ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 9, 2005
1:15 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative John Coghill
Representative Nancy Dahlstrom

OTHER LEGISLATORS PRESENT

Representative Harry Crawford

COMMITTEE CALENDAR

HOUSE BILL NO. 103
"An Act requiring an actionable claim against the state to be tried without a jury."

- HEARD AND HELD

HOUSE BILL NO. 187
"An Act establishing the Alaska capital income account within the Alaska permanent fund; relating to deposits into the account; relating to certain transfers regarding the Amerada Hess settlement to offset the effects of inflation on the Alaska permanent fund; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 188
"An Act establishing the State of Alaska Capital Corporation; authorizing the issuance of bonds by the State of Alaska Capital Corporation to finance capital improvements in the state; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 149
"An Act relating to further regulation of the sale, possession, and delivery of certain chemicals and precursors used in the manufacture of methamphetamine."

- MOVED CSHB 149(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 103
SHORT TITLE: CLAIMS AGAINST THE STATE
SPONSOR(S): REPRESENTATIVE(S) KELLY

01/24/05	(H)	READ THE FIRST TIME - REFERRALS
01/24/05	(H)	STA, JUD, FIN
03/03/05	(H)	STA AT 8:00 AM CAPITOL 106
03/03/05	(H)	Moved Out of Committee
03/03/05	(H)	MINUTE(STA)
03/04/05	(H)	STA RPT 1DNP 5NR
03/04/05	(H)	DNP: GRUENBERG;
03/04/05	(H)	NR: GARDNER, GATTO, RAMRAS, ELKINS, SEATON
03/09/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 187
SHORT TITLE: AMERADA HESS INCOME; CAPITAL INCOME ACCT.
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/28/05	(H)	READ THE FIRST TIME - REFERRALS
02/28/05	(H)	JUD, FIN
03/09/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 188
SHORT TITLE: STATE OF AK CAPITAL CORP.; BONDS
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/28/05	(H)	READ THE FIRST TIME - REFERRALS
02/28/05	(H)	JUD, FIN
03/09/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 149
SHORT TITLE: SALE OF METHAMPHETAMINE AND PRECURSORS
SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/14/05	(H)	READ THE FIRST TIME - REFERRALS
02/14/05	(H)	JUD, FIN
03/07/05	(H)	JUD AT 1:00 PM CAPITOL 120

03/07/05	(H)	Heard & Held
03/07/05	(H)	MINUTE(JUD)
03/09/05	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

HEATH HILYARD, Staff
to Representative Mike Kelly
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 103 on behalf of the sponsor, Representative Kelly.

CHERYL FRASCA, Director
Office of Management & Budget (OMB)
Office of the Governor
Juneau, Alaska
POSITION STATEMENT: Opened the presentation of HB 187 [and HB 188] on behalf of the administration.

MICHAEL BARNHILL, Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 187 [and HB 188] on behalf of the administration.

DEVON MITCHELL, Debt Manager
Treasury Division
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 187 and HB 188 on behalf of the administration.

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 149.

JANE PIERSON, Staff
to Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 149, explained the proposed CS, Version S, and responded to questions during discussion of proposed amendments.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 149, responded to questions regarding the proposed CS, Version S, and proposed amendments.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:15:08 PM. Representatives McGuire, Kott, Gruenberg, and Gara were present at the call to order. Representative Anderson arrived as the meeting was in progress. Representatives Coghill and Dahlstrom were excused.

HB 103 - CLAIMS AGAINST THE STATE

1:16:00 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 103, "An Act requiring an actionable claim against the state to be tried without a jury."

1:16:22 PM

HEATH HILYARD, Staff to Representative Mike Kelly, Alaska State Legislature, sponsor, said on behalf of Representative Kelly that HB 103 provides for a simple change to the existing [law] that says claims against the state shall be tried by a jury; with the change proposed by HB 103, such claims shall be tried by a judge without a jury. He pointed out that the proposed change would return the state to the same procedure it had prior to 1975, when Senator John Butrovich introduced legislation providing for the current procedure. He also pointed out that in 1975, the state was a party in University of Alaska v. National Aircraft leasing, Ltd., 536 P.2d 121, 128-29 (Alaska 1975), and relayed that according to information he received from a member of the 1975 University of Alaska Board of Regents, Senator Butrovich introduced the aforementioned legislation in response to that case. Mr. Hilyard said that he and Representative Kelly have spoken to general counsel for the University of Alaska, who indicated that she has no problem with the proposed change. In addition, he relayed, he and the

sponsor were told by the Alaska Academy of Trial Lawyers (AATL) that it remains neutral on the issue.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 103.

1:18:57 PM

REPRESENTATIVE GARA relayed that he has a lot of concerns regarding HB 103 and would like to have more discussion on it with all committee members present.

CHAIR McGUIRE noted that the members who were absent have requested that the bill be heard another time when they can attend. She suggested that today, members that are present can provide the sponsor's staff with a list of items they'd like more information on for the bill's next hearing.

REPRESENTATIVE GRUENBERG mentioned that HB 103 was discussed in the House State Affairs Standing Committee; that he has concerns with the bill; and that when the bill was reported out of the House State Affairs Standing Committee, he voted "do not pass." He said he would like to have testimony reopened [when the bill is heard next].

CHAIR McGUIRE relayed that she would do so.

REPRESENTATIVE GRUENBERG opined that juries tend to favor defendants, and offered his understanding that in the aforementioned case, it was the University of Alaska that had asked for a trial by jury.

[Chair McGuire turned the gavel to over to Representative Kott.]

REPRESENTATIVE KOTT asked Representative Gara to explain his concerns.

1:22:11 PM

REPRESENTATIVE GARA Opined that there's more chance of a jury getting a case right than there is of a judge getting it right. He added:

> What happens in the dynamic of a jury trial is that certain people miss certain evidence, and they all get in the room and then one will say, "Do you remember this part," and then another will say, "Do you

> remember this part." And I think when you put 12 heads together - or 6 heads, I think, ... [in] a district court case - ... you have more of a chance of getting it exactly right than you do if you're one person. So I think jury trials are better than judge trials - that's my personal belief. I think the constitutional framework is that people get to be judged by their peers, and I think the value of the jury system is incredible, in my view.
>
> And so I don't like taking away the right of the community to come in and judge the conduct of the state, judge the conduct of the plaintiff. ... I would be more scared, as a litigant, of a decision by a judge than I would [be of] a decision by a jury. So I think the jury process is much stronger than letting just a judge decide a case. It's also faster. What happens is, judges, when they decide cases, like any sort of person who's overwhelmed with work, they'll sit on a case during the trial and they feel compelled to ... [provide] a written decision, and it can be six months or longer to get a decision out of a judge after the trial is over. [In comparison] a jury returns the verdict pretty quickly. ...

