

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 22, 2005

2:44 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. 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."

- MOVED CSHB 257(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 92

"An Act relating to the purchase of interests in corporations, including limited liability companies, by the University of Alaska."

- MOVED CSHB 92(JUD) OUT OF COMMITTEE

SENATE BILL NO. 87

"An Act relating to motor vehicle safety belt violations."

- MOVED HCS SB 87(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 129(JUD)

"An Act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 143(STA)

"An Act amending the definition of the term 'state agencies' as it applies under Executive Order No. 113; relating to information systems in the legislative branch and to the Telecommunications Information Council; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 36(JUD)

"An Act relating to absentee ballots."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
04/13/05	(H)	Heard & Held
04/13/05	(H)	MINUTE(JUD)
04/18/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/18/05	(H)	Heard & Held
04/18/05	(H)	MINUTE(JUD)
04/22/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 92

SHORT TITLE: UNIVERSITY OF ALASKA AND CORPORATIONS

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	EDU, HES
04/05/05	(H)	EDU AT 11:00 AM CAPITOL 106
04/05/05	(H)	Heard & Held
04/05/05	(H)	MINUTE(EDU)
04/06/05	(H)	HES REFERRAL WAIVED
04/06/05	(H)	JUD REFERRAL ADDED AFTER EDU
04/07/05	(H)	EDU AT 11:00 AM CAPITOL 106
04/07/05	(H)	-- Meeting Canceled --
04/12/05	(H)	EDU AT 11:00 AM CAPITOL 106
04/12/05	(H)	Moved CSHB 92(EDU) Out of Committee

04/12/05 (H) MINUTE(EDU)
 04/14/05 (H) EDU AT 11:00 AM CAPITOL 106
 04/14/05 (H) -- Meeting Canceled --
 04/18/05 (H) EDU RPT CS(EDU) NT 1DP 5NR
 04/18/05 (H) DP: LYNN;
 04/18/05 (H) NR: THOMAS, WILSON, GATTO, SALMON,
 NEUMAN;
 04/18/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/18/05 (H) Scheduled But Not Heard
 04/19/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/19/05 (H) Heard & Held
 04/19/05 (H) MINUTE(JUD)
 04/22/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 87

SHORT TITLE: SEAT BELT VIOLATION AS PRIMARY OFFENSE
 SPONSOR(S): SENATOR(S) BUNDE

02/02/05 (S) READ THE FIRST TIME - REFERRALS
 02/02/05 (S) STA, JUD
 02/17/05 (S) STA AT 3:30 PM BELTZ 211
 02/17/05 (S) Moved SB 87 Out of Committee
 02/17/05 (S) MINUTE(STA)
 02/18/05 (S) STA RPT 2DP 2NR
 02/18/05 (S) NR: THERRIAULT, HUGGINS
 02/18/05 (S) DP: ELTON, WAGONER
 03/01/05 (S) JUD AT 8:30 AM BUTROVICH 205
 03/01/05 (S) Moved SB 87 Out of Committee
 03/01/05 (S) MINUTE(JUD)
 03/02/05 (S) JUD RPT 3DP 2NR
 03/02/05 (S) DP: SEEKINS, FRENCH, GUESS
 03/02/05 (S) NR: THERRIAULT, HUGGINS
 03/03/05 (S) TRANSMITTED TO (H)
 03/03/05 (S) VERSION: SB 87
 03/04/05 (H) READ THE FIRST TIME - REFERRALS
 03/04/05 (H) STA, JUD
 03/19/05 (H) STA AT 9:30 AM CAPITOL 106
 03/19/05 (H) Heard & Held
 03/19/05 (H) MINUTE(STA)
 04/12/05 (H) STA AT 8:00 AM CAPITOL 106
 04/12/05 (H) Moved HCS SB 87(STA) Out of Committee
 04/12/05 (H) MINUTE(STA)
 04/13/05 (H) STA RPT HCS(STA) 1DP 4DNP 1NR
 04/13/05 (H) DP: GRUENBERG;
 04/13/05 (H) DNP: GARDNER, LYNN, GATTO, ELKINS;
 04/13/05 (H) NR: SEATON
 04/22/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided an explanation during discussion of HB 257.

HEATH HILYARD, Staff
to Representative Mike Kelly
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 92, offered a comment on behalf of the sponsor, Representative Kelly.

