

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

May 4, 2004

3:42 p.m.

**TAPE (S) 04-32**

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Senator John Cowdery, Vice Chair  
Senator Bert Stedman

**MEMBERS ABSENT**

Senator Gretchen Guess  
Senator Lyman Hoffman

**COMMITTEE CALENDAR**

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 364(O&G)

"An Act prohibiting the issuance of state shallow natural gas leases in the vicinity of Kachemak Bay, modifying the authority to extend certain shallow natural gas leases, and precluding the director of the division of lands from reissuing or otherwise extending shallow natural gas leases within the Kachemak Bay area if there is a breach of a term or condition of the lease; and providing for an effective date."

MOVED CSSSHB 364(O&G) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 551(JUD) am

"An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of certain felony drug offenses and to the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 364

SHORT TITLE: NATURAL GAS LEASES NEAR KACHEMAK BAY

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/12/04	(H)	PREFILE RELEASED (1/2/04)
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	O&G, RES, FIN

02/19/04 (H) SPONSOR SUBSTITUTE INTRODUCED  
 02/19/04 (H) READ THE FIRST TIME - REFERRALS  
 02/19/04 (H) O&G, RES, FIN  
 03/09/04 (H) O&G AT 3:15 PM CAPITOL 124  
 03/09/04 (H) Heard & Held  
 03/09/04 (H) MINUTE(O&G)  
 04/01/04 (H) O&G AT 3:15 PM CAPITOL 124  
 04/01/04 (H) Moved CSSSHB 364(O&G) Out of Committee  
 04/01/04 (H) MINUTE(O&G)  
 04/05/04 (H) O&G RPT CS(O&G) NT 2DP 1NR 3AM  
 04/05/04 (H) DP: KERTTULA, CRAWFORD; NR: MCGUIRE;  
 04/05/04 (H) AM: HOLM, ROKEBERG, KOHRING  
 04/14/04 (H) FIN REFERRAL REMOVED  
 04/19/04 (H) RES AT 1:00 PM CAPITOL 124  
 04/19/04 (H) Scheduled But Not Heard  
 04/23/04 (H) RES AT 1:00 PM CAPITOL 124  
 04/23/04 (H) Moved CSSSHB 364(O&G) Out of Committee  
 04/23/04 (H) MINUTE(RES)  
 04/26/04 (H) RES RPT CS(O&G) NT 5NR 2AM  
 04/26/04 (H) NR: KERTTULA, GUTTENBERG, LYNN, HEINZE,  
 04/26/04 (H) MASEK; AM: WOLF, STEPOVICH  
 04/30/04 (H) TRANSMITTED TO (S)  
 04/30/04 (H) VERSION: CSSSHB 364(O&G)  
 05/01/04 (S) READ THE FIRST TIME - REFERRALS  
 05/01/04 (S) STA, RES

BILL: HB 551

SHORT TITLE: DRUG FELONY DISQUALIFIES TEACHER

SPONSOR(s): JUDICIARY

04/05/04 (H) READ THE FIRST TIME - REFERRALS  
 04/05/04 (H) EDU, JUD  
 04/13/04 (H) EDU AT 11:00 AM CAPITOL 124  
 04/13/04 (H) Scheduled But Not Heard  
 04/15/04 (H) EDU AT 11:00 AM CAPITOL 124  
 04/15/04 (H) Moved Out of Committee  
 04/15/04 (H) MINUTE(EDU)  
 04/19/04 (H) EDU RPT 1DP 1NR 2AM  
 04/19/04 (H) DP: WOLF; NR: OGG; AM: SEATON, GATTO  
 04/22/04 (H) FIN REFERRAL ADDED AFTER JUD  
 04/23/04 (H) JUD AT 1:00 PM CAPITOL 120  
 04/23/04 (H) Moved CSHB 551(JUD) Out of Committee  
 04/23/04 (H) MINUTE(JUD)  
 04/26/04 (H) JUD RPT CS(JUD) NT 3DP 2NR  
 04/26/04 (H) DP: SAMUELS, OGG, MCGUIRE;  
 04/26/04 (H) NR: GARA, GRUENBERG  
 04/28/04 (H) FIN REFERRAL WAIVED