REPRESENTATIVE GARA concluded by saying that he likes the jury system.

REPRESENTATIVE GRUENBERG offered his belief that with a jury verdict - unless there is something very unusual, or the evidence could not possibly support the factual decision of a jury, or the jury instructions are erroneous - it is very hard to overturn a judgment by jury. On the other hand, he remarked, judges enter factual findings and conclusions of law, "and deference is given to them," but a decision by a judge can be picked apart on appeal much more easily than can a jury's decision.

REPRESENTATIVE KOTT noted that the committee would be holding the bill over.

[Representative Kott returned the gavel to Chair McGuire.]

REPRESENTATIVE GARA said he doesn't find it useful to hear only one side of a story and then make a decision based only on that one side. So although members' packets contain a detailing of four cases against the state, the information is from the

state's perspective, and so he is disinclined to rely on that information without hearing the cases from the other side's perspective. He acknowledged, however, that although he would like to hear both sides of the story for each of the four cases used as examples, the committee, as a practical matter, cannot conduct "four trials on these cases"; instead, he is just pointing out that anecdotal information from one side in litigated cases is often not that useful.

CHAIR McGUIRE suggested that members or other interested parties have a bit more time to present information from both sides of the aforementioned cases. She stated that HB 103 would be held over.

REPRESENTATIVE GARA asked Mr. Hilyard how the bill relates to the [Alaska State] Constitution.

MR. HILYARD relayed that Article I, Section 16, of the Alaska State Constitution says:

> **Civil Suits; Trial by Jury.** In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.

MR. HILYARD also relayed that Article II, Section 21, of the Alaska State Constitution says:

> **Suits Against the State.** The legislature shall establish procedures for suits against the State.

MR. HILYARD suggested that the language of Article II, Section 21, can be interpreted to mean that the legislature has the discretion to determine how claims against the state will be handled.

[HB 103 was held over.]

HB 187 - AMERADA HESS INCOME; CAPITAL INCOME ACCT.
HB 188 - STATE OF AK CAPITAL CORP.; BONDS

1:28:10 PM

CHAIR McGUIRE announced that the next order of business would be a hearing on two bills: HOUSE BILL NO. 187, "An Act establishing the Alaska capital income account within the Alaska permanent fund; relating to deposits into the account; relating to certain transfers regarding the Amerada Hess settlement to offset the effects of inflation on the Alaska permanent fund; and providing for an effective date."; and HOUSE BILL NO. 188, "An Act establishing the State of Alaska Capital Corporation; authorizing the issuance of bonds by the State of Alaska Capital Corporation to finance capital improvements in the state; and providing for an effective date."

The committee took an at-ease from 1:29 p.m. to 1:30 p.m.

1:30:01 PM

CHERYL FRASCA, Director, Office of Management & Budget (OMB), Office of the Governor, explained that HB 187 is the infrastructure for the [governor's] proposal by which the governor's budget would fund approximately $340 million worth of capital projects. She relayed that others from the administration would speak to the provisions of [HB 187 and HB 188] and to the kind of structure that is necessary in order to issue bonds and then use the earnings from the settlement of the State v. Amerada Hess, et al. 1 JU-77-847 Civ. (Superior Court, First Judicial District) case to pay for the debt.

1:31:09 PM

MICHAEL BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law (DOL), explained that the state filed suit against the oil companies in 1977. The litigation proceeded for many, many years, and when the case was on its way to trial in the late 1980s, objections were raised, on the basis of bias, regarding allowing Alaskans to sit on the jury and as judges on the case, since they could potentially benefit from any judgment arrived at, because a portion of the judgment would go into the permanent fund and in turn be distributed to them via permanent fund dividends (PFDs). This issue was litigated in multiple courts, before multiple judges, and culminated in legislation that altered Title 37 - specifically the statutes pertaining to the permanent fund - and provided that any monies that came from the Amerada Hess litigation would be segregated in the permanent fund so that any earnings on those monies would not flow into the (PFD) program but would instead be rededicated to the principal of the permanent fund.

MR. BARNHILL relayed that the issue has been raised regarding whether the state can now change that statute, and the DOL is of the opinion that such can be done, though there are policy implications inherent in doing so. The attorneys that worked on the Amerada Hess litigation are concerned about the [public] perception of repealing the statute if there were to be a big case in the future that could potentially benefit the permanent fund, since the same aforementioned bias issue could again be raised. If the state gets the reputation of enacting "these" statutes and then repealing them, the public's perception of that could be of concern, but that is a policy issue, not a legal issue. In response to questions, he relayed that the aforementioned statute is in Title 37.13.145(d), which was enacted in 1989.

REPRESENTATIVE GRUENBERG said he wants a copy of a written legal opinion by the DOL addressing the issue of whether the state can change the statute. He asked whether the DOL or any one else has any opinions to the contrary.

MR. BARNHILL said the DOL did not, but he did not know whether others did.

CHAIR McGUIRE, noting that the legislature has the authority to change statute, suggested that the issue is really whether the spirit of agreement is incorporated into the statute and how that impacts future negotiations.

1:36:04 PM

MR. BARNHILL said that there was never any agreement "to do this," rather it was just a solution to the concern regarding the potential bias of judges and jurors. He relayed that the court also came up with its own solution in 1989, which was to amend both the Alaska Rules of Civil Procedure and the Alaska Rules of Criminal Procedure to provide that the mere receipt of a PFD would not constitute a challenge for cause; these changes took effect in 1990 via Alaska Supreme Court Order 1013, which amended Rule 47(c) of the Alaska Rules of Civil Procedure and Rule 24(c) of the Alaska Rules of Criminal Procedure. He added that because of a later amendment to Rule 47, the change brought about by the aforementioned Supreme Court Order can now be found under Rule 47(c)(13).

REPRESENTATIVE GRUENBERG offered his interpretation of the [rule] of necessity as being, "if everybody's disqualified,

nobody is disqualified," and said that court systems have used the rule of necessity [when there are] challenges, for example, to the federal judicial retirement system, where every federal judge in the country would be disqualified. He asked whether the DOL has any feeling about having the rule of necessity statutorily enacted.

MR. BARNHILL declined to express an opinion on that issue at this time.

