

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

April 13, 2005

1:11 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Nancy Dahlstrom  
Representative Pete Kott  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 183

"An Act relating to the use of campaign contributions for shared campaign activity expenses and to reimbursement of those expenses."

- MOVED CSHB 183(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 260

"An Act relating to purchase and possession of cigarettes or tobacco products by a person under 19 years of age, to licenses for persons engaged in activities involving tobacco products, to taxes on cigarettes and tobacco products, and to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204, 205, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 260(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53

"An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid; relating to a duty and standard of care for services to children and families, to the confidentiality of investigations,

court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters, to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters, to the retention of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding, to eligibility for permanent fund dividends for certain children in the custody of the state, and to juvenile delinquency proceedings and placements; establishing a right to a trial by jury in termination of parental rights proceedings; reestablishing and relating to state citizens' review panels for certain child protection and custody matters; amending the duty to disclose information pertaining to a child in need of aid; authorizing additional family members to consent to disclosure of confidential or privileged information about children and families involved with children's services within the Department of Health and Social Services to officials for review or use in official capacities; relating to reports of harm and to adoptions and foster care; mandating reporting of the medication of children in state custody; prescribing the rights of grandparents related to child-in-need-of-aid cases and establishing a grandparent priority for adoption in certain child-in-need-of-aid cases; modifying adoption and placement procedures in certain child-in-need-of-aid cases; amending treatment service requirements for parents involved in child-in-need-of-aid proceedings; amending Rules 9 and 13, Alaska Adoption Rules; amending Rules 3, 18, and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

- MOVED CSSSHB 53(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 257

"An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 133

"An Act relating to incorporation of boroughs and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes; and providing for an effective date."

- BILL HEARING POSTPONED TO 4/18/05

**PREVIOUS COMMITTEE ACTION**

BILL: HB 183

SHORT TITLE: CAMPAIGN FINANCE: SHARED EXPENSES

SPONSOR(S): REPRESENTATIVE(S) HAWKER

02/28/05 (H) READ THE FIRST TIME - REFERRALS  
02/28/05 (H) STA, JUD  
03/29/05 (H) STA AT 8:00 AM CAPITOL 106  
03/29/05 (H) Moved CSHB 183(STA) Out of Committee  
03/29/05 (H) MINUTE(STA)  
03/30/05 (H) STA RPT CS(STA) 2DP 2NR  
03/30/05 (H) DP: ELKINS, SEATON;  
03/30/05 (H) NR: GARDNER, RAMRAS  
04/06/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/06/05 (H) <Bill Hearing Postponed>  
04/13/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 260

SHORT TITLE: TOBACCO: BONDS; TAX; POSSESSION BY MINORS

SPONSOR(S): FINANCE

04/07/05 (H) READ THE FIRST TIME - REFERRALS  
04/07/05 (H) JUD, FIN  
04/13/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 53

SHORT TITLE: CHILDREN IN NEED OF AID/REVIEW PANELS

SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/10/05 (H) PREFILE RELEASED 1/7/05  
01/10/05 (H) READ THE FIRST TIME - REFERRALS  
01/10/05 (H) HES, JUD, FIN  
03/02/05 (H) SPONSOR SUBSTITUTE INTRODUCED  
03/02/05 (H) READ THE FIRST TIME - REFERRALS  
03/02/05 (H) HES, JUD, FIN  
03/15/05 (H) HES AT 3:00 PM CAPITOL 106  
03/15/05 (H) Heard & Held  
03/15/05 (H) MINUTE(HES)  
03/22/05 (H) HES AT 3:00 PM CAPITOL 106  
03/22/05 (H) <subcommittee meeting>  
03/31/05 (H) HES AT 3:00 PM CAPITOL 106  
03/31/05 (H) Moved CSSHB 53(HES) Out of Committee  
03/31/05 (H) MINUTE(HES)  
04/04/05 (H) HES RPT CS(HES) NT 5DP

04/04/05 (H) DP: ANDERSON, KOHRING, MCGUIRE, SEATON,  
WILSON  
04/11/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/11/05 (H) <Bill Hearing Rescheduled to 4/12>  
04/12/05 (H) JUD AT 8:00 AM CAPITOL 120  
04/12/05 (H) Heard & Held  
04/12/05 (H) MINUTE(JUD)  
04/13/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 257

SHORT TITLE: STATE PROCUREMENT ELECTRONIC TOOLS  
SPONSOR(S): JUDICIARY

04/06/05 (H) READ THE FIRST TIME - REFERRALS  
04/06/05 (H) JUD, FIN  
04/11/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/11/05 (H) <Bill Hearing Rescheduled to 4/13>  
04/13/05 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE MIKE HAWKER  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Sponsor of HB 183.

BROOKE MILES, Executive Director  
Alaska Public Offices Commission (APOC)  
Department of Administration (DOA)  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments and responded to  
questions during discussion of HB 183.

REPRESENTATIVE KEVIN MEYER  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: As chair of the House Finance Committee,  
sponsor of HB 260, presented the bill and responded to  
questions.

MICHAEL PATTERSON, President  
Lucky Raven, Inc.  
Soldotna, Alaska  
POSITION STATEMENT: Provided comments during discussion of  
HB 260.

DALE FOX, Executive Director

Alaska Cabaret Hotel Restaurant & Retailer's Association (Alaska CHARR)  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of HB 260.

PETE ROBERTS  
Homer, Alaska  
POSITION STATEMENT: Provided comments during discussion of HB 260.

JAMES N. GARDNER, Attorney at Law  
Gardner & Gardner, P.C.  
Portland, Oregon  
POSITION STATEMENT: During discussion of HB 260, provided comments on behalf of Philip Morris USA and responded to questions.

JOHANNA BALES, Excise Audit Manager  
Central office  
Tax Division  
Department of Revenue (DOR)  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of HB 260, and responded to a question regarding a proposed amendment.

DAVID PARISH, Lobbyist  
for the American Heart Association (AHA)  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of HB 260, and responded to a question.

MIKE ELERDING, President  
Northern Sales Company of Alaska, Inc.  
Juneau, Alaska  
POSITION STATEMENT: During discussion of HB 260, responded to a question and suggested, via written remarks provided to the committee, a change to current statute.

CHRISTOPHER C. POAG, Assistant Attorney General  
Commercial/Fair Business Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska  
POSITION STATEMENT: During discussion of HB 260, responded to questions regarding proposed amendments.

SUZANNE CUNNINGHAM, Staff  
to Representative Kevin Meyer  
House Finance Committee  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 260, provided an explanation of proposed Amendment 5 on behalf of the House Finance Committee, sponsor.

RYNNIEVA MOSS, Staff  
to Representative Coghill  
Alaska State Legislature

POSITION STATEMENT: Presented the proposed CS for SSHB 53, Version P, on behalf of Representative Coghill, sponsor.

JOHN McKAY  
Anchorage Daily News  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of SSHB 53 and suggested a change.

CHERYL TRAIL  
Lincoln, Nebraska

POSITION STATEMENT: During discussion of SSHB 53, shared her personal experiences with adoption procedures and the Department of Health and Social Services (DHSS).

JAN RUTHERDALE, Assistant Attorney General  
Human Services Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of SSHB 53.

TAMMY SANDOVAL, Acting Deputy Commissioner  
Office of Children's Services (OCS)  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

POSITION STATEMENT: During discussion of SSHB 53, provided comments and responded to questions.

VERN JONES, Chief Procurement Officer  
Central Office  
Division of General Services (DGS)  
Department of Administration (DOA)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 257, provided comments, recommended changes, and responded to questions.

BRUCE LUDWIG, Business Manager  
Alaska Public Employees Association/American Federation of Teachers (APEA/AFT);  
Secretary/Treasurer  
Alaska State  
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 257, provided comments and asked that the bill be held over.

JIM DUNCAN, Business Manager  
Alaska State Employees Association (ASEA)  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 257 and asked that the bill be held over.

BEN MILAM  
Palmer, Alaska

POSITION STATEMENT: His testimony regarding HB 257 was read by Ken Brown.

BARRY JACKSON, Procurement Analyst; Project Manager; Programmer Analyst  
Resource Data, Inc. (RDI)  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 257.

