

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 19, 2003

1:32 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

Senator Scott Ogan, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 9

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 45

"An Act relating to the Legislative Budget and Audit Committee."

MOVED CSSB 45(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 3

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

HEARD AND HELD

SENATE BILL NO. 2

"An Act relating to recovery of civil damages from the parents or legal guardian of a minor; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

SB 9 - See State Affairs minutes dated 2/11/03

SB 45 - See Judiciary minutes dated 3/12/03

SB 2 - See HESS minutes dated 2/24/03 and Judiciary minutes dated 3/17/03

SJR 3 - No previous action to record.

WITNESS REGISTER

Mr. Tim Biggane
Fairbanks North Star Borough
PO Box 71267
Fairbanks, Alaska 99707
POSITION STATEMENT: Supports SB 9

Sgt. Ronald Wall
Alaska State Troopers
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Supports SB 9

Elise Hsieh
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions about SB 9

Larry Dietrick
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795
POSITION STATEMENT: Answered questions about SB 9

Brad Thompson
Department of Administration
PO Box 110200
Juneau, AK 99811-0200
POSITION STATEMENT: Answered questions about SB 9

Senator Lyda Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 45

Steve Branchflower
Alaska Office of Victims' Rights
1007 West 3rd Avenue, Suite 205
Anchorage, Alaska 99501-1936
POSITION STATEMENT: Answered questions about SB 45

Jacqueline Tupou
Staff to Senator Green
Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about SB 45

ACTION NARRATIVE

TAPE 03-9, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present were Senators Ellis, French and Chair Seekins. Senator Ogan was excused and Senator Therriault arrived shortly thereafter. The first order of business to come before the committee was SB 9.

CSSB 9(STA)-CLEANUP OF ILLEGAL DRUG SITES

SENATOR GRETCHEN GUESS, sponsor of SB 9, told members that version V was before the committee and gave the following explanation.

SB 9 establishes standards and guidelines to ensure that illegal drug labs are cleaned up and safe before reoccupation. SB 9 is the companion bill to Representative Holm's legislation. Currently, when law enforcement makes a bust of an illegal lab, it takes out the mass chemicals and posts a notice on the building stating that it was an illegal lab site. The process ends at that point because Alaska has no standards or guidelines to ensure that the dwelling is cleaned further. SB 9 sets up a procedure for cleanup that provides the owner with a few options. The owner could appeal that there was a lab bust in the building and if the owner wins the appeal, no further action is necessary. Second, the owner could secure and test the property for contaminants. If high levels of chemicals were found, the property would be cleaned up, retested, and reoccupied. The third option is to test the property after the cleanup. The Department of Environmental Conservation (DEC) would act as the oversight agency and the Oil Spill and Prevention Division within DEC could most efficiently provide the standards and guidelines for testing and decontamination. The division would provide a list of companies eligible to do the testing and sampling, but the division would set up guidelines for decontamination so the homeowner could do that work him or herself.

SENATOR GUESS informed members that the law enforcement community proposed one of the changes in the committee substitute (CS). Because drugs change from year to year, the chemicals listed in the original bill are incomplete. Therefore,

the CS provides that the Department of Public Safety (DPS) will provide a list of chemicals to DEC each year for which guidelines will be set. That will ensure that the tests are done for the drugs that are being used in illegal labs.

SENATOR GUESS pointed out that these dwellings cannot be reoccupied until a property owner has self certified that the procedures were carried out and the property may not be sold without full disclosure. She noted this legislation has had seven or eight hearings in the last three years and she has found consistent and good discussion regarding why the property owner is being blamed when a renter typically causes the problem. This bill contains a provision that says the renter's lease is not void if the renter caused the problem. A property owner also has recourse in damage deposits and civil actions that can be recovered for any damage. If criminal action is involved, the property owner could request restitution. The Division of Legal Services believes there is a good chance, under the current landlord tenant law, that renters are already under this obligation, but there are no guidelines to ensure that a dwelling is decontaminated. She said this issue requires a policy call and, unless one believes it is the government's responsibility to clean up illegal drug sites, the onus must lay with the property owner. The Legislature can give the property owner as much recourse as possible to recoup costs or it can allow reoccupation of the contaminated dwelling. She said she believes it is more critical that a renter know that a home does not contain hazardous material.