REPRESENTATIVE GARA opined that it would be a travesty to base policy on what he considers to be a frivolous argument made by oil company attorneys 15 years ago, and noted that the [Alaska] Supreme Court has ruled, via the adoption of court rule changes, that it is okay for somebody to sit on a jury even though he/she gets a dividend. He asked for details regarding the court rulings on the Amerada Hess case.

1:40:10 PM

MR. BARNHILL said there were several court rulings and he would provide the committee with a list. In response to additional questions, he offered his understanding that most of the rulings were in favor of not disqualifying the judge, and said he would research the issue further but didn't think there were any rulings favoring the oil company's position.

MR. BARNHILL, in response to further questions, relayed that the statutory segregation of funds was done to address the perceived problem regarding bias, so as to enable the case to go forward; that Judge Walter Carpeneti issued a "notice of intention to grant motion for disqualification," indicating that at that point in time he was in favor of the oil companies' position, but he never did grant the motion - it was in the wake of that notice that the aforementioned legislation was enacted; and that the U.S. Court of Appeals 1994 case, Exxon Corporation v. Harold C. Heinze; Charles E. Cole; Ronald Swanson; James E. Eason, did not address the bias issue, but did say, "Because the parties have not yet developed a factual record on the value of the remaining claims or their potential impact - if any - on Alaska permanent fund dividends, we cannot evaluate Exxon's bias claims on their merits."

CHAIR McGUIRE noted that that case also says: "We express no opinion on the merits of the parties' arguments regarding abstention and the rule of necessity. The district court order dismissing Exxon's complaint with prejudice is vacated, and the

case is remanded to the district court to dismiss without prejudice."

REPRESENTATIVE GARA asked how much the state received from the Amerada Hess litigation.

MR. BARNHILL suggested that the OMB could better address that question, but offered his belief that the total amount is [in excess] of $250 million and that with interest compounding over the years the amount is now [in excess] of $400 million.

1:45:09 PM

DEVON MITCHELL, Debt Manager, Treasury Division, Department of Revenue (DOR), referred to a several-page handout in members' packets and indicated that it contains information regarding both HB 187 and HB 188, the general ideas of which flow in concert. House Bill 187 would allow earnings from the Amerada Hess settlement to flow into the proposed Alaska capital income account. House Bill 188 creates the State of Alaska Capital Corporation, which would have the ability to issue up to $350 million in corporation obligation bonds that would be used to fund the state's capital projects. Further, the potential source of payment of operating leases, which the corporation would enter into with agencies that would benefit from the projects, would be the Alaska capital income account, though initially the Alaska capital income account would also be used to fund the establishment of the State of Alaska Capital Corporation.

MR. MITCHELL said that the goal of this proposed structure is to allow the state to move forward and leverage "this" fund and "achieve this project list" in a manner that would allow tax-exempt bonds to be used as the funding source while maintaining the ability to invest money in a taxable fashion. The bond structure proposed [by HB 188] would be a combination of "security features and flexibility features" to allow for the adjustment of annual payments. Initially the DOR was considering a structure that would have a 40-year interest-only structure with a final maturity that would have a bullet, or balloon, payment, and the DOR would have the flexibility in the interim years to retire debt as receipts of the corporation might exceed the nominal interest payment amounts. One key security feature built into the corporation is the "moral obligation" pledge of the state on a debt service reserve fund.

MR. MITCHELL suggested that flowcharts on pages 7-8 of the aforementioned handout can help members visualize the governor's proposal, which, in the latter stages, would provide for monies to be appropriated annually into a revenue fund and from there flow into either a debt service reserve fund, a bond redemption fund, or towards the cost of operations. Also, issues of corporate bonds would have flexible amortization and would "fund up" the construction fund, which would be used for the [capital] projects identified in [members' packets] through the normal spending process the state uses for other capital projects. Investors would be repaid from the cycling of money through the bond redemption fund, which would be funded essentially a year in advance of actual amortization requirements, allowing it to [function through] potentially low appropriation years.

MR. MITCHELL referred to charts on pages 9-12 of the aforementioned handout, and said they show "some modeling of how this might work, with some assumptions that are currently being used." Referring specifically to page 9, he said monies in the Alaska capital income account would be invested in a manner similar to other Alaska Permanent Fund Corporation (APFC) investments, using the same asset allocation; the anticipated realized earnings rate is 7.04 percent, which is differentiated from the total return expectation of 7.61 percent for "the corporation." He said that at 7.04 percent, there will be an annual transfer of approximately $29.9 million.

MR. MITCHELL said page 10 of the handout shows the annual lease appropriation received by the State of Alaska Capital Corporation's revenue fund; that the amount [in column 4] is equivalent to the earnings rate shown on page 9, column 5; that [the revenue fund] has a borrowing rate of 6 percent, which he characterized as high; that [the revenue fund] has a reinvestment rate of corporate assets of 2 percent because they would have been invested in a more liquid fashion. Referring to the column on page 10 labeled, "Outstanding Bonds," he said it might be helpful to look at page 12, which shows a net funding of the project list at $343 million - this is from the amount listed in the aforementioned Outstanding Bonds column beginning in 2006; the $343 million has nominal interest payments associated with it that were derived from the 6 percent borrowing rate.

MR. MITCHELL added:

> We have contributions of earnings on fund balance that go into the calculation, transfers out; the transfer

> out in 2006 would be to fund up the debt service reserve ... fund - and then an ending balance column. And if [you] look down, you can see the flexible nature, where, in 2008, we begin paying on principal with the $21 million figure, shown in 2008, and that begins diminishing the outstanding bond amount and diminishing the nominal payment requirement.

MR. MITCHELL said the DOR anticipates further refinement of the bills' leveraging, security, and structure provisions as they move through the process; as that happens, the DOR would continue to explore structuring possibilities, including variable rate debt, to ensure the highest probability that debt service would be paid from receipts of the State of Alaska Capital Corporation rather than from any other funding source.

1:53:41 PM

REPRESENTATIVE GARA offered his understanding that the proposal would "set free" about $30 million, per year, of permanent fund earnings that would then be put into the general fund (GF).

MR. MITCHELL replied:

> The structure would allow for the earnings of the Amerada Hess [settlement], rather than to become principal, to flow over to the earnings reserve. And so it would not go to the general fund, but rather to the earnings reserve [in an account] called the Alaska capital income account ... - available for appropriation.

MR. MITCHELL indicated that the amount [available for appropriation] is estimated to be about $30 million a year.

