

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

April 25, 2005

1:13 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 JOINT RESOLUTION NO. 12

Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund.

- MOVED CSHJR 12(W&M) 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."

- MOVED CSSB 129(JUD) OUT OF COMMITTEE

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."

- MOVED CSSB 143(STA) OUT OF COMMITTEE

CONFIRMATION HEARING(S)

Violent Crimes Compensation Board

LeRoy J. Barker, Esq. - Anchorage

- CONFIRMATION(S) ADVANCED

Commission on Judicial Conduct

Ethel Staton - Sitka

- CONFIRMATION(S) ADVANCED

Alaska Judicial Council

Christena "Tena" Williams - Ketchikan

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 266

"An Act relating to offenses and penalties for violation of vehicle weight limitations; prohibiting the use of a violation of a vehicle weight limitation for certain personal automobile insurance actions; amending Rule 43.6, Alaska Rules of Administration; and providing for an effective date."

- MOVED CSHB 266(TRA) OUT OF COMMITTEE

CONFIRMATION HEARING(S)

Board of Governors of the Alaska Bar

Joseph N. Faulhaber - Fairbanks

- SCHEDULED BUT NOT HEARD

Commission on Judicial Conduct

Jerry Story - Wasilla

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 268

"An Act relating to overtaking and passing certain stationary vehicles."

- 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: HJR 12

SHORT TITLE: CONST. AM: BUDGET RESERVE FUND REPEAL

SPONSOR(S): REPRESENTATIVE(S) HARRIS

02/18/05	(H)	READ THE FIRST TIME - REFERRALS
02/18/05	(H)	W&M, STA, JUD, FIN
04/01/05	(H)	W&M AT 8:30 AM CAPITOL 106
04/01/05	(H)	Heard & Held
04/01/05	(H)	MINUTE(W&M)
04/08/05	(H)	W&M AT 8:30 AM CAPITOL 106
04/08/05	(H)	Heard & Held
04/08/05	(H)	MINUTE(W&M)
04/11/05	(H)	W&M AT 8:30 AM CAPITOL 106
04/11/05	(H)	Moved CSHJR 12(W&M) Out of Committee
04/11/05	(H)	MINUTE(W&M)
04/12/05	(H)	W&M RPT CS(W&M) NT 3DP 1NR
04/12/05	(H)	DP: WILSON, SEATON, WEYHRAUCH;
04/12/05	(H)	NR: SAMUELS
04/19/05	(H)	STA AT 8:00 AM CAPITOL 106
04/19/05	(H)	Scheduled But Not Heard
04/20/05	(H)	STA AT 8:00 AM CAPITOL 106
04/20/05	(H)	Scheduled But Not Heard
04/21/05	(H)	STA AT 8:00 AM CAPITOL 106
04/21/05	(H)	Moved CSHJR 12(W&M) Out of Committee
04/21/05	(H)	MINUTE(STA)
04/22/05	(H)	STA RPT CS(W&M) NT 4DP 2NR
04/22/05	(H)	DP: LYNN, ELKINS, RAMRAS, SEATON;
04/22/05	(H)	NR: GARDNER, GRUENBERG
04/25/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 129

SHORT TITLE: WRONGFUL FILING OF LIS PENDENS

SPONSOR(S): SENATOR(S) HUGGINS

03/03/05	(S)	READ THE FIRST TIME - REFERRALS
03/03/05	(S)	JUD
03/23/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/23/05	(S)	Moved CSSB 129(JUD) Out of Committee
03/23/05	(S)	MINUTE(JUD)
03/24/05	(S)	JUD RPT CS 3DP 2NR SAME TITLE
03/24/05	(S)	DP: SEEKINS, THERRIault, HUGGINS
03/24/05	(S)	NR: FRENCH, GUESS

03/31/05 (S) TRANSMITTED TO (H)  
 03/31/05 (S) VERSION: CSSB 129(JUD)  
 04/01/05 (H) READ THE FIRST TIME - REFERRALS  
 04/01/05 (H) L&C, JUD  
 04/11/05 (H) L&C AT 3:15 PM CAPITOL 17  
 04/11/05 (H) Moved Out of Committee  
 04/11/05 (H) MINUTE(L&C)  
 04/12/05 (H) L&C RPT 3DP 2NR  
 04/12/05 (H) DP: LYNN, ROKEBERG, ANDERSON;  
 04/12/05 (H) NR: CRAWFORD, GUTTENBERG  
 04/22/05 (H) JUD AT 1:00 PM CAPITOL 120  
 04/22/05 (H) Scheduled But Not Heard  
 04/25/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 143

SHORT TITLE: STATE INFO SYSTEM PLAN: LEGISLATURE/UNIV  
 SPONSOR(S): STATE AFFAIRS

03/16/05 (S) READ THE FIRST TIME - REFERRALS  
 03/16/05 (S) STA  
 03/22/05 (S) STA AT 3:30 PM BELTZ 211  
 03/22/05 (S) Heard & Held  
 03/22/05 (S) MINUTE(STA)  
 03/29/05 (S) STA AT 3:30 PM BELTZ 211  
 03/29/05 (S) Moved CSSB 143(STA) Out of Committee  
 03/29/05 (S) MINUTE(STA)  
 03/30/05 (S) STA RPT CS 3DP 1NR SAME TITLE  
 03/30/05 (S) DP: THERRIAULT, WAGONER, HUGGINS  
 03/30/05 (S) NR: DAVIS  
 04/01/05 (S) TRANSMITTED TO (H)  
 04/01/05 (S) VERSION: CSSB 143(STA)  
 04/04/05 (H) READ THE FIRST TIME - REFERRALS  
 04/04/05 (H) JUD  
 04/22/05 (H) JUD AT 1:00 PM CAPITOL 120  
 04/22/05 (H) Scheduled But Not Heard  
 04/25/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 266

SHORT TITLE: VEHICLE WEIGHTS AND INSURANCE  
 SPONSOR(S): TRANSPORTATION

04/08/05 (H) READ THE FIRST TIME - REFERRALS  
 04/08/05 (H) TRA, JUD, FIN  
 04/12/05 (H) TRA AT 1:30 PM CAPITOL 17  
 04/12/05 (H) Failed To Move Out Of Committee  
 04/12/05 (H) MINUTE(TRA)  
 04/14/05 (H) TRA AT 1:30 PM CAPITOL 17

04/14/05 (H) Moved CSHB 266(TRA) Out of Committee  
04/14/05 (H) MINUTE(TRA)  
04/15/05 (H) TRA RPT CS(TRA) 1DP 1NR 4AM  
04/15/05 (H) DP: ELKINS;  
04/15/05 (H) NR: KAPSNER;  
04/15/05 (H) AM: NEUMAN, KOHRING, SALMON, THOMAS  
04/25/05 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE JOHN HARRIS  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Sponsor of HJR 12.

SENATOR CHARLIE HUGGINS  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Sponsor of SB 129.