MARY E. GREEN, Associate General Counsel
University of Alaska
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 92.

SENATOR CON BUNDE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 87.

CINDY CASHEN
National Council on Alcoholism and Drug Dependence
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 87.

KEVIN E. QUINLAN, Chief
Safety Advocacy Division
Office of Safety Recommendations and Accomplishments
National Transportation Safety Board (NTSB)
Washington D.C.

POSITION STATEMENT: Provided comments during discussion of SB 87.

JOAN DIAMOND
Department of Health and Human Services
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 87.

DON SMITH, Administrator
Highway Safety Office
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 87 and responded to a question.

TODD SHARP, Lieutenant
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 87 and responded to questions.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [2:44:36 PM](#). Representatives McGuire, Anderson, Coghill, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representative Kott arrived as the meeting was in progress.

HB 257 - STATE PROCUREMENT ELECTRONIC TOOLS

[2:45:32 PM](#)

CHAIR McGUIRE announced that the first 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." [Before the committee was HB 257, as amended on 4/18/05.]

CHAIR McGUIRE, speaking as chair of the House Judiciary Standing Committee, sponsor of HB 257, relayed that although a proposed committee substitute (CS) for HB 257, Version 24-LS0826\Y, Bannister, 4/21/05, was available for adoption as a work draft, the committee must also readopt the preferences section of Conceptual Amendment 1, as amended, to HB 257 - the original version of the bill - which was adopted at the bill's last hearing. She explained that Version Y simply extends, for another year, the sunset provided for in the 2003 legislation originally authorizing the pilot project.

REPRESENTATIVE GRUENBERG moved to adopt the proposed CS for HB 257, Version 24-LS0826\Y, Bannister, 4/21/05, as the work draft. There being no objection, Version Y was before the committee.

REPRESENTATIVE GRUENBERG made a motion [to adopt Conceptual Amendment 1] to "meld into" Version Y [the amendment which had been adopted to HB 257, that being Conceptual Amendment 1, as amended with regard to proposed subsection (c) referencing only proposed subsections (d)-(r), and which prior to being amended read:

A BILL

FOR AN ACT ENTITLED

"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."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 36.30 is amended by adding a new section to article 1 to read:

Sec. 36.30.093. State procurement and electronic commerce tools program.

(a) The department may enter into a program under which the department contracts with a person from the private sector to provide procurement services and to provide for the delivery and use of electronic commerce tools. Notwithstanding any other provision of this chapter, the contract shall be awarded under AS 36.30.100 - 36.30.265.

(b) Notwithstanding any other provision of this chapter, all state departments and instrumentalities of the state may participate in the program authorized by (a) of this section.

(c) A procurement conducted by the person selected under (a) of this section is not subject to this chapter or to AS 36.15. However, the procurement is subject to (d) - (u) of this section.

(d) A contract based on solicited bids shall be awarded to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent has been applied for evaluation purposes.

(e) If a bidder qualifies as an Alaska bidder and is offering services through an employment program, a

15 percent cost preference will be applied during evaluation.

(f) If a bidder is an Alaska bidder and is a qualifying entity, a ten percent cost preference will be applied during evaluation.

(g) If a bidder is an Alaska bidder and if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with disabilities, a ten percent cost preference will be applied during evaluation. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with disabilities will remain at 50 percent or more during the contract term.

(h) Insurance-related contracts shall be awarded to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent has been applied during evaluation. In this subsection, "Alaska bidder" means a person who is an Alaska bidder and an Alaska domestic insurer.

(f) Alaska products shall be used whenever practicable in procurements for a state agency. Recycled Alaska products shall be used when they are of comparable quality, of equivalent price, and appropriate for the intended use.

(g) If a bid indicates that the product(s) being purchased will be recycled Alaska products, a cost preference of five percent will be applied during evaluation.

(h) In a project financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber, and manufactured lumber products originating in this state from local forests shall be used wherever practicable.

(i) When agricultural products are purchased, a seven percent cost preference will be applied during evaluation to agricultural products harvested in the state.

(j) When fisheries products are purchased, a seven percent cost preference will be applied during evaluation to fisheries products harvested or processed within the jurisdiction of the state.

