

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

May 6, 2003

3:02 p.m.

MEMBERS PRESENT

Representative Jim Holm, Co-Chair
Representative Beverly Masek, Co-Chair
Representative Hugh Fate
Representative Vic Kohring
Representative Dan Ogg
Representative Albert Kookesh

MEMBERS ABSENT

Representative Mary Kapsner

COMMITTEE CALENDAR

HOUSE BILL NO. 230

"An Act relating to political signs on private property."

- MOVED CSHB 230(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 65

"An Act relating to forfeiture of a motor vehicle, airplane, or vessel for illegal transportation of alcohol."

- HEARD AND HELD

SENATE BILL NO. 53

"An Act relating to disposition of a traffic offense involving the death of a person; providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

- MOVED SB 53 OUT OF COMMITTEE

HOUSE BILL NO. 217

"An Act relating to driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 301

"An Act establishing the Knik Arm Bridge and Toll Authority and relating to that authority; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 230

SHORT TITLE: POLITICAL SIGNS ON PRIVATE PROPERTY

SPONSOR(S): REPRESENTATIVE(S) HOLM

Jrn-Date	Jrn-Page		Action
03/31/03	0713	(H)	READ THE FIRST TIME - REFERRALS
03/31/03	0713	(H)	TRA, STA
04/29/03		(H)	TRA AT 1:30 PM CAPITOL 17
04/29/03		(H)	Heard & Held MINUTE(TRA)
05/06/03		(H)	STA AT 8:00 AM CAPITOL 102
05/06/03		(H)	Scheduled But Not Heard -- Recessed to 5:30 PM --
05/06/03		(H)	TRA AT 1:30 PM CAPITOL 17

BILL: HB 65

SHORT TITLE: IMPORTING ALCOHOL TO DRY VILLAGE

SPONSOR(S): REPRESENTATIVE(S) LYNN

Jrn-Date	Jrn-Page		Action
01/27/03	0075	(H)	READ THE FIRST TIME - REFERRALS
01/27/03	0075	(H)	TRA, JUD
01/27/03	0075	(H)	REFERRED TO TRANSPORTATION
01/29/03	0089	(H)	COSPONSOR(S): MCGUIRE
05/01/03		(H)	TRA AT 1:30 PM CAPITOL 17
05/01/03		(H)	-- Meeting Canceled --
05/06/03		(H)	TRA AT 1:30 PM CAPITOL 17

BILL: SB 53

SHORT TITLE: REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

SPONSOR(S): SENATOR(S) OGAN

Jrn-Date	Jrn-Page		Action
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01/31/03	0090	(S)	READ THE FIRST TIME - REFERRALS
01/31/03	0090	(S)	TRA, JUD
02/18/03		(S)	TRA AT 1:30 PM BUTROVICH 205
02/18/03		(S)	Moved Out of Committee -- Time Returned to 1:30 pm --
02/18/03		(S)	MINUTE(TRA)
02/19/03	0220	(S)	TRA RPT 2DP 3NR
02/19/03	0220	(S)	DP: COWDERY, LINCOLN;
02/19/03	0220	(S)	NR: WAGONER, THERRIAULT, OLSON
02/19/03	0220	(S)	FN1: (ADM)
02/19/03	0220	(S)	FN2: INDETERMINATE(ADM)
02/19/03	0220	(S)	FN3: ZERO(LAW)
02/19/03	0220	(S)	FIN REFERRAL ADDED AFTER JUD
02/19/03	0228	(S)	COSPONSOR(S): DYSON
04/02/03		(S)	JUD AT 1:30 PM BELTZ 211
04/02/03		(S)	Scheduled But Not Heard
04/07/03		(S)	JUD AT 1:30 PM BELTZ 211
04/07/03		(S)	Heard & Held MINUTE(JUD)
04/09/03		(S)	JUD AT 1:30 PM BELTZ 211
04/09/03		(S)	Moved Out of Committee MINUTE(JUD)
04/10/03	0778	(S)	JUD RPT 4DP 1NR
04/10/03	0778	(S)	DP: SEEKINS, OGAN, FRENCH, ELLIS;
04/10/03	0778	(S)	NR: THERRIAULT
04/10/03	0778	(S)	FN1: (ADM)
04/10/03	0778	(S)	FN2: INDETERMINATE(ADM)
04/10/03	0778	(S)	FN3: ZERO(LAW)
04/25/03	0965	(S)	FIN RPT 2DP 5NR
04/25/03	0965	(S)	DP: GREEN, WILKEN; NR: TAYLOR, HOFFMAN, OLSON, BUNDE, STEVENS B
04/25/03	0965	(S)	FN1: (ADM)
04/25/03	0965	(S)	FN2: INDETERMINATE(ADM)
04/25/03	0965	(S)	FN3: ZERO(LAW)
04/25/03		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/25/03		(S)	Moved Out of Committee
04/25/03		(S)	MINUTE(FIN)
04/30/03	1049	(S)	RULES TO CALENDAR 4/30/2003
04/30/03	1049	(S)	READ THE SECOND TIME
04/30/03	1049	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/30/03	1049	(S)	READ THE THIRD TIME SB 53

