfare, because they're unable to work, because of the personal injury that they've received.

Number 1495

REPRESENTATIVE SEATON asked if the proposed legislation would only [address] "court structured settlements," or could there be "fallout" into mortgages, for example, or other structured payment plans that might result in restrictions.

MR. LaBOLLE responded that [HB 64] should be written only in a way which would allow for court approval of court-issued settlements and should not apply to mortgages, for example.

REPRESENTATIVE SEATON asked where that language could be found in the proposed legislation.

Number 1440

CHAIR WEYHRAUCH noted Section 1, [paragraph] 1, [lines 10-12], which read as follows [original punctuation provided]:

(1) the structured settlement arose from an action filed in Alaska or that could have been filed in Alaska, or the payee of the structured settlement is domiciled in Alaska;

CHAIR WEYHRAUCH suggested that the language could be amended to add the word "court" before the word "action", to indicate court action, rather than an action filed in a recorder's office, for example.

MR. LaBOLLE stated that that is a good idea.

Number 1360

REPRESENTATIVE BERKOWITZ asked the following:

For purpose of clarification, if someone gets a settlement, where they're being paid \$10,000 a year for, say, the duration of their lifetime, what this is intended to prevent is some third party coming in and saying, "We're going to give you \$50,000 up front." And then they're going to take over receipt of those \$10,000 payments in perpetuity. Is that correct?

MR. LaBOLLE concurred.

REPRESENTATIVE BERKOWITZ asked if, frequently, parents might take a settlement on behalf of their children and have some kind of trust responsibility for their children, and sometimes there would be nothing to prevent the parent from selling the settlement, even though a child's interest is involved.

MR. LaBOLLE stated that if he understands correctly, "this settlement would stop that, because it requires the court consider the dependents' best interest."

REPRESENTATIVE BERKOWITZ noted that "this tactic" is frequently used by predatory outside interests to take money from Alaskans.

He stated that a structured settlement is something that the court and both parties have agreed to and there is a vested state interest in ensuring that that settlement is carried forward. He mentioned a predatory problem [in regard to ensuring that] a third party not subvert the will of the court. He asked Mr. LaBolle if that is also what he is intending to prevent.

MR. LaBOLLE said yes.

Number 1265

REPRESENTATIVE LYNN mentioned a reassignment approved by the court. He asked what the cost to the person seeking court approval would be.

MR. LaBOLLE answered that he is not sure, but that it would probably be deducted in the lump-sum payment.

REPRESENTATIVE LYNN asked how long it would take for "one of these people" to receive a hearing and a decision by the court.

MR. LaBOLLE replied that he did not know.

Number 1190

REPRESENTATIVE GRUENBERG said, "We're duplicating a statute that I think may be at the root of the problem." He indicated AS 09.17.040. He mentioned a tort reform which allows the court, at the request of the injured party, to order periodic payments - structured settlements that are paid out over time. Furthermore, there is a provision in that statute that says that once the court has ordered periodic payments, it can't change that order unless the party dies, and then it can only change it to provide for support [to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death]. He said a "Rule 60(b) motion," which allows a person to get relief from judgment, can't be filed. He mentioned the requirements to modify a court rule.

REPRESENTATIVE GRUENBERG offered the example of a person who is "down the road on periodic payments" and can't live with that anymore. He said that, normally, that person should have the right to seek relief from judgment, to go back to court and get an order for a lump-sum payment. He suggested a [solution] would be to amend the statute to allow a person to file a Rule 60(b) motion, so the court can allow a lump-sum payment, and

[that person] would not have to deal with "this industry." He asked Mr. LaBolle if he thinks that is an idea that should be considered.

Number 0992

MR. LaBOLLE responded, "It does seem that the court closing the door at the end of the decision does open the door for the sharks to come in."

REPRESENTATIVE GRUENBERG mentioned a jurisdiction and an amount limited to \$75,000. He said, "But in here, you only allow the superior court to entertain such a motion."