#### **ACTION NARRATIVE**

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at [1:11:56 PM](#). Representatives McGuire, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representatives Anderson, Coghill, and Kott arrived as the meeting was in progress.

#### **HB 183 - CAMPAIGN FINANCE: SHARED EXPENSES**

[1:12:47 PM](#)

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 183, "An Act relating to the use of campaign contributions for shared campaign activity expenses and to

reimbursement of those expenses." [Before the committee was CSHB 183(STA).]

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, sponsor, relayed that while Alaska has some of the strongest campaign finance laws in the nation, there is an ambiguity regarding, for example, two candidates participating in the same activity, such as a fundraiser, in which one candidate writes the check for the caterer and the other candidate reimburses him/her. This legislation inserts language specifying that one candidate may reimburse another candidate for shared campaign expenses, as long as the reimbursement occurs within three working days after the original expense is paid. He highlighted that the main intent is to shift the burden for compliance with campaign laws from vendors to candidates.

CHAIR McGUIRE inquired as to the rationale for the three-day requirement.

REPRESENTATIVE HAWKER relayed that he wanted there to be a tight window, and after extensive discussion in the House State Affairs Standing Committee, reimbursement within three working days was deemed a reasonable length of time.

[1:15:46 PM](#)

REPRESENTATIVE GARA said that he would like to include language in HB 183 to allow one [candidate] to provide another [candidate] with his/her fundraising list.

REPRESENTATIVE HAWKER indicated that his only reservation with regard to adding such language is that he is not familiar with [current law] on that issue.

REPRESENTATIVE GARA suggested that the committee could either address this now with a conceptual amendment or [a committee substitute] could be drafted before the legislation gets to the House floor.

CHAIR McGUIRE suggested instead that the committee move HB 183 out of committee today and then draft appropriate language with help from the Alaska Public Offices Commission (APOC). She said that she would agree to help obtain support for [Representative Gara's] suggested change.

REPRESENTATIVE HAWKER said he would be willing to co-sponsor [such an amendment] on the House floor or in the House Rules Standing Committee.

[1:18:48 PM](#)

REPRESENTATIVE GRUENBERG opined that the requirement to repay a candidate within three working days could be too short for candidates from the Bush who have a fundraiser in Anchorage. Therefore, he asked whether the sponsor would view changing that requirement to a week as a friendly amendment.

REPRESENTATIVE HAWKER indicated his preference for having the shortest, tightest time period possible.

REPRESENTATIVE GRUENBERG reiterated the potential problems those in the Bush could face with the three-day requirement.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to delete "three working days" from page 2, line 18, and insert "five working days". There being no objection, Amendment 1 was adopted.

[1:20:47 PM](#)

REPRESENTATIVE HAWKER, in response to comments, specified that the intent of HB 183 is to merely cleanup areas of the campaign finance laws that are universally supported by both Republicans and Democrats.

[1:22:17 PM](#)

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), Department of Administration (DOA), informed the committee that the APOC has reviewed HB 183 and didn't believe there would [be an issue] with the repayment happening within three working days. However, changing it to five working days or one working day might be cause concern because of the possibility of the well-funded candidate virtually supporting the non-funded [candidate] pending the outcome of the fundraising event. Furthermore, there may be some confusion if the repayment crosses reporting periods. Ms. Miles opined that the APOC would favor the shorter time period. However, if the committee believes additional time is necessary, the APOC will administer whatever the law specifies.

MS. MILES, in response to earlier comments, noted that the law does permit candidates to make contributions to the party for events. With regard to Representative Gara's request regarding the sharing of fundraising lists, Ms. Miles pointed out that there is some value to those lists, but characterized that value as de minimis. Ms. Miles concluded by saying that these aforementioned issues are matters of policy and thus the APOC will support whatever laws the legislature.

[1:25:12 PM](#)

REPRESENTATIVE GRUENBERG said he doesn't see that there would be a problem changing the repayment time period from three days to five days.

REPRESENTATIVE DAHLSTROM, noting Ms. Miles's comments on the issue, moved that the committee rescind its action in adopting Amendment 1.

REPRESENTATIVE GRUENBERG offered changing the three-day requirement to a five-day requirement within a reporting period. He relayed his understanding that Ms. Miles's concern was in regard to the disclosures being reported within the same [reporting] period.

MS. MILES said such [language] would completely address her concern.

CHAIR MCGUIRE inquired as to how the individual [candidate] would know [when a reporting period change].

REPRESENTATIVE GRUENBERG offered his belief that that information would be shared between candidates who know their reporting periods.

REPRESENTATIVE HAWKER opined that there is little to no difference between three days overlapping the end of a reporting period and five days overlapping the end of a reporting period. He relayed his understanding that the current statute is intended to prevent one candidate from making a loan to another, and so if statute authorizes the reimbursement of a shared campaign expense, the [date] specified on the campaign disclosure form would apply.

[1:27:43 PM](#)

REPRESENTATIVE GRUENBERG offered his understanding that a candidate who has been reimbursed would show receipt of the check, otherwise it would appear to be a loan and need to be reported.

REPRESENTATIVE GARA explained that technically, if a candidate receives something and pays for it three days later, the candidate's books would have to refer to those [funds] as a loan or a contribution during that period. Therefore, he suggested that the legislation specify that as long as [the candidate] pays for [the shared expenses] within [a certain period of] days, then it doesn't have to be reported as something else in the meantime.

REPRESENTATIVE HAWKER specified that the trigger mechanism is when one candidate writes a check and gives cash [to another candidate]. He opined that [Representative Gara's suggestion] adds an unnecessary level of complication. Until a check is actually written, both candidates could decide to split the payment.

CHAIR McGUIRE clarified that there is no intention for there to be any additional reporting than there [currently is]. She indicated her agreement that the three-day requirement may be difficult for those in the Bush and thus the change to a five-day requirement makes sense.

REPRESENTATIVE DAHLSTROM withdrew her motion.

MS. MILES, in response to a question, reiterated that if the [compensation is received] during the same reporting period, it would be fine; however, if one candidate owes another for costs paid in advance of a shared fundraising event and the reporting period is closed, then the other candidate would need to show it as a debt.

CHAIR McGUIRE surmised that what Ms. Miles is describing is no different than if the candidate owed it to the vendor and there were no shared expenses.

MS. MILES agreed.

[1:31:35 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSHB 183(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB

183(JUD) was reported from the House Judiciary Standing Committee.

HB 260 - TOBACCO: BONDS; TAX; POSSESSION BY MINORS

[1:31:51 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 260, "An Act relating to purchase and possession of cigarettes or tobacco products by a person under 19 years of age, to licenses for persons engaged in activities involving tobacco products, to taxes on cigarettes and tobacco products, and to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204, 205, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, as chair of the House Finance Committee, sponsor, presented HB 260. He said that HB 260 addresses the issues of tobacco taxation, possession and purchase of tobacco products by minors, and limits on the supersedeas bond that signatories of the Master Settlement Agreement (MSA) must post to stay an execution of judgment in civil tobacco-related litigation. He said his main goal in carrying the bill is to further the efforts being made to prevent children from starting to smoke in the first place. Studies indicate that if a person doesn't start smoking before the age of 19, there is a 90 percent chance that he/she will never start smoking. The bill increases the tax on "smokeless" tobacco products from 75 percent to 100 percent of the wholesale cost, and accelerates the currently instituted increase on cigarettes.

REPRESENTATIVE MEYER relayed that under HB 260, individuals who import tobacco products for their own personal consumption will be required to purchase a buyer's license from the Department of Revenue (DOR) for a fee of \$25; such licensure will enable the DOR to collect the required taxes from the buyer. The bill also proposes to set the supersedeas bond limit at \$100 million. He offered his understanding that this bond limit will not change any other aspect of the law, will not change the rules by which a trial is conducted, will not affect who ultimately wins the lawsuit, and will not affect the rights of plaintiffs to fully recover damages. Placing a limit on such bonds will ensure that the state will continue to receive its MSA payments, he posited,

and predicted that because Alaska is such a small state, it is doubtful that the proposed bond limit would ever be reached anyway.