04/30/03	1049	(S)	PASSED Y19 N- E1
04/30/03	1050	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/30/03	1050	(S)	COURT RULE(S) SAME AS PASSAGE
04/30/03	1059	(S)	TRANSMITTED TO (H)
04/30/03	1059	(S)	VERSION: SB 53
05/01/03	1228	(H)	READ THE FIRST TIME - REFERRALS
05/01/03	1228	(H)	TRA, JUD
05/06/03		(H)	TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

ALLEN COMBS

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of himself, offering suggestions to HB 230.

ED EARNHART

Anchorage, Alaska

POSITION STATEMENT: Testified on his own behalf, expressing concerns related to HB 230.

ANDREE McLEOD

Anchorage, Alaska

POSITION STATEMENT: Testified on her own behalf, requesting the inclusion of safeguards and protection regarding HB 230.

REPRESENTATIVE BOB LYNN

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented the sponsor statement for HB 65.

LINDA WILSON, Deputy Director

Public Defender Agency

Department of Administration

Anchorage, Alaska

POSITION STATEMENT: Testified on HB 65, noting support for the CS; testified on SB 53, offering that there would be minimal fiscal impact on the agency.

MATTHEW C. LEVEQUE, Lieutenant

Alaska State Troopers

Department of Public Safety (DPS)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 65.

MATT FELIX

National Council on Alcohol and Drug Dependence
Juneau, Alaska

POSITION STATEMENT: Testified in strong support of HB 65.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section - Juneau
Criminal Division
Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 65 and answered questions.

SENATOR SCOTT OGAN

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of SB 53.

ACTION NARRATIVE

TAPE 03-20, SIDE A

Number 0001

CO-CHAIR BEVERLY MASEK called the House Transportation Standing Committee meeting to order at 3:02 p.m. Representatives Masek, Holm, Fate, Kohring, and Ogg were present at the call to order. Representative Kookesh arrived as the meeting was in progress.

HB 230 - POLITICAL SIGNS ON PRIVATE PROPERTY

CO-CHAIR MASEK announced that the first order of business would be HOUSE BILL NO. 230, "An Act relating to political signs on private property."

Number 0049

ALLEN COMBS, representing himself, said he would reiterate what he had said in previous testimony [meeting of 4/29/03] and would add several additional points. He alluded to signs' being up only 60 days before an election and no more than 10 days after an election is completed. He also mentioned a fine of \$100 a day, per sign, if signs were not taken down. He said he would like to see the "setback provision" the same as it is in Anchorage so undue problems are not caused to people who are driving.