SENATOR GUESS told members SB 9 has the support of the law enforcement community.

CHAIR SEEKINS told members that Tim Biggane from the Fairbanks North Star Borough and Sergeant Ronald Wall from the Alaska State Troopers were available on teleconference to answer questions.

SENATOR ELLIS stated support for the legislation and asked if Anchorage, Fairbanks, and the Mat-Su Borough continued to be the hotspots for methamphetamine production in Alaska.

SENATOR GUESS told members that to her knowledge, there have been 13 busts so far this year. Since the Anchorage Police Department (APD) started cracking down, a lot of labs moved to the Mat-Su and Kenai areas. Ketchikan and Juneau have also had illegal drug lab busts in the past year.

SENATOR FRENCH asked if this legislation would apply to hotels and motels as well as apartment rentals.

SENATOR GUESS said it would.

SENATOR FRENCH asked for an estimate of the cost of a typical cleanup.

SENATOR GUESS said her research shows the typical cost of testing and cleanup runs between \$2,000 and \$5,000. Testing costs about \$200 per chemical and six chemicals are included in the new chemical list. She talked to a cleanup company in Juneau that would charge 70 cents per square foot. She said the cost would vary due to the size of the area and whether a "suitcase" or contained lab was used.

SENATOR FRENCH asked if owners who want to do the cleanup privately could get a cleanup manual from DEC.

SENATOR GUESS said DEC has to have decontamination guidelines that must be followed. The Juneau business told her that a typical cleanup would involve blasting the paint from the walls, repainting, resealing and removing the carpet.

SENATOR THERRIAULT asked, if the bill allows for the sale of the property with full disclosure, why it can't be rented with full disclosure. He also asked how long the disclosure time period is in effect and whether it remains with the property forever even though it was officially cleaned up.

SENATOR GUESS said that even if a property is sold, it couldn't be reoccupied until it is cleaned. Regarding the timeframe for disclosure, she said that once it's been cleaned and DEC has approved the test results, "it goes off of the list."

SENATOR THERRIAULT asked whether he as the owner of a recently busted drug lab could reoccupy the property.

SENATOR GUESS said she does not know if anyone could stop the owner from reoccupying the property, but the owner could not allow anyone else to reoccupy it.

SENATOR THERRIAULT asked if the state cannot stop the owner from reoccupying the property and the owner sold it, whether the new owner could occupy it.

SENATOR GUESS said to her knowledge the state cannot stop the owner from occupying the property, but the state could stop the owner from having anyone else occupy it.

CHAIR SEEKINS asked if that would apply even if the owner disclosed the situation and the tenant agreed to assume the risk.

SENATOR GUESS said that it would. She surmised that situations would arise where people might not be able to afford any other housing. Offering a waiver provision would delve into the landlord tenant law and other things she did not explore.

SENATOR THERRIAULT noted that Senator Guess mentioned higher dangers to infants because of crawling on carpets and asked whether methamphetamine is absorbed through the skin and whether the concern is with the end product only or all of its components that might have been spilled in the making.

SENATOR GUESS said that all of the drugs on the list could be absorbed through the skin and from breathing. The common health concerns are skin burns, eye irritation, and respiratory problems from inhaling the chemicals.

SENATOR THERRIAULT pointed out that different sections of a house, such as a garage, could be separated from the living area by doors. He asked whether all of the restrictions would apply to the entire house if the activity took place in the garage.

SENATOR GUESS said they do and she hasn't grappled with that issue because she doesn't know what chemicals might seep into the dwelling. In that situation, she would assume the landlord would test immediately to find out whether chemicals exist in the dwelling.

CHAIR SEEKINS asked if the entire hotel would be closed if someone set up a lab in one room.