04/29/04 (H) RLS RPT CS(JUD) NT 3DP 4NR  
 04/29/04 (H) DP: KOTT, MCGUIRE, ROKEBERG;  
 04/29/04 (H) NR: BERKOWITZ, COGHILL, MORGAN,  
 04/29/04 (H) KERTTULA  
 04/29/04 (H) RLS AT 9:00 AM FAHRENKAMP 203  
 04/29/04 (H) Moved CSHB 551(JUD) Out of Committee  
 04/29/04 (H) MINUTE(RLS)  
 05/01/04 (H) TRANSMITTED TO (S)  
 05/01/04 (H) VERSION: CSHB 551(JUD) AM  
 05/02/04 (S) READ THE FIRST TIME - REFERRALS  
 05/02/04 (S) STA, HES

**WITNESS REGISTER**

Representative Paul Seaton  
 Alaska State Capitol  
 Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 364

Mike McCarthy  
 Geologist  
 Homer, AK 99603  
**POSITION STATEMENT:** Gave testimony on CSSSHB 364(O&G)

Ryan Makinster  
 Staff to Representative Lesil McGuire  
 Alaska State Capitol  
 Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 551 for the sponsor

Larry Wiget  
 Executive Director of Public Affairs  
 Anchorage School District (ASD)  
 P.O. Box 196614  
 Anchorage, AK 99519-6614  
**POSITION STATEMENT:** Opposed CSHB 551(JUD) am

Bonnie Barber  
 Professional Practices Teaching Commission (PTPC)  
 Anchorage, AK 99513  
**POSITION STATEMENT:** Questioned need for CSHB 551(JUD) am

**ACTION NARRATIVE**

**TAPE 04-32, SIDE A**

**CHAIR GARY STEVENS** called the Senate State Affairs Standing Committee meeting to order at 3:42 p.m. Present were Senators Cowdery, Stedman and Chair Gary Stevens.

**CSSSHB 364(O&G)-NATURAL GAS LEASES NEAR KACHEMAK BAY**

CHAIR GARY STEVENS announced the first order of business to come before the committee to be CSSSHB 364(O&G).

REPRESENTATIVE PAUL SEATON, sponsor, explained that the bill is designed to contain the shallow natural gas leases in the Homer area to their original three year term and places a moratorium on reissue of those leases. It does not in any way compromise future leases for conventional gas in the Homer area.

To understand why this bill is necessary, a brief history of the shallow natural gas leases is in order, he said. He referred to maps of the area and explained the following:

In 1976 the State of Alaska bought back leases in Kachemak Bay and the uplands of this area. Now, there were no wells in these uplands, but the area that is described in this bill is the upland areas that were in the original buyback in 1976.

In 1996 the State of Alaska came forward with the shallow natural gas program which was an over the counter sale, not a competitive bid. The main benefit of the program is that the leases are cheap and the incentive was to allow rural areas to have an easy way to get gas with small rigs - that could be not requiring the big deep rigs for conventional gas - and make it cheap for rural areas to develop energy.

In 1999 the State of Alaska formed the Cook Inlet Area-wide Lease Sale Program and it specifically excluded this area, this lower portion of the Cook Inlet Basin from that area-wide lease sale program. And ironically it's this exclusion of the Homer bench area from the area-wide lease sale, which made it vulnerable or available for the shallow natural gas program.

In June of 2003 leases were granted to Lapp Resources who had applied for those. And it's interesting when you look at those leases - again, they were noncompetitive leases, just over the counter. It was

only \$500 per nine square miles. There was no best interest finding required. And a best interest finding of course is where you have a balancing act where you have comments and the state balances.

In the 1996 shallow natural gas lease program, there was a general finding that said, "It's in the best interest of the state to develop shallow natural gas." Period, wherever it was - so that precluded the necessity for an individual specific best interest finding, which is what has led to most of these problems.

There was effectively no notification of the local area that these leases were going to be issued or applications because we have two newspapers in the Homer area. The Homer Tribune and the Homer News and it was published in neither of those. There was a publication in the Peninsula Clarion, which is on the north end of the Kenai Peninsula and is read by very few people on the southern Kenai.