Number 0148

MR. COMBS suggested a "one time only at one location" maximum of 32 square feet and also that signs be placed so there is 0.5 mile between the signs on private property only. In reference to permanency, he said that a permanent base on a political sign has no bearing one way or the other. He gave the example of one sign in which four-by-fours were provided by the owner in his front yard; a sign was screwed onto it and when they were done, they took the sign off. He clarified that he has been involved with mayoral campaigns for the past two or three elections and has put up and taken down signs. He told the committee that there are problematic conflicts between borough, state, and federal regulations regarding signage.

Number 0238

ED EARNHART, representing himself, stated that he agreed with the previous testimony. He said the situation has been especially bad during the past few years due to a mistake made by the legislature. He said he presumed the state would not be involved with issuing permits because that would be left up to the borough or the municipalities, since they handle matters of property. He said sometimes people don't seem to understand that private property can't be regulated and therefore the sign (indisc.) and that the changes seem to fit pretty well with what the municipality had for roads (indisc.).

CO-CHAIR MASEK acknowledged that Mr. Earnhart's testimony from a previous meeting [4/29/03] was on record.

Number 0414

ANDREE McLEOD, representing herself, noted that she had submitted documents to committee members, and requested that alongside HB 230, consideration be given to safeguarding protection and enforcement so that violations of political signs on private property would be addressed. She told the committee that she had submitted a police report and also that she had been a candidate for office and wanted to show, by example, how frustrating it is to go through that process. She said she hoped the committee understood the "blood sweat and tears" involved in campaigning and hoped that safeguards, protections, and provisions would be inserted into the bill to finally put some teeth into it.

CO-CHAIR MASEK, upon determining that no one else wished to testify, closed public testimony on HB 230.

Number 0543

CO-CHAIR HOLM moved to adopt the proposed committee substitute (CS) for HB 230 [Version 23-LS0780\I, Utermohle, 5/1/03] for the purposes of discussion. There being no objection, it was so ordered and Version I was before the committee.

Number 0586

REPRESENTATIVE FATE offered Amendment 1, labeled 23-LS0780\I.3, Utermohle, 5/1/03, which read:

Page 1, line 3, following "**Section 1.**":

Insert new material to read:

"The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS. The Alaska State Legislature finds that

(1) the right to advocate for or against those individuals who would occupy public office and issues of public interest is an inherent right that has been repeatedly affirmed by the courts; and

(2) the right to advocate for or against those individuals who would occupy public office and issues of public interest must be subject to only the minimum of restrictions necessary to address a compelling public or government interest.

*** Sec. 2."**

REPRESENTATIVE FATE explained that the amendment involves the inherent right to place a sign, as a political advocacy right, stating that this right is one of the most sacred rights in the United States of America, and allows for putting up political signs if those signs conform to federal and state law.

Number 0688

CO-CHAIR MASEK, hearing no objection, stated that Amendment 1 was adopted.

Number 0703

REPRESENTATIVE FATE offered Amendment 2, labeled 23-LS0780\I.2, Utermohle, 4/30,03, which read:

Page 2, line 10, following "**hazard**":

Insert "i";

(D) the signs are consistent with regulations adopted by the department regarding the time and manner for removal of signs that do not have current relevance; in this subparagraph,

(i) "current relevance" means the subject matter of a sign is a matter of ongoing public consideration by the public or the date of decision on the subject matter of the sign has not passed;

(ii) "date of decision" means the date on which a decision on the subject matter of a sign is no longer subject to influence by public opinion, such as the date of an election for public office or on a ballot measure, action by the governor on a bill passed by the legislature, formal settlement or formal conclusion of an armed conflict, conclusion of contract negotiations, or similar matters for which a date of decision may be ascertained"

Page 2, line 11:

Delete "(D)"

Insert "(E)"

REPRESENTATIVE FATE pointed out that as a previous witness had explained, there are time considerations regarding when signs should be removed and when they're allowed to go up. The language does this without setting deadline times or "time-certain" and will therefore limit the amount of time that signage can be up.

Number 0761

CO-CHAIR MASEK, hearing no objection, stated that Amendment 2 was adopted.