DEBORAH GRUNDMANN, Staff  
to Senator Charlie Huggins  
Senate Transportation Standing Committee  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Assisted with the presentation of SB 129 on  
behalf of the sponsor, Senator Huggins.

RUTH HAMILTON HEESE, Assistant Attorney General  
Environmental Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska  
POSITION STATEMENT: Assisted with the presentation of SB 129  
and responded to comments.

HEATHER BRAKES, Staff  
to Senator Gene Therriault  
Senate State Affairs Standing Committee  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented SB 143 on behalf of the sponsor,  
the Senate State Affairs Standing Committee.

PAMELA A. VARNI, Executive Director  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 143.

CURTIS CLOTHIER, Manager  
Data Processing  
Legislative Administrative Service  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 143.

STEVEN SMITH, Chief Information Technology Officer  
Office of Information Technology  
University of Alaska  
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 143.

LEROY J. BARKER, Esq., Appointee  
to the Violent Crimes Compensation Board (VCCB)  
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Violent Crimes Compensation Board (VCCB).

ETHEL STATON, Appointee  
to the Commission on Judicial Conduct (CJC)  
Sitka, Alaska

POSITION STATEMENT: Testified as appointee to the Commission on Judicial Conduct (CJC).

CHRISTENA "TENA" WILLIAMS, Appointee  
to the Alaska Judicial Council (AJC)  
Ketchikan, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Judicial Council (AJC).

JOS GOVAARS, Staff  
to Representative Jim Elkins  
House Transportation Standing Committee  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 266 on behalf of the sponsor, the House Transportation Standing Committee.

AVES D. THOMPSON, Director  
Anchorage Office

Division of Measurement Standards & Commercial Vehicle  
Enforcement

Department of Transportation & Public Facilities (DOT&PF)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 266, provided  
comments, asked that the bill be moved forward, and responded to  
questions.

MICHAEL BELL, Director  
Alaska Trucking Association, Inc. (ATA)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 266, provided  
comments in opposition to portions of the bill, suggested a  
change, and responded to questions.

BARBARA HUFF TUCKNESS, Director  
Governmental And Legislative Affairs  
Teamsters Local 959  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 266, provided  
comments, asked that the bill be moved forward, and responded to  
questions.

PAUL FUHS, Lobbyist  
for Horizon Lines of Alaska, LLC ("Horizon")  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 266, provided  
comments, and asked that the bill be moved forward.

NONA WILSON, Legislative Liaison  
Office of the Commissioner  
Department of Transportation & Public Facilities (DOT&PF)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 266, provided  
comments, asked that the bill be left as is, and responded to a  
question.

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

POSITION STATEMENT: Responded to a question during discussion  
of HB 266.

**ACTION NARRATIVE**

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at [1:13:35 PM](#). Representatives McGuire, Coghill, Dahlstrom, and Gruenberg were present at the call to order. Representatives Anderson, Kott, and Gara arrived as the meeting was in progress.

HJR 12 - CONST. AM: BUDGET RESERVE FUND REPEAL

[1:14:05 PM](#)

CHAIR MCGUIRE announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 12, Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund. [Before the committee was CSHJR 12(W&M).]

REPRESENTATIVE JOHN HARRIS, Alaska State Legislature, sponsor of HJR 12, offered that the resolution would provide "a way to deal with what we hope will be the beginnings of a fiscal plan for the state." The resolution would put before the voters the question of whether the Constitutional Budget Reserve Fund (CBRF) should be put into another "constitutional" fund that would allow earnings to be used for capital construction or capital maintenance. The resolution also provides that the earnings that will be allowed to be used would "be a stream determined by a percent-of-market-value approach," specifying 5 percent of the value of the fund every year; additionally, the fund would be inflation proofed. He predicted that the establishment of such a fund will be much less controversial than similar approaches.

REPRESENTATIVE HARRIS mentioned that a companion bill is currently in the House Finance Committee and would take approximately \$600 million from the CBRF and put it into a "statutory budget reserve" fund, and suggested that doing so would alleviate concerns regarding cash flow, concerns regarding whether the state would be able to meet its financial obligations in a timely manner. He explained that if HJR 12 passes, it will eliminate the three-quarter vote requirement, and predicted that this will in turn force the legislature to look at other sources of revenue to balance the budget without relying on what he characterized as "the crutch" of the CBRF. Voters could also then vote for candidates based upon what they claim they will do to balance to budget when and if they become elected officials.

[1:18:22 PM](#)

CHAIR McGUIRE noted that HJR 12 is before the House Judiciary Standing Committee because it proposes a change to the Alaska State Constitution, and suggested that committee members allow the House Finance Committee to address the financial ramifications of the resolution.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HJR 12.

1:19:26 PM

REPRESENTATIVE GARA asked whether HJR 12 would take all monies currently in the CBRF and put it in a capital construction permanent fund.

REPRESENTATIVE HARRIS said it would with the exception of the aforementioned \$600 million being addressed by legislation currently in the House Finance Committee. That \$600 million, were both that bill and this resolution to pass - and the latter be approved by the voters - would be placed in the aforementioned "statutory budget reserve" fund; the remainder of monies currently in the CBRF would be transferred into the capital construction permanent fund.

REPRESENTATIVE HARRIS, in response to a further question, clarified that were HJR 12 to pass, all references [in the Alaska State Constitution] to the CBRF would be eliminated; this would include references to "the sweep." The proposed new capital construction permanent fund would be constitutionally protected, and only the earnings - never the principal - could be spent. Again, the aforementioned \$600 million would be available to address cash flow issues, would be available to borrow from and pay back, and would be subject to appropriation by the legislature.

1:21:31 PM

REPRESENTATIVE GARA said his concerns are related to what he called "capital equity," in that historically, a disproportionate amount of money [for capital projects] tends to go to the districts of those members in the House Finance Committee with power, and offered that he has always thought that a solution would be to have "some sort of equity requirement." He asked Representative Harris to comment on this issue, and suggested that perhaps a provision could be added to the resolution such that it would allow for both fairness and

statesmanship by saying that as part of "this" fund, no district could get more than 25 percent more than the average that all districts get unless authorized by a two-thirds vote in the House of Representatives. For example, if there were an emergency situation or a special project, then with a two-thirds vote, one district would be able to get a substantially larger amount of money than other districts; the legislature would have the flexibility to provide more funds to an area that needed it.

[1:23:34 PM](#)

REPRESENTATIVE HARRIS said he doesn't have a problem with such a concept, but noted that almost all school maintenance projects are in rural Alaska and thus it seems that minority members are getting the bulk of capital funds. He said that he hopes to be able to work with Representative Croft in the House Finance Committee to address parity concerns.

REPRESENTATIVE GARA suggested that perhaps the language could be structured such that "the average capital that goes to majority member districts, per district, should not be more than 25 percent more than the average that goes to minority member districts, absent a two-thirds vote."

REPRESENTATIVE HARRIS posited that such would be good idea and that the concept has a lot of merit, but he doesn't yet know how it would be structured, what the language would look like. He suggested that perhaps the administration should be required to provide the legislature with a "maintenance list" - similar to the school construction list that it already provides - based on certain criteria, and that such a list might help to maintain some sense of order.