SENATOR GUESS said the previous committee discussed this issue. At this point, it applies to the dwelling, which would be the hotel room and not the entire complex. Law enforcement officials are trained to be able to tell whether other rooms have been impacted. They would inform the property owner if adjoining ducting and other systems could have impacted other rooms. She explained that this bill is focused on the place of activity and law enforcement officials feel competent to determine whether any other areas might be contaminated.

CHAIR SEEKINS asked Senator Guess whether she considered mandatory restitution from the person that caused the damage as part of the sentencing

SENATOR GUESS said that according to testimony in the past, an owner could get restitution now if there is a criminal proceeding. She looked into including a restitution provision in the bill to ensure that it is required, but was told by the Division of Legal Services it was unnecessary because the property owner has that vehicle along with a civil vehicle and damage deposits.

CHAIR SEEKINS expressed concern that using a civil vehicle may cost as much to recover as the restitution is worth. He said because the state will be requiring the owner to bear the cost of cleanup, it should mandate restitution from whomever caused the damage as part of the sentence.

SENATOR FRENCH said it is virtually guaranteed that restitution would be ordered as part of a sentence. He said a judge would have to take into account a person's ability to pay, but restitution would be ordered as part of the criminal sentence and, if any assets are available, the owner could recover.

SENATOR DYSON said the Senate HESS Committee discussed the same question and Senator French's answer is correct. However, he had to remind himself that the primary intention of the legislation is the safety of the next occupants.

CHAIR SEEKINS said he agrees with Senator Guess's intention; he is just trying to protect the innocent party. He then asked why this legislation is not being used to address other homes that contain health hazards that are not the result of illegal activities.

SENATOR GUESS said that when researching this issue, she found that other laws provide a tremendous amount of coverage. This legislation is focused on solving one problem.

CHAIR SEEKINS noted that no other laws have "the teeth" this bill has.

SENATOR GUESS offered to provide Chair Seekins with a comprehensive list of how the state deals with other hazardous materials within dwellings.

SENATOR FRENCH asked Sergeant Wall where the responsibility for the cleanup of methamphetamine labs falls right now.

SENATOR FRENCH said in many cases the labs are not being cleaned. The residences are being reoccupied shortly after the labs are discovered and dismantled.

SENATOR FRENCH asked if law enforcement officials haul away the obvious remnants and the trace materials stay behind.

SERGEANT WALL said that is correct. Law enforcement officials remove gross contaminants and items that contain contaminants from the residence. The Drug Enforcement Agency (DEA), through a federal program, has a company that packages and removes contaminants, but that company never sets foot inside of the residence.

SENATOR GUESS told members that she has found two situations to be the most common. The first is one in which the property owner does not care and re-rents the property. The other situation is one in which the property owner does care, but has nowhere to go for information. She recalled a case in Juneau where the owner was unable to get information from state or city agencies so he gutted the house and burned the damaged material because the city dump would not take it. The owner was then fined by the state for doing so. She said currently there's no way of knowing the standard to which a place is cleaned.

SENATOR THERRIAULT questioned whether the wall paint would be sand blasted down to sheetrock or whether the walls are being steam cleaned.

SENATOR GUESS said she was told the paint needs to be removed down to the sheetrock and the sheetrock needs to be resealed. The same applies to the carpet; the pad needs to be removed and the floor needs to be resealed before new carpet is installed. She noted that law enforcement officers have testified that they can detect methamphetamine in the walls after they have been repainted.

CHAIR SEEKINS asked if the goal of sealing would be to trap the chemicals within the sheetrock.

SENATOR GUESS said that repainting or steam blasting does not trap the chemicals.

CHAIR SEEKINS asked Elise Hsieh and Tim Biggane to comment.

MS. ELISE HSIEH, Assistant Attorney General, Department of Law (DOL), told members that in response to an earlier question about whether the owner could reoccupy the property, language on page 4 in subsection (c) reads, "...or, being the owner of property, knowingly occupies or uses the property, in violation of this section is guilty of a class A misdemeanor." She said who would prosecute and enforce that provision is another matter.

CHAIR SEEKINS asked if knowingly jeopardizing the health of a child is legal in Alaska statutes.

MS. HSIEH said she is not as familiar with that area of law, but she assumes there are statutes with general language that would apply to that situation.