(k) If a bid or offer designates the use of an Alaska product that is identified in the contract specifications and designated as a Class I, Class II, Class III state product under AS 36.30.332, a cost preference equal to the percentage established for the class under AS 36.30.332(c) will be applied to the

product during evaluation. The program contractor shall use the Alaska product preference list, as described in 3 AAC 92.090(a), as the basis for establishing the percentage of Alaska product preference.

(l) If a contractor designates the use of an Alaska product in a bid or proposal and fails to use the designated product for a reason within their control, each payment under the contract shall be reduced according to the schedule set forth in AS 36.30.330(a).

(m) Except as provided under (q) of this section, all preferences are cumulative and shall be applied in the order referenced under (d) - (n) of this section.

(n) A bidder may not receive a preference under this section under both (d) and (e), (d) and (f), or (e) and (f) for the same contract.

(o) In order to qualify for a preference under (e), (f), or (g) of this section, a bidder shall add value by actually performing, controlling, managing, and supervising the services provided, or a bidder shall have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

(p) When awarding a contract under competitive sealed proposals, the program contractor shall consider the preferences described in this section. Applicable preferences shall be applied solely to the cost portion of the proposals during evaluation.

(q) Informal procurements conducted by the program contractor are subject to the preferences described in this section.

(r) In this section,

(1) "agency" has the meaning given in AS 36.30.990(1);

(2) "agricultural products" has the meaning given in AS 36.15.050(g)(1);

(3) "Alaska bidder" has the meaning given in AS 36.30.170(b);

(4) "Alaska products" has the meaning given in AS 36.30.338(1);

(5) "contract" has the meaning given in AS 36.30.990(7);

(6) "employment program" has the meaning given in AS 36.30.990(11);

(7) "instrumentalities of the state" means a state public corporation, a state enterprise, or

another administrative unit of state government that handles its procurement and supply management in a manner that is separate from a department of the state;

(8) "qualifying entity" has the meaning given in AS 36.30.170(e)(1)-(4);

(9) "person" has the meaning given in AS 36.30.990(16);

(10) "person with a disability" has the meaning given in AS 36.30.170(k);

(11) "program contractor" means the contractor selected by the department to manage the program;

(12) "recycled Alaska product" has the meaning given in AS 36.30.338(4).

*** Sec. 2.** The uncodified law of the State of Alaska enacted in secs. 2 and 3, ch. 51, SLA 2003, are repealed.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Nothing in this Act affects the validity of actions taken by the Department of Administration under ch. 51, SLA 2003, before the effective date of this Act.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

CHAIR MCGUIRE indicated that [Conceptual Amendment 1] would put the bidder preferences back in the bill.

REPRESENTATIVE GARA objected for the purpose of discussion.

CHAIR MCGUIRE reiterated that Version Y simply extends the pilot project, and that [Conceptual Amendment 1] would ensure that the bidder preferences therein would apply to any contract authorized by the 2003 legislation.

REPRESENTATIVE GARA said he wants to ensure that [Conceptual Amendment 1] really does what Chair McGuire intends it to do.

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, reiterated that [Conceptual Amendment 1, as amended], which was brought forth by the administration, had been adopted at the fill's last hearing for application to the original legislation.

REPRESENTATIVE GARA said he wanted to ensure that [Version Y and Conceptual Amendment 1] would not expand the current pilot project to more departments.

CHAIR McGUIRE said [they would not], again reiterating her belief that [Conceptual Amendment 1] simply adds the bidder preferences to Version Y. She noted that Alaska Supply Chain Integrators and other [contractors] object to [Version Y].

REPRESENTATIVE GRUENBERG withdrew his motion [to adopt Conceptual Amendment 1].

REPRESENTATIVE GRUENBERG then restated the motion, that being to adopt a new [Conceptual Amendment 1], to "incorporate Section 1 [of Conceptual Amendment 1, as amended,] into this bill.

MS. TONDINI attempted to clarify that [new Conceptual Amendment 1] would incorporate subsections (c)-(r) [of Conceptual Amendment 1].

REPRESENTATIVE GRUENBERG concurred and, in response to a question, posited that the drafter would insert [new Conceptual Amendment 1] in the proper location.

REPRESENTATIVE GARA said he would not hold the bill up but would instead review the language later to ensure that it did what the committee intended. He then removed his objection to the motion [to adopt new Conceptual Amendment 1].