[1:26:41 PM](#)

REPRESENTATIVE GRUENBERG surmised that HJR 12 is basically "changing what is now a [Constitutional Budget Reserve (CBR)] with a three-quarter vote into a permanent fund but allowing access of no more than 5 percent of the principal per year" for capital construction [and maintenance].

REPRESENTATIVE HARRIS concurred with that summation.

REPRESENTATIVE GRUENBERG offered his understanding that originally the resolution was not limited to capital construction.

REPRESENTATIVE HARRIS concurred.

REPRESENTATIVE GRUENBERG suggested that perhaps the resolution oughtn't to be limited to just capital projects, but then noted that the fund would simply become a second permanent fund.

REPRESENTATIVE HARRIS offered:

The idea, of course, is that we have such a huge amount of deferred maintenance ... all over the state, and if we're ever going to get past this idea of the CBR being nothing more than a fund that we entice the minority - whoever they may be, republican or democrat - to dip into to balance our budget, and we're going to look forward enough to say we're going to use some other mechanism to balance our budget long-term, then we have to do this. Otherwise, this mechanism is here, it's easy - I mean relatively easy - to get at. And ... we've talked right now about [how] ... the republicans are in power so they just shut the democrats out.

Well, the democrats will be in power sooner or later ..., and when they are you don't want to be shackled with that same issue either - you want to be able to control policy, as you should be able to. And I understand why the legislature did this years ago; ... the legislature was awash in money ... in those days, and ... the minority at that point in time ... had concerns about ... the money all being spent ..., so they ... wanted to put their own sideboards on it. ...

I think those days are over with. ... We're not in those situations anymore. Yeah, we have \$50-a-barrel oil ..., but we know that's not realistic to [expect that to] last forever. ... And with our budget continuing to increase, it won't be too many more years ... [before] we're at \$3 billion general fund [GF] budget - it's going to take a lot of oil at very high prices to allow us to balance our budget under that scenario. And so I say we're going to need other revenue sources to balance our budget on a continuing ... [basis].

[1:30:21 PM](#)

REPRESENTATIVE GRUENBERG offered a hypothetical example involving repairs to a school in a Rural Education Attendance Area (REAA), and asked whether such a school would be considered a facility of the state or a subdivision of the state.

REPRESENTATIVE HARRIS said yes.

REPRESENTATIVE GRUENBERG asked whether the resolution would allow any public building in the state to receive monies from the fund created via the resolution.

REPRESENTATIVE HARRIS said yes.

REPRESENTATIVE GRUENBERG asked whether ferries would also be considered facilities of the state.

REPRESENTATIVE HARRIS said yes.

[1:31:26 PM](#)

REPRESENTATIVE GARA offered his understanding that the aforementioned school construction list that the administration provides the legislature is a "statutory" list.

REPRESENTATIVE HARRIS concurred with Representative Gara's understanding.

REPRESENTATIVE GARA offered his belief that the current three-quarter vote requirement of the CBR provides the minority with a voice regarding budget issues.

REPRESENTATIVE HARRIS clarified, however, that such is not a guarantee, since with \$50-a-barrel oil, for example, the legislature is able to balance the budget without tapping into the CBRF and thereby needing to make use of the three-quarter vote requirement.

REPRESENTATIVE GARA offered his understanding that he and the sponsor agree with the concept that there should be some sort of equity regarding capital funds. He suggested that the resolution ought to include a provision which says that excluding the maintenance and construction school budget, which is defined by statute, for all other capital that's paid for by this fund, the average amount that goes, per district, to majority districts can be no more than 20 percent more than the average that goes to minority districts. If the House Judiciary Standing Committee were to amend HJR 12 to that effect, then if

20 percent doesn't seem to the House Finance Committee to be a fair number, he remarked, then that committee could try and come up with a better number.

REPRESENTATIVE HARRIS remarked that such could be done either through an amendment or through intent language of some sort, adding that he doesn't have a problem with that concept as long as school maintenance issues or public facility maintenance issues are excluded - the first of which are already addressed by the aforementioned statutory list, and the second of which might also soon be addressed through a similar statutory list - since there may be more needs regarding those issues in certain districts. For example, the installation of detection systems in court buildings in urban areas. Such lists allow the legislature to funnel funds through to those specific areas/projects after the administration has had an opportunity to look at them in terms of which items should be a priority. In conclusion, he said he would prefer that the capital construction permanent fund not be used as a bonding mechanism; that rather it should be used strictly as a "cash" mechanism to pay for needed infrastructure repair.

[1:34:55 PM](#)

REPRESENTATIVE COGHILL said he would object to putting an allocation provision in the resolution. Rather, if they are going to add language to the [Alaska State] Constitution regarding another constitutional fund, they should just define how that fund is to be managed and how it is to be accessed, and all other issues related to that fund should be left up to the legislature to deal with. He cautioned against putting equity allocations in the [Alaska State] Constitution, since, he opined, allocations should instead be debated as a legislative policy issue, particularly given the historical fluctuations in pipeline revenues. He asked the sponsor to comment regarding what he anticipates the actual ballot language would be.

REPRESENTATIVE HARRIS noted that the language on the ballot could be worded a number of different ways, and expressed a preference that it be as clear as possible so that the voters understand what they are voting on and understand what the term, "percent of market value," means with regard to both inflation proofing and "the stream of revenue coming off."

REPRESENTATIVE COGHILL asked the sponsor whether he is wedded to the concept of "percent of market value," or whether he would be

amenable to having an open fund and allowing the legislature to "dip into" it as well.

REPRESENTATIVE HARRIS reiterated that the principal of the proposed fund would be constitutionally protected so as to prevent "dipping into" it. Additionally, as currently written, there is no vote mechanism allowing access to the principal.

REPRESENTATIVE COGHILL surmised, then, that only 5 percent of the market value of that fund would be used and no three-quarter vote would be needed.

[1:38:51 PM](#)

REPRESENTATIVE HARRIS concurred. In response to a question, said he is not completely devoted to the "5 percent of market value" concept, but he thinks that it is a good mechanism that allows two things to happen, one of which being to inflation proof the fund. He pointed out, too, that the legislature would not be required to use those funds; instead, if that money were not needed, it could simply revert back into principal.

REPRESENTATIVE COGHILL, surmised that the current constitutional requirement of paying back the CBRF would no longer exist with the adoption and voter approval of the proposed constitutional change.

REPRESENTATIVE HARRIS concurred.

[1:40:24 PM](#)

REPRESENTATIVE GARA said another of his concerns centers around the possibility that if the cushion now offered by the CBRF is wiped out, it will hasten the day that an income tax or a sales tax or a permanent fund dividend (PFD) cut will have to be imposed.