REPRESENTATIVE GARA asked whether the bonds that would be issued would be based on the value of the entire Amerada Hess portion of the permanent fund.

MR. MITCHELL replied:

> The idea to leverage is not necessarily linked, specifically, to ... a pledge of principal that resides in [what]... we're calling the Amerada Hess settlement. It would be a leveraging of a public corporation of the State of Alaska, supported by operating leases that that public corporation would

enter into, that could be paid from earnings of this settlement that would flow through the Alaska capital income account.

MR. MITCHELL characterized this as an important feature of the potential leveraging, because one can't have a pot of money that is pledged to a leveraging, and then issue bonds on a tax exempt basis, since such is not allowed under the U.S. tax code.

REPRESENTATIVE GARA asked whether the state would be pledging part of the permanent fund in any way to support the bonds.

MR. MITCHELL said no. He reiterated that the corporation's revenues derived from operating leases would be pledged. He indicated that such would be considered a less credit-worthy pledge than the state might otherwise provide through other financing vehicles, but by implementing a "moral obligation" on the debt service reserve fund, even though such won't be relied upon as a funding source, it creates a backstop, or a minimum credit threshold, for leveraging, which is anticipated to be in "the A ratings category."

REPRESENTATIVE GARA raised the issue of defaulting on bond obligations. He asked what the bond issuer would attach in case of such a default.

MR. MITCHELL said the bond issuer could not attach anything other than the revenues of [the State of Alaska Capital] Corporation. In the event of a failure to pay debt service, the [proposed] statute requires the corporation to request that the legislature replenish the [debt service] reserve fund from other funding sources; that is what constitutes "moral obligation," he explained, noting that other entities in state government already have the authority to issue moral obligation debt.

1:59:01 PM

REPRESENTATIVE GARA said he still has questions regarding the bonding portion of the governor's proposal.

CHAIR McGUIRE said that HB 187 and HB 188 would be held over and brought back at a future meeting.

HB 149 - SALE OF METHAMPHETAMINE AND PRECURSORS

2:00:07 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 149, "An Act relating to further regulation of the sale, possession, and delivery of certain chemicals and precursors used in the manufacture of methamphetamine." [Before committee was the proposed committee substitute (CS) for HB 149, Version 24-LS0596\L, Luckhaupt, 3/4/05, which was adopted as a work draft on 3/7/05; in members' packets was a proposed CS for HB 149, Version 24-LS0596\S, Luckhaupt, 3/9/05.]

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, thanked legislative staff and Department of Law staff for their assistance with the creation of the proposed CS, Version S.

2:01:27 PM

JANE PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, on behalf of Representative Ramras, explained the changes in Version S. She indicated that page 3, line 7, now provides that the crime of endangering the welfare of a child in the first degree would be a class B felony. Page 5, lines 3 and 7-8, now provides that the mental intent under proposed AS 11.71.020(a)(6)(A) and (B) be one of reckless disregard. Page 5, lines [17-23], now references 6 grams instead of 9 grams, [and provides that the possession of ephedrine, phenylpropanolamine, iodine, and crystal iodine - among other chemicals - are prima facie evidence that the person intended to manufacture, aid in the manufacture of, or deliver to another person who intends to manufacture methamphetamine].

MS. PIERSON relayed that page [6, lines 1-14,] now uses terms, for a person who possesses the listed chemicals, that are consistent with those defined on pages [8-10]. Also, terms for iodine distributor have been added to page 6 [lines 8-14], and page 6, line 18, now correctly references proposed AS 11.71.020(a)(2)-(6). Page 8 [lines 28-31] now contains terms for retail distributors and manufacturers that are consistent [with other parts of the bill]. Version S no longer includes Pediatric gel and liquid forms of pseudoephedrine in the list of exceptions, since these products may start being used by methamphetamine manufacturers if pseudoephedrine in tablet form becomes more difficult to acquire in quantity. Version S no longer requires manufacturers, wholesalers, or retail sellers of pseudoephedrine to register with the Department of Public Safety (DPS), since federal registration requirements already exist under 21 U.S.C. 821.

MS. PIERSON relayed that [Section 11 of Version S] now includes products containing ephedrine and phenylpropanolamine; now specifies that the identification required to purchase the chemicals listed in the bill must be valid government-issued photographic identification; and now specifies that the logbook must include the type of the aforementioned identification used as well as the identification number on that ID card.

[Chair McGuire turned the gavel over to Representative Anderson.]

MS. PIERSON relayed that page 10 [line 12] now includes iodine and iodine crystals in the list of chemicals that must be kept behind the counter.

2:06:15 PM

MS. PIERSON, in response to queries, explained that definitions for "dispenser" and "retail distributor" were not included in Version S because the wording [in other parts of the bill] had been changed, and relayed that Version S now defines "readily retrievable" in part as:

> if the registration address is outside the state, "readily retrievable" means records must be furnished within three working days by courier, facsimile, mail, or electronic mail

MS. PIERSON, in response to a further query, relayed that Version S does not include a civil penalty for violations of the proposed pseudoephedrine laws.

REPRESENTATIVE GRUENBERG asked why the crime of [endangering a child in the first degree] should be a class B felony, and why the mental intent [under proposed AS 11.71.020(a)(6)(A) and (B)] has been changed to one of reckless disregard.

REPRESENTATIVE RAMRAS opined that the crime of endangering a child in the first degree by exposing him/her to the toxic materials and behavior inherent in the manufacture of methamphetamine should be a class A felony, but acknowledged that such a penalty might not be supportable, since other behaviors resulting in child endangerment currently result in a lesser penalty. He indicated that he is open to looking at that issue further.

[Representative Anderson returned the gavel to Chair McGuire.]

REPRESENTATIVE RAMRAS, with regard to the question of why the mental intent [standard] has been changed, offered his understanding that "reckless" is a "lesser" term.

MS. PIERSON relayed that the Department of Law (DOL) had indicated a preference for that standard.

2:10:35 PM

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), indicated that the mental intent was changed because of a proof problem, and explained that what [law enforcement officers] are finding is that methamphetamine users are often trading the raw materials that go into the manufacture of methamphetamine - the precursors, the pseudoephedrine, the phosphorus, the iodine - for the finished product. And when that occurs, the DOL believes that it will be difficult to prove that the person purchasing the raw ingredients to give or trade to someone else knew that those substances were going to used to manufacture methamphetamine. So by having the mens rea be one of reckless disregard - where one is aware of a risk but consciously disregards it - it will be easier to prosecute someone who purchases or possesses the raw materials for the purpose of providing them to a methamphetamine manufacturer.