Number 0790

REPRESENTATIVE OGG offered Amendment 3, which read [original punctuation provided but some formatting changed]:

P.2,LINE 7,INSERT:

(A)individual **or conjoined** signs do not exceed 32 square feet **total per side;**

REPRESENTATIVE OGG explained that during testimony, concern was expressed that potentially four-by-eight signs - or whatever size - could be stuck or stapled together, with the end result

being similar to a billboard. Amendment 3 speaks to avoiding this adjoining of signs. It allows for political freedom but at the same time offers protection against the expressed concern regarding billboards.

CO-CHAIR MASEK clarified that adopting Amendment 3 would not interfere with complying with the recently adopted Amendments 1 and 2.

CO-CHAIR MASEK, hearing no objection, announced that Amendment 3 was adopted.

Number 0914

REPRESENTATIVE FATE offered Conceptual Amendment 4, on page 2, under the new language [line 8, subparagraph (B), "signs are not on a permanent base;"], suggesting the striking of "not on a permanent base" and replacing it with "temporary". He referred to previous testimony indicating that sometimes signage is placed temporarily on permanent bases.

REPRESENTATIVE FATE said another part of Conceptual Amendment 4 would add a new subparagraph (E) [page 2] with regard to obtaining approval from the landowner or from the occupant of that private property so that a sign could be placed there.

REPRESENTATIVE OGG agreed that this was a good point, but said it would involve enforcement; he suggested in such situations, trespassing laws could take effect if the property owner was notified of trespassing.

REPRESENTATIVE FATE said he felt this answered his question and limited Conceptual Amendment 4 to page 2, line 8, changing the language to "signs are temporary".

Number 1013

CO-CHAIR MASEK, hearing no objection, announced that Conceptual Amendment 4 was adopted.

Number 1050

CO-CHAIR HOLM moved to report CSHB 230 [Version 23-LS0780\I, Utermohle, 4/29/03], as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 230(TRA) was reported from the House Transportation Standing Committee.

HB 65 - IMPORTING ALCOHOL TO DRY VILLAGE

CO-CHAIR MASEK announced that the next order of business would be HOUSE BILL NO. 65, "An Act relating to forfeiture of a motor vehicle, airplane, or vessel for illegal transportation of alcohol."

Number 1134

REPRESENTATIVE FATE moved to adopt the proposed committee substitute (CS) [Version H, labeled 23-LS0159\H, Ford, 4/23/03] as a work draft. There being no objection, Version H was before the committee.

Number 1165

REPRESENTATIVE BOB LYNN, Alaska State Legislature, sponsor of HB 65, provided the following testimony:

Our Alaska villages have a right to determine if they are dry or if they are wet in so far as implication of alcoholic beverages are concerned. For those villages that have opted to be dry, bootleg implication of alcoholic beverages in the dry villages has been a continuing problem for a number of years. This situation flouts the law and denigrates the authority of the village officials. This legislation mandates, after due process of law, vehicle confiscation of vehicle used in bootleg operations.

And I might say this bill has the direct interest of Governor Murkowski. You may remember during his state of the state address, way back when, to our joint session, that this was a key part of his message. It's also a part of the governor's crime-fighting package that he announced at a press conference, at which I was honored to be a part. I believe that we need to support our governor; most importantly, though, I think we need to support the laws of our villages and put teeth into those villages' laws, so there will be respect for the law, and I believe that at least some of the problems related to alcohol may be addressed. I also have a letter of support from the Alaska Association of Police Chiefs, signed by Chief Thomas Clemons, which I'll pass around to the committee. We have some members of the administration

here today who will testify in support of this bill and will hopefully answer some of the more technical aspects of the bill.