REPRESENTATIVE HARRIS noted that debates on that issue took place when oil was at \$8 per barrel, and remarked that that question is one that will have to be faced at some point, particularly given that the budget has continued to increase because costs have continued to increase. He added:

It's bringing it to a head, to say we have to ask the people of the state of Alaska how they want to truly fund the growth of this government, period. And this puts the question before them - they don't have to

vote for [it], the people, but it puts the question in front of them - "Do you want to do something different with the CBR?" ... And that certainly will be part of the debate if it gets out there in the public, to say, "Well, this is ... enhancing the fact you're probably going to have use of the earnings of the permanent fund or income tax or sales tax just to balance the budget in the future." But I think the people need to have that question in front of them.

[1:43:26 PM](#)

REPRESENTATIVE GARA [made a motion to adopt Conceptual Amendment 1], to say that outside of school and public facilities construction and maintenance projects, the expenditures from this fund should not provide, on average, any more than a maximum of 20 percent more per district in majority members' districts than minority members' districts, to guarantee that the minority doesn't get shut out of the process for power reasons, and would say that in order for that [stipulation] to be waived, there would have to be a two-thirds vote to justify the projects that would otherwise disrupt that balance.

REPRESENTATIVE ANDERSON objected.

[1:45:03 PM](#)

REPRESENTATIVE ANDERSON opined that Conceptual Amendment 1 would tie the legislature's hands and underestimates the fact that districts are connected.

REPRESENTATIVE COGHILL said he objects to Conceptual Amendment 1 because of the possibility that it could create allocation problems, and opined that when proposals are offered that would change the Alaska State Constitution, they should be accompanied with a description of the basic underlying principal. If allocations are to be based on certain, set percentages, for example, then the legislature should be free to allocate within those percentages.

REPRESENTATIVE GARA, with regard to Conceptual Amendment 1, said:

Certainly ..., under this proposal, ... one ... republican district could get all the money and the other one would get none, but that would be okay as long as on average, all of the ... money that went to

the majority wasn't on average, per district, 20 percent [more] than all of the money that went to the minority. And if we can't agree to something like that or some other language that would preserve fairness to people who are not the majority ... party, I really greatly worry that we're going to have a provision where things like what happened in the past, where you get this special allocation for majority member districts that doesn't get accorded to the minority party, will happen more often.

And if we're going to get rid of the two-thirds vote requirement, which is really one of the few things that gives the minority a voice in this legislature, ... then I think you have to replace it with something that guarantees some fairness. And ... if people want to work on better language, and people want to get this bill out today, that's why I would like to have something on the record today and let them fiddle with it in [the House Finance Committee]. But [I've] got to say, I'm not going to be thrilled with a provision that doesn't have a protection like that.

[1:48:31 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Conceptual Amendment 1. Representatives McGuire, Anderson, Coghill, Kott, and Dahlstrom voted against it. Therefore, Conceptual Amendment 1 failed by a vote of 2-5.

[1:48:53 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSHJR 12(W&M) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 12(W&M) was reported from the House Judiciary Standing Committee.

SB 129 - WRONGFUL FILING OF LIS PENDENS

[1:49:19 PM](#)

CHAIR MCGUIRE announced that the next order of business would be 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."

SENATOR CHARLIE HUGGINS, Alaska State Legislature, sponsor of SB 129, thanked Representative Gruenberg for his assistance in reviewing the bill, and characterized the bill as non-contentious, essentially correcting faults currently in the system. In the situation that engendered the bill, a state employee had "fragrantly" filed [a notice of lis pendens] against some people that he had no legitimate claim against. He explained that a lis pendens notice is essentially a lien of sorts, and in the aforementioned situation, the pendens action was filed against an assistant attorney general, a real estate developer, and some members of the Board of Game; it cost those people thousands of dollars to "remove that action." In conclusion, he offered his belief that adopting SB 129 and instituting the correction it proposes is the right thing to do.

DEBORAH GRUNDMANN, Staff to Senator Charlie Huggins, Senate Transportation Standing Committee, Alaska State Legislature, added on behalf of Senator Huggins, sponsor, that SB 129 seeks to discourage abusive filings of illegal lis pendens notices and, in fact, makes filing such illegal notices a class A misdemeanor. While the filing itself does not create a formal lien, such a notice can have a similar impact on the ability of the targeted person to do business with the affected real estate. She, too, referred to the situation that engendered the legislation, and mentioned that that case took months, thousands of dollars, and attorney time to solve. She then pointed out that Section 2 of CSSB 129 now proposes to also add the words, "in writing" to AS 11.46.560(b).

[1:53:26 PM](#)

RUTH HAMILTON HEESE, Assistant Attorney General, Environmental Section, Civil Division (Juneau), Department of Law (DOL), offered that a lis pendens is basically a filing that one puts in the recorder's [office] of a notice of a pending suit, and is defined in part in Black's Law Dictionary as a notice filed, on public records, for the purpose of warning all persons that the title of certain [property] is in litigation and that that they are in danger of being bound by an adverse judgment. It essentially creates a cloud on the title of one's property. In creating SB 129, the DOL considered existing law regarding the crime of filing wrongful liens on property, and the legislation merely amends that existing law to include wrongful filing of lis pendens. It essentially closes the loophole that some are using to harass people for certain decisions they may have made. The bill is narrowly focused, she concluded, adding that the criminal intent for this crime is reckless disregard, which

involves an individual consciously going forward with an act even though he/she knows that there is a substantial risk that the act will be found wrongful.

[1:55:13 PM](#)

REPRESENTATIVE ANDERSON characterized SB 129 as an important piece of legislation, and noted that abuses of the lis pendens procedure can even be seen in "family law" cases.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 129.

SENATOR HUGGINS, in response to a comment, offered his understanding that by using the term, "reckless disregard" in the bill, it ensures that the behavior is not merely careless behavior. In response to a further comment, he pointed out that there is no evidence of abuse of the current law regarding offering a false instrument for recording even though that law uses the same standard of reckless disregard.

MS. HEESE also pointed out that the "in writing" provision would allow someone to submit to having a lis pendens filed on him/her and thus the person that filed the notice would be fairly safe from prosecution under this proposed statute. She, too, pointed out that the current law regarding offering a false instrument for recording has not been abused, and suggested that the same standard of criminal intent should apply to the filing of all such false instruments. It would be foolhardy for someone to file such an instrument knowing that it is false, she concluded.

CHAIR McGUIRE offered her belief that reckless disregard means a conscious disregard, not just a mistaken disregard.

REPRESENTATIVE GARA disagreed, offering his understanding that with reckless disregard, one could know that a behavior is wrongful and still "accidentally" do it. He opined that providing a criminal penalty for behavior that is reckless would be doing a disservice.

MS. HEESE offered to read the definition of "reckless disregard."

CHAIR McGUIRE said that doing so wouldn't be necessary. She added that she didn't see how someone could consciously disregard a risk and then claim that doing so was an accident.

2:01:12 PM

SENATOR HUGGINS relayed that after discussing this issue with others, he feels 100 percent comfortable that the language currently in the bill will not be abused.

REPRESENTATIVE GARA made a motion to adopt Amendment 1, to "make it a crime of intent rather than a crime of recklessness."

