ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 23, 2006
10:11 a.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Peggy Wilson
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 329
"An Act relating to bail."

- HEARD AND HELD

CS FOR SENATE BILL NO. 186(JUD)
"An Act relating to the Alaska Executive Branch Ethics Act; and providing for an effective date."

- MOVED HCS CSSB 186(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 414
"An Act relating to allowing a parent or guardian of a minor to intercept the private communications of the minor and to consent to an order authorizing law enforcement to intercept the private communications of the minor."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 20(JUD)
"An Act relating to offenses against unborn children."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 329

SHORT TITLE: BAIL RESTRICTIONS
SPONSOR(S): REPRESENTATIVE(S) STOLTZE, LYNN

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
02/23/06	(H)	JUD AT 10:00 AM CAPITOL 120

BILL: SB 186
SHORT TITLE: EXECUTIVE BRANCH ETHICS
SPONSOR(S): SENATOR(S) SEEKINS

04/22/05	(S)	READ THE FIRST TIME - REFERRALS
04/22/05	(S)	STA, JUD
04/26/05	(S)	STA AT 3:30 PM BELTZ 211
04/26/05	(S)	Moved CSSB 186(STA) Out of Committee
04/26/05	(S)	MINUTE(STA)
04/27/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/27/05	(S)	Scheduled But Not Heard
04/28/05	(S)	STA RPT CS 3NR 1DNP NEW TITLE
04/28/05	(S)	NR: THERRIAULT, WAGONER, HUGGINS
04/28/05	(S)	DNP: ELTON
04/28/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/28/05	(S)	Scheduled But Not Heard
04/29/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/29/05	(S)	Scheduled But Not Heard
04/30/05	(S)	JUD AT 9:00 AM BUTROVICH 205
04/30/05	(S)	Scheduled But Not Heard
05/01/05	(S)	JUD AT 4:00 PM BUTROVICH 205
05/01/05	(S)	Moved CSSB 186(JUD) Out of Committee
05/01/05	(S)	MINUTE(JUD)
05/02/05	(S)	JUD RPT CS FORTHCOMING 1DP 1DNP 2NR 1AM
05/02/05	(S)	DP: SEEKINS
05/02/05	(S)	DNP: FRENCH
05/02/05	(S)	NR: THERRIAULT, HUGGINS
05/02/05	(S)	AM: GUESS
05/02/05	(S)	JUD AT 8:30 AM BUTROVICH 205
05/02/05	(S)	Moved Out of Committee 5/1/05
05/03/05	(S)	JUD CS RECEIVED NEW TITLE
05/04/05	(S)	RETURNED TO RLS COMMITTEE
05/08/05	(S)	TRANSMITTED TO (H)
05/08/05	(S)	VERSION: CSSB 186(JUD)
05/09/05	(H)	READ THE FIRST TIME - REFERRALS
05/09/05	(H)	STA, JUD
01/31/06	(H)	STA AT 8:00 AM CAPITOL 106
01/31/06	(H)	Heard & Held

01/31/06	(H)	MINUTE(STA)
02/14/06	(H)	STA AT 8:00 AM CAPITOL 106
02/14/06	(H)	Heard & Held
02/14/06	(H)	MINUTE(STA)
02/16/06	(H)	STA AT 8:00 AM CAPITOL 106
02/16/06	(H)	Moved HCS CSSB 186(STA) Out of Committee
02/16/06	(H)	MINUTE(STA)
02/21/06	(H)	STA RPT HCS(STA) 2DP 3NR 1AM
02/21/06	(H)	DP: GARDNER, SEATON;
02/21/06	(H)	NR: GRUENBERG, ELKINS, RAMRAS;
02/21/06	(H)	AM: GATTO
02/23/06	(H)	JUD AT 10:00 AM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as one of the prime sponsors of HB 329.

BEN MULLIGAN, Staff
to Representative Bill Stoltze
House Finance Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 329 on behalf of one of the prime sponsors, Representative Stoltze.