MR. GUANELI, in response to further questions, relayed that the crime of misconduct involving a controlled substance in the second degree is a class A felony, and opined that the delivery of the precursor chemicals listed in proposed AS 11.71.020(a)(6)(A) and (B) of Version S should have the mens rea of "reckless disregard" because AS 11.71.020 pertains to schedule IA controlled substances, among which are heroin and other opium-based products. He indicated that [proposed AS 11.71.0202(d) of Version S] also pertains to schedule IA controlled substances.

REPRESENTATIVE GRUENBERG expressed concern about making wholesale increases to the state's criminal penalties, and opined that the legislature should be consistent [with regard to the type of penalty that's imposed for similar crimes].

MR. GUANELI explained that [proposed AS 11.71.020(d)] pertains to a possessory offense, and offered his belief that it wouldn't make sense to say that someone possesses the chemicals used to manufacture methamphetamine with reckless disregard that he/she

is going to manufacture methamphetamine. He surmised that when AS 11.71.020(a)(1) was first enacted, the legislature probably felt, particularly with regard to heroin, that possession was adequate in terms of proof of the intent to deliver. However, [law enforcement officers] are now dealing with people who possess the ingredients used to manufacture of methamphetamine but are not doing that manufacturing themselves, and so the DOL feels that trying to prove that such people have a specific mental state imposes too big a burden. He remarked that although the mens rea of "reckless disregard," as provided for in [proposed AS 11.71.020(a)(6)(A) and (B)], could be changed, the DOL believes that "reckless disregard" is a more appropriate mens rea.

REPRESENTATIVE GRUENBERG asked whether such people are being charged with any kind of a crime.

2:15:46 PM

MR. GUANELI said there are some crimes related to the listed chemicals.

REPRESENTATIVE GRUENBERG asked whether there is currently "a proof problem" regarding those that possess heroin, and whether those that possess the chemicals used in the manufacture of methamphetamine could just be prosecuted under existing AS 11.71.020(a)(1), since that uses the term "manufacture".

MR. GUANELI said that after further review, he now believes that the phrase in existing AS 11.71.020(a)(1) - "with the intent to manufacture or deliver" - does modify the verb "possesses," and thus does modify the possessory offense; therefore, the same comments he made about [proposed AS 11.71.020(d)] also apply to the language in existing AS 11.71.020(a)(1).

REPRESENTATIVE GRUENBERG acknowledged that point.

MR. GUANELI noted, though, that there has not been a lot of manufacturing of opium products in Alaska; those products generally come from outside of Alaska, and so one who possesses opium products would most likely be charged with intent to deliver, rather than with intent to manufacture.

2:17:55 PM

REPRESENTATIVE GRUENBERG asked why Section 6 of Version S - proposed AS 11.71.020(d) - now specifies six grams, rather than nine grams.

MR. GUANELI said that the amount of six grams has been recommended by the Alaska State Troopers, who want to be able to deal with consistent amounts, both for training purposes and for providing notice to retailers and the public. He also offered his understanding that six to nine grams of pseudoephedrine is typical of the amount being found in many of the methamphetamine laboratories ("labs") in Alaska. In response to a question, he indicated that one gram would equal the size of a raisin, so six grams would equal the size of about a handful of raisins, and that most of the methamphetamine labs in Alaska are small - sometimes referred to as "mom and pop" operations - and they are particularly dangerous because of the ease with which they can be set up, and even six grams of pseudoephedrine can be used to manufacture about five and a half grams of methamphetamine, with each gram being sold for between $100-$250, depending on the location.

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REPRESENTATIVE GARA said that he is generally supportive of the bill, but does still have concerns, such as one with the reference to manslaughter. Turning attention to the six-gram limitation proposed by the bill, he asked how much pseudoephedrine can be used by a person legitimately.

MR. GUANELI offered his understanding that a typical package contains roughly only nine-tenths of a gram or one gram, and that if the instructions on the package are followed, that amount should last several days. He relayed that most packages recommend only taking the product for seven days before seeing a doctor. He referred to the Iowa survey that he'd spoken of at the bill's last hearing, and reminded members that that study indicated most people generally only bought one package at a time and just a few people bought two packages at a time. So although there might be rare instances of a person buying five or six packages for his/her family's usage over the course of a year, that is not who law enforcement officers are going to be pursuing, and if a person is obtaining six or more packages at once, that might be an indication that he/she is not using the pseudoephedrine in a legitimate manner.

2:23:50 PM

REPRESENTATIVE GARA asked whether [Costco Wholesale Warehouse ("Costco")] sells pseudoephedrine products.

MR. GUANELI said he'd heard that it did.

MS. PIERSON said she'd looked for pseudoephedrine products the other day when she was in Costco but didn't find any.

REPRESENTATIVE GARA noted that [Section 6 of Version S] makes it a crime to just possess six grams of pseudoephedrine, and questioned whether that is something that should be criminalized.

REPRESENTATIVE RAMRAS noted that he's heard a concern on that issue from a Fairbanks company that sends cold medicine in bulk to "manned camps" in remote sites, and acknowledged that perhaps the bill doesn't yet adequately provide an exception for such companies.

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REPRESENTATIVE GARA said he didn't think the bill should make criminals out of all people who possess six or more grams of pseudoephedrine products but aren't operating a methamphetamine lab, because not all such people possess those products with illegitimate purposes in mind.

MR. GUANELI clarified that the bill does not make simple possession of pseudoephedrine products a crime; rather, someone would first have to charged with manufacturing methamphetamine, since Section 6 simply provides for a presumption that a person who possesses more than six grams intends to manufacture. In order to prosecute such a case, he remarked, there must be other evidence as well; the bill does not provide for a strict liability offense, a simple possessory offense. The bill is trying to address the fact that possessing [certain] amounts of pseudoephedrine products can lead to methamphetamine manufacturing.

REPRESENTATIVE GARA said he disagrees with Mr. Guaneli's statement. He remarked that although he believes that Mr. Guaneli would never prosecute a person for simply possessing pseudoephedrine products when the person doesn't intend to manufacture methamphetamine, he doesn't want to pass a law that would let another prosecutor do so. He noted that [Section 6] says in part: "possession ... is prima facie evidence that the person intended to use the listed chemicals to manufacture ...".