The way this works is that the criteria for issuing the leases are if the Department of Natural Resources can see any benefit to gas to the local areas then the leases have to be issued. So comments that could be received couldn't be considered anyway. And that's another fault of the program because if people bring up positives and negatives, none of the negatives can be weighed in whether they're going to issue the leases for the shallow natural gas program. It's only if there is any benefit to gas to the local area then the leases would have to be issued. And they were issued at the time and there were not then and there still are no operational regulations in place for how the shallow natural gas wells have to be - procedures have to be conducted.

The goal of this sponsor substitute is to allow the current leases in the Homer area not to be extended or reissued and to exclude the lands of the Homer bench, which is shown up here - a highly populated area - from future leasing under the shallow natural gas program, which again is the non-competitive, over the counter lease program.

But again, this bill in no way keeps the state from forming a new area-wide lease sale, expanding the Cook Inlet area area-wide lease sale or issuing oil or gas leases for this area. It is only a moratorium on the issuance or re-issuance of shallow natural gas leases.

The sectional analysis of the bill is that the first section just excludes the area of Katchemak Bay from leasing under the shallow natural gas program.

Section 2 is the main guts of the bill and what it does, it lays out discretionary provisions or conditions so that the director of Oil and Gas has criteria under which to reissue leases.

Now the Division of Oil and Gas supports these recommendations. Currently what would happen is if their three year lease runs out, it almost has to be an automatic extension because if the director of Oil and Gas doesn't extend the leases, the State is exposed to a takings claim for arbitrary and capricious decisions by the director of Oil and Gas because the Legislature has not set out the conditions under which they should be reissued, extended or not extended.

Section 3 of the bill modifies or amends the law to prohibit the issuance or re-issuance of shallow natural gas leases before the date and if the leases terminate. In other words, if somebody goes through here and does not perform on the leases, does not have paying quantities of gas, has no plan in place for investing in the leases, then this would mean that those would terminate and would not be re-issued. And it also covers a breach of contract in which they would be let -they would revert to the state or they would be canceled and not re-issued.

Section 4 is just the immediate effective date.

I would like to note one other thing and that is this has a zero fiscal note. It requires no buy back. It requires no purchase. It does have an indeterminate note on the potential loss of revenue, but there are two things to consider. One is that as long as these shallow natural gas leases are in place, the State cannot go in and do an oil and gas lease. And there's

good potential for conventional gas in this area. However, you have what is called correlative rights problems. Because under the shallow natural gas program you can drill down to 3,000 feet and if you can geologically demonstrate that you found gas above 3,000 feet and that same structure goes down to lower, deeper reservoirs, you can follow that gas on down to the lower deeper reservoirs. However if it's not contiguous or continuous with the upper gas, then that lower gas is trapped and you cannot access it. And that's where the value is to the State. Now these would probably be thought of as highly sought after leases in a competitive bid situation because the area just north of this area is a high gas area. In fact, [pointing to a map] these cross hatches are state leases that are in here. All this other area interspersed are subsurface rights that are owned by private individuals. They were pre-statehood homesteads so those rights are privately owned. {Blue portions on the map] These blue sections are all privately owned subsurface. These cross hatches here some are under the school and the hospital. Up here is the area, which is the watershed for the city's reservoir. North of this line, right up here, this is the North Star Field, which is just going into production now. There's a contract to bring the pipeline over to service Homer. There's oil or gas drilling out here. Unocal has just gone to unitization up here. So this area is in the Cook Inlet Basin gas field, but having this area leased under shallow natural gas - the department has said that they would never - as long as there's just 3,000 foot leases, they would never consider doing an all gas lease a gas and oil lease below that because of the legal complications it would entail.

So the other thing about the fiscal note is that it is indeterminate however, as you'll notice in Section 2, the conditions of non-extension of the lease is that the department has determined that there is practically no chance that extending the leases will lead to gas production. So basically there's not much indeterminate because to not extend the leases they have to make the determination that extending them, there won't be any drilling - or any production. We're not losing any royalties at all if we're not going to produce gas on them.