REPRESENTATIVE MEYER said it is important to keep the MSA payments coming into the state, because that money goes toward the state's education/cessation programs. Currently 26 other states have established supersedeas bond limits, and it would be appropriate for Alaska to do the same, he concluded.

1:37:30 PM

MICHAEL PATTERSON, President, Lucky Raven, Inc., said he would like to see improvements made to the enforcement provisions of the bill. Currently, for a first offense, a business will lose its license. So for some businesses, such as his, that type of penalty would in essence shut the business down, whereas for other businesses, such as those that are not primarily in the business of selling tobacco, that type of penalty wouldn't have that great an impact. He suggested that substantial financial penalties - both on the individual that performs the illegal sale, and on the business itself - would be a greater deterrent; for example, a financial penalty of \$5000 for a first offense, and \$10,000 for a second offense. "I believe ... making the clerk also liable for the offense ... will help clear up part of the difficulties," he remarked.

MR. PATTERSON said he would also like to see more done in the way of education regarding tobacco sales; for example, currently the alcohol industry is benefiting from the "techniques in alcohol management" (TAM) program, and he would like to see similar educational efforts made in the tobacco industry. Also of concern to him is the enforcement of the tax on other tobacco products. Currently there isn't any state-to-state reporting and it is very difficult to track Internet sales of cigars, for example, and so trying to collect the tax on such sales will also be very difficult, he concluded, and predicted that this gap in enforcement will leave the door wide open for most consumers to look out of state when purchasing their tobacco products, and could actually discourage people from doing business in Alaska.

CHAIR McGUIRE next ascertained that a representative from the Department of Health and Social Services (DHSS), Tobacco Prevention and Control Unit, was available to answer questions.

1:41:14 PM

DALE FOX, Executive Director, Alaska Cabaret Hotel Restaurant & Retailer's Association (Alaska CHARR), relayed that because of the bill's recent introduction, CHARR has not yet formally taken the issue up. Notwithstanding this, he offered:

It's a mixed bag. We think there's some really good provisions in this bill, and some that probably would not be supported by our group. First let's talk about the positives. Obviously, as the folks who run the TAM program in the alcohol industry, we believe that strengthening the efforts to make sure that everyone ... who is trying to get tobacco [is carded] and that there's adequate education for the frontline employees is critically important. The "We Card" program, which is in the state now and [is] something we hope to expand, we think is a good step in the right direction. And so, yes, we should do everything that we can to prevent youth from getting access to tobacco prior to reaching the age [of 19].

The second provision we think is a very good pro-business stance is the bond cap. ... The tobacco companies [have] ... shown good faith with the Master Settlement Agreement, they're making their payments, and we think that anything that has the potential of putting somebody out of business is bad legislation, and so a bond cap provision that allows people to move forward through the courts equitably is a very positive effort.

In terms of the taxes, accelerating the taxes on tobacco and on smokeless tobacco, in general the Alaska CHARR group has come out against singling out specific products in the marketplace for special taxes, and I would suspect that they would do that on this as well. ... Those are general comments that I think are reflective of our industry. Thank you very much.

[1:44:05 PM](#)

PETE ROBERTS opined that the bond limitation being proposed in the bill is a good idea, but that the rest of the bill should be tossed. He elaborated:

We just raised our taxes on tobacco products; [they] were to be phased in. We haven't even gotten through that period and here somebody wants to do good and raise them some more. I think that the idea of trying to keep teens from smoking is a good idea. On the other hand, I think that most of the tobacco is bought by adults, and this is punitive and it's social engineering. And I think it's bad state policy and not very consistent with the republican ideals, so I'm against it. Thanks.

[1:45:21 PM](#)

JAMES N. GARDNER, Attorney at Law, Gardner & Gardner, P.C., said he would be speaking on behalf of Philip Morris USA (PA USA) regarding the bond provisions in HB 260. He characterized the MSA as being very important to Alaska because it delivers millions of dollars in revenues to the state annually; however, the continued receipt of these funds is threatened by the huge judgments that have been awarded against the tobacco companies that are funding the settlement. Although defendants in such cases almost always have the right to appeal, and although in many instances such appeals have been successful - either in reducing the judgment or in overturning the judgment entirely - in order to stay the execution of judgment on appeal, defendants must post a supersedeas bond.

MR. GARDNER said that in the states that do not already have a limit on that type of bond, the amount of the bond usually equals the amount of the judgment itself, and if a company that is a defendant in such a case cannot afford to post a bond in the amount set by the court, the company may be forced to file for bankruptcy in order to stop the plaintiff from taking the companies assets during the appeal process. That kind of a stay could disrupt payments by the company to Alaska and all the other states that receive MSA payments. He used a Florida case as an example wherein if there hadn't been a supersedeas bond limit, the company - the defendant - would have gone bankrupt, adding that 33 states thus far have recognized the possibility of risk from large supersedeas bond requirements and that another 5 states do not require supersedeas bonds at all. He, too, offered his belief that passage of HB 260 would not affect either the substantive rights of the litigants or the ultimate right of recovery if the plaintiff prevails following the appeal.

[1:48:57 PM](#)

MR. GARDNER, in response to questions, said that he is not aware of any cases in Alaska in which a required bond has threatened to put a company out of business; opined that either paying a huge judgment outright or putting up the same amount for a supersedeas bond would be impossible, from a financial standpoint, and therefore the company would be forced to file bankruptcy, which would in turn impede the flow of MSA funds to the states; and offered his belief that although the trial court in Alaska does have some degree of discretion regarding what amount an appeal bond should be set at, as a practical matter, that kind of discretion simply can't cope with the massive reduction that would be necessary to avoid disruption of MSA payments should a "mega verdict" ever be awarded in Alaska.

REPRESENTATIVE GARA asked Mr. Gardner whether he would be amenable to a provision that would make it a class C felony to dissipate assets in order to avoid a judgment.

MR. GARDNER said he wouldn't agree to such a provision. He noted, though, that Section 12, subsection (b), of HB 260 contains language which says that if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the full amount of the judgment. He opined that such language addresses Representative Gara's concern.

REPRESENTATIVE GARA pointed out, however, that that language is merely saying that if a company dissipates assets in order to avoid payment of the judgment, the company then really does have to post the bond, the bond that's automatically required up front in all other cases. His suggestion, he reiterated, is to make it a crime, a class C felony, to dissipate assets in order to avoid paying a judgment; he characterized this as an appropriate penalty particularly if the proposed bond limit is adopted.

MR. GARDNER reiterated his belief that the language in subsection (b) of Section 12, specifically the language requiring that a preponderance of the evidence be shown, offers full protection to an appellee.

[1:54:01 PM](#)

JOHANNA BALES, Excise Audit Manager, Central office, Tax Division, Department of Revenue (DOR), after relaying that she

is also the program manager of the division's Tobacco Tax Program, noted that retailers support the proposed taxes on "other tobacco products" that are being purchased through the mail by individuals for personal consumption. With regard to a comment made by Mr. Patterson, she explained that currently there are state-to-state reporting requirements in place, but acknowledged that currently no tax is levied when products are imported by individuals for personal consumption; so although the division is able to identify some such individuals, enforcement of Internet purchases is somewhat problematic.

MS. BALES offered her belief that if this provision is adopted, most people will comply with the law, and that its adoption will help protect instate retailers; this is particularly important for the DOR and instate retailers given that an increase in taxes might entice people to buy their tobacco products through the Internet. She concluded by saying that both the DOR and the governor's office supports HB 260.

[1:56:56 PM](#)

DAVID PARISH, Lobbyist for the American Heart Association (AHA), mentioned that the AHA is an active member of the Alaska Tobacco Control Alliance (ATCA), which is a coalition working closely with the national Campaign For Tobacco-Free Kids. He said that the AHA is still looking at the individual sections of HB 260, especially the "criteria of what is the maximum public-health benefit particularly relative to reducing tobacco consumption among Alaska's youth," and that although the AHA currently has no official position on HB 260, in general the organizations he represents do not support the provision pertaining to a limit on supersedeas bonds, but they do support the provisions regarding the taxation of other tobacco products and the acceleration of the current cigarette tax.