CHAIR McGUIRE remarked that one of the difficulties law enforcement and prosecutors are currently facing has to do with obtaining proof in these cases and trying to track down who the perpetrators are. She asked Representative Gara whether there is an alternative amount he would prefer.

2:28:41 PM

REPRESENTATIVE GARA said he didn't offhand. He opined that it should not be crime to simply possess six or more grams of pseudoephedrine without there being some other evidence that a person manufactures methamphetamine. He offered his belief that when it becomes easier to prove cases it also becomes easier to make mistakes [regarding whether a person should actually be charged with a crime]. He indicated that if someone could relay to him an amount of pseudoephedrine that could not possibly be used for innocent purposes, then he would be willing to have that amount specified in the bill.

MR. GUANELI, in response to a question, reiterated that one package of a pseudoephedrine product contains approximately nine-tenths of a gram of pure pseudoephedrine, and so one would have to buy more than six packages of pseudoephedrine products to exceed the limit proposed in the bill.

CHAIR McGUIRE noted that other states, including California, have a nine-gram limitation.

MR. GUANELI concurred.

REPRESENTATIVE RAMRAS noted that Section 6 starts out by saying, "In a prosecution under (a) of this section, possession of six grams or more of the listed chemicals ..., or to deliver to another person who intends to manufacture methamphetamine ...". He surmised that "a big home or a girl scout camp," for example, wouldn't be trying to deliver to another person who intends to manufacture methamphetamine. "So I don't ... think that reasonable people would prosecute a reasonable family," he added.

REPRESENTATIVE GARA suggested as a solution that the bill say that it is prima facie evidence of the intent to manufacture and distribute methamphetamine if one is found with both pseudoephedrine products and methamphetamine lab equipment. He also noted that the bill makes it a crime to possess six or more grams of iodine. He asked whether that is more iodine than one

could have a legitimate use for, or whether he should have the same concern regarding the limitation on iodine as he does about the limitation on pseudoephedrine.

REPRESENTATIVE RAMRAS noted that a Fred Meyer employee relayed to him that Fred Meyer will allow a person to buy three boxes of Sudafed at a time, and relayed that in one instance, four young people pulled up in a car and each came into the store and bought the maximum amount allowed. He opined that having twelve packages of Sudafed in the car clearly indicated that those youths had illegitimate intentions. In such situations, he remarked, he would be reluctant to have the bill specify that methamphetamine lab equipment must also be present. He suggested that Ms. Pierson might be able to better address the question regarding iodine quantities.

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MS. PIERSON said that according to discussions she's had with the Department of Public Safety (DPS) and the Anchorage Police Department (APD), "iodine is not the stuff your grandmother used to put on your cut." Instead, iodine is a crystal that is used in really large water purification plants, and is a highly toxic substance. Apparently, one can go to a "local water supply store," buy iodine in a five-gallon bucket, and then resell it in smaller quantities. The bill proposes to limit the amount a person could have in his/her possession, since it is not a substance that the average person would keep around.

REPRESENTATIVE GRUENBERG asked whether iodine is used in the manufacture of salt.

MS. PIERSON said she did not know.

MR. GUANELI, in response to questions, said that iodine is one of the three primary ingredients used in making methamphetamine. He, too, noted that iodine is a toxic chemical and can be purchased in large quantities, adding that it is legitimately used in water treatment and in some veterinary applications. A five-pound box of iodine, for example, which can be bought for approximately $200, is enough to treat over 1 million gallons of water; therefore, if a person is in possession of five pounds of iodine, then he/she should be in the business of treating water. Iodine sells on the street for roughly $50 an ounce, he remarked, and pointed out that other states set a limit of either six or nine grams. He emphasized that the type of iodine being referred to in the bill is not the type used in the

treatment of small cuts and scratches, but is the type for which the state ought to be able to say that possession of six or more grams is prima facie evidence of methamphetamine manufacture.

MR. GUANELI said he doesn't know of any reason for law enforcement to go after somebody who is in the business of water treatment or who is buying cold medication for a scout troop; such would just lead to bad press and won't stop the manufacturers of methamphetamine. With regard to the argument that committee members trust him not to prosecute someone unjustly but don't trust other prosecutors not to, he noted that he has heard that argument for 29 years and has yet to have any of his employees behave less cautiously than he does in prosecution situations. "Again, we're trying to deal with a real life crises that is endangering all Alaskans, including children," he remarked, but acknowledged that [iodine] industry representatives have yet to weigh in on this issue.

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CHAIR McGUIRE offered her understanding that it is difficult to catch people in the middle of manufacturing methamphetamine, and surmised that this would be one reason for having the limitations proposed in the bill. Also, she surmised, there may be people that are working in groups for the purpose of obtaining ingredients for a methamphetamine manufacturer, and opined that such peripheral players should have to face penalties as well. To illustrate her point she used the example of buying bullets for a gun knowing full well that the person one is giving the bullets to is going to use the gun to shoot at other people.

REPRESENTATIVE ANDERSON concurred, and offered his belief that law enforcement officers will not want to go after those that have a legitimate reason for possessing the ingredients listed in the bill.

2:42:30 PM

REPRESENTATIVE GRUENBERG again raised the issue of manufacturing salt, and asked that more research be done. He also asked what amounts other states use in their limitations.

REPRESENTATIVE RAMRAS indicated that some states use a limit of six grams and other states use a limit of nine grams; Version S proposes a limit of six grams because that is what the DPS asked for.

2:44:26 PM

MS. PIERSON added that her research has shown there to be about an equal split between those states that have a six-gram limitation and those that have a nine-gram limitation.

REPRESENTATIVE KOTT said he has some of the same concerns that Representative Gara has regarding the six-gram limitation, and opined that regardless of whether a person is caught and prosecuted, the bill proposes to make criminals out of those who possess six or more grams of the listed chemicals. He pondered whether the selling of pseudoephedrine products in bulk quantities might change the dynamics, and noted that they've not yet heard from any retailers, wholesalers, manufacturers, or "packaging groups."

REPRESENTATIVE ANDERSON indicated that he disagrees with Representative Kott because Section 6 begins by saying, "In a prosecution under (a) of this section ...". He characterized this language as providing the delineation between just possessing and possessing in conjunction with the intent to manufacture or deliver, and opined that ownership alone would not result in a violation of the law.

REPRESENTATIVE KOTT - referring to Section 9, beginning on page 8, which says in part, "A person commits the crime of purchase or receipt of restricted amounts of certain listed chemicals if the person purchases or receives more than ... six grams ..." - asked Mr. Guaneli, "If I purchase seven grams, under this bill, am I a criminal?"