REPRESENTATIVE SEATON noted there were resolutions in the packets from Kachemak City, Homer, and the Kenai Peninsula Borough. All are in favor of the bill.

CHAIR GARY STEVENS asked when the leases were awarded and when they are up.

REPRESENTATIVE SEATON said that under the shallow natural gas program, the leases have a three year duration and they may be extended for an additional three years. The leases in the Homer area were issued in June 2003 so there are about two years left on the leases. Currently there is no application for a drilling permit and no publicly issued plans for going forward and drilling. Lapp Resources has made an agreement giving Unocal the right to be a producer if they want to explore six of the nine square mile leases.

Either conventional gas or coal bed methane could be developed. The latter is gas taken from a coal seam, but there's a lot of water produced with this method and dealing with the contaminated water is problematic. Unocal isn't in the business of doing coal bed methane; they tried it in the past and got out of the business. They were looking at the possibility of doing conventional gas - being able to find some of that that was above the 3,000 foot and they could show geologically that it went to six or eight thousand feet and develop that conventional gas using the shallow gas program. That was never intended by the authors of the shallow natural gas program and so our indications are that Unocal is not planning on trying to do deep conventional gas under the shallow natural gas program, but there is no assurance of that. That's part of the problem; people don't know what will happen in their front yard next week, he said. This bill would remove that uncertainty in two more years.

SENATOR COWDERY asked whether the blue area on the map showed homestead land with subsurface rights and whether anyone in the private sector had leased their land.

REPRESENTATIVE SEATON clarified that the blue areas were private and the crosshatch blue had subsurface rights, and there was no record of any private sector lease. In fact there has been no exploration or seismic work in this area specific to shallow natural gas.

SENATOR COWDERY asked whether natural gas is used for heating in that area.

REPRESENTATIVE SEATON told him oil is used for the most part, but there is an established gas field at the North-fork and there are plans for another well. Once that is accomplished, there is an agreement to put a pipeline in to Anchor Point, which would ultimately supply the Kenai Peninsula with natural gas.

SENATOR COWDERY asked how many companies have bid on the leases.

REPRESENTATIVE SEATON advised there was no bidding process because the leases were over-the-counter sales, which are first come first served.

SENATOR COWDERY asked how many sales were involved.

REPRESENTATIVE SEATON said Lapp Resources put \$500 down and bought eight tracts each of which is nine square miles. About half of the area is state subsurface rights and half is private subsurface rights.

CHAIR GARY STEVENS clarified for the record that the amount paid for the leases was just a few thousand dollars.

REPRESENTATIVE SEATON agreed.

SENATOR COWDERY asked whether there was any investment to date in the leases.

REPRESENTATIVE SEATON said, "There has been absolutely no investment made in the leases." He added that Dave Lappi of Lapp Resources has participated in discussions regarding this issue but they haven't invested money. They have, however, worked out an agreement with Unocal for six of the leases.

CHAIR GARY STEVENS remarked that consistent throughout the discussions is the point that the notification process was inadequate. Local people simply were not aware that these leases were going to occur.

REPRESENTATIVE SEATON said that's true, but it wouldn't have mattered anyway because under the terms of the Shallow Natural 1996 Gas Act, negative comments may not be considered. The director of DNR is charged with looking at whether an area might benefit in any way whatsoever from shallow natural gas

development in an area. "That's one of the things that the Division of Oil and Gas does not like about this program," he said. They put out a notification, but their hands are tied with regard to doing anything other than issuing the leases.

CHAIR GARY STEVENS pointed out that the City of Homer was concerned that leases were let under their water supply and some tidal areas.

REPRESENTATIVE SEATON agreed and explained that Homer relies on one water source that is outside the city. The borough gave the city extra-territorial powers on the watershed surrounding the reservoir but now, under the shallow natural gas program, the entire area has been leased.

SENATOR STEDMAN asked whether people that have subsurface rights could drill a well and hook up their house.

REPRESENTATIVE SEATON replied that is possible, there are few regulations on someone who owns both the surface and the subsurface rights for doing shallow natural gas.

SENATOR STEDMAN questioned whether it a cost factor that keeps these people from drilling their own wells.