CHAIR McGUIRE stated that [new Conceptual] Amendment 1 was adopted.

[2:50:58 PM](#)

REPRESENTATIVE GRUENBERG turned attention to Section 2 of [Conceptual Amendment 1, as amended, as it was intended to apply to the original version of HB 257] and said he didn't think the committee ought to adopt that provision.

The committee took an at-ease from 2:51 p.m. to 2:52 p.m.

[2:52:34 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 257, Version 24-LS0826\Y, Bannister, 4/21/05, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected [for the purpose of discussion], and offered his understanding that [new Conceptual Amendment 1] would incorporate subsections (c)-(r) [of Conceptual Amendment 1, as amended].

CHAIR McGUIRE, after ascertaining that there were no further objections to the motion, announced that CSHB 157(JUD) was reported from the House Judiciary Standing Committee.

HB 92 - UNIVERSITY OF ALASKA AND CORPORATIONS

[2:53:20 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 92, "An Act relating to the purchase of interests in corporations, including limited liability companies, by the University of Alaska." [Before the committee was CSHB 92(EDU).]

CHAIR McGUIRE noted that at the bill's last hearing, the sponsor had explained the bill and public testimony had been closed.

REPRESENTATIVE GARA said that he still doesn't know what the concept of "piercing the corporate veil" entails and would like further explanation regarding why the university should be exempted from that concept.

CHAIR McGUIRE mentioned that the sponsor's staff has provided members with a copy, from Westlaw, of a portion of a book by Stephen B. Presser entitled Piercing the Corporate Veil that specifically addresses the concept as it pertains to Alaska.

[2:55:21 PM](#)

HEATH HILYARD, Staff to Representative Mike Kelly, Alaska State Legislature, sponsor, offered on behalf of Representative Kelly that perhaps Ms. Green could better address Representative Gara's query.

[2:55:54 PM](#)

MARY E. GREEN, Associate General Counsel, University of Alaska, explained:

What the policy of [piercing] the corporate veil was designed to do was to eliminate what is normally the rule that a shareholder's assets are free from the

debts of the corporation. And it was designed basically to take those cases where there had been fraud, or [where] a corporation sets up a fraud kind of corporation just to protect the corporation's assets, or [where] someone does the same thing. That was the original basis for the rule. The rule in most parts of the country has a number of different provisions. ... Generally what it has is that ... a plaintiff is allowed to pierce the corporate veil and reach the assets of the shareholder if the subject corporation had been a mere instrumentality, if there had been an attempt to perpetrate fraud, accomplish injustice or a violation of the law.

In Alaska, it's much easier to pierce the corporate veil because the [Alaska] Supreme Court has adopted [a rule specifying that] only one of those ... [criteria] needs to be met. ... It either has to be a mere instrumentality of the shareholder, or there has to have been wrongful conduct. One of the things that the ... [aforementioned portion of the book, Piercing the Corporate Veil] points out about the Alaska rule is that ... [Alaska] is among the easiest states in the union [in which] to pierce [the] corporate veil. Secondly, the [aforementioned portion of the book] also points out, toward the end, that it looks like the [Alaska] Supreme Court is going to an even easier way to pierce the corporate veil - relying solely on undercapitalization of the corporation.

MS. GREEN continued:

If that happens, certainly ... any shareholder [who] invests in a small corporation that doesn't have a lot of assets is at risk to end up paying for the liabilities of the corporation. Usually what happens in small corporations is that the creditors of small corporations, because they know that the corporation is normally free to contract and that they can't get assets [of] the shareholders, ... require guarantees from the primary people, and so then the shareholder would be, in fact, liable, [but] with a personal guarantee. ...

What this bill would do would make it so that the university [would] ... be free, of course, to contract just like any other person, to guarantee the debts if

it was appropriate - if not, the university's assets would be protected by what is a very easy application [of] piercing the corporate veil. ... As a university, we need to protect the public's assets in this ... vast university, and that's the reason that we're seeking this [change to statute].

CHAIR McGUIRE noted that Black's Law Dictionary defines corporate veil as, "the legal assumption that the acts of a corporation are not the actions of its shareholders, so that the shareholders are exempt from liability for the corporation's actions."

[2:59:54 PM](#)

REPRESENTATIVE GRUENBERG shared his concern that small businesses who act as suppliers to the university may be left "holding the bag."