MR. TIM BIGGANE, Director of Emergency Operations in the Fairbanks North Star Borough, told members that this bill is necessary because chronic exposure to methamphetamine lab chemicals or byproducts has the potential to cause both long and short term health problems. Children are particularly susceptible to the residue of chemicals used during manufacture that remain in furniture, window treatments, carpets and other places. His office has been involved with owners of facilities used as drug labs. About 50 percent of the owners want to know what needs to be done to clean the property. He stated his division supports this legislation as does the mayor and the assembly.

2:10 p.m.

SENATOR THERRIAULT asked if all of the furniture must be destroyed or whether it can be certified as clean.

SENATOR GUESS said she would look to DEC's contamination guidelines for an answer and would get back to Senator Therriault.

SENATOR THERRIAULT remarked that if the paint must be scraped off of the walls, he couldn't imagine what would be done to clean a mattress.

CHAIR SEEKINS asked if DEC provided draft guidelines or any indication of what may be involved.

SENATOR GUESS said DEC hasn't, but other states have draft guidelines.

MR. LARRY DIETRICK, Acting Director of the Spill Prevention and Response Division, DEC, explained to members that the guidelines would be chemical-specific so there is a big difference between the cleanup requirements for lead-based paint, a volatile organic compound cleanup, or more sophisticated chemical compounds. DEC would approach the guidelines based on the compounds that have been encountered in these labs. The standard for children's exposure would be used. DEC would specify the analytic methods, the sampling protocols, and the cleanup guidelines. DEC has looked at guidelines used in other states and found that the State of Missouri has a very simple cleanup guideline that is very general and not chemical specific. He pointed out that a large laboratory using a variety of chemicals and adjoining ventilation systems in a condo unit would be much more complicated to clean up. He repeated that guidelines would be driven by the types of chemicals and the setting in which they are found. DEC will propose guidelines that address simple to complex situations and the guidelines may be modified or upgraded later on if a more elaborate scenario occurs.

CHAIR SEEKINS asked Mr. Dietrick to provide copies of the guidelines used by other states.

SENATOR THERRIAULT asked if anything in the bill would trigger use of the 470 fund.

MR. DIETRICK replied, "From the response perspective, we stay outside of private dwellings. That's a problem for us and we can't legally go into a private dwelling - that's a search warrant situation for us...." He said DEC has responded to these home lab situations when the contamination spreads to the outside environment, such as in the groundwater.

SENATOR THERRIAULT asked if there would be any way the owner could ask DEC to help and pick up the tab.

MR. DIETRICK said if the owner asks for technical assistance, DEC tries to provide it, but if DEC was in a regulatory mode that would be another situation.

SENATOR THERRIAULT asked if the homeowner would have access to the [470] account.

MR. DIETRICK said the owner would not.

There being no further questions, Chair Seekins said he would compare SB 45 and Representative Holm's bill, get the guidelines from DEC, and bring the bill before the committee again.

SENATOR GUESS asked if public testimony was closed.

CHAIR SEEKINS said he would always try to accommodate those who want to give public testimony.

SB 45 was held in committee.

#SB 2

SB 2-PARENT LIABILITY FOR DAMAGE BY CHILD

SENATOR DYSON, sponsor of SB 2, informed members he introduced this legislation at the request of several school districts and the Alaska Association of School Boards (AASB). It removes the liability limit of \$10,000 for acts of vandalism. He said he originally viewed this legislation as a simple matter, but as he began "stumbling around in the legal woods," he stepped on several other issues he was unaware of.

TAPE 03-9, SIDE B

SENATOR DYSON informed members that if version S of SB 2 were adopted, it would be used as a partial revisor's bill to eliminate some of the ambiguities in the law. It would also establish that a court should pursue the minor that did damage before pursuing the parent. It also clarifies that foster parents, subsidized legal guardians, and subsidized adoptive parents are not held liable for the actions of the behaviorally challenged children for which they have accepted responsibility. He asked that the committee adopt version S as the working document.

SENATOR THERRIAULT moved to adopt version S of SB 2 as the working document. There being no objection, it was so ordered.