SUSAN A. PARKES, Deputy Attorney General
Criminal Division
Office of the Attorney General
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 329.

PORTIA PARKER, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 329.

SENATOR RALPH SEEKINS
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 186.

BRIAN HOVE, Staff
to Senator Ralph Seekins
Senate Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of SB 186, responded to questions on behalf of the sponsor, Senator Seekins.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 10:11:27 AM. Representatives McGuire, Coghill, Gara, Wilson, and Anderson were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

HB 329 - BAIL RESTRICTIONS

10:12:16 AM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 329, "An Act relating to bail." [In committee packets was a proposed committee substitute (CS) for HB 329, Version 24-LS1302\F, Luckhaupt, 2/14/06.]

10:12:22 AM

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, one of the prime sponsors of HB 329, relayed that he simply wants to give clearer guidelines as to what bail means and establish better lines of communication between all facets of the criminal justice system and particularly with the Department of Corrections (DOC). In response to a question, he relayed that although HB 329 was not introduced specifically in response to the recent situation involving the escape from custody of John P. Smith, II, while attending his father's funeral, that situation is one that illustrates the current potential problems regarding temporary releases from jail. The aforementioned escape affected the people of his community, he noted, adding that when Mr. Smith was apprehended, he was babysitting for a couple.

10:15:01 AM

REPRESENTATIVE ANDERSON moved to adopt the proposed committee substitute (CS) for HB 329, Version 24-LS1302\F, Luckhaupt, 2/14/06, as the work draft. There being no objection, Version F was before the committee.

REPRESENTATIVE ANDERSON noted that Version F would make the crime of unlawful evasion a class C felony.

10:15:25 AM

BEN MULLIGAN, Staff to Representative Bill Stoltze, House Finance Committee, Alaska State Legislature, one of the prime sponsors of HB 329, said on behalf of Representative Stoltze that the DOC has relayed that one out of five persons who are temporarily released from prison fail to return, though in some areas up to 50 percent fail to return. This requires law enforcement officers to go out and actively search for those escaped prisoners. Sometimes prisoners are released for medical or drug abuse assessment, but that's not really necessary since those assessments can be done in house or accommodations can be made to do so. The bill will not restrict bail and is only meant to address the issue of temporary or periodic release - those who still qualify to make bail will be able to make bail.

MR. MULLIGAN, in response to questions, said that if someone arrested for a lesser crime can't make bail but wants to be released temporarily to attend a funeral, for example, the DOC already has a system in place to arrange for such a release, and HB 329 would simply make the person go through the DOC's system rather than getting released by a judge. In response to a further question, he acknowledged that HB 329 would make the crime of unlawful evasion a class C felony even if the person was initially in jail for a misdemeanor.

REPRESENTATIVE COGHILL characterized that as a steep punishment.

REPRESENTATIVE STOLTZE concurred, but characterized that change as a necessary step, because the system won't work when the penalty for unlawful evasion is lighter than the prisoner's original sentence; currently there is no incentive to return to jail. He relayed that he has consulted with law enforcement agencies, the Department of Law (DOL), [the DOC], and the Alaska Court System (ACS) on this issue.

REPRESENTATIVE COGHILL, after remarking that a class C felony is still a steep punishment, acknowledged Representative Stoltze's points.

10:20:35 AM

REPRESENTATIVE WILSON offered her belief that the change proposed by HB 329 will reduce the state's costs because it will act as a deterrent.

REPRESENTATIVE STOLTZE concurred, but noted that another aspect to consider is that when judges are dealing with the question of whether to grant temporary [release], they should know why the person is in jail to begin with and how he/she is behaving while in jail. Some people simply are not suitable for release, and judges won't know that unless they communicate with the DOC; HB 329 will bring the DOC "into the loop" so that it can provide judges with information that will allow them to recognize people for the level of danger they might present while out on temporary release.

MR. MULLIGAN, in response to a question, offered his understanding that although the ACS has some information on a prisoner requesting temporary release, the DOC is not automatically given an opportunity to speak to whether someone should be released. House Bill 329 will ensure that the DOC does get to provide input regarding whether the temporary release of a particular prisoner is appropriate. He pointed out that the DOC, as a matter of course, becomes very familiar with how an inmate behaves.