MR. LaBOLLE indicated that the reference to "superior court" is on page 3, line 19 of [HB 64].

Number 0935

REPRESENTATIVE GRUENBERG asked Mr. LaBolle if there was any reason why the language should not say "the court with competent jurisdiction", since some decisions may have been rendered by the district court. He asked Mr. LaBolle if he would object to that suggestion as an amendment.

MR. LaBOLLE said no.

REPRESENTATIVE GRUENBERG referred to page 2, beginning on line 26, which read as follows:

(5) the payee has received independent professional advice regarding the legal, tax, and financial implication of the transfer;

REPRESENTATIVE GRUENBERG asked how that would affect people living in the Bush who don't have easy access to a lawyer.

MR. LaBOLLE answered that those people would be able to speak with a lawyer via a telephone.

REPRESENTATIVE GRUENBERG indicated chapter 55 of a federal law [P.L. 107-134], which says that tax is imposed [on any person who acquires] structured settlement [payment rights in a structured settlement factoring transaction]. He said the tax is [equal] to 40 percent of the factoring discounts, and he added that it looks to him like a confiscatory tax, rather than a revenue-raising tax. He said he could see how this tax could

drive down the amount to the injured party even further. He stated that he was contemplating a state tax to further attempt to "ratchet down the industry."

REPRESENTATIVE GRUENBERG referred in part to AS 09.17.040, subsection (f), which read as follows:

Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death.

Number 0728

REPRESENTATIVE GRUENBERG stated, "It seems to me maybe we could cure this problem by simply changing that sentence to allow the judge to entertain a Rule 60(b) motion."

MR. LaBOLLE noted that a definition of "structured settlement" can be found on [page 5, lines 16-18, of HB 64], which reads as follows:

(9) "structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

Number 0600

WILLIAM AZAR, Attorney at Law, told the committee that he has been practicing personal injury law in the State of Alaska since May 1973, representing plaintiffs. He said his practice is composed of a large number of Native individuals. Over the years, he noted, he has settled many cases for large amounts of money, where structured settlements were employed as a vehicle to pay off the money to the individuals, with the idea that those individuals would obtain periodic, tax-free, payments and live the rest of their lives without worrying about the fact that they could no longer work.

MR. AZAR stated that even though court order would provide that the structured settlements could not be cashed in, he has seen them cashed in by a number of "fraudulent, artificial means," with the consent of the injured party who wants a lump-sum

settlement, rather than the periodic payments he/she originally agreed to.

Number 0492

MR. AZAR stated his understanding that [HB 64] would not prohibit "these assignments," but is a consumer bill that requires disclosure through the court system. He opined that that is a good thing; it requires people who want to pay a lump sum for structured settlement to get court approval and prove that they have shown to the injured party exactly how much it will cost him/her. Mr. Azar said, where there have been large settlements and structured settlements employed, most of his Native clients have cashed them in. He said it's a pity, because the money is dissipated quickly, and they're worse off then if they had just been given one large lump sum in the beginning.

MR. AZAR stated that he is in favor of [HB 64], just as he was in favor of [its precursor] two years ago. He said, "It was so important that the U.S. Congress passed legislation that penalized these people when they don't get a state court to approve the cashing in of the settlement." He urged the House State Affairs Standing Committee to pass HB 64. He said he thinks the bill is in the best interest of, not only the Native people, but every citizen of the State of Alaska.

Number 0273

REPRESENTATIVE GRUENBERG asked Mr. Azar if he concurred with his previously suggested amendment for AS 09.17.040, subsection (f), regarding a Rule 60(b) motion. Furthermore, he told Mr. Azar that he would welcome a response in writing, rather than putting him on the spot right then.

Number 0203

MR. AZAR read Sec. 09.17.040, subsection (d), which reads as follows:

(d) In an action to recover damages, the court shall, at the request of an injured party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment.

MR. AZAR said, "Sometimes they're settled without a court case, you see, so that doesn't apply there." He suggested considering an amendment to say "whether there's a case filed, or not". He agreed to clarify his comments in writing. He stated that he thinks [HB 64] ought to pass, regardless of AS 09.17.040.