[2:00:02 PM](#)

REPRESENTATIVE KOTT surmised that everyone there has the children's best interest at heart and wants to ensure that tobacco does not fall into their hands. He asked whether enough time has elapsed to allow an evaluation of whether either of the most recent cigarette tax increases have decreased usage by those who are underage.

MR. PARISH said that most of the data that the AHA has only reflects what has occurred since 1997, adding that he would be willing to research the issue further and get that information

to the committee. In response to another question, he provided the committee with a copy of the Campaign For Tobacco-Free Kids' position statement.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 260.

2:03:03 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 1, to delete Section 12 of the bill, the section that proposes to set a limit of \$100 million on supersedeas bonds pertaining to tobacco litigation.

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA predicted that the moment that tobacco companies get a special bond amount, [ExxonMobil Corporation] will want a special bond amount. He opined that there is no need to remove the bond amount, particularly given that there has never been a case in Alaska where "the bond amount has been abused by a court" and given that the court has the discretion to lower the bond amount if the amount originally set threatens to put a company out of business or force it to declare bankruptcy. He concluded his argument in favor of Amendment 1 by stating that he did not think the proposed bond limit is needed.

REPRESENTATIVE ANDERSON disagreed, and urged members to keep Section 12 in the bill.

REPRESENTATIVE KOTT noted other sections of the bill would be affected by the adoption of Amendment 1.

2:06:55 PM

REPRESENTATIVE GARA withdrew Amendment 1 for the purpose of restating it.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, "to delete all provisions that change any of the bond laws or bond rules, either in statutes or in court rules; so delete Section 12 and then all related sections."

CHAIR McGUIRE added, "And including in the title."

REPRESENTATIVE GARA said, "Yep."

[2:07:25 PM](#)

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

[2:07:58 PM](#)

REPRESENTATIVE GARA, referring to page 4 [lines 16-18], made a motion to adopt Conceptual Amendment 2, to make it a class C felony to intentionally dissipate assets to avoid payment of a judgment.

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA offered his belief that any attempt by a tobacco company to dissipate assets to avoid payment of a judgment should be considered fraud and such a company should therefore be charged with a class C felony, especially if the proposed bond limit is adopted.

REPRESENTATIVE GRUENBERG suggested that Conceptual Amendment 2 merely needs to add language specifying that violation of "this subsection" is also a class C felony.

REPRESENTATIVE GARA noted that the amendment is conceptual, and said that as long as the drafters specify that the conduct has to be intentional, he will be satisfied with whatever language the drafters choose.

[2:10:33 PM](#)

A roll call vote was taken. Representatives Dahlstrom, Gruenberg, and Gara voted in favor of Conceptual Amendment 2. Representatives McGuire, Anderson, Coghill, and Kott voted against it. Therefore, Conceptual Amendment 2 failed by a vote of 3-4.

REPRESENTATIVE GRUENBERG asked members to look at an e-mail sent by Mike Elerding - President, Northern Sales Company of Alaska, Inc. - specifically at the language referring to statutory language signed into law in 2003:

Section 43.50.510 of [Senate Bill 168] stipulated that "for purposes of this section, a stamp is considered affixed only if more than 80 [percent] of the stamp is attached to the individual package" ... "in accordance" with regulations adopted by the Department of Revenue. Subsequent to the passage of this measure it has been demonstrated that the current state of tax stamping technology has not been able to produce an 80 [percent] affixment standard. Based on our actual experience the best estimate for the performance standard of affixing a tobacco stamp on each pack of cigarettes is somewhere in the 55 [percent] range. Only through the collaborative efforts of the state Department of Revenue and industry have we avoided an unmitigated disaster regarding the enforcement of the 80 [percent] performance requirement. Section 43.50.510 needs to be amended to reduce the affixment standard from 80 [percent] down to 55 [percent].

MIKE ELERDING, President, Northern Sales Company of Alaska, Inc., confirmed that his letter referenced statutory language currently in effect.

CHRISTOPHER C. POAG, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law (DOL), relayed that the regulations referred to in AS 43.50.510(d) have not yet been adopted.

REPRESENTATIVE GRUENBERG said he would be willing to offer an amendment to reduce the affixment standard currently stipulated in AS 43.50.510(d) down to 55 percent.

MS. BALES said that Mr. Elerding is correct in that the cigarette tax stamping machines are incapable of affixing 80 percent of the stamp 100 percent of the time. Because of this, the DOR has drafted an amendment that would lower the affixment standard to 55 percent while also requiring that either four of the letters of the state name or three of the serial numbers be legible. She offered her belief that this amendment would address the problems encountered by the "stampers" and protect state revenues. She mentioned that this amendment has been given to sponsor.

REPRESENTATIVE GRUENBERG made a motion to adopt the DOR's suggested amendment as Conceptual Amendment 3, which read [original punctuation provided]:

\* **Section ?.** AS 43.50.510(d) is amended to read:

(d) For purposes of this section, a stamp is considered affixed only if more than 55 [80] percent of the stamp is attached to the individual package in accordance with (c) of this section and regulations adopted by the department, and

(1) four of the letters of the state name printed on the stamp are legible; or

(2) three of the serial numbers printed on the stamp are legible.

REPRESENTATIVE MEYER said that although he'd intended to offer that amendment in the House Finance Committee, it would be acceptable to him to adopt it in the House Judiciary Standing Committee instead.

CHAIR MCGUIRE asked whether there were any objections to Conceptual Amendment 3. There being none, Conceptual Amendment 3 was adopted.

[2:17:51 PM](#)

REPRESENTATIVE GRUENBERG asked whether the issue of training and licensing, perhaps via a program similar to the TAM program, has been addressed.

REPRESENTATIVE MEYER indicated a preference for addressing that issue via a separate bill.

REPRESENTATIVE KOTT made a motion to adopt [Conceptual] Amendment 4, to delete Section 2; to delete the proposed language change in Section 3, page 2, line 17; and to delete Section 14. He offered his belief that adoption of Conceptual Amendment 4 "essentially takes us back to the bill that was passed by the house last year," and went on to say: "It seems to me, to have this particular issue before us is somewhat disingenuous, since a group of members came to me and asked me to work out a compromise with industry; the compromise that we worked out was in fact the one that passed the House." He offered his belief that adopting the language that Conceptual Amendment 4 proposes to delete would be premature.

CHAIR McGUIRE, in response to a question, offered her understanding that Conceptual Amendment 4 would delete the language that deals with acceleration of the tax rate.

[2:20:46 PM](#)

REPRESENTATIVE MEYER said that the bill seeks a balance, since in order to garner enough votes to pass a supersedeas bond limit, the other provisions were necessary.

REPRESENTATIVE KOTT, in response to a question, offered his belief that Conceptual Amendment 4 also addresses the issue of smokeless tobacco.

REPRESENTATIVE GARA said he agrees with Representative Kott regarding the compromise reached last year. He asked whether members would be amenable to amending Conceptual Amendment 4, "to add the bond part," thereby also deleting the proposed bond limit.

[2:24:04 PM](#)

REPRESENTATIVE ANDERSON indicated that he supports the bond limit.

REPRESENTATIVE MEYER opined that the provisions being deleted by Conceptual Amendment 4 ought to remain in the bill.

REPRESENTATIVE GARA objected to [Conceptual] Amendment 4.

CHAIR McGUIRE said she understands Representative Kott's position, but mentioned that she'd already made a commitment to try to keep all of the provisions in the bill.

[2:26:14 PM](#)

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

CHAIR McGUIRE made a motion to adopt Amendment 5, which read [original punctuation provided]:

Page 2, line 2:  
Following "facility":  
Insert "  "

Following "assisting":

Insert "an agent or employee of the Department of Health and Social Services under AS 44.29.092 or"

Page 2, line 3:

Delete "this section"

Insert "AS 11.76.100, 11.76.106, or 11.76.107"

SUZANNE CUNNINGHAM, Staff to Representative Kevin Meyer, House Finance Committee, Alaska State Legislature, relayed that Amendment 5, which she characterized as a technical clarification amendment, was brought to the sponsor's attention by the DOL. Amendment 5 addresses the issue of minors who participate with law enforcement or the DHSS in "sting" operations.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He asked why Amendment 5 proposes to delete the words, "this section" from AS 11.76.105.