REPRESENTATIVE GARA said that according to his interpretation, the bill could also affect how a defendant that could be innocent is treated, because it pertains to whether someone can be released, either after conviction or before his/her trial - a trial at which the person could be found innocent. Furthermore, when a judge releases someone on bail until the trial, that too is a temporary release as described in the bill, and, again, the person could be found innocent. He urged care in defining the word, "temporarily" as it will be used in the bill.

MR. MULLIGAN offered his belief that the bill will not affect someone who can make bail; instead, only if a person fails to make bail will the question of whether he/she can be temporarily released be addressed by the bill.

REPRESENTATIVE GARA said he wants to know how the bill will affect both guilty people and those who haven't been judged guilty.

10:26:24 AM

SUSAN A. PARKES, Deputy Attorney General, Criminal Division, Office of the Attorney General, Department of Law (DOL), said she would echo statements that the bill will only affect the temporary release of persons who can't make bail but want temporary release for a particular event such as a funeral, a wedding, a birth, or a medical appointment.

REPRESENTATIVE GARA asked whether the word, "temporary" is defined somewhere in statute, adding that his concern is that "temporary" could also be construed as that period of time between when one is put in jail and one's trial - "that's technically, in the English language, temporary also."

MS. PARKES offered her belief that that is not correct. She added:

> When bail is set, here's your bail pending trial, and then at trial you're either convicted or you're found not guilty, and if you're not guilty then you're not going to have any bail, so I don't think that's considered "temporary"; temporary would be, for the next 24 hours, the next 48 hours. I think it's pretty clear. ... This committee could certainly consider defining it, but I think it's pretty well understood that either bail is set pending trial - however long that may be - or there's some sort of temporary release.

REPRESENTATIVE GARA surmised that he and Ms. Parkes mean the same thing.

MS. PARKES noted that innocent and guilty people are treated the same under the bail statute, positing that they would also be treated the same under this proposed temporary release statute. If one can't make the bail that has been set - bail the amount of which the judge has determined will keep society safe - why should one then get a temporary pass out of jail?

REPRESENTATIVE GARA suggested changing the language on lines 10-12 to say in part, "nothing in this chapter allows a court to order a defendant who has not satisfied bail to be released temporarily or periodically".

MS. PARKES acknowledged that such a change might clarify the issue.

CHAIR McGUIRE said her concern pertains to the fact that innocent people are charged all the time and still incur bail obligations even if they have no resources with which to satisfy that bail. Such people still ought to be eligible for temporary release for purposes of attending the funeral of a close family member or the birth of their child. It is the bad cases - such as the aforementioned one involving Mr. Smith - that gain public recognition, and currently judges have the discretion to grant temporary release on a case-by-case basis, whereas the legislature doesn't have the opportunity oversee each and every request for temporary release. She asked how often the bad cases occur, and whether they happen often enough to warrant taking away judicial discretion.

10:31:03 AM

MS. PARKES pointed out that when bail is originally set, everyone is presumed innocent - that's where judges start from and that's factored into the system. She then relayed that she was surprised to find that cases such as Mr. Smith's happen often; for example, recently in Kenai a person temporarily released for a medical assessment escaped custody. She suggested that the DOC could provide statistics.

CHAIR McGUIRE noted that the way the bill is currently written, if a person has the resources to make bail, then the bill won't apply to him/her, but if the person can't make bail, he/she goes to jail.

MS. PARKES concurred, but noted that a person can always [request] bail modification, adding that this occurs on a routine basis.

REPRESENTATIVE GARA offered his understanding, however, that a person is only entitled to bail modification if there has been a change in his/her circumstances.

MS. PARKES said, "You have to bring forth either a new proposal or new factual information and give 48-hour ... [written] notice of either what the new proposal is or [what] the new information you're going to bring forward [is]."