SENATOR DYSON explained the changes in version S as follows:

- Section 1 deletes the \$10,000 limit on parental liability in existing law
- Section 2(c) exempts the legal guardian from liability

SENATOR DYSON said that provision created a lot of discussion. He misspoke at the first hearing when he said legal guardians would not be liable for the actions of a child who was actually a ward of the state. Subsequently he found two cases that are contradictory. Section 2(c) will set that matter straight in statute. The Division of Family and Youth Services (DFYS) does not have insurance, but the state does have risk management insurance to provide protection. He continued explaining the changes in version S.

- Section 3 clarifies that legal guardians are held harmless. Subsection (b) specifies that parents who adopt a hard to place child are also held harmless. Most of those adoptions are subsidized because the children are likely to end up in an institution or group home if the adoptive parents do not get help.
- Subsection (d)(2) is new and clarifies that action may be taken against the child.

SENATOR DYSON said that since he introduced the bill, he has received a number of calls asking him why the law will go after the parent and not the child who did the damage. The Division of Legal Services told him that one could go after the child and the child's assets, including dividends, until the debt is satisfied. He said he is very pleased with the latest version of the bill as it accomplishes several things that need to be addressed and provides a clear trail for holding people accountable.

SENATOR THERRIAULT asked if this language ties the exemption for the legal guardian to state placed children only or whether a family member who acts as a legal guardian, such as an uncle, would be exempt.

MR. BRAD THOMPSON, Director of Risk Management, Department of Administration (DOA), said that Senator Therriault's question is answered in existing statute, AS 13.26.070. It reads, "A guardian is not liable to third persons by reason of the parental relationship for acts of the ward." That is the law Senator Dyson is trying to correct because it conflicts with AS 34. He does not believe it is restricted to guardians through the state's activity.

SENATOR FRENCH said Senator Therriault's question brings up the most interesting policy call this legislation makes, that being that it exempts guardians trying to "do good," such as grandparents.

SENATOR ELLIS said he understands denying a student loan to a child involved in a bad act until the debt is made good, but he asked for an explanation of how a child's assets would be attached.

SENATOR DYSON said he assumes that is within the court's purview to decide what is appropriate. He expects it would most often apply to a teenage minor who might own a car.

SENATOR ELLIS asked if the child would be required to pay back 100 percent of the debt owed before benefiting from a student loan or any other state benefit.

SENATOR DYSON replied it is best to leave those decisions to the court.

SENATOR THERRIAULT said he worked on the original statutory language and at that time he heard from quite a few parents who said that the state wouldn't let them control their children, but the state would hand them the bill for damage done by the children. Those parents cautioned they would use section 2 of the statute so that when the children went to a movie, the parents would call the police and report them as runaways. He asked if Senator Dyson has heard similar comments.

SENATOR DYSON said he hasn't but a similar bill is working its way through the House. In testimony before the House committees, people have said that the first recourse is to a homeowner's policy, and if the \$10,000 limit is removed, some homeowners' policies may increase. He also heard from parents who said the state would not protect them when their children are abusive, but wants to take everything they own if their children do damage elsewhere.

SENATOR FRENCH noted that a judge might not read the recovery against the minor provision to mean that the entire judgment must be put on the minor so the court would have to collect from the parents. He questioned whether the bill should contain a provision that says the liability is joint and severable. That way, the court would proceed against both in tandem, and if the minor has easily recoverable assets, those would be taken first.

The committee took a brief at-ease.

2:40 p.m.

SENATOR ELLIS asked if the committee has information on the largest dollar amount of an act of youth-induced vandalism.

SENATOR DYSON said he received some information from his school district and believes the amount was between \$300,000 and \$400,000.

SENATOR ELLIS said he participated in discussions about the original legislation when the amount was increased from \$2,000 to \$10,000. This proposal is to have no limit. He said he agrees with Senator Dyson that he resents paying for other people's children who are out of control, but he encouraged members to seriously consider the consequences of changing the liability limit amount from \$10,000 to no limit.