Number 1277

LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration, testified that the proposed CS would probably have no significant change on the fiscal note. She said that she didn't have a position one way or the other on HB 65, although she believes that it provides consideration for the due process of law for people with snow machines, vessels, or boats regarding mandatory forfeiture. She said the agency represents indigent clients charged with bootlegging offenses and that representing someone who owns an airplane would be unlikely. The number of cases that the agency would carry under this bill would probably be fairly limited, considering that clients generally don't have many assets. Ms. Wilson added that the proposed CS was an improvement upon HB 65.

Number 1350

MATTHEW C. LEVEQUE, Lieutenant, Alaska State Troopers, Department of Public Safety (DPS), testified that DPS supports HB 65 and offered to answer questions.

Number 1378

MATT FELIX, National Council on Alcohol and Drug Dependence, testified that the council, having been in Juneau since 1965, was one of the oldest nonprofit corporations in Juneau and was a prevention agency. He said that when he had previously been director of the state's Alcohol and Drug Abuse Division in the 1980s, he had worked with the legislature to pass local-option alternatives at the request of a number of incorporated and non-incorporated villages. He stated that the legislation allowing for villages to vote to stay dry or wet was requested by rural Alaskans. He said the desire was that this type of legislation would be enforceable and that its creation would not contribute to there being a profitable situation for bootleggers. Mr. Felix strongly urged the committee to pass HB 65 and mentioned that two major research projects on the effects of going dry in rural Alaska have been conducted and that those studies had been very positive.

CO-CHAIR MASEK ascertained that there was no further public testimony and then closed public testimony.

REPRESENTATIVE FATE asked whether a description of "illegal transportation" existed in regulation or in law.

Number 1520

ANNE CARPENETI, Assistant Attorney General, Legal Services Section - Juneau, Criminal Division, Department of Law (DOL), testified that the division supports HB 65 and answered the previous question by suggesting that it would be interpreted as transportation and violation of the local option law or another provision in Title 4. She then said that "illegal transportation" would be transportation and violation of the local-option law, or transportation of alcohol for sale without a license, under Title 4. She commented that she was trying to imagine all of the violations under law; she said the main one would be transportation in violation of Title 4 [AS 04.11.499], the local-option law, which this bill mainly addresses.

REPRESENTATIVE FATE referred to an instance he'd read about in which an airplane was carrying [a large] amount of alcohol to a dry area in rural Alaska. There was an attempt to forfeit the aircraft due to the claim of bootlegging, and this coincided with the claim that the alcohol was the man's personal stock of liquor. Representative Fate asked, "How is illegal transportation termed, outside of going to an expensive litigation process?"

MS. CARPENETI replied that in this particular case, a factual analysis would be necessary to determine where he was going, what the local options were in that particular community, and if he was prosecuted for violation of the local options - which would require proof beyond a reasonable doubt of having violated the local-option law - and that then the state could ask the court for forfeiture.

REPRESENTATIVE KOOKESH asked for clarification of the phrase "where he was going," explaining that if one was in Fairbanks, planning to go to a dry region, "where he was going doesn't matter until he gets there."

MS. CARPENETI responded, "If he was on his way, and stopped in a dry village that had a local option, ... if he were parked in Fairbanks, I don't think there would be a violation." She thanked Representative Kookesh for suggesting that clarification.

REPRESENTATIVE OGG asked what would happen in situations in which commercial planes flying to both wet and dry areas might stop in those areas and stay overnight, resulting in there being something on the plane that would violate the local dry law.

MS. CARPENETI replied that in a circumstance in which a commercial airplane was traveling from place to place, carrying cargo, nothing would happen to the person in charge of the aircraft. She said that depending on the local option, the person sending it would be in violation of the law, assuming that it got to a village that had adopted a local option against the sale or possession, but it wouldn't be a violation of the law if it was contained in the airplane as unloaded cargo.

REPRESENTATIVE OGG asked about a passenger on that plane who would take luggage into the area.

MS. CARPENETI said this would depend upon the facts; to prosecute a person for violation of a local option, there would have to be some culpable mental state of the person. If something happened just "by accident" because of weather considerations, she didn't think prosecution would be brought.