REPRESENTATIVE ANDERSON objected.

CHAIR McGUIRE surmised that Amendment 1 would replace "reckless" on page 1, line 8, with "intentional".

2:02:32 PM

A roll call vote was taken. Representative Gara voted in favor of Amendment 1. Representatives McGuire, Anderson, Coghill, Kott, Dahlstrom, voted against it. Therefore, Amendment 1 failed by a vote of 1-5.

2:03:12 PM

REPRESENTATIVE ANDERSON moved to report CSSB 129(JUD) out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected. He then provided comments regarding the term reckless in the civil context and as it related to physicians.

CHAIR McGUIRE ruled those comments out of order.

REPRESENTATIVE GARA removed his objection to the motion to report the bill from committee.

CHAIR McGUIRE stated that CSSB 129(JUD) was reported from the House Judiciary Standing Committee.

SB 143 - STATE INFO SYSTEM PLAN: LEGISLATURE/UNIV

2:04:31 PM

CHAIR McGUIRE announced that the next order of business would be 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."

HEATHER BRAKES, Staff to Senator Gene Therriault, Senate State Affairs Standing Committee, Alaska State Legislature, explained, on behalf of the Senate State Affairs Standing Committee, sponsor of SB 143, that Executive Order (EO) 113, which took effect March 14, 2005, eliminated the Telecommunications Information Council (TIC) and transferred its powers and duties to the commissioner of the Department of Administration (DOA). Under EO 113, the legislature was included in the definition of "state agency" and, as a result, the legislative branch was placed under the jurisdiction of the executive branch with regard to the specific statutes now listed in SB 143. Senate Bill 143 removes the legislature from the aforementioned definition and sets the legislative branch apart from the executive branch, reflecting the reality that the legislature already oversees its own telecommunications operations.

[2:06:18 PM](#)

REPRESENTATIVE COGHILL relayed that he had no objections to the bill.

PAMELA A. VARNI, Executive Director, Legislative Affairs Agency (LAA), offered the following comments:

I believe the passage of this bill would reflect how the legislature actually operates within the State of Alaska's information technology community. This bill will allow the legislature to operate with the same autonomy as the judicial branch, and having the ability to decide what is best for our own branch of government is important. We have always enjoyed a cooperative relationship with the Department of Administration and information technology group. This bill will allow us to continue to work with them, but cleans up references which currently put the legislature's data processing program under their direction.

Executive Order 113 could not make substantive changes to the law. That is why SB 143 is so important for you to pass. The Legislative Affairs Agency has its own data processing group, which supports the legislature. Under the auspices of the Legislative Council's IT subcommittee, long-range and short-term

goals are established for the legislature and voted on by Legislative Council. These goals take into account the legislature's unique needs and plans for the future. It is important that the legislature have the flexibility to develop our own programs and procedures to meet the goals which are specific to the Alaska legislature, both now and in the future.

MS. VARNI, in conclusion, thanked the committee for the opportunity to speak, and offered to answer questions.

[2:08:14 PM](#)

CURTIS CLOTHIER, Manager, Data Processing, Legislative Administrative Services, Legislative Affairs Agency (LAA), said he would echo Ms. Varni's comments, adding his belief that the intent of SB 143 is to put the legislature's data processing staff on the same footing as the judicial branch's data processing staff, and that the bill would not affect how his section currently operates. He, too, offered to answer questions.

[2:09:03 PM](#)

STEVEN SMITH, Chief Information Technology Officer, Office of Information Technology, University of Alaska, said that the University of Alaska wishes to not be included in EO 113's definition of "state agency", and noted that CSSB 143(STA) already effects that change. He said he would echo many of the previous comments, adding that the University of Alaska's information technology policy is set through the University of Alaska Board of Regents, and that as a public educational institution, the University of Alaska has the opportunity to realize [savings] in contractual relationships with vendors. Additionally, much of the University of Alaska technology and research needs are very specific, and thus require the University of Alaska to be considered as a separate entity, apart from, and with different needs than, the executive branch, though the University of Alaska does work closely with the information technology organizations in all other branches of government in order to maintain certain standards.

[2:11:32 PM](#)

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 143.

REPRESENTATIVE KOTT said he is surprised that no one from the administration is present to testify, since the bill would not have been necessary had the administration worked with and given consideration to the legislative branch and university during the development of EO 113. He suggested that those in the administration who develop executive orders in the future should learn from this example. In conclusion, he said he supports the Senate State Affairs Standing Committee's endeavor to provide the legislature and university with the autonomy they deserve.

REPRESENTATIVE ANDERSON moved to report CSSB 143(STA) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSSB 143(STA) was reported from the House Judiciary Standing Committee.

CONFIRMATION HEARING(S)

Violent Crimes Compensation Board

2:13:13 PM

CHAIR McGUIRE announced that the committee would next consider the reappointment of LeRoy J. Barker, Esq., to the Violent Crimes Compensation Board (VCCB).

2:13:26 PM

LEROY J. BARKER, Esq., Appointee to the Violent Crimes Compensation Board (VCCB), said he thinks that serving on the VCCB has been a good experience and that it is important to maintain continuity. He relayed that he has established a good working relationship with the staff and other members of the VCCB, and opined that the VCCB serves an important function.

CHAIR McGUIRE relayed to Mr. Barker that the legislature appreciates his service.

REPRESENTATIVE ANDERSON reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

REPRESENTATIVE ANDERSON made a motion to advance from committee the nomination of LeRoy J. Barker, Esq., to the Violent Crimes Compensation Board. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Commission on Judicial Conduct

2:15:06 PM

CHAIR McGUIRE announced that the committee would next consider the reappointment of Ethel Staton to the Commission on Judicial Conduct (CJC).

ETHEL STATON, Appointee to the Commission on Judicial Conduct (CJC), relayed that she has served on the CJC since 2001 and has enjoyed the experience.

CHAIR McGUIRE asked Ms. Staton whether she has any suggestions for improvements to the CJC.

MS. STATON opined that the CJC has done a wonderful job.

CHAIR McGUIRE thanked Ms. Staton for her service.

REPRESENTATIVE ANDERSON made a motion to advance from committee the nomination of Ethel Staton to the Commission on Judicial Conduct. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Alaska Judicial Council

2:16:56 PM

CHAIR McGUIRE announced that the committee would next consider the appointment of Christena "Tena" Williams to the Alaska Judicial Council (AJC).

CHRISTENA "TENA" WILLIAMS, Appointee to the Alaska Judicial Council (AJC), in response to the question of why she wished to serve on the AJC, said she believes everyone should serve his/her state in one way or another, and so she chose this venue after being asked to serve.

REPRESENTATIVE GARA, noting that his concern is that those who serve on [the AJC] should "stand up" for a judiciary that is politics blind, asked her to comment on whether she believes that judges ought to have philosophies, one way or the other, on certain issues.

MS. WILLIAMS said no, adding that she is not that interested in what a person's politics are and so would simply look at each

person individually and determine whether he/she is competent to do the job.