SENATOR DYSON told members the House version of the bill contains a \$25,000 limit and he believes this issue would be dealt with in conference committee. He said all that parents have is classic bankruptcy protection that allows them to keep equity in their home.

CHAIR SEEKINS said he hates to see any family come to that, but he hates to burden the public with the activities of an unsupervised child. He said this bill would provide an incentive for parents to know whom their children are with and where they are. SB 2 was held in committee.

#

#SJR 3

SJR 3-CONST AM: APPROPRIATION/SPENDING LIMIT

SENATOR DYSON, sponsor of SJR 3, told members that former Senator Donley proposed a constitutional spending limit last year when the Legislature was discussing the state's fiscal difficulties. It passed the Senate but not the House. As he read through Senator Donley's committee discussions and notes he found that in 1981 a previous constitutional amendment established a spending limit with an escalator clause that would have set last year's general fund spending limit at over \$6 billion. It also contained a provision that if court interpreted that the spending limit was reached, one-third must be spent on capital projects. The upshot is that constitutional spending limits never worked.

SENATOR DYSON explained that Senator Donley's proposal said any spending increase would be limited to 4 percent of the amount spent two years earlier. To spend another 2 percent, a two-

thirds vote was required and to spend 2 percent beyond that, a three-quarter vote was required.

SJR 3 is virtually the same resolution that passed the Senate last year. It excludes payments to the railroad, the permanent fund, money traded between state agencies, dividends and pass through money from the federal government. It will require a supermajority vote to increase the budget more than 4 percent every two years.

2:49 p.m.

SENATOR THERRIAULT asked if SJR 3 is a reintroduction of Senator Donley's resolution.

SENATOR DYSON said it is.

SENATOR ELLIS noted that Governor Murkowski has said he does not support a constitutional spending limit because he plans to exercise fiscal discipline. He asked Senator Dyson if he changed the Governor's mind.

SENATOR DYSON said he has not. He has had significant discussions with Ms. Frasca of the Office of Management and Budget (OMB) and he hopes someone from the Administration will be present today to suggest improvements.

SENATOR THERRIAULT said the constitution expressly gives the Legislature the power, without interaction with the Governor, so it is not necessary to change his mind.

SENATOR ELLIS said although it is not required, it is advisable.

SENATOR FRENCH referred to a statement made earlier by Senator Dyson about how governments have a hard time breaking the habit of spending other's money and remarked that Alaska is a perfect example of the fallacy of that position because the Legislature has cut spending over the last decade.

SENATOR DYSON said it is quite surprising to see that the Legislature is spending less now per capita than it was pre-Prudhoe Bay. However, he does not believe the general population believes that legislators are trustworthy without the Legislature voluntarily putting significant restrictions upon itself. He said he hopes the Legislature acts responsibly and doesn't need to impose the limit. However, Senator Donley found that for the spending limit to come into play, the Legislature

would have to spend more money than what is allowed, someone would have to file suit, and the court would have to rule that the Legislature acted unconstitutionally.

SENATOR ELLIS asked Senator Dyson if he said this resolution is largely a public relations exercise to build trust.

SENATOR DYSON said he believes, and it was Senator Donley's position, that this must be done to build the public's confidence that the Legislature is operating within boundaries that are not easily mutable. He said he suspects everyone agrees something needs to be done to bring in more revenue, but Senator Donley believes the public will not support any new revenue sources unless they trust the Legislature with their money. He said this would help. His last point was that someone must take court action to impose the limit and he suspects that action will seldom be invoked, but it's a good exercise in discipline.

SENATOR FRENCH asked Senator Dyson for a copy of the background materials he referenced.

SENATOR THERRIault said that Senator Donley was concerned that the public was convinced that the Legislature had been prudent and would continue to be prudent. He asked if the existing spending limit set \$2.5 billion as the base and ratcheted it up every year.

SENATOR DYSON said that is correct; the escalator clause provides for inflation and population increases.

SENATOR THERRIault said that points out why statutory programs should never automatically be inflation proofed - spending would shoot through the roof.

There being no further questions or testimony, Chair Seekins told members he would bring this legislation before the committee at a later time. He then announced the committee would take up SB 45.