REPRESENTATIVE OGG asked who would be called upon to prove the [culpable] mental state.

MS. CARPENETI answered that the state would have to first prove that violation of the law was beyond a reasonable doubt and then, in terms of the forfeiture, it would be by preponderance of the evidence. Ms. Carpeneti said she should double check.

REPRESENTATIVE OGG said that in some instances, the party in question would be the owner.

Number 1760

MS. CARPENETI asked if he was referring to subsections (e) and (f), and if so, explained that those subsections modify the remission provisions in the forfeiture law for violations of Title 4, and that a remission is when a co-owner of a car or vehicle, who hasn't been involved in the illegal transportation of alcohol, goes to the court and says, "Judge, I didn't have anything to do with this violation. It's my car too. I want it back so I can use it. It's not fair for me to lose my interest in this car." She indicated this toughening-up of the remission provisions allows forfeiture in cases when a co-owner may know that his/her co-owner is violating the law and knows that the

vehicle is being used for illegal acts and doesn't stop it. Under the forfeiture provision, that person would have to go to the judge and say, "Not only did I not know about this particular violation, but I had no reason to know about it and I had no reason to know that this person had been bootlegging before."

Number 1808

CO-CHAIR HOLM referred to forfeiture, saying that he had a problem with the word "reputation" [in subsections (e) and (f)] and asked, "At what point in time does the forfeiture occur, and then at what point in time does the remission of that forfeiture occur?" He said that when items are being held for court purposes, many times those items are held for years as part of the court's process and need for evidence, before those items are returned. He expressed his concern for "evidentiary holding," whether it was a car or a snow machine, and asked, "If we're going to allow somebody to have the remission of that forfeiture, what kind of timing do we have here? Do we have whatever the court deems is a reasonable time, or is there some mechanism whereby, if it's shown that a person doesn't know, then it's an immediate remission of that forfeiture?"

MS. CARPENETI responded that HB 65 doesn't change the provisions of the law set in statute regarding the procedure for forfeiture of a car, boat, or airplane. She explained that the vessel would be seized and statute requires that notice be given to owners or others who have potential interest in that piece of property, including a bank with a loan on it, or the spouse of the person who has been charged or convicted. At that point, a hearing is set up on the forfeiture and the person who claims an interest has a chance to give his/her side of the story. She said that banks or spouses may not have any reason to know of certain situations.

CO-CHAIR HOLM asked again about the timeframes involved.

MS. CARPENETI replied that it's all set out in AS 04.16.220(e).

REPRESENTATIVE FATE said, "Once again, there's no aviation provisions in the event that local option areas overlap." He said that in the worst-case scenario, if there was a local option that was dry and a local option that was wet, the most restrictive would dominate, meaning that in the overlapping areas, the areas wanting to be wet would then have to go dry. He asked if there was any mediation involved so that the people

who voted for that area to be wet would not have that right be denied.

MS. CARPENETI said this was an interesting question and that the reason this was proposed was because when local options are overlapping, statutes currently provide that the boundaries go back to the actual village. She said the division just learned this because somebody was violating both local options, and the law indicates that with overlapping options, the five-mile boundary no longer applies and "you go back to the actual village." She said the division was trying to address that situation, and when this amendment was originally suggested, the suggestion was for the least restrictive option to apply. She stated that the sponsor preferred the application of the more restrictive option.

REPRESENTATIVE FATE stated that he had a problem with statutes' taking away something that people had voted into existence unless it was at least mediated. He said he also had a problem with the word "reputation" because a reputation is sometimes earned but just as often is not, and that the use of the word in law may undeservedly "violate [an individual's] record".

Number 2127

MS. CARPENETI responded that the bill does provide for some sort of forum to arbitrate the boundaries. She said that in current law, the Alcoholic Beverage Control Board ("ABC Board") has the authority to alter boundaries under some circumstances and that this allows for the ABC Board to adjust the boundaries for these overlapping conditions. She said that "reputation" applies to remission, not to whether a person is guilty of violating the title. She said she believed the purpose was "to not allow somebody who's a co-owner of a vehicle to close their eyes and say, 'Gee whiz, I want my car back because I didn't know that he was going to go out that night and bootleg all this alcohol in violation of the local option.'"