REPRESENTATIVE GRUENBERG clarified that he had not considered it an alternative issue, but "something we could do as part of the bill, maybe."

Number 0045

RANDY DYER, Executive Vice President, National Structured Settlement Trade Association (NSSTA), Washington D.C., reminded the committee that structured settlements have served Alaskans for more than two decades.

TAPE 03-07, SIDE A

Number 0010

MR. DYER told the committee that when the legislature last considered this legislation in Alaska, 18 states had already passed similar legislation; today that number is 35 states. He said that the factoring companies have, for the most part, "found religion as a result of the federal bill and the companion bills in the state." A new industry has emerged to take their place, and it supports the legislation now before the committee. He listed the following supporters of this legislation nationally: members of both the plaintiff and defense bar, members of the disability community, members of the consumer community, judges, and mediators. He noted that [HB 64] stands as a companion to the federal legislation.

MR. DYER discussed the purpose of the federal legislation. He said it establishes a 40 percent excise tax on the factoring companies. The excise tax is designed to be the difference between the amount given to the victim of the factoring transaction and the total undiscounted payments given in exchange for that, he said. Furthermore, the 40 percent excise tax can't, in effect, be deducted from the amount given to the person, because as soon as the person gets less, the tax goes up, which creates a sort of tax spiral. The tax was never intended to be levied on anyone, he said; it is so confiscatory that it is intended only to control behavior. He explained that the behavior, in this case, is to drive the factoring transaction into the oversight of a court, which is what [HB 64] would do. With the court order, as described in [HB 64], the

tax would be waived and the individual could receive a fair deal, he said.

MR. DYER said that in the past three years since legislation has been enacted around the country, factoring companies have created good deals for people. He added that those companies are still not quite as good as normal lending practices would be, but "they are much better deals for people." He pointed out that the factoring companies have come to realize that there's no point in bringing a bad deal before a judge, because "they'll just get it thrown out." He stated that the legislation has served its purpose and he hopes the committee will pass [HB 64].

MR. DYER described a periodic payment statute that's "on the books" in the State of Alaska as "a little bit different than this." He defined a periodic payment as one in which the tortfeasor can simply pay their judgment over time. A structured settlement is a similar agreement, but is always achieved as an agreement between the parties, pretrial; no court can force anyone to take a structured settlement. He continued as follows:

To make a change which would allow the individual to undo a periodic payment arrangement is one thing. To do that with a structured settlement is another. And the difference is that under a structured settlement, a funding vehicle would have been purchased. And, under federal tax law, the funding vehicle has to be fixed and determinable. That is to say the amount and timing of the payments have to be determined in advance and cannot be changed.

To make a change to bring the periodic payment legislation under Rule 60(b) may trigger an unwanted tax result. So, I would suggest that, if the committee decides to go that way, that they do so very carefully. And we'd be happy to help you understand the elements of that change.

Number 0500

REPRESENTATIVE GRUENBERG suggested that a subcommittee might be formed to deal with [any technical changes regarding Rule 60(b)]. He stated that he would like to have Mr. Dyer's input.

CHAIR WEYHRAUCH told Representative Gruenberg that if he would work with Mr. LaBolle, Mr. Dyer, and Mr. Azar on [the issue], the committee would be consider it [further].

Number 0550

JOHN GEORGE, representing the American Council of Life Insurers (ACLI) - the providers of annuities that fund structured settlements - stated that ACLI supports [HB 64] as a good disclosure for recipients of structured settlements. In response to a request by Chair Weyhrauch, he said he would be happy to work with Representative Gruenberg and the sponsor on any committee substitutes that may come before the committee.

[HB 64 was heard and held.]

ADJOURNMENT

Number 0610

The House State Affairs Standing Committee took an at-ease at 9:48 a.m. in order to prepare for the overview. [For the overview by the Department of Natural Resources, see the 9:50 a.m. minutes for this date.]