#

#SB 45

SB 45-LB&A CRIMES AND COOPERATION

SENATOR LYDA GREEN, sponsor of SB 45, told members that a proposed committee substitute version Q was prepared and was the result of concerns expressed during a previous committee hearing.

SENATOR THERRIAULT made a motion to adopt version Q as the working document.

There being no objection, Chair Seekins announced that version Q was before the committee.

SENATOR GREEN gave the following explanation of the changes made in version Q:

- the felony status was changed to a misdemeanor throughout, and accomplishes the same purpose
- the term "public employee" was changed to "state employee"
- on line 21 of page 2, the expression, "an appointing authority may appoint" includes all state employees
- Section 4 on line 23 of page 2 adds to current statutory language so that whistleblower status would cover interference or any failure to cooperate with an audit or other matter within the authority of the Legislative Budget and Audit Committee.

CHAIR SEEKINS asked Senator Green about the proposed amendments.

SENATOR GREEN explained that Senator Therriault has one amendment that contains some deletions and the other amendments pertain to changes in the reporting authority.

SENATOR ELLIS asked Senator Green the level of misdemeanor and the maximum penalty it carries.

SENATOR GREEN said the penalty is a class A misdemeanor. She deferred to Mr. Branchflower for further details.

MR. STEVE BRANCHFLOWER, Office of Victims' Rights, Legislative Affairs Agency, told members that a class A misdemeanor carries a maximum jail term of one year and a maximum fine of \$2,000 and would be for hindering the Legislative Budget and Audit (LBA) Committee in the first degree. The second degree is a class B misdemeanor with a maximum penalty of 90 days in jail and a fine.

SENATOR GREEN asked Mr. Branchflower to describe how a court would handle the probable sentence.

MR. BRANCHFLOWER said it would depend on a person's prior criminal history. Neither statute would subject the defendant to

presumptive sentencing because that only applies to felonies. A judge would have total discretion in terms of fashioning a sentence. The judge would look to the person's background and consider the arguments. The court could also request a pre-sentence report.

SENATOR ELLIS asked if, upon conviction, there could be a significant fine and someone could conceivably go to jail for up to one year.

MR. BRANCHFLOWER said that is correct for a first-degree conviction for a class A misdemeanor.

SENATOR ELLIS asked if that is the charge for not cooperating with the LBA committee.

MR. BRANCHFLOWER said it would be for violation of AS 11.56.870, hindering the LBA committee as a state employee.

CHAIR SEEKINS asked if hindering means more than not cooperating.

MR. BRANCHFLOWER said that is correct: hindering contemplates all of the conduct that is set out on the top of page 2, so the person would have to actively obstruct as opposed to failure to provide information in response to a request.

SENATOR ELLIS asked what the underlying rationale is for the heavy hand in regard to the LBA Committee and not to the other standing legislative committees.

MS. JACQUELINE TUPOU, staff to Senator Green, told members that an amendment proposed by Senator Therriault might resolve that concern by adding another layer to this process so that the consequences do not happen immediately.

SENATOR THERRIAULT moved to adopt Amendment 1 and asked that it be considered a conceptual amendment to give the legal drafter some leeway for corrections.

SENATOR ELLIS objected.

SENATOR THERRIAULT told members that when he looked at the language on page 2, lines 3 and 4, he was concerned about who the words "committee or its staff" referred to. As the outgoing chair of the LBA Committee, his staff consisted of the auditor and all of her personnel, the fiscal analyst and his personnel,

and the Senator's personal staff as well as a committee person who interacted between his office and the others. In addition, all of the LBA Committee members had a staff member. He did not feel it was appropriate that a request from any one of those members or their staff would trigger this provision and jeopardize their employment and subject them to a fine. He explained that Amendment 1 would replace the words "committee or its staff" with "the legislative auditor or the legislative fiscal analyst". He advised that Pat Davidson and David Teal now hold those positions. Therefore, if their shops make an official request for information, this provision would be triggered if the information were withheld. He noted that he could envision departments wanting to protect social security numbers, income information, or other confidential information from his staff because they don't work under any canons of confidentiality. However, the Legislative Budget and Audit staff and the Legislative Finance staff do so agencies should be comfortable sharing that information with those two divisions. The wording of Amendment 1 solves his concern.