MS. GREEN replied that this is an obvious problem, but commented, "That's true in every small corporation." She said that small suppliers can get a personal guarantee from the major people who are running the corporation in order to avoid the normal rule that shareholders aren't liable. She commented that this bill would not change that protection that the small business owner has to choose not to extend credit to small corporations.

REPRESENTATIVE GRUENBERG remarked that the [Alaska] Supreme Court has considered this issue on several occasions and has enacted a rule that's an expansion of the common law "because the court realizes that in Alaska we're dealing with some fairly unsophisticated people and we're dealing with, in many cases, small people who ... never heard of the corporate veil [and] don't know much about this." He concluded that the [Alaska] Supreme Court has essentially said that [a supplier] doesn't have to get personal guarantees, and if the corporation doesn't pay its bill, the supplier will be able to go to court to collect that money. He said: "Here we're letting probably the biggest shareholder in the whole state, the ... university, off the hook. The state is in the least equitable position to want this break. Nobody else gets this break in dealing with small, undercapitalized corporations. Why should the State of Alaska?"

CHAIR McGUIRE offered her belief that issues must be weighed, and in this instance, the greater good of allowing the university to invest in small businesses that might make great

technological advances outweighs [other considerations]. She commented that this is one way for new small businesses to get some capital, which is very hard to get in Alaska. She opined that the university isn't going to invest if it is exposed to tremendous liability. She continued:

We're not saying that we would allow the university to be an integral, active player committing wrongdoing and then shielding them from that wrong. ... What we're saying is that we're going to allow them to be a passive investor to provide some of the capital seed money to grow these companies, but we're not going to hold them, the entire of the University of Alaska budget and subsequently the State of Alaska's general fund, on the hook for it.

[3:06:45 PM](#)

REPRESENTATIVE GRUENBERG said that the way that Chair McGuire is interpreting the bill is more palatable than it would be otherwise. However, he noted, the way the bill is drafted it is different. He turned to page 1, line 10, which says that the corporation is "not considered to be a part of the university for any purpose," which he surmised is a much broader grant of immunity than Chair McGuire has stated.

CHAIR MCGUIRE noted that perhaps amendments could address that issue at a later point, and reiterated her understanding of the bill.

REPRESENTATIVE COGHILL commented, "Just the fact that they are going to put the full weight of the university behind it as a project in allowing expertise to go in brings huge ... 'blue-sky' capital to these projects, and might even be a part of the responsibility. ..."

CHAIR MCGUIRE reiterated that public testimony on HB 92 was closed.

[3:09:33 PM](#)

REPRESENTATIVE GARA, mentioning that he would be offering an amendment to address his concern, explained that his concern is that current corporate law says that the shareholder, which would be the university in this case, is not liable for the debts or the injuries caused by the corporation unless the shareholder has committed fraud or is engaged in a wrongful

conduct. He opined that by passing this bill, the legislature would be saying that the university can engage in fraud and wrongful conduct without having its assets touched. He commented, "It's a very weird way to encourage development at the university," adding that he understands the problem but doesn't think that this bill is the right solution.

REPRESENTATIVE GARA said he would like to make a conceptual amendment that clarifies that this bill would not allow the university to escape liability if it engages in fraud or wrongful conduct.

MS. GREEN replied that such a change would be fine with the university.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, to retain the parts of the corporate veil rule that prevent an entity from engaging in fraud or wrongful conduct. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG noted that Ms. Green was concerned about the university's exposure based only on the theory that the small nonprofit business would be a mere instrumentality of the university. He pondered whether he could craft the bill to say that.

MS. GREEN said she doesn't think that would be needed because the [Alaska] Supreme Court has said that there are only two ways to pierce the corporate veil; one is from fraud or wrongful conduct and the other is through a mere instrumentality rule.

CHAIR McGUIRE remarked:

The [conceptual amendment] is in. There'll be a CS that comes back, and what we can do ... is have it attached with a legal memo that basically certifies that this amendment completes our goal in this committee of keeping mere instrumentalities in and wrongful conduct out.

REPRESENTATIVE GRUENBERG agreed that that would be fine.

REPRESENTATIVE ANDERSON moved to report CSHB 92(EDU), as amended, out of committee with individual recommendations, the accompanying zero fiscal note, and the attached letter of intent.