REPRESENTATIVE GARA asked Ms. Williams whether her motivation for serving on the AJC stems from her having seen problems with the judicial process that she'd like to see corrected.

MS. WILLIAMS said no.

CHAIR MCGUIRE relayed that members were asked to participate in a survey conducted by the AJC regarding its bylaws. She said she hopes Ms. Williams will have an active part in reviewing the information gathered in that survey.

[2:20:20 PM](#)

REPRESENTATIVE ANDERSON thanked Ms. Williams for her comments. Offering an example of an acquaintance of his, he urged Ms. Williams to not "give all the weight to a Bar Poll."

REPRESENTATIVE ANDERSON made a motion to advance from committee the nomination of Christena "Tena" Williams to the Alaska Judicial Council (AJC). There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

HB 266 - VEHICLE WEIGHTS AND INSURANCE

[2:22:28 PM](#)

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 266, "An Act relating to offenses and penalties for violation of vehicle weight limitations; prohibiting the use of a violation of a vehicle weight limitation for certain personal automobile insurance actions; amending Rule 43.6, Alaska Rules of Administration; and providing for an effective date." [Before the committee was CSHB 266(TRA).]

JOS GOVAARS, Staff to Representative Jim Elkins, House Transportation Standing Committee, Alaska State Legislature, said, on behalf of the House Transportation Standing Committee, sponsor of HB 266, that the bill modifies existing law relating to the penalty structure for overweight vehicle violations, as well as prohibits the use of overweight vehicle violations by insurers [to raise a driver's personal insurance rates]. The bill proposes the first increase in penalties since the existing

provisions were established in the 1970s. Those provisions do not adequately inhibit commercial shipping companies and others from violating overweight vehicle limitations, he opined, adding that the proposed modifications establish a graduated penalty for the amount of weight in excess of the limitations set by statute, regulation, and permit.

MR. GOVAARS said there are also new offenses established to sanction [certain] shippers or carriers who, for example, commit a combined total of [15] or more violations during any 12-month period. The maximum fine for this violation is \$10,000. This modification is expected to result in commercial shippers and carriers being more rigorous towards compliance with overweight vehicle limitations. Another provision of the bill prohibits the use of overweight vehicle violations by insurers to adversely impact decisions related to providing private automobile insurance coverage for drivers. In the majority of cases, the driver has little or no knowledge or ability to limit the weight of the load placed on the vehicle they are assigned to drive and, as a result, the company causes the violation and, if cited, pays the fine imposed.

MR. GOVAARS relayed that currently, overweight vehicle violations are used by insurers as justification to take adverse action in relation to the personal automobile insurance coverage of truck drivers. Section 1 of the bill would prohibit this action. This legislation will protect drivers who do not know they are in violation, as well as Alaska's roads from overweight vehicles. In conclusion, he said that the Department of Transportation & Public Facilities (DOT&PF), the "Teamsters," and [Horizon Lines of Alaska, LLC,] all support HB 266, and that the sponsor would like to thank the committee for its support [of HB 266].

REPRESENTATIVE ANDERSON noted that he's heard a concern regarding weight standards.

MR. GOVAARS relayed that there have been concerns expressed that the increase in penalties is too significant, particularly for the smaller amounts of weight over the limit, and that members' packets include a list of Overweight Uniform Traffic Citations for 2004, some of which were for relatively small amounts of weight over the limit, but one of which - listed at the top of page 3 of the handout - was for 36,400 pounds over the limit. In response to another question, he relayed that the sponsor thinks that the bill should not be amended.

REPRESENTATIVE GARA noted that the bill contains a provision regarding repeat violations, and asked how that provision relates to current law and whether repeat violations are a common occurrence.

MR. GOVAARS said that there are a number of carriers that have traveled over weight a number of times. He suggested, however, that a representative from the DOT&PF would be better able to address this issue.

2:27:45 PM

AVES D. THOMPSON, Director, Anchorage Office, Division of Measurement Standards & Commercial Vehicle Enforcement, Department of Transportation & Public Facilities (DOT&PF), first relayed that current statute does not contain a "repeat violation" provision, and then that in calculating repeat violations, consideration would be given to the number of violations that all the drivers working for a particular carrier had, because numerous violations - even if each driver had only one violation - could demonstrate a pattern of violation for the carrier. He offered his understanding that under the bill, if a carrier reaches the repeat violation threshold listed in the bill, it could trigger an investigation by the DOT&PF to determine whether a pattern of violation exists which warrants prosecution by the Department of Law (DOL).

REPRESENTATIVE GARA asked Mr. Thompson and the sponsor to consider imposing a higher fine for a driver with repeat violations.

MR. THOMPSON said he would be willing to think about that concept.

REPRESENTATIVE GARA indicated that he views repeat violations from companies with just a few drivers as worse than repeat violations from companies with a lot of drivers.

2:30:15 PM

MR. GOVAARS offered his understanding that the goal of HB 266 is to get overweight trucks off the road because, in addition to causing wear and tear on the road, they create a hazard. And although HB 266 proposes to replace the current [fine] structure, if the committee can come up with what it considers to be a more equitable way of ensuring that overweight vehicles

are no longer on Alaska's roads, the sponsor would be open to an amendment, he relayed.

[2:31:22 PM](#)

MR. THOMPSON explained that it is the DOT&PF's intention to try to reduce the number of overweight vehicles and is not looking to generate revenue, adding that it is important to remember that there is a fine associated with each individual violation and that the "pattern of violation" provision is aimed at the most egregious of violators - those carriers that take advantage of every situation and push their drivers to do things they shouldn't be doing. He also explained that Section 1 prohibits insurers from using overweight violations to adversely impact decisions related to personal automobile insurance; that Section 2 modifies the existing penalty structure, which, he opined, do not adequately deter overweight violations; and that Section 3 addresses patterns of repeat violations, which could result in a fine of up to \$10,000 for the most egregious offenders. In conclusion, he asked that the committee give favorable consideration to HB 266 and move it forward.

[2:33:19 PM](#)

MICHAEL BELL, Director, Alaska Trucking Association, Inc. (ATA), relayed that although the ATA supports Section 1 of HB 266 - since there are times when drivers unintentionally violate the overweight regulations and are then penalized with a rise in insurance premiums on vehicles unrelated to the violation - the ATA does have some concern with Section 2, which increases the fines for overweight violations. He noted, however, that the proposed legislation would be less objectionable if the highest proposed fine increases were confined to the more significant weight violations - for example, those vehicles that are overweight by 8,000 pounds or more. The ATA does not believe that the large increases in fines for violations involving those vehicles that are less than 8,000 pounds overweight are justified, since the impact of those vehicles on the state's highways is not as significant, and the overweighting might just be the result of unintentional errors by shippers or the lack of scales being readily available.