MR. POAG explained that "this section" refers to the possession statute, and the DOL is not trying to enforce that statute via sting operations; it makes more sense to simply list the provisions of law that are being enforced through sting operations, those provisions pertaining to youth access.

REPRESENTATIVE GRUENBERG suggested that perhaps the specific sections listed in Amendment 5 should simply be added to proposed AS 11.76.105 rather than using them in place of the words, "this section".

MR. POAG suggested that the Department of Health and Social Services could better address that issue, but added that he did not think that the possession provision of current statute needed the exemption pertaining to those involved in sting operations.

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 5, to strike the words, "Delete 'this section'". There being no objection, Amendment 5 was amended.

CHAIR MCGUIRE asked whether there were any objections to Amendment 5, as amended. There being none, Amendment 5, as amended, was adopted.

[2:31:36 PM](#)

REPRESENTATIVE ANDERSON moved to report HB 260, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected.

[2:31:48 PM](#)

A roll call vote was taken. Representatives McGuire, Anderson, Coghill, Kott, Dahlstrom, and Gruenberg voted in favor of reporting HB 260, as amended, from committee. Representative Gara voted against it. Therefore, CSHB 260(JUD) was reported from the House Judiciary Standing Committee by a vote of 6-1.

HB 53 - CHILDREN IN NEED OF AID/REVIEW PANELS

[2:32:41 PM](#)

CHAIR MCGUIRE announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53, "An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid; relating to a duty and standard of care for services to children and families, to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters, to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters, to the retention of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding, to eligibility for permanent fund dividends for certain children in the custody of the state, and to juvenile delinquency proceedings and placements; establishing a right to a trial by jury in termination of parental rights proceedings; reestablishing and relating to state citizens' review panels for certain child protection and custody matters; amending the duty to disclose information pertaining to a child in need of aid; authorizing additional family members to consent to disclosure of confidential or privileged information about children and families involved with children's services within the Department of Health and Social Services to officials for review or use in official capacities; relating to reports of harm and to adoptions and foster care; mandating reporting of the medication of children in state custody; prescribing the rights of grandparents related to child-in-need-of-aid cases and

establishing a grandparent priority for adoption in certain child-in-need-of-aid cases; modifying adoption and placement procedures in certain child-in-need-of-aid cases; amending treatment service requirements for parents involved in child-in-need-of-aid proceedings; amending Rules 9 and 13, Alaska Adoption Rules; amending Rules 3, 18, and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date." [Before the committee was CSSSHB 53(STA).]

REPRESENTATIVE COGHILL, speaking as the sponsor of SSHB 53, said that he has prepared a proposed committee substitute (CS). He opined that there is need for a jury trial whenever a parental right is terminated. He relayed that members' packets contain information about the 1982 U.S. Supreme Court case, Santosky v. Kramer, which discussed "the process and the evidence levels." He offered his belief that severing the relationship between a parent and child is a big issue, and although sometimes the process works well, sometimes it doesn't, particularly when departmental employees have either not been diligent, or have had an ax to grind, or have gotten into personality conflicts with [parents].

REPRESENTATIVE COGHILL relayed that he is willing to go forth with the proposed CS because the department has been agreeable to the provisions that will "open up the process"; however, he is not comforted by the "huge timeline issues," which can result in parents having as little as 120 days before going from one court proceeding to the final determination regarding parental rights. He stated his concern that "if there is a doubt that that family should be forever severed from that child, that there should be one more look." He expressed his belief that there should be one more level to reach "beyond a reasonable doubt," adding that he had hoped this would be an issue that the committee could work on. He opined that many times the compelling interest for the safety of the child has ignored the importance of the family even those that are dysfunctional.

[2:39:17 PM](#)

REPRESENTATIVE ANDERSON moved to adopt the proposed committee substitute (CS) for SSHB 53, Version 24-LS0251\P, Mischel/Chenoweth, 4/11/05, as the work draft.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

REPRESENTATIVE COGHILL explained that in Version P, every reference to a jury trial has been removed.

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR McGUIRE announced that Version P was before the committee.

[2:39:51 PM](#)

RYNNIEVA MOSS, Staff to Representative Coghill, Alaska State Legislature, concurred that [Version P] no longer contains reference to a jury trial.

REPRESENTATIVE COGHILL turned the committee's attention to Section 13 on page 21 regarding civil liability.

MS. MOSS explained that the original bill said that there was a duty or standard of care for children in state custody, while [the current Section 47.10.960] said that there is not. She said that the Department of Law objected to the language in the original bill because it would create a very expensive fiscal note for civil suits.

REPRESENTATIVE COGHILL read Section 47.10.960 in its current form:

Nothing in this title creates a duty or standard of care for services to children and their families being served under AS 47.10.

REPRESENTATIVE COGHILL stated that he strongly objects to this language because it could be misinterpreted.

REPRESENTATIVE GRUENBERG stated he would like to offer an amendment that would keep that language in and add a clause that says that failure to comply does not create a civil liability. He said he agrees with Representative Coghill, adding that there can be a duty or standard of care that's essential for dealing with the adjudication and disposition phase.

[2:43:59 PM](#)

JOHN McKAY, Anchorage Daily News, opined that the bill is "good as far as it goes, but it needs to go a bit further in terms of presumptions of openness." He noted that when other states have opened these proceedings up, everyone seems to be glad that they did it. He commented that he would like to supplement his remarks with articles, including a particular newspaper series that looked at the effect of opening these proceedings up. He

said that he would either fax or email these articles to the committee within the next day.

2:47:28 PM

MR. McKAY stated that he felt it was important for [the committee] to also look at opening the records that relate to the proceedings, which he thought were not adequately addressed in the bill. He pointed out that some comments were filed by a man named Mr. Wexler from the Coalition for Child Protection and Reform; Mr. McKay commented that he agreed with those comments, and recommended that the committee review them. Mr. McKay also asked that the committee look at some language that would help create a stronger presumption of openness. He offered to work with the committee to determine language that everyone would be satisfied with.

CHAIR McGUIRE suggested that Mr. McKay forward his suggestions on to Representative Coghill. She noted that she too was concerned about maintaining the balance between confidentiality and public access to information.

MR. McKAY remarked:

I think it enhances the awareness that the public is interested in this, that there's an extra dimension to what they're doing every day, even though somebody's not sitting there [observing]. ... I think it's really helpful to know that there is experience in other states that have tried this and have found not only that there weren't bad effects, ... but [that] the experience is so universally the opposite.

2:51:18 PM

CHERYL TRAIL relayed that she lives in Nebraska and has cared for her granddaughter from infancy until the age of two and a half years old. She said that her granddaughter is a ward of the State of Alaska who was placed with her on a "foster adopt" basis on an interstate compact. She shared with the committee her experiences with Alaska's Department of Health and Social Services (DHSS), Office of Children's Services (OCS), and charged that the OCS took her granddaughter from her by subterfuge and under pretext.

MS. TRAIL pointed out that when her granddaughter was removed from her care by the OCS, she was not told why this action was

taken, but was instead told by the OCS that she wasn't a party to the case and therefore did not have a right to the information. She said that it took six months for her attorney to get a hearing, and only at the time of discovery did she find out that the OCS had a lot of erroneous information.

MS. TRAIL stated that because of her experience, she strongly supports the strengthening of the rights of grandparents who have been involved in rearing their grandchildren. She remarked that in her experience, the OCS did not follow many of its own policies and procedures, and "actually lied under oath during the hearing in front of a judge"; therefore, she supports the establishment of an opportunity for a trial by jury in cases of parental rights determination. She also stated that she supports the establishment of the citizens' review board, and commented, "I think this bill will go a long way in changing an agency that's known by the citizens of their state to be corrupt."

CHAIR McGUIRE asked Ms. Trail if she has any information about where her [granddaughter] is now.

MS. TRAIL replied that her granddaughter was placed in a foster home and that the OCS is pushing through an adoption.