REPRESENTATIVE GARA objected for the purpose of discussion. He asked Ms. Green to clarify the reference to "mere instrumentality."

[3:15:13 PM](#)

MS. GREEN explained that there are five to eleven factors in the "mere instrumentality" portion. She explained:

One is that a parent owns all or most of the capital stock. Two is that the parent and subsidiary corporations have common directors. Three is that the corporation finances the subsidiary. ... Four is that the parent subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation. We would probably cause the incorporation of any corporation we were doing. The subsidiary has inadequate capital, which is likely in these small startups, or within public policy nonprofits. Parent pays the salaries and other expenses or losses of the subsidiary. ... The subsidiary has substantially no business except with the parent and no assets except those conveyed to it by the parent.

Chances are the startup that we had would have some assets from the inventor as well. And not following corporate form: the parent using the property as its own and the directors of the subsidiary are not acting independently in the interest of the subsidiary. But the problem is that you don't have to have all of those things met to be ruled a mere instrumentality and thus have the corporate veil pierced. The [Alaska] Supreme Court has said that you can have as little as two, and has suggested that even having low capitalization is enough.

REPRESENTATIVE GARA removed his objection and asked that Ms. Green fax that list to the committee. He noted that he still had some concern about the bill, saying, "I'm not so sure this is good policy to let people avoid responsibility this way."

REPRESENTATIVE GRUENBERG turned the committee's attention to a memorandum to Representative Mike Kelly from Legislative Legal Services dated January 13, 2005, and pointed out one section that read in part:

With regard to nonprofit corporations, did you have in mind corporations from other states ...?

REPRESENTATIVE GRUENBERG, remarking that nonprofits from other states might be governed by the other state's laws, asked if perhaps the bill should be limited to investments in nonprofits within the State of Alaska.

MS. GREEN replied: "Certainly the conflicts-of-law question would arise in a deal with ... out-of-state entities. We will have these. ... What we will insist on before we enter into such an agreement is that the law of Alaska applies so that we are protected." She remarked that the only out-of-state deals the university will be making are those that promote education and research, rather than those that pertain to "startups."

[3:19:51 PM](#)

CHAIR MCGUIRE, noting that there was no longer an objection to the motion to report CSHB 92(EDU), as amended, from committee, stated that CSHB 92(JUD) was reported from the House Judiciary Standing Committee.

SB 87 - SEAT BELT VIOLATION AS PRIMARY OFFENSE

[3:21:55 PM](#)

CHAIR MCGUIRE announced that the final order of business would be SENATE BILL NO. 87, "An Act relating to motor vehicle safety belt violations." [Before the committee was HCS SB 87(STA).]

SENATOR CON BUNDE, Alaska State Legislature, sponsor of SB 87, said the bill changes Alaska's seatbelt law such that a violation would be a primary offense. The current "secondary" law is required for federal funding, he noted, adding that SB 87 simply allows a police officer to stop and ticket a motorist for not wearing a seatbelt. He said testimony from law enforcement indicates that SB 87 will not make a change to police practices. If police want to stop a car, there are any number of reasons that are much more visible than a seatbelt violation, he said - for example, a cracked windshield, snow-obscured license plate, and bad lane changes. He said the fear that the bill will result in more "preemptive" stops is not logical. National Highway Safety Administration data indicates that in other states with this law, the number of stops has not risen, he noted, but seatbelt usage has - by up to 12 percent. About 84 percent of Alaskans currently use seatbelts, and if usage

increases to 90 percent, the federal government will give the state \$18 million for highway safety [projects], he said.

[3:27:13 PM](#)

SENATOR BUNDE said that more importantly, the law will save lives, and offered his belief that had this bill passed last year, there would be six or seven Alaskans alive who instead died from lack of seatbelt use. He said he has heard the argument that "I always wear my belt - I just don't want to be told I have to," adding that he has a hard time with that kind of logic. He said he is guilty of having a libertarian streak, except when people feel that it is their own business if they suffer from not wearing their seatbelt. There is a cost to society, including [a rise in] insurance rates and Medicaid rates, he declared, adding that although he supports individual rights, if those rights cost the society, the society has the right to "offer this minor, minor change." There are already primary seatbelt laws for passengers and children under 16 in Alaska now, he added.