10:33:34 AM

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), explained that if a

person is incarcerated awaiting trial and doesn't make bail, and a major event occurs, the DOC does not do a temporary release; instead, after considering his/her request, the DOC will keep the person in custody and simply escort him/her to the event - the person is never released from custody. She said she'd recently approved such a request, a request to attend a funeral, even though the circumstances were not typical; the prisoner was escorted to the funeral and then brought back to the correctional facility. The problem with temporary release is that many don't return - for example, in Fairbanks as many as 50 percent of those on temporary release were not returning. She mentioned that that particular rate of failure is being addressed and is improving through increased communications between the DOC and the prosecutors, public defenders, probation officers, and judges in that area.

CHAIR McGUIRE noted, however, that there could be two similarly situated people arrested for the same type of crime, and the bill won't apply to the person who is able to make bail even though he/she is no different, when later there is a death in the family, than the person who couldn't make bail. Why, then, should the person who can't make bail have more restrictions placed on him/her simply because he/she can't make bail?

REPRESENTATIVE ANDERSON observed that in Chair McGuire's example, both individuals are presumed innocent but one awaits trial in jail while the other one doesn't.

MS. PARKER said, "That's completely up to the judge; ... we can only look at people who are in custody."

MS. PARKES explained that in cases where a person has the resources to make bail - a job, a family, or other indicators of stability - a judge can make a finding that that person is less likely to flee, whereas a person without such resources or ties to the community doesn't have a lot to lose by just taking off. In response to another question, she said she doesn't know that there is a particular standard that must be met with regard to whether the community will still be safe if a particular person is released, though the bail statute does contain a list of criteria that a judicial officer must take into account when determining the conditions of release and the appropriate amount of bail; those criteria include family ties, employment status, financial resources, character and mental condition, length of residence in the community, record of convictions and appearances at proceedings, whether the person has confessed to the crime, and the weight of the evidence against the person.

10:38:25 AM

CHAIR McGUIRE, in response to a question, noted that Mr. Smith had originally been charged with kidnapping, assault, arson, and robbery.

REPRESENTATIVE GARA suggested changing the bill such that before a person charged with either a class A sexual offense or an unclassified felony can be released on bail, the judge must make a finding that there is a reasonable certainty that the public would be protected under the conditions of bail. He offered his understanding that in Mr. Smith's situation, the judge had released him on bail without first ensuring that he would not pose a danger to society.

MS. PARKER clarified that Mr. Smith was not let out on bail; Mr. Smith escaped while on temporary release, and the bill addresses whether temporary release is available to someone who can't make bail.

CHAIR McGUIRE asked whether the option of posting bail had been offered to Mr. Smith.

MS. PARKES said it had, adding that bail is set in every case.

REPRESENTATIVE GARA suggested changing the standard for temporary and periodic [releases] to, "a reasonable certainty" that the community is going to be protected.

MS. PARKES said doing so would be a policy call for the legislature to make, though she noted that AS 12.30.020 specifies that the court must set a bail that will reasonably assure the person's appearance as required and that he/she will not pose a danger to the victim. Thus the term, "reasonably assure" is the current standard, she surmised.

REPRESENTATIVE STOLTZE indicated that he would rely on Ms. Parker and Ms. Parkes's judgment regarding this issue.

MS. PARKER, in response to questions, explained that in addition to increasing the penalty for unlawful evasion to a class C felony, the bill also proposes to preclude a judge from allowing temporary releases, though a person could still request, through the DOC, to be escorted to an event. Currently, when the DOC receives an order from a judge to temporarily release someone, the DOC does so and hopes that the person actually does come

back at the specified time; if he/she does not, then he she can be charged with failure to appear or unlawful evasion - both currently misdemeanors. In Mr. Smith's case, he was originally facing several felony charges, and so any additional misdemeanor charge he faced for not returning provided little incentive to return. In response to a further question, she explained that under the bill, when the DOC receives a request for temporary release of a prisoner, the DOC will make the decision regarding whether to escort that prisoner and return him/her to