[2:57:12 PM](#)

MS. TRAIL, in response to further questioning by Representative Dahlstrom, explained the circumstances under which the OCS took custody of her granddaughter, her granddaughter's diagnosis and medication prescriptions, and her own personal background.

[3:06:22 PM](#)

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SSHB 53.

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 5, Line 18

Delete: Lines 18 through line 24

Insert:

**(2) follow the findings set out in AS 47.05.65.**

REPRESENTATIVE KOTT objected for the purpose of discussion.

REPRESENTATIVE COGHILL explained that he'd wanted to assert family primacy in the bill, but then he learned that AS 47.05.65 covered his concerns.

REPRESENTATIVE KOTT removed his objection.

REPRESENTATIVE GARA asked if he could make a friendly amendment to Amendment 1, as follows:

Page 5, Line 17:

After "child"

Insert ", when in the child's best interests"

REPRESENTATIVE COGHILL objected, stating that AS 47.05.65 is "replete with that whole discussion."

[3:10:20 PM](#)

JAN RUTHERDALE, Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law (DOL), noted that she has the same concern as Representative Gara. She remarked that there are times when there's a conflict between ensuring the safety of the child and ensuring the parents' participation in the upbringing of the child.

REPRESENTATIVE COGHILL, agreeing that there can be such a conflict, then stated:

But remember, this is a conflict. We're asking the state to insert itself into a family for the child's welfare. And in AS 47.05.65, which I'm asking us to amend into here, it says, "It is the policy of the state to strengthen families and to protect children from child abuse and neglect." I have no problem that that's the purpose of what I'm doing here. I'm just asking that the parents' participation in the upbringing of the child be included when we're talking about promoting the child's welfare.

REPRESENTATIVE COGHILL maintained his objection to the amendment to Amendment 1.

REPRESENTATIVE GARA commented that he certainly wanted to advocate the concept that parents should be able to participate throughout the process, but remarked that "you don't want to tell the department that a parent who's a danger to the child

should keep participating, and if we just say, 'the parents shall participate,' then I think we're taking away the department's leeway to prevent that [participation] if a parent is a danger to the child."

REPRESENTATIVE COGHILL replied that he didn't think this "construction" language changes the intent regarding the best interests of the child; rather it simply includes the family "At a higher level." He said, "To me, this is one of the key reasons for me doing this bill."

REPRESENTATIVE GARA withdrew his suggestion to amend Amendment 1.

[3:14:55 PM](#)

REPRESENTATIVE COGHILL reiterated that one of the main reasons he sponsored this bill is for family protection.

CHAIR MCGUIRE asked whether there were any further objections to Amendment 1. There being none, Amendment 1 was adopted.

[3:15:39 PM](#)

REPRESENTATIVE DAHLSTROM made a motion to adopt Amendment 2, to remove subsection (n) from Section 5 on page 4, lines 19-26, regarding adoption. She pointed out that this was not in the original governor's bill that was introduced, but was added in by the House State Affairs Standing Committee. She offered her understanding that during the House State Affairs Standing Committee meeting, the Department of Law testified that it knew this was a potential issue, but it didn't think this would affect OCS adoptions. However, she said, "We heard in the testimony yesterday that it will affect many other permanent adoptions."

CHAIR MCGUIRE asked whether there were any objections to Amendment 2. There being none, Amendment 2 was adopted.

REPRESENTATIVE COGHILL made a motion to adopt Amendment 3, which read [original punctuation provided]:

Page 17, line 7, after the word "capacities.":  
Delete: the remainder of Line 7 through line 20.

MS. MOSS noted that the language contained in the aforementioned lines would require certain departments to disclose confidential

information to family members other than parents, and explained that Legislative Legal Services had pointed out that the federal government would have a problem with that language and it could cost the state \$29 million per year.

REPRESENTATIVE GARA asked for clarification that "we're just deleting the changes ... starting at line 7, and so we're not deleting the rest of the statutory language."

CHAIR McGUIRE concurred.

MS. MOSS suggested that Amendment 3 be a conceptual amendment such that it would merely delete the proposed new language on page 17, lines 7-20.

REPRESENTATIVE COGHILL restated Conceptual Amendment 3 as taking out the proposed new language on lines 7-20 of page 17.

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 3. There being none, Conceptual Amendment 3 was adopted.

[3:18:52 PM](#)

REPRESENTATIVE COGHILL made a motion to adopt Amendment 4, which read [original punctuation provided]:

Page 27, line 5:

Delete:

"may"

Insert:

"shall"

REPRESENTATIVE COGHILL explained that Amendment 4 would ensure that the initial interviews are audiotaped always and vidoetaped when possible.

MS. RUTHERDALE said that the Department of Health and Social Services objects to Amendment 4.

TAMMY SANDOVAL, Acting Deputy Commissioner, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), elaborated:

In working through this bill, ... it changed to "may" and then today it's back to "shall", and we're not

sure how that happened because we'd had conversations about that. And we just have some concerns about the logistics of that: what it means to children in the interview process. While I agree that it does protect ..., I think it raises so many other issues.

REPRESENTATIVE COGHILL suggested that the issue of the cost incurred by the requirements of Amendment 4 be discussed in the House Finance Committee.

CHAIR MCGUIRE asked whether there were any objections to Amendment 4. There being none, Amendment 4 was adopted.

[3:21:03 PM](#)

REPRESENTATIVE ANDERSON moved to report the proposed committee substitute (CS) for SSHB 53, Version 24-LS0251\P, Mischel/Chenoweth, 4/11/05, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE COGHILL relayed that he had one other issue to address.

CHAIR MCGUIRE expressed a preference that that issue be addressed in the House Finance Committee.

REPRESENTATIVE COGHILL agreed to do so.

REPRESENTATIVE DAHLSTROM asked that Representative Coghill consider the comments that she received from foster parents who expressed concern about being mandated to have relationships with the family.

[3:23:12 PM](#)

MS. MOSS noted that the language in the bill is permissive, and said she'd been assured by the OCS that it wouldn't put foster parents or the children in harm's way.

REPRESENTATIVE COGHILL offered his belief that [maintaining a relationship with the family] is not mandated.

REPRESENTATIVE ANDERSON again moved to report the proposed CS for SSHB 53, Version 24-LS0251\P, Mischel/Chenoweth, 4/11/05, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected for the purpose of discussion. He said that he thinks generally the amendments are good changes to the law. He stated his intention to keep working with the sponsor on additional changes.

REPRESENTATIVE GARA then removed his objection.

CHAIR McGUIRE asked whether there were any further objections to reporting the proposed CS for SSHB 53, Version 24-LS0251\P, Mischel/Chenoweth, 4/11/05, as amended, from committee. There being no objection, CSSSHB 53(JUD) was reported from the House Judiciary Standing Committee.

HB 257 - STATE PROCUREMENT ELECTRONIC TOOLS

[3:24:26 PM](#)

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 257, "An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

VERN JONES, Chief Procurement Officer, Central Office, Division of General Services (DGS), Department of Administration (DOA), explained that in 2003, House Bill 313 was passed by the legislature and became law, thereby creating a state procurement pilot program. He went on to say:

The [DOA] then prepared and issued an RFP [request for proposals] for a contractor to outsource state procurement functions in the Southeast Region of [the Department of Transportation & Public Facilities (DOT&PF)], and awarded a contract to [Alaska Supply Chain Integrators, LLC (ASCI)] as envisioned in ... [that] bill. [The] bill and subsequent contract were limited to two departments and two instrumentalities of the state, and had a June 2006 sunset date. [The] procurement pilot contractor, as we're calling them, has been operating [DOT&PF] Southeast Region procurements for nine months now. [House Bill 257] would remove the restrictions on the number of departments and instrumentalities contained in the current law, as well as eliminate the sunset provisions that are there now. ... Yesterday I spoke with committee staff and sent a message in which I suggested a couple of amendments that would fix an

incorrect statutory reference and clean up some of the preference language. I see that the version before you does not have those amendments, and I would urge you to consider them.

CHAIR MCGUIRE, speaking as the chair of the House Judiciary Standing Committee, sponsor of HB 257, noted that Mr. Jones's suggested amendments are contained in an e-mail he provided; the portion of his e-mail that explains his suggested amendments read [original punctuation provided]:

1. Replace reference to AS.36.30.100-190 to AS 36.30.100-265 - this would allow for awarding of the contract via RFP rather than just ITB, which would not be appropriate for this type of contract.