REPRESENTATIVE SEATON thought that was probably the case.

SENATOR COWDERY asked for an explanation of exactly what subsurface means and questioned whether it's six inches or six feet from the surface.

REPRESENTATIVE SEATON said he didn't really have the answer, but he thought that if you're extracting anything such as gravel that's all part of the subsurface mineral estate. He wasn't sure about a basement for example, but he did know you didn't need a state permit to put in a basement.

SENATOR COWDERY asked whether the leaseholder could do anything without the permission of the property owner.

REPRESENTATIVE SEATON said the existing law requires a surface use agreement and the surface owner must give reasonable access to the holder of the subsurface rights. If no agreement can be reached, then the leaseholder may post a bond through DNR to cover potential damages and go forward. There is pending legislation to change that, but that's the way it is currently.

CHAIR GARY STEVENS added that is one of the many concerns people have. They really don't have control over what could happen on their property.

REPRESENTATIVE SEATON said that's correct. HB 69 changed the law a bit and allows administrative override by the deputy commissioner of DNR of any local ordinances that would attempt to restrict shallow natural gas. Proposed legislation attempts to correct that but as it is, it certainly feeds people's fears.

SENATOR COWDERY remarked that the gas fields can be very large and he wondered how you keep track of which property the gas might be under.

REPRESENTATIVE SEATON said the Division of Oil and Gas works on this problem all the time and in Homer it would be difficult because there is so much private land interspersed with the state land. Areas are unitized in terms of how far a particular gas field reaches. Then everyone within a unit has a period of time to join the unit, but if they do that then they just lose their gas. When a unit is formed the landowners in that unit get a portioned share of the royalties of the gas that's produced in that unit. But, he said,

To make our understanding clear. The way the law is now, if you have the occupied land and there is five acres unoccupied right next to you, if the gas company would decide to put it on your land, there is nothing you can do about that. You can disagree with that and then it goes to DNR for a posting of a bond and that bond has nothing to do with your wishes or desires. That bond is strictly related to what damage they would cause in their drilling operations and what it would take - \$8,500 \$10,000 - to repair that damage when they leave. And that would be the only recourse. And that's one of the things that the other bills are trying to clean up. Is so that they would have to demonstrate that they couldn't go to one of these other parcels of land around you. Now granted I don't want to mean that the gas companies that we've been dealing with would want to inflame the situation any more by doing that, hopefully they would go to the other parcels of land that were unoccupied or that would like to have a surface use agreement, but the current law doesn't require them to do that. The other shallow natural gas bills that are coming forward through HB 395, which is in Resources, would require them to demonstrate that they needed to use your

particular piece of land where they could get that bond.

**4:10 p.m.**

CHAIR GARY STEVENS remarked that if it was determined that your property was the only one that could be drilled, potential impacts might be that roads would be constructed, a drill might be placed on your property, a generating plant put in to power the drilling, and above ground piping could be installed. It all adds up to quite an impact on the local property owner.

REPRESENTATIVE SEATON said the companies are interested in working out problems, but legally that could happen. The burden of cooperation legally falls on the surface owner.

MIKE McCARTHY, Homer resident and retired registered geologist, testified via teleconference to say that he represents over 1,220 members of the Kachemak Bay Property Owners Alliance. He stated the following:

Currently the coal bed methane leases here impact 22,000 acres, which includes Homer's Bridge Creek watershed, an elementary school, three churches, and a portion of the designated critical wetland habitat area. We, the 1,200 members have expended thousands of volunteer hours to get the City of Homer, Kachemak City and the Kenai Peninsula Borough to pass resolutions supporting a moratorium and a buyback proposal for the coal bed methane leases in this area. This bill presently before you is not going to fix all the ills of the current CBM statute, but it's a solid start and it shows government responsiveness to Alaska's citizens. I would like to applaud both yourself and Representative Seaton for your efforts on our behalf.

MR. McCARTHY then read a letter from a Homer Realtor outlining the decidedly negative impact that the coal bed methane issue is having on the area wide real estate market. [A copy may be found in the bill file.]

He pointed out that there are 1,084 properties that are impacted and they're worth \$66.4 million in assessed value yet the leases were acquired for just \$28,000.