MR. BELL went on to say that those increases penalize small trucking companies and owner/operators to a much larger degree than they do larger companies. He then referred to what he termed the shift in responsibility, from carriers to shippers, for violations caused by bill-of-lading errors, adding that the

ATA does not support this proposed change. Carriers have the right to seek restitution from a customer if they choose, but it is their choice, and if carriers have the right equipment available to haul their loads, can provide some margin of error, and, where possible, check the weights of the loads, then [bill-of-lading] errors can be caught.

MR. BELL said that the ATA does not support placing the burden of these errors directly on to its customers, since it does not believe that customers intentionally misstate the weights on bills of lading. With regard to Section 3, he said that while the ATA does not support "the additional scrutiny," it does believe that the "tier structure" should be directly proportional to the number of drivers a given company has. In conclusion, he mentioned that the ATA is in the process of having proposed amendments drafted.

REPRESENTATIVE ANDERSON asked whether an amendment deleting the language on page 2, lines 6-12 - which currently proposes [fine increases] for vehicles that are overweight by amounts up to and including 8,000 pounds - would alleviate the ATA's concerns.

MR. BELL said yes.

REPRESENTATIVE ANDERSON said he would be willing to make such an amendment.

MR. BELL, in response to a question, relayed that the ATA represents about 350 companies and that that equates to approximately 65 percent of the trucks currently driving Alaska's roads.

[2:36:53 PM](#)

BARBARA HUFF TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, relayed that members' packets should include a copy of a letter offered by her supervisor in support of the bill, adding that her organization would like to encourage the committee to move the bill onto the next committee of referral. She elaborated:

From our perspective, this is first, foremost, and ultimately about safety - we do represent truck drivers in the industry, many of which work for companies that are members of ATA [and] some that are not. ... I would also like to comment regarding the earlier [proposed] amendment if I'm not totally out of

line. When we looked at this bill from a safety perspective -- and I guess for the record, whether you're running 2,000 pounds overweight or 30,000, an overweight vehicle is in violation of the law - first and foremost.

Secondly, it creates a safety hazard. ... In fact ... there has been a legislative representative in this building who lost her son and her husband to a truck [that] ... was running ... overweight. It would fall into the category that they're looking at reducing the fines on, and, ... for the record, we would not support [such an amendment]. ... You're looking at increasing fines that have not been increased for ... 30-some years. If you sit down and you actually calculate that percentage based on just the cost of living [increase] alone, it doesn't come anywhere near what's being proposed here. We believe that the increases in rates are very fair.

First and foremost we would like to see all drivers, all companies, follow the law. And if they're following the law, they're not going to be paying these fines, ultimately, anyway. So for that reason we would have great concern with proposing to adjust any of those fines, and we would ask the committee's support to move the bill on. Thank you.

[2:40:25 PM](#)

REPRESENTATIVE GARA asked whether the teamsters concern is that truckers are currently being endangered by those that are loading the trucks.

MS. HUFF TUCKNESS said one could ultimately make that analogy, but offered that in the big picture, whether one is the owner of the trucking company or the driver of the truck, the onus of complying with the law is on both of them. The controversy boils down to who, ultimately, is responsible for paying the fine, and by reducing that fine, then, the company that is in violation would not be paying as much. So although her organization represents the truckers, the incentive provided by the increased rates should ensure that everyone abides by the law. To address a concern she'd heard in a previous committee that an individual trucker wouldn't know how much weight was being loaded onto his/her truck, she opined that a responsible, experienced truck driver knows how much weight his/her truck is

built to carry and knows how to determine, within a reasonable margin of error, whether he/she is overloaded.

REPRESENTATIVE GARA asked whether drivers are pressured to carry overweight loads or whether a driver always has the freedom to refuse to drive an overweight vehicle.

MS. HUFF TUCKNESS relayed that that concern could apply in certain areas, such as the Anchorage area or the Eagle River area, that in certain areas perhaps there is the potential for drivers to be encouraged to run overweight.

[2:43:15 PM](#)

PAUL FUHS, Lobbyist for Horizon Lines of Alaska, LLC ("Horizon"), after noting that Horizon is responsible for transporting about 40 percent of the goods that come into the state, said that he was glad to see that HB 266 received a House Judiciary Standing Committee referral, since this committee's focus is on the enforcement aspects of laws and the fairness with which they are applied. He went on to say:

The overweight laws for Alaska were passed for a reason. The first was to protect our roads. ... When a truck is overweight, it pushes up a big wave in front of those tires, and that's what actually cracks the road - the groves you see in the road are caused by studs, that's not by overweight trucks; ... when that wave pushes the pavement up enough that it has a crack in it and water gets underneath and then freezes, that's what breaks up our roads. You can run with an overweight truck, but you have to [get] a permit, and a number one condition of an overweight permit is that you drive slower to reduce the amount of damage to the road.

So it's costing the state ..., having to replace the roads sooner than they normally would, and it's also [a] public safety issue for us in the container industry. Our containers are rated - the bottom of them ... - to carry a certain capacity. If they're overloaded, the bottom of the container can break out and spill the cargo onto the longshoreman working underneath, and we actually had this happen out in Dutch Harbor. As a matter of fairness, and I think some of the issues were raised as far as the drivers ... picking up a load that's overweight, we feel as a

business-fairness issue there [that] our company is dedicated to running legal operations within the laws of the State of Alaska, and we believe that other carriers should be required to do the same.

And unfortunately we have a situation now where the fine structure for overweight [vehicles] is less than what you would make if [you] got paid to carry the ... extra weight. So ... it's a fine to you, but it's not as much as you're getting paid, so it's not really an efficient deterrent to running overweight, as it is right now. And we have actually lost business by refusing to carry overweight cargo and telling people we wouldn't do it, and they actually found another carrier to carry their cargo.

On the issue of the "lower end," ... I wouldn't say do away with the increase on the bottom end, but maybe make it graduated ..., because in those areas you could make an honest mistake of being just a little bit over. You get over 8,000 pounds, [then] that has to be willful and intentional. The other thing is that the penalty did remain on the driver, and the reason for that is that it's a criminal penalty and it's very easy for the department to give a criminal ticket. ... The driver, most times, has no control over the load. They say, "Here's your load," it's got a seal on the container ..., and you just pick it up and you go with it.

Well, to try to do a civil fine to the person that overloaded the container would take too much time in the courts and the fiscal note would have been large. So that was a compromise: leave it a criminal penalty to the driver. The law does address, however, the issue, then, [that] if the driver is not at fault it shouldn't affect his insurance rates. And in terms of the pattern, [Mr. Thompson] is correct about that, that's to try to get at the habitual person who just kind of accepts it as a cost of doing business and [says], "I'm going to run overweight anyway."

MR. FUHS then drew attention to the language on page 3, line 1, language that Horizon specifically asked for and which makes reference to a federal law - the Intermodal Safe Container Transportation Act of 1992 - that addresses situations in which somebody certifies on the bill of lading that cargo weighs

20,000 pounds, for example, when in fact it weighs 30,000 and so the documentation has been intentionally falsified. Such instances are a violation of federal law, and under HB 266, if a carrier or driver has violated that federal law three or more times, the department can also go after the shipper - the entity who actually loaded the container - because a pattern of violation has been demonstrated. In conclusion, he said that Horizon urges the committee to move the bill on to the next committee.