SENATOR ELLIS said that Amendment 1 is a huge improvement and he withdrew his objection.

CHAIR SEEKINS announced that Amendment 1 as a conceptual amendment was adopted.

SENATOR GREEN told members that Section 5 was incorporated at Senator Therriault's request.

MS. TUPOU explained that Section 5 is a housekeeping issue. In 1980 when the permanent fund board was established, there was a provision requiring legislative confirmation of board members. It also provided that LBA would hold some public hearings and offer recommendations on the nominees. In 1982, a court case decision declared that provision unconstitutional. She surmised that provision was removed elsewhere but because computer programs did not provide word search abilities at that time, it was never removed from these sections of statute.

CHAIR SEEKINS noted that Section 5 was already adopted as part of version Q.

MS. TUPOU told members that Amendment 1 would add another layer so that if an auditor didn't get the requested information, they would notify Ms. Davidson who would make the official call. The violation would be triggered if her request went unanswered. The person must be a public servant, which implies public trust.

SENATOR ELLIS recalled serving on the Senate Judiciary Committee with Senator Taylor who was frustrated that he didn't have more power to obtain information. That is what prompted his question about why these powers and potential penalties would not apply to other legislative committees.

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SENATOR GREEN said that has to do with the role of the LBA Committee, and Legislative Finance partners with the LBA Committee in doing investigative work. That standard is higher because often investigations are the result of questionable activity.

SENATOR ELLIS asked Senator Green why she changed her mind and changed the felony charge to a misdemeanor charge.

SENATOR GREEN said after she left the last meeting, it dawned on her that the real question is what is the appropriate penalty that would get the desired result and act as an incentive for a person to cooperate.

SENATOR FRENCH expressed concern that this is a criminal prosecution that could be used to punish someone for discouraging full cooperation. He provided the following hypothetical example. Two department employees are ready to go home at 4:30 and an LBA auditor calls and requests a large report right then. One of the employees suggests they say they are too busy to get to it today. That employee has now discouraged the other worker from fully cooperating with a legislative auditor. He said that may seem like a trivial example, but that person could be prosecuted for a crime. He said the real weapon is a person's job. If a person is not doing his or her job and is malingering instead of making copies for an auditor, that person should be fired. He maintained that no judge would put anyone in jail for breaking this law. He said that losing one's job as a consequence seems to him to be a more realistic approach to the problem.

CHAIR SEEKINS countered that he does not think any judge would convict anyone of a crime for putting off a request until the following morning. He asked Senator French if he would prosecute such a case.

SENATOR FRENCH said judges do not convict; juries do. He said he frequently goes before juries and tells them their decision to make is not whether this is a big or small violation, their decision is whether the law has been broken.

CHAIR SEEKINS asked if the prosecutor's office would take on such a case considering its budget constraints.

SENATOR FRENCH said it would not. He said the addition to the whistleblower statute is a great improvement.

SENATOR THERRIAULT said, as past Chair of the LBA Committee, he would have asked the auditor whether the report was provided the next day or whether the employees were cooperating. He noted the thing that differentiates Legislative Finance and the Legislative Budget and Audit Committee from other legislative committees is that those shops are professional ongoing operations. The make-up of legislative committees and staff changes regularly. He asked members to recognize that the directors of both agencies would be involved in the decision about whether or not a violation occurred.

SENATOR GREEN added that she has been impressed that an audit might take six months to a year and information is not usually expected within the same day.

SENATOR THERRIAULT made a motion to move CSSB 45(JUD) from committee with four zero fiscal notes and the understanding that committee staff would review the final work product when it comes back from the Division of Legal Services and, if staff thinks it contains anything more than what was discussed, the bill would be brought back before the committee.

CHAIR SEEKINS announced that with no objection, the motion carried. There being no further business to come before the committee, he adjourned the meeting at 3:22 p.m.

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