2. "Cleans up" the preferences and makes them more uniform and workable. The preferences as listed are drawn from existing statute, which are complex, confusing, poorly written, and have been subject to protest.

MR. JONES clarified that the portion of his e-mail labeled "1" proposes that language, "36.30.190" on page 1, line 10, be replaced with, "30.36.265". He said that doing so would allow the department to "award a contract of this type via an RFP rather than just an ITB [invitation to bid]." With regard to the portion of his e-mail labeled "2", he said:

This bill lifts preferences from existing statute, and I can tell you from experience that the preferences we now have in statute are complex, ... cumbersome, ... hard to understand, and hard to apply - they are not consistent, [and] they act in different ways. For example, some preferences reduce an offeror's price for comparison purposes, [while] other preferences have you go through an analysis, find the lowest price, take a percentage of that bidder's price, and apply a discount to someone else's ... offer. My suggestion and the language that I'd provided would make these preferences, at least for this bill, uniform and consistent. And I would recommend that you would consider that.

[3:30:41 PM](#)

REPRESENTATIVE DAHLSTROM asked how the bill will affect the transparency of the current procurement process.

MR. JONES relayed that under the bill, as is now the case under the pilot program, the state would not be required to provide formal public notice of either the opportunity to compete or the awards that are made. In response to questions, he reiterated that the pilot program was implemented by the DOA, which chose to implement it in the DOT&PF's Southeast Region.

CHAIR MCGUIRE mentioned that the administration didn't want to institute a pilot project in areas where it might not be successful, and so the bill gave the DOA the discretion to utilize the pilot program in up to four different departments. She offered her belief that the intent of the bill that originally established the pilot program was not carried out. She elaborated:

It was for four departments. We really wanted to see, in four different departments, what are the measured savings, how does it work, how is it changing - in a good way or bad way - procurement. And what happened was that ... people drug their feet, [and] it wasn't until a year after the bill had been signed into law that even any meaningful steps were made to identify which department would then be under the pilot [program]. And when it was done, I would argue that it was done in a department that's very difficult: ... the [Alaska] Marine Highway Southeast Transportation System. That's a difficult department [in which] to employ the kind of success that I would have liked to have seen. So ... as the [original] bill's sponsor, I felt a little set up; I felt, personally, as if the goal that I was trying to get realized ... wasn't allowed to ... go forward. And so that's a source of frustration, and it's part of the reason that ... [HB 257] is before you today; ... I want to give ... [the DOA] the discretion to expand it to whatever departments they believe will be feasible.  
...

CHAIR MCGUIRE reiterated that the intent of the original bill establishing the pilot program was to allow for the pilot program to be instituted in up to four different departments, and that the pilot program was only utilized in one department and late at that.

[3:36:27 PM](#)

REPRESENTATIVE KOTT offered his understanding that under the original legislation - House Bill 313 - the DOA could outsource up to two departments and up to two other instrumentalities of the state - for example, the Alaska Permanent Fund Corporation (APFC) or the Alaska Housing Finance Corporation (AHFC). With regard to the contract that was let, what period of time was it for, he asked.

MR. JONES said that the contract aligns itself with the bill, and thus goes through [June] of 2006; however, there is a provision in the contract stipulating that if the bill were to be amended, the contract could be extended another couple of years through optional renewals. In response to the question of what would happen if an RFP was offered and a different vendor was the low bidder, he said that the contract which is in place now would "stand on its own and would run its course, and we would have two contracts up and running." He noted that all of the DOA's professional services contracts typically have several types of termination clauses that could be utilized if the state so chose, either for cause or for convenience.

REPRESENTATIVE KOTT asked whether there are any annual reports required which could show a savings from outsourcing or the cost/benefit of outsourcing.

MR. JONES replied:

There's an understanding with that contract, and us, to perform benchmarking audits. And we have done that and continue to do that so we can get some sort of a gauge for how they're doing compared to how the agency was doing previously.

MR. JONES, in response to a further question, said that those audits are performed quarterly; that the audit for the first quarter has been completed; that the contractor is now operating in the third quarter; and that the audit for the second quarter is just now coming up and will be completed very soon. The first quarter audit, he remarked, is for a time period in which "there was a lot of transition going on," and so the results are rather inconclusive, particularly given that it occurred so early on in the process, before a lot of data was available.

REPRESENTATIVE KOTT surmised, then, that at this point, the cost/benefit is not yet known.

MR. JONES concurred. He added that he hopes to have the second quarter audit concluded and available for release to members soon. In response to further questions, he relayed that although the second quarter audit has not yet been released, it does appear that Chair McGuire has possession of a letter from Commissioner Barton to Commissioner Matiashowski commenting on the first quarter audit, which was released some time ago, and includes a fax from the DOT&PF, Administrative Services, that pertains to first quarter findings.

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BRUCE LUDWIG, Business Manager, Alaska Public Employees Association/American Federation of Teachers (APEA/AFT); Secretary/Treasurer, Alaska State, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), offered the following comments:

The pilot program, two years ago, was rushed through in the final days of the 2003 [legislative] session. There were no measurements to success included in the bill, no benchmarks for comparison, and nothing to enable anyone to determine if it was a success or a failure. There doesn't appear to have been a lot of thought given to it. The bill title was misleading. When we talked to [legislators] after it was passed, we were told [that] it was a bill to enable e-commerce. The bill does much, much more than that. The [Alaska Supply Chain Integrators, LLC (ASCI)], who brought ... [House Bill 313] forward, was the only responsive bidder and was awarded the contract.

The state determined they could save \$250,000 by eliminating the warehouse and using fewer employees in favor of e-commerce. [Alaska Supply Chain Integrators] actually began work July 1, 2004, and 10 state employees were laid off. Since the pilot project [began], only one quarter has been audited; the second audit is in process, and the third should be getting underway. They're actually working in the fourth quarter at the moment. The pilot [program] has until a year from next June to finish.

As the [DOA] testified in ... Senate [committee hearings], the jury's still out on whether it's saving money or not. It's too early to extend it; it still

has another year to run its course and determine if it was a good pilot project or not. This bill should be held over while a sufficient record is established to be able to intelligently make a decision on whether it has been a success or not. We've heard various rumors from people out in the agencies about how successful it's been. For one thing, we've heard that goods and services cost 20 percent more when you buy them under ASCI than what the state was purchasing at.

And if you extend that out for the life of the pilot project, that's a cost to the state of [\$2.5 million] ..., or it's [\$2.5 million worth] of fewer goods that you're going to have. We've heard that there's 1,500 invoices sitting out there, where the invoice can't be matched up to the purchase order. Now, that means that the state's vendors aren't getting paid. That affects the state's reputation, but, more importantly, it affects a lot of Alaska businesses that depend on the money; they've already delivered the goods and they're waiting on payment and aren't getting it.

We've heard [about] other problems. For instance, the first audit points [out] that when the M/V Kennicott was undergoing engine overhaul down in the yard in Portland, ASCI ordered seven different orders of engine parts [and] six of them got shipped to Juneau. They had to be flown down - airfreighted down - to Portland. ... That cost the state a lot of money. Of the original \$250,000 savings, about half of that was the warehouse - closing the warehouse. On October 1 they reopened the warehouse. It doesn't work without the warehouse; you have to have the warehouse to transfer goods and store them. So the savings was no longer \$250,000.

We're also hearing that the ASCI employees are working a lot of overtime. So who knows whether there's any savings in personal services costs. But if we're losing on the goods and services that we're purchasing, we're not saving money. A far better project would be to enable state agencies to use e-commerce tools themselves. There's some, right now, that are using them. There ought to be some kind of a program that [the DOA] establishes to let all the departments use them - one big e-commerce site. In summary, we just ask that you hold the bill over;

let's see how the pilot project goes, let's give it a fair run, and see if we save money or lose money. Thank you.