MS. CARPENETI continued that it only refers to a co-owner getting his/her interest back, and that it makes it more difficult for that owner to get his/her interest back regarding a vehicle that has been used to violate the local option, because the co-owner has to show that he/she was truly innocent by indicating that it was unknown that anything was going to happen on an actual occasion and that there was no reason to know that this other person had violated the law in the past or was a known bootlegger.

REPRESENTATIVE FATE asked if the ABC Board's authority was exercised after the fact and not before.

MS. CARPENETI asked, "After the fact of what?"

REPRESENTATIVE FATE explained that if this law were to pass, the gray area, the overlapping options, would precipitate the ABC Board's redoing of the boundaries. The violation would have already taken place because of the most restrictive option, before the ABC Board reforms the boundaries. He said that if every time there's an overlap, the ABC Board redoes the boundary so that the problem is avoided, then Ms. Carpeneti would be correct. But ordinarily, the overlapping boundaries would precipitate a violation because of the most restrictive option, and at that point, the ABC Board redoes the boundary - so it is after the fact of a violation that has already occurred.

MS. CARPENETI said that in this instance, this had not been the DOL's suggestion, so she directed concern for "most restrictive" rather than "least restrictive" to the sponsor of HB 65.

Number 2252

CO-CHAIR MASEK indicated that due to remaining questions on HB 65, her recommendation was to hold the bill over.

REPRESENTATIVE LYNN said valid concerns had been brought up and he would continue to work with the DOL to resolve those issues.

REPRESENTATIVE KOOKESH suggested that the sponsor reconsider the use of the word "may" on page 3, line 24, and the word "village" on line 27. He referred to a dry community in his district with a population of 2,500 people, saying that the interpretation of a village should be something different than having a population of 1,000 people.

REPRESENTATIVE LYNN asked where a definition of "village" could be found in statute.

MS. CARPENETI said she could access that information.

REPRESENTATIVE OGG commented that the law presently offers the option, but with [HB 65] forfeiture would become mandatory. He wondered whether having the option had decreased the amount of bootlegging and if changing to mandatory would likely effect a decrease.

TAPE 03-20, SIDE B

Number 2375

REPRESENTATIVE LYNN said he didn't know the answer, but assumed that if the village had voted to go dry, there must have been some amount of reduction involved. He said he assumed that having a law by which a vehicle may be confiscated would deter even more people. He commented that there are tremendous alcohol problems in the villages and this includes some of the military population who reside in the villages.

REPRESENTATIVE OGG said that if a village goes dry, there is a definite impact and "that's when bootlegging starts to become something." He asked whether having the more permissive option of confiscating a vehicle had caused a decrease in bootlegging.

REPRESENTATIVE LYNN responded, "I don't know," but said that in cases like this, it's better to tighten the law because of the problems "out there."

REPRESENTATIVE OGG questioned the value if it doesn't act as a deterrent.

REPRESENTATIVE LYNN replied that when there are laws against anything, there is a consideration of two points, the punitive action or the action to deter. He suggested that this argument could be applied to the death penalty as well as being applied, to a lesser degree, in this case.

CO-CHAIR MASEK announced that HB 65 would be held over in order to address questions that had been brought up by members.

SB 53 - REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

CO-CHAIR MASEK announced that the final order of business would be SENATE BILL NO. 53, "An Act relating to disposition of a traffic offense involving the death of a person; providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

Number 2255

SENATOR SCOTT OGAN, Alaska State Legislature, sponsor of SB 53, testified that he introduced similar legislation approximately eight years ago. He reported that it was carried for several sessions and had passed in the [House] and made it through the committee process in the [Senate] during the last session, but did not make it through at the end of session.