SENATOR COWDERY asked whether he was aware that property deeds and title insurance for property that's sold in Alaska say that the property owner does not have subsurface rights.

MR. McCARTHY agreed, but the situation here is that a number of property owners didn't know that a subsurface lease had been let and if they'd known they wouldn't have purchased the property.

SENATOR COWDERY again asked for information regarding where subsurface rights begin.

MR. McCARTHY said he didn't have that information.

REPRESENTATIVE SEATON advised that property owners that dig a water well must apply for water rights from the State if you want the property right on that water.

CHAIR GARY STEVENS noted that the Resource Committee would hear the bill next and he wanted the bill to move if at all possible.

SENATOR COWDERY motioned to report CSSSHB 364(O&G) and attached fiscal notes from committee with individual recommendations. He asked for unanimous consent. There being no objection, it was so ordered.

**CSHB 551(JUD) am-DRUG FELONY DISQUALIFIES TEACHER**

CHAIR GARY STEVENS announced CSHB 551(JUD) am to be up for consideration.

RYAN MAKINSTER, staff to Representative Lesil McGuire, introduced the bill and explained that the bill requires the Department of Education to either revoke or not permit the certification of a teacher that has been convicted of a felony drug charge. Some people have charged that the bill doesn't give anyone credit for making changes in their lives after having made a mistake. His response is that children are impressionable and convicted felons in the classroom don't provide good role models. Also, he posited, convicted drug felons have probably participated in other criminal activities; they just got caught on this one.

The House Judiciary Committee amended the original bill to exclude felonies in the fourth degree, which includes possession of minor substances including marijuana. In the current form, the bill pertains to felony drug convictions at a "criminal enterprise" level, which is selling, manufacturing or

distributing controlled substances or felony drug charges related to minors. Another question that was raised was whether a 19 year old selling a drug to an 18 year old would you fall under the statute and the answer is no. There's a three year age difference for that requirement to come into play, he said.

CHAIR GARY STEVENS stated that he has serious concerns about the bill. He is familiar with what the Professional Teaching Practices Commission (PTPC) does and he questioned the need for the bill. The other issue is rehabilitation. Certainly, as a parent, he wouldn't want someone who was recently convicted of a drug offense to be teaching his children, but if someone was convicted of a crime 35 years ago, it's possible that they have made changes and to revoke or not issue a teacher certificate doesn't take rehabilitation into consideration at all. He asked if it is true that someone could lose his or her certification for something that happened years ago.

MR. MAKINSTER said that's true. Although they aren't including a statutory requirement to look back, it's just if something comes to light. Also the current version removes "for life" as the term of revocation, which gives the Professional Teaching Practices Commission more latitude.

SENATOR COWDERY asked how DUI convictions might relate.

MR. MAKINSTER said that AS 11.71 describes felony drug convictions. Certain felony classes are actually drug convictions and aren't related to DUIs.

LARRY WIGET, executive director of public affairs for the Anchorage School District, testified via teleconference to state that as laudable as the legislation may appear, it is unnecessary. The bill is a direct result and reaction to a recent incident in the Anchorage School District teacher that was ultimately fired by the district after a conviction for possession of drugs. The Anchorage School District believes and the Professional Teaching Practices Commission concurs that the changes brought forth in this legislation can best be handled through regulation. Changes in regulation on moral turpitude within the Professional Teaching Practices Commission regulations would probably accomplish the same thing, he asserted.

CHAIR GARY STEVENS reiterated his original question regarding the need for the legislation and asked Mr. Wiget if it was his position that this isn't a step forward.

MR. WIGET said, "That would be the position of the Anchorage School District."

BONNIE BARBER, executive director of the Professional Teaching Practices Commission, testified via teleconference to say that the commission questions the need for the legislation. She said:

The commission has a history of investigating adjudicating and disciplining educators who have used drugs using current law and regulations. The commission agrees that teachers convicted of felony level misconduct involving a controlled substance could pose a severe threat to the health and safety of students. However, the commission also believes that there may be extenuating circumstances that would warrant a discretionary review of the facts presented so as to determine whether a revocation or denial would be an appropriate sanction for these offenses.