3:48:54 PM

JIM DUNCAN, Business Manager, Alaska State Employees Association (ASEA), said that the ASEA opposes HB 257 and recommends that it be held over. He offered his belief that it is very clear that the pilot project has not been completed, and that the legislature should evaluate the success or failure of that project before expanding it. Referring to page 2 of the aforementioned letter regarding the first quarter audit, he noted that it says in part: "It is clear from the audit conclusions under ASCI management there has been no improvement in service and the cost of goods to the state have actually increased. Based on these findings we recommend that there be no expansion of the pilot until ASCI's performance demonstrates significant benefit to the state." He said he's been hearing that there has been no improvement shown in the second quarter, but acknowledged that such has yet to be substantiated.

MR. DUNCAN urged the committee to hold HB 257 over until the aforementioned results are provided and until the legislature has a chance to understand what has really happened with the pilot project. He indicated that there is also a constitutional question, which has been provided to members in the form of a memorandum, regarding denying Alaska businesses and individuals equal protection [under] the law. He suggested that the committee review the memorandum, and that the committee carefully consider what the result will be of allowing a private contractor to completely bypass Title 36, the procurement code, as is proposed in HB 257.

MR. DUNCAN pointed out that Alaska's procurement laws were put into place after careful consideration, are based on model legislation, and have been updated. At the time that those laws were established, the legislature worked to ensure that Alaska's procurement process was open and transparent, and that the public's trust would be maintained. Passage of HB 257 will allow the rules of procurement to be set by [the DOA] and the contractor, he remarked, adding his belief that "those who set the rules will control the game." He acknowledged that he's heard that there is a lot of interest in streamlining the process, but opined that such should not be done at the expense of the public's trust.

MR. DUNCAN noted that as a former commissioner of the DOA, he had similar goals, and therefore worked with the chief procurement officer and others towards that end. The statutes do not prohibit e-procurement at this time, he pointed out, but such does require the proper tools. He urged the committee to evaluate what those tools actually are and then given them to the administration. He then asked the committee to consider the issue of privatization by reviewing the federal government's "OMB Circular No. A-76", which gives direction to the heads of departments and establishments to be very careful with regard to what gets privatized, and which also indicates that some activities are inherently governmental.

MR. DUNCAN relayed that the aforementioned document says in part:

An inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. ... An inherently governmental activity involves ... [e]xerting ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

MR. DUNCAN noted that these directions are currently being applied at the federal level, under an administration that is known to favor privatization, and suggested that similar direction should apply in the state of Alaska. In conclusion, he offered his belief that there are numerous, important reasons to hold the bill over for further careful consideration by the committee.

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BEN MILAM had his testimony read by Ken Brown as follows:

I have almost 30 years experience in logistics and purchasing, and have attended more formal classes on purchasing than anyone in the state, including upper-graduate level classes. I only mention this to emphasize that formal purchasing for government is a science. It is often complicated and very different from buying groceries at the local grocery store. In large corporations, professional buyers are viewed in

the income category, rather than as expense, because of the value they add to the purchasing process. In government agencies, those professional buyers save thousands of dollars that can be then used to support programs.

These profits and savings are possible because professional buyers are dedicated to their company or agency mission. The buyers in the proposed program will follow this same philosophy. They are dedicated to making money for their company. They are not dedicated to the government mission and cannot be if they are loyal to their company. This is a very bad program. I am also very active with the National Association of Purchasing Management. At a recent meeting we discussed the whole concept of contracting out. Where private industry has contracted out the purchasing function, however, all those that I'm aware of retained signature authority over purchases, had documents distributed on their own forms, and enforced their own corporation rules. In all of those cases the contractor provided only transactional work and was hidden from view on purchasing documents.

Even though these private corporations maintained very strict control over their contractors and even though the programs were successful for them, contracting out purchasing of a government agency and spending public money is quite different. In government purchasing, public trust is essential. I belong to a newspaper clipping service that collects newspaper articles nationwide. I have a stack currently over an inch thick. Most of the articles collected in the past year concerned corruption in government contracts.

There are two points here. One, contracts are vulnerable to corruption because of the extremely large dollar volume involved. Two, most of us would agree that all of these actions are wrong and that those involved should be punished; however, most of these offenses are not against the law in private contracts. [A] private contractor can give contracts to his friends if he wants to. It is his money. He can spend it where and how he likes. We can't do that with public money. Citizens of Alaska deserve strict accountability for their money and we have a procurement code that makes that possible. This is a

very bad contract and very poor public policy. Thank you.

[3:58:07 PM](#)

BARRY JACKSON, Procurement Analyst; Project Manager; Programmer Analyst, Resource Data, Inc. (RDI), relayed that he is a retired DOA Division of General Services (DGS) employee, having served as Contracting Manager, Deputy Director, and Acting Director. While working for the DOA, he remarked, he attempted to bring automation and improved productivity to the DOA's procurement systems, and in pursuit of those goals visited other states to examine their automation systems. However, he noted, the State of Alaska never adopted any of the procurement systems used by other states, and so frustrated by the state's inability to bring automation to the DOA's DGS, he taught himself to program and then created applications that have since been used for nearly 15 years.

MR. JACKSON went on to say:

When I first saw the RFP for this pilot program for e-commerce tools and web tools ..., I knew I wanted to be a part of this effort to improve the state's procurement system, and [so] I convinced my company to offer my services to Alaska Supply Chain Integrators in support of their RFP response. I assisted [ASCI] in winning the contract and have since developed most of the internal procurement policies used in the pilot project. I've also conducted training of [DOT&PF] employees on "ASCI Smart Tool Applications" and assisted in performance reviews internally. The ASCI tools, as they currently exist, are uniquely suited and fitted to the State of Alaska; they've been highly customized for the State's systems, and are better than anything I've encountered in any other state. ...

MR. JACKSON added:

In 1969, when I was hired, agencies of the state were ... limited to being able to make \$25 purchases without coming back through the Division of General Services. In other words, the State of Alaska's procurement systems were highly centralized at that time. Over the years, because this [was] a very paper-oriented system, the more demand that was placed upon it, the longer things took, and there was a trend

towards decentralization, which was strongly accelerated in the mid-80s. Subsequent to ... [some] scandals that [occurred], ... a procurement code was adopted which mandates a centralized procurement system.

However, decentralization kept apace to the point where, now, I think it's fair to characterize the State's procurement system as strongly decentralized. And that brings with it the attendant difficulties of failure to consolidate repetitive procurements, [of] increases in personnel because the services are being performed over and over again in various departments, and [of] ... enforcing the rules and procedures that are required. Today, I think we have an opportunity ... to recentralize a lot of the procurement through the use of web tools and an automated system such as the one that ASCI has. [It will] ... provide for a better service, better accountability, better productivity.

Business rules that the state now uses and tries to enforce through paper processes can be enforced through electronic means, and I believe all-around better efficiency and productivity can be realized. As a manager, my judgment is that these tools are well tailored to the job - they create efficiencies, which increase the productivity of the users. That increase in productivity can be put to use in several ways. The people that are doing the daily ordering have more time to do other things. In the centralized portion of the current system, the persons that are now doing the buying are far more efficient and productive in doing their jobs and producing the work that comes in.

Right now we are in a period of transition; these are dramatic changes that are being made, and there will be challenges, which are due to the complexity and due to the resistance to change or just plain resistance due to potential for job loss. My estimation, given the "sea change" in the way the systems operate, is that the transition has been going pretty well so far, even given the resistance that's been encountered. Regarding the subject of these quarterly audits, I don't remember, in my 30 years of State service as a contracting official, ever doing quarterly audits on any contractor.

MR. JACKSON concluded:

This level of scrutiny, were it applied to a state agency, looking ... at the same issues, would undoubtedly reveal various issues of overspending and such as [has] been alleged by others providing testimony here today. I guarantee that were I able to spend that level of activity in scrutiny in investigating another agency quarterly, ... I would find purchasing violations and overspending. I'm not offering that as an excuse, I'm simply saying that this level of scrutiny is unprecedented in my experience, and I don't believe that any state agency could withstand that level of scrutiny ... either.

CHAIR McGUIRE said she would leave public testimony open and hold HB 257 over.

**ADJOURNMENT**

[4:06:31 PM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:06 p.m.