MR. GUANELI, in response, explained that there are two provisions, one that creates the presumption that possession is prima facie evidence of the intent to manufacture, and one, on page 8, that stipulates that a crime has been committed if a person purchases more than six grams of the listed chemicals within a 30-day period. However, as a practical matter, he suggested, stores are not going to sell someone that amount of pseudoephedrine, and relayed that he has heard that drug companies are in the process of developing cold medications that do not contain pseudoephedrine. He said that if there is a concern about the bill applying to those that are responsible for legitimately providing pseudoephedrine products to certain groups of people - such as someone responsible for supplying a scout camp - then it would be easy to craft an exception.

CHAIR McGUIRE mentioned that hotels in the Bush might keep a stock of pseudoephedrine products for employees and guests.

MR. GUANELI said he didn't know whether a hotel which did that might be considered a retailer; if so, then it would be lawful for the hotel to have more than six grams of pseudoephedrine.

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REPRESENTATIVE GRUENBERG said he has a concern that the language on page 8 would criminalize someone who has to take a pseudoephedrine product daily for health reasons.

MR. GUANELI pointed out, however, that the six-gram limitation would equal a six-month supply for someone like that.

REPRESENTATIVE ANDERSON offered his belief that the regulation process would be sufficient to inform retailers about the restrictions proposed in the bill. He also noted that language on page 8, line 25, of Version S provides an exemption for those that have a prescription for pseudoephedrine products.

REPRESENTATIVE ANDERSON moved to adopt the proposed CS for HB 149, Version 24-LS0596\S, Luckhaupt, 3/9/05, as the work draft. There being no objection, Version S was before the committee.

2:52:18 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 1, to strike Section 6. He suggested that the sponsor could then work on language that would be more narrowly tailored.

REPRESENTATIVE ANDERSON objected [for the purpose of discussion].

REPRESENTATIVE GARA said he would prefer the bill to make possession a crime only if there is also some other indication that the person is also distributing or manufacturing methamphetamine. He added that he disagrees with Representative Anderson's statement that the bill is not making simple possession a crime; even in Section 6, he added, all that must be proven is possession.

2:54:08 PM

REPRESENTATIVE ANDERSON acknowledged that he'd failed to note that Section 9 does make possession a crime, said he may be

willing to consider deleting Section 9, but said he disagrees with the concept of deleting Section 6 and reiterated his belief that it only applies in situations where someone is already being prosecuted under AS 11.71.020(a).

REPRESENTATIVE GRUENBERG indicated that he would be willing to offer an amendment to delete Section 9.

REPRESENTATIVE ANDERSON maintained his objection on Amendment 1.

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 1. Representatives McGuire, Anderson, and Kott voted against it. Therefore, Amendment 1 failed by a vote of 2-3.

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REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 2, to insert on page 5, line 29, after "valid prescription" the words "or possessed for a legal use". Such a change might make [Section 6] hard for the prosecution to use, but it will prevent the criminalization of "buying Sudafed so people can treat family colds."

MR. GUANELI pointed out, however, that the purpose of creating the presumption [in Section 6] is to recognize that the substances listed, when ingested in the amount listed, don't have a legal use. He added that if the state could prove that a substance is going to be used illegally, it wouldn't need the presumption. Conceptual Amendment 2 guts the presumption, he concluded, and said that the DOL is not in favor of Conceptual Amendment 2.

REPRESENTATIVE ANDERSON predicted that Conceptual Amendment 2 would allow a methamphetamine manufacturer who had cleaned out all his/her equipment to argue that he/she possessed the listed chemicals for a legal purpose.

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REPRESENTATIVE RAMRAS concurred, adding that the Alaska State Troopers have told him that they've been asked by the district attorney's office to not pursue people who are found with methamphetamine precursors when they offer up lawful excuses for possessing the precursors.

REPRESENTATIVE GARA withdrew Conceptual Amendment 2.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment [3], to change Section 6 such that "six grams" becomes "nine grams".

REPRESENTATIVE ANDERSON objected.

A roll call vote was taken. Representatives McGuire, Kott, Gruenberg, and Gara voted in favor of Conceptual Amendment 3. Representative Anderson voted against it. Therefore, Conceptual Amendment 3 was adopted by a vote of 4-1.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, to delete Section 9.

REPRESENTATIVE ANDERSON objected.

MR. GUANELI said the whole point of having businesses keep records on those that are buying the listed chemicals and what amounts are being purchased is to deter people from buying large amounts of [pseudoephedrine products] within a short period of time, and opined that even if a person only purchases six grams of pseudoephedrine product every 30 days, that amount could be used to manufacture five grams of methamphetamine. He suggested that without the six-gram limitation, much of the bill's value goes away.

REPRESENTATIVE ANDERSON suggested amending Amendment 4 such that instead of deleting Section 9, it changed "six grams" to "nine grams". This would make Sections 6 and 9 conform, he added.

REPRESENTATIVE GRUENBERG said he would accept such a change to Amendment 4, specifically that page 8, lines 14, 19, and 24, and page 9, line 5, be changed by deleting "six" and inserting "nine". [Although no formal motion was made, Amendment 4 was treated as amended.]

REPRESENTATIVE ANDERSON withdrew his objection to Amendment 4, as amended.

CHAIR McGUIRE asked whether there were any further objections to Amendment 4, as amended. There being none, Amendment 4, as amended, was adopted.

3:03:41 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 5, to alter Section 9 "to address the issue of the hotel or camp or business that purchases this stuff in bulk." He asked, however, whether the language on page 8, lines 26-27 - which reads, "in the ordinary course of a legitimate business, or to an employee of a legitimate business" - means any legitimate business or only the ones listed on page 8, line 28, through page 9, line 3.

MR. GUANELI said it would only apply to those businesses listed on page 8, line 28, through page 9, line 3.

3:05:19 PM

REPRESENTATIVE RAMRAS mentioned that he sells Sudafed through the gift shop in his hotel, and said that [if the bill passes], he would keep logbook and comply with the proposed new requirements.

CHAIR McGUIRE said she could envision lodges [in remote areas] keeping large quantities of cold medication on hand for their employees and clients, and noted that although the bill does have the exception, "in the ordinary course of business", it only pertains to specific types of businesses.

MR. GUANELI offered his understanding that lodges wouldn't be exempted currently, but reiterated that it would be easy to craft another exception that would apply to [that sort of business].

CHAIR McGUIRE indicated that it is important to keep in mind how Alaskans conduct business.