SENATOR OGAN told the committee of some friends of his, also known by people in the room, who had lost their two oldest boys in a car wreck eight years ago. The person who had caused that car wreck was basically charged with a traffic violation, also had six points taken off of his/her license, and [had to do] some [community] service. The family was told that there was no culpable mental state, and for someone to be charged with a felony or with manslaughter, there has to be a culpable mental state. He said that when running a red light, or when driving irresponsibly and violating traffic law, one doesn't [necessarily have a] culpable mental state, so prosecution can't take place unless there is something egregious involved like alcohol or reckless driving; there is no way to prosecute such an individual for anything other than a traffic violation.

SENATOR OGAN testified that after the bill was introduced, he heard from a woman who had lost her daughter in a car wreck and who had been unable to track down [the driver]; it was found that the woman [driving the car] was cited for running a red light and had to pay a \$50 fine. Senator Ogan said he has been "pushing this issue" for a number of years because the situation seemed so unjust. Then-Governor Knowles pushed this last year and legislation almost made it through the process. Senator Ogan explained that in Section 1 of SB 53, court rules are amended so as to require a trial to honor due process, if someone is going to lose his/her license. Section 2 addresses revocation of the driver's license, although it's not a mandatory revocation. He pointed out that objection in the past has pertained to a situation such as taking a license away from a parent who is driving a vehicle, who has children in the car, and who hits a patch of ice and [has an accident] that results in the death of his/her child. He said the desire is to grant the courts the ability to exercise discretion to make the judgment call regarding who needs to lose his/her license and who doesn't.

SENATOR OGAN outlined that the person has to be operating the motor vehicle that was involved in the accident, the accident has to cause a death of another person, and there has to be violation of a traffic law. There is also latitude regarding a

limited license for such things as work or for taking care of sick family members. Victims' rights are protected by allowing a representative of the family to testify at the hearing when there is a request for revoking the license or for issuing a limited license.

Number 2093

REPRESENTATIVE FATE said he likes the bill but wishes that it were expanded to include not only death, but also permanent disability because he knows of cases, close to him, where there was a third party who caused an accident that resulted in a \$10 fine for not having taillights. He said in this example, this was a terrible accident wherein people were seriously injured, and that he would like "permanent impairment" to be included in the bill as well.

SENATOR OGAN replied that this sentiment was brought up in the other body and he fully agrees; however, after eight years of addressing this issue, he would rather address one thing at a time. He said he would be happy to introduce such a bill regarding disability, but since this has been a long and arduous process, he would rather keep it narrow at this point. He commented about the woman who had lost a daughter to a driver who had been fined \$50 for running a red light, and noted that this woman had another daughter who was permanently disabled.

REPRESENTATIVE KOHRING commended Senator Ogan for the legislation, commenting that he was at the service in March 1994 after those two young men, whom he knew very well, had died; he said he felt motivated to pass SB 53, hoping that it would help with other situations.

CO-CHAIR HOLM mentioned that this bill has already been extensively worked through, both in this body and the other body, and that a lot of people's concerns have already been addressed.

Number 1978

LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration, testified that with the enactment of SB 53, the agency would be representing people who would not otherwise be entitled to [legal] counsel. She said that when there is the possibility of losing one's driver's license, one is entitled to a trial. However, she predicted that there would be so few of these cases - hopefully, none - that the fiscal

impact on the agency would be very slight. She said from what she had heard from the [Division of Motor Vehicles], there should be less than 10, if that many, so the effect would be minimal. She said she was available for questions.

CO-CHAIR MASEK, ascertaining that there was no further testimony, closed public testimony on SB 53.

Number 1898

REPRESENTATIVE KOHRING moved to report SB 53 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 53 was reported from the House Transportation Standing Committee.

ADJOURNMENT

The House Transportation Standing Committee meeting was recessed at 4:10 p.m. to a call of the chair. [The meeting never was reconvened.]