As you mentioned, under some circumstances it would be deemed appropriate to consider the length of time that has lapsed since the conviction as well as any documented...end of tape

**TAPE 04-32, SIDE B**  
**4:30 p.m.**

I did have a case of a Vietnam veteran who had offenses from the end of the war and then was clean and sober for 30 some years. Under this proposal, this person would not be allowed to get a certificate because we do a background check on every single applicant who applies for a certificate in the state of Alaska. So any conviction shows up on the FBI fingerprint report and under this proposal, the Office of Certification would be required to deny a person a certificate no matter when the offense occurred. The commission feels this is unnecessary. The commission is a group of nine educators who review decisions and they have the expertise to make the appropriate decision regarding whether a certificate should be denied or not.

I'd also like to mention that right now we can revoke or suspend a certificate for crimes of immorality and in the list of crimes of immorality is unlawful

distribution or possession for distribution of a controlled substance. So we can revoke now for those crimes that this proposal delineates.

The commission believes that the current system works and that we do not need to make the changes that are proposed.

CHAIR GARY STEVENS thanked Ms. Barber and said he was sure she couldn't comment on the Anchorage case that Mr. Wiget mentioned earlier.

MS. BARBER said she could say that it is the commission's position that they can take action for crimes of felony possession of a controlled substance, but she can't talk about a specific case.

CHAIR GARY STEVENS commented that the process did work then asked if the other issue was Section 3. (c).

MS. BARBER said she was concerned with the proposed addition to Section 1. (f). She said she understands that to be a requirement that a certificate not be issued.

CHAIR GARY STEVENS asked Mr. Makinster to clarify the issue.

MR. MAKINSTER said he first wanted to address a point made earlier about someone that had a drug problem when they were younger and had been rehabilitated. He went on to say:

This bill does not approach that. It doesn't approach anywhere revoking their certificate for some kind of similar situation as that. The highest level is criminal enterprise, that's five or more actions of manufacturing and distributing with the intent to profit. The other misconducts under AS 11.71.030 are the delivery with an intent to sell or distribute to a minor. This is not possessing drugs. This is not sharing drugs with a minor. This is intent to distribute. ... So it isn't any possession issue.

CHAIR GARY STEVENS asked Ms. Barber whether she had a response.

MS. BARBER said the commission can and does take action on all those issues. She then reiterated that she reads the amendment to require that the commission deny a certificate to a person that had a conviction in the past. She disagreed with Mr.

Makinster's statement that the amendment doesn't deal with someone's rehabilitation. She asserted that, "A person that had a conviction 30 years ago and had no conviction since then, - under this proposal it says the department may not issue a teaching certificate. So in fact it does not take into consideration any rehabilitation."

Continuing she said that the misuse of a controlled substance is a very serious conviction, but there are other serious convictions such as assault and kidnapping that aren't delineated. Those are crimes for which they revoke and or deny certificates so it doesn't make sense that just this one crime is delineated. The bill isn't necessary because they already do what the bill outlines, but it wouldn't allow the commission to use its discretion.

CHAIR GARY STEVENS asked her to give a background explanation of the Professional Teaching Practices Commission telling who they are and how the members are appointed.

MS. BARBER explained that the commission was established in statute in 1966 and given the responsibility of disciplining educators who commit immoral, unethical or illegal acts. The nine commissioners are appointed by the governor are approved by the Legislature. There are five teachers, two administrators and a representative from higher education and a representative from the Department of Education and Early Development.

CHAIR GARY STEVENS asked how many cases the commission hears each year and the result of the hearings.

MS. BARBER said it varies from year to year, but they hear about 70 cases a year and about 10 of those result in some sanction.

CHAIR GARY STEVENS asked Mr. Makinster whether he had any closing comments.

MR. MAKINSTER thanked the committee for hearing the bill.

CHAIR GARY STEVENS noted that he didn't have a quorum so no action could be taken in any case, but the issue was in need of additional scrutiny. CSHB 551(JUD) am was held in committee.

CHAIR GARY STEVENS adjourned the meeting at 4:40 p.m.