[2:47:53 PM](#)

NONA WILSON, Legislative Liaison, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), noted that with some companies, the fines as they exist today have simply been absorbed as part of the cost of doing business, particularly given what a company can get paid for overloading a vehicle. She pointed out that some would say it is a questionable practice to compromise safety as a cost of doing business, and offered a personal example wherein her mother was hit by an overweight vehicle - her mother's car never came home. And while some companies can afford to pay the fines, she remarked, the state cannot afford to pay the expense of continually replacing roads.

MS. WILSON said that although permits for overweight vehicles are available, the drivers are asked to drive slower, which won't get them to their destinations on time. She relayed that the DOT&PF is asking for the bill to be left as is, and pointed out that the average violations occurring in 2004 were for being overweight between 1,000 and 8,000 pounds. This is something that neither citizens nor the state can afford; the department will have to keep coming back to the legislature for more funds, and meanwhile everyone will still be driving on damaged roads. The issue is one of safety, both in terms of overweight vehicles sharing the road with other drivers and in terms of the quality of Alaska's roads.

[2:50:24 PM](#)

REPRESENTATIVE COGHILL asked how difficult it is to get an overweight permit.

MS. WILSON offered her understanding that such permits, particularly those pertaining to short distances, can be gotten a day after applying for one.

REPRESENTATIVE COGHILL said he's heard criticism that getting such permits takes too long and that it takes longer than it used to. He said he's also heard that the weight distribution for motor homes is far worse than it is for trucks and yet a fine structure for motor homes is nonexistent.

MS. WILSON suggested that Mr. Thompson could better address that issue.

MR. THOMPSON, on the issue of overweight permits, relayed that typically a permit can be issued the same day it is applied for, and that although the department did have a permit office in Fairbanks for a number of years, technology has allowed the department to provide better service by consolidating its offices. With regard to the issue of motor homes, he acknowledged that they are not something that the department has been focusing on; the department's focus has instead been on commercial vehicles.

REPRESENTATIVE COGHILL opined that commercial trucking is one of the reasons for having roads as well as one of the reasons for the costs associated with having roads. He remarked that the bill proposes some pretty narrow margins, and asked whether snow accumulation during a run could result in an overweight problem for the driver.

MR. THOMPSON explained that although drivers can accumulate a lot of weight due to weather conditions, departmental regulations have provisions regarding snow and ice and so accommodations are made for such situations. There are also accommodations made in recognition of the fact that different scales may be set differently. He mentioned that federal oversight must also be kept in mind.

[2:55:05 PM](#)

MR. GOVAARS opined that there are two problems associated with overweight vehicles - weight and speed - and pointed out that motor homes do not drive nearly as fast as carriers, which are the ones hauling weights in excess of 30,000 pounds overweight.

REPRESENTATIVE COGHILL said he agrees with that point, but remarked that he knows how easy it is to end up being a couple of thousand pound overweight. On the issue of speed, he asked whether the intention is to either post signage regarding speed or limit speed during certain times.

MR. GOVAARS said the only time a driver would be required to drive a certain speed would be when he/she has obtained an overweight permit.

REPRESENTATIVE COGHILL opined that speed restrictions would have a huge impact on the industry.

MR. GOVAARS indicated that the sponsor would be willing to look at any proposed amendments on that issue.

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 266.

[2:58:16 PM](#)

REPRESENTATIVE ANDERSON, noting that he wished to amend it, turned attention to Amendment 1, which, in its unamended form read [original punctuation provided]:

Page 2      Delete Lines 6 - 12  
                  Renumber subsections

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 1, as amended to read:

Page 2      Delete Lines 6 - 10  
                  Renumber subsections

REPRESENTATIVE DAHLSTROM objected.

REPRESENTATIVE GARA asked Representative Anderson whether he thinks a truck that's driving three tons overweight isn't a safety consideration.

REPRESENTATIVE ANDERSON pointed out that Amendment 1, as amended, is merely eliminating the proposed increase in fines for trucks driving up to 6,000 pound overweight, not the existing fines for those trucks.

REPRESENTATIVE GARA clarified that he is asking whether driving 6,000 pounds overweight is enough of a safety consideration that updating the current fee structure for those trucks is justified.

REPRESENTATIVE ANDERSON opined that it isn't.

REPRESENTATIVE COGHILL asked what the average payload of "an eighteen wheeler" is.

MR. BELL said the payload is determinate on the type of vehicle, adding that the average gross vehicle weight rating (GVWR) is in the neighborhood of between 80,000 and 120,000 pounds.

REPRESENTATIVE COGHILL surmised that a "payload" would be about "half of that."

MR. BELL concurred.

[3:01:56 PM](#)

A roll call vote was taken. Representatives Anderson and Coghill voted in favor of Amendment 1, as amended. Representatives McGuire, Kott, Dahlstrom, Gruenberg, and Gara voted against it. Therefore, Amendment 1, as amended, failed by a vote of 2-5.

[3:02:27 PM](#)

REPRESENTATIVE GRUENBERG asked what the reference to AS 12.55.035(c)(1)(D) pertains to.

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, offered her understanding that it pertains to the current criminal fine structure.

MR. THOMPSON remarked, "That defines the violation."

REPRESENTATIVE GRUENBERG turned attention to Sections 4 and 6 of the bill, and offered his understanding that Section 4 proposes to change what he termed a substantive rule and so would therefore not require a two-thirds vote.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, which would be conditional such that if Rule 43.6 of the Alaska Rules of Administration is not a procedural rule, that Section 6 be deleted.

CHAIR MCGUIRE clarified that Conceptual Amendment 2, if it is adopted by the committee, would take effect if [Legislative Legal and Research Services] determines that changing Rule 43.6 does not require a two-thirds vote.

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REPRESENTATIVE GARA asked what would happen if the response from Legislative Legal and Research Services is not definitive.

REPRESENTATIVE GRUENBERG said he wants Conceptual Amendment 2 to only take effect if [Legislative Legal and Research Services] is 100 percent sure that a two-thirds vote will not be required.

MR. GOVAARS indicated that he would be amenable to leaving that determination up to Legislative Legal and Research Services.

REPRESENTATIVE GRUENBERG said, "My motion is, 'Let's go with whatever they recommend'; let's call it to their attention."

REPRESENTATIVE ANDERSON indicated that he is reluctant to adopt a conditional amendment, adding that he would rather the research be done before the bill is heard in the House Finance Committee, which could then perhaps amend the bill.

REPRESENTATIVE GRUENBERG indicated that he would be comfortable with that.

CHAIR McGUIRE concurred.

REPRESENTATIVE GRUENBERG withdrew Conceptual Amendment 2.

[3:06:58 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSHB 266(TRA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 266(TRA) was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

[3:07:20 PM](#)

The House Judiciary Standing Committee was recessed at 3:07 p.m. to a call of the chair. [The meeting was never reconvened.]