SENATOR BUNDE said, "We're going from a primary law in some instances to a primary law in all instances." He said he had intended to gather the names of people who suffered due to not wearing a seatbelt, but it was too emotionally difficult. However, he did have a man contact him who said he could use his 19-year-old son as an example of one who would still be alive had he used a seatbelt. Senator Bunde said his bill is really targeted at that age group; data shows that young adults are the most likely to not use a seatbelt. "This is a small trade of individual freedom for a large societal gain," he concluded.

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REPRESENTATIVE GRUENBERG asked if points would be assessed and if one's insurance costs would go up if he/she were ticketed.

SENATOR BUNDE said there was a suggestion to cancel insurance for anyone involved in an accident who was not wearing a seatbelt, but such would have resulted in a far more draconian impact on people's rights. He characterized HCS SB 87(STA) as fine-tuned, and concluded by indicating that he is amenable to incorporating a proposed amendment from Representative Gara [which later became known as Amendment 1], labeled 24-LS0457\Y.1, Luckhaupt, 4/21/05, which read:

Page 2, following line 7:

Insert a new bill section to read:
"*Sec.3. AS 28.05.095 is amended by adding a new subsection to read:

(f) In a prosecution under (a) of this section, the prosecution must show that the peace officer stopping or detaining the vehicle personally observed the violation of (a) of the section before stopping or detaining the vehicle."

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CINDY CASHEN, National Council on Alcoholism and Drug Dependence, after noting that she was recently the executive director of the Juneau Chapter of Mothers Against Drunk Driving (MADD), acknowledged that there have been claims that MADD has taken grant money to lobby for the bill. This is not true, she said, and explained that MADD has a media campaign called "Click-it or Ticket" under the National Highway Traffic Safety Administration, which funnels money through the Alaska Highway Safety Office. She surmised that it is perhaps through this campaign that the misperception arises. Another second accusation she has heard, she relayed, is that if SB 87 were to become law, MADD would pressure law enforcement to pull people over. "That's ridiculous," she declared.

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KEVIN E. QUINLAN, Chief, Safety Advocacy Division, Office of Safety Recommendations and Accomplishments, National Transportation Safety Board (NTSB), said the NTSB is the nation's crash investigators, and its view is that SB 87 is the single most important measure that the state could adopt. He said it is very effective, and noted that military installations require seatbelt use. He concluded that the bill will have its greatest impact on the state's youngest drivers.

[3:41:33 PM](#)

JOAN DIAMOND, Department of Health and Human Services, Municipality of Anchorage (MOA), said there is no downside to SB 87. She relayed that she collects data on injuries for her department, and her research shows that the benefit of a seatbelt is that it distributes the force of a collision to the strongest parts of the body - hips, shoulders, and chest. A person's head or chest is less likely to strike the steering wheel or windshield or be thrown out of the vehicle. She said there is a 79 percent use rate, and the goal is to increase it

to 91 percent. "We are counting on you to pass the primary law this year," she stated.

[3:43:18 PM](#)

DON SMITH, Administrator, Highway Safety Office, Division of Program Development, Department of Transportation & Public Facilities (DOT&PF), relayed that he is also the governor's representative for highway safety, and asked the committee to imagine an outbreak of a disease in Alaska that killed or maimed 4,500 people. He opined that if this many Alaskans were to die or be hurt from any one disease in a single year, Alaskans would demand a vaccine. He noted that the irony is that "we already have the best vaccine available to reduce the death toll on our highways, and those are seatbelts." He said 101 people died last year in crashes, but 54 would have survived if they had been wearing their seatbelts.

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REPRESENTATIVE KOTT asked if there is a statutory definition of highway.

MR. SMITH indicated that it includes every roadway that is publicly maintained for vehicular travel.

[3:45:32 PM](#)

TODD SHARP, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), said SB 87 is about saving lives, reducing injuries, and keeping people from being ejected from their vehicles, all of which the Alaska State Troopers support 100 percent, adding that he has seen the proposed amendment and is absolutely comfortable with it.

REPRESENTATIVE COGHILL noted that the bill, via Section 3, repeals [AS 28.05.095(e)], which currently reads:

(e) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless the peace officer has probable cause to stop or detain the motor vehicle other than for a violation of (a) of this section.