REPRESENTATIVE GARA withdrew Amendment 5.

REPRESENTATIVE GARA made a motion to adopt Amendment 6: on page 9, line 3, insert a new subsection (b)(2)(E) to say, "a business or organization for legal use by persons employed by or served by that business or organization".

REPRESENTATIVE GRUENBERG said he opposes Amendment 6 because a methamphetamine manufacturer might be able to use that exception.

REPRESENTATIVE GARA pointed out, however, that Amendment 6 specifies "legal use".

CHAIR McGUIRE suggested that Amendment 6 be addressed at a later time, and asked Representative Gara whether he would be willing to withdraw Amendment 6 if the sponsor commits to working with him before the bill gets to the House Finance Committee. She offered her belief that there should be another category [of businesses] listed in the exemption provision.

REPRESENTATIVE GARA said, "Sure." [Amendment 6 was treated as withdrawn.]

REPRESENTATIVE GARA noted that Representative Ramras and Representative Crawford had differing views with regard to the reporting requirements. Currently, the bill provides that the information collected by a business remain at the business unless law enforcement requests it; he offered his understanding that Representative Crawford would prefer for all the information collected by businesses to be periodically sent in to law enforcement.

REPRESENTATIVE GARA suggested that the registry provision be changed [via a Conceptual Amendment 7]: "that it should be a local option, that if a local government believes that they would like to have this information sent to them, that on a periodic basis, if the local government passes an ordinance asking for this, that these records should be sent to the local law enforcement agency on a periodic basis."

3:12:44 PM

REPRESENTATIVE RAMRAS said he'd had concerns that automatically sending in all the information would be a burden on small businesses, and that the DPS wouldn't want "the records of everybody in Alaska that has caught a cold in the last six months." He mentioned that [Conceptual Amendment 7] will allow law enforcement to localize its research, and characterized Conceptual Amendment 7 as a friendly amendment and an excellent compromise.

CHAIR McGUIRE remarked that Conceptual Amendment 7 would allow communities to evaluate their resources.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 7. There being no objection, Conceptual Amendment 7 was adopted.

MS. PIERSON, in response to a question, relayed that there is a penalty for violating the registration and recordkeeping requirements of Section 11.

REPRESENTATIVE KOTT noted that a violation would result in a fine of $10,000.

REPRESENTATIVE GARA said, "I think for the local option thing I wouldn't want to make that a crime if you forgot to send your ... [information] in; ... [if] the local government says you have to send ... [information] in every 30 days, I don't think I want to make that a misdemeanor if they forget."

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 8 to say, "[a] knowing violation of ... the local option section, if the local government buys into it, ... is punishable by a fine of up to $500 per violation." He posited that the language "up to" gives the court the discretion of whether to impose a fine.

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 8. There being no objection, Conceptual Amendment 8 was adopted.

3:15:08 PM

REPRESENTATIVE GARA expressed concern with Section 1 of the bill, indicating that he is not sure that he agrees that there should be a new manslaughter crime. He noted that currently there is a general manslaughter crime, but under [Section 1, subsection (a)(3)] of the bill, the person delivering the substance - "sort of a mule" - would be made "a murderer," adding that he is not sure he is comfortable with that provision.

CHAIR McGUIRE noted that this issue had been debated thoroughly in a prior hearing [on a different bill]. She asked that any proposed amendment to Section 1 be reserved for the House floor.

REPRESENTATIVE GARA [although no formal motion had been made] withdrew Amendment 9.

REPRESENTATIVE GARA made a motion to adopt Amendment 10, to delete "or delivers" from page 2, line 1. He opined that the person who knowingly manufactures methamphetamine is much more culpable than the one hired to buy the pseudoephedrine product and transport it to the manufacturer.

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

MR. GUANELI noted that the language is also part of the governor's bill and so the administration feels it should remain. He offered his interpretation that "deliver" as used in Section 1 means the person who is selling the finished product - "a crack dealer ... a heroin dealer" - not the person who is delivering the ingredients that go into the making of methamphetamine; Section 1 specifies a "controlled substance" but pseudoephedrine is not currently on a controlled substance list. He opined that Section 1 addresses situations in which overdoses have occurred or in which a person injected someone else with these drugs, and noted that such situations are treated as murder in other states, particularly on the east coast. He concluded by saying that the DOL feels that a charge of manslaughter in such situations is a fairly measured response.

REPRESENTATIVE ANDERSON maintained his objection.

REPRESENTATIVE GARA withdrew Amendment 10.

3:19:43 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 11, to make the crime of endangering the welfare of a child in the first degree, as described under proposed AS 11.51.100(g) and as referenced in proposed AS 11.51.100(h), a class C felony instead of a class B felony. He noted that the aforementioned governor's bill makes that crime a class C felony.

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE RAMRAS said he objects to Amendment 11.

REPRESENTATIVE GARA what is the difference is between a class C felony and a class B felony.

CHAIR McGUIRE said the [maximum sentence] is 5 years for a class C felony, 10 years for a class B felony, and 20 years for class A felony.

REPRESENTATIVE GARA asked what the presumptive sentence is for those classes of felony.

CHAIR McGUIRE offered her understanding that there aren't any presumptive sentences.

MR. GUANELI explained that under the recently passed new sentencing structure, the presumptive range is 0-2 years for a class C felony, and 1-3 years for first time class B felony. He noted that for a first time offense, for either a class C felony or a class B felony, a person might be eligible for a suspended imposition of sentence (SIS).

CHAIR McGUIRE mentioned that fines are also imposed for felony crimes.

REPRESENTATIVE ANDERSON withdrew his objection.

CHAIR McGUIRE asked whether there were any further objections to Amendment 11. There being none, Amendment 11 was adopted.

REPRESENTATIVE GARA said he still has a concern about the list of chemicals [in Section 8] because he doesn't know what they are.

3:23:00 PM

MS. PIERSON said they are anabolic steroids.

REPRESENTATIVE RAMRAS relayed that that list of chemicals was given to him by Representative Croft.

MS. PIERSON, in response to a question, indicated that Section 8 proposes to add those chemicals to the list of schedule VA controlled substances.

REPRESENTATIVE GARA opined that there ought to be more discussion regarding the issue of how much iodine someone can possess/purchase.

CHAIR McGUIRE noted that the bill will be heard in the House Finance Committee.

3:24:00 PM

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 149, Version 24-LS0596\S, Luckhaupt, 3/9/05, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 149(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:25 p.m.