REPRESENTATIVE COGHILL offered his belief that the standard of probable cause is going to be reduced. He asked, "When you stop another vehicle right now, under the probable cause law that we have right now, what do you have to visually see?" He said he might offer an amendment to delete Section 3 and leave the standard of probable cause.

LIEUTENANT SHARP said an officer would have to see and recognize the violation to make a stop.

REPRESENTATIVE COGHILL questioned whether an officer would be able to see the violation. "It seems to me ..., if we pass this law as stated, un-amended, then you really literally could stop any car you wanted to stop."

LIEUTENANT SHARP said he doesn't see it that way; an officer has to see and recognize the violation and be able to testify that the violation was witnessed.

REPRESENTATIVE ANDERSON said he supports [Representative Gara's] proposed amendment. He asked if a person could be cited for a seatbelt violation if he or she was pulled over for another reason.

LIEUTENANT SHARP said he could issue a citation; however, he would want to be able to witness that that person was not wearing the seatbelt while the vehicle was being operated. A person could remove a seatbelt after being stopped, he noted.

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REPRESENTATIVE COGHILL reiterated that he would like to delete Section 3. He opined that the law could be used to stop anybody at any time for any purpose when an officer may be looking for other things. "I'm certainly not here to protect people who are doing wrong things, but it may be just, for example, [that] somebody has a attitude about me and wants to just stop me."

REPRESENTATIVE GARA said he understands Representative Coghill's concern, but relayed that the sponsor has satisfied him that everything is going to be alright under the bill. The proposed amendment is something that is already implied in the bill, he said, and suggested stating somewhere else in the bill that nothing repeals the legal requirement of probable cause.

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REPRESENTATIVE COGHILL said that is the heart of his question. If someone is stopped, there must be probable cause. "As a primary law, I still think you need to have some reason, and it seems to me that [current law, AS 28.05.095(e),] does that."

REPRESENTATIVE KOTT asked if a violation will become a moving violation subject "to points."

LIEUTENANT SHARP said there are no points for this offense, and offered his belief that it wouldn't be considered a moving violation.

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LIEUTENANT SHARP said he did not know how it would affect insurance costs.

CHAIR MCGUIRE said her car insurance company asked her whether she wears her seatbelt.

LIEUTENANT SHARP said a passenger could receive a citation.

REPRESENTATIVE ANDERSON pointed out that such is subject to a fine of only \$15.

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SENATOR BUNDE said [AS 28.05.095(e)] makes it a secondary offense, and keeping that provision in statute negates the intent of the bill. He said pilots don't get in an airplane without a seatbelt, and there are many more car crashes than airplane crashes. Seatbelts also keep a driver controlled under extreme maneuvers, he added, which helps prevent accidents. Do it for the kids, he concluded.

[3:59:50 PM](#)

REPRESENTATIVE GARA made a motion to adopt Amendment 1 [text provided previously].

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GARA said Amendment 1 would require an officer to see that someone is not wearing a seatbelt before making a stop. It will protect against a citizen telling on someone else who is driving without a seatbelt.

REPRESENTATIVE ANDERSON removed his objection.

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 1, to replace the word "show" with the word "prove". There being no objection, Amendment 1 was amended.

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

REPRESENTATIVE COGHILL said he wants to make sure there is a violation before an officer stops a vehicle, and asked if Amendment 1, as amended, did that.

SENATOR BUNDE offered his understanding that there must be probable cause in order to bring a prosecution.

[4:04:08 PM](#)

REPRESENTATIVE GRUENBERG said yes to Representative Coghill's question.

REPRESENTATIVE GARA said he agrees, but it would not hurt to add language to the effect that "nothing in this bill reduces the requirement that an officer have probable cause before they stop a car."

REPRESENTATIVE GRUENBERG suggested wording it such that a seatbelt violation is not probable cause for search and seizure; he then he withdrew that suggestion.

[4:05:57 PM](#)

REPRESENTATIVE COGHILL made a motion to adopt Conceptual Amendment 2, to say, "Nothing in the bill minimizes the need for establishing probable cause for stopping or detaining a vehicle for a violation."

REPRESENTATIVE GRUENBERG suggested that that language could be inserted into AS 28.05.095, and indicated that he supports Conceptual Amendment 2.

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

[4:06:44 PM](#)

REPRESENTATIVE ANDERSON moved to report HCS SB 87(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS SB 87(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

4:07:12 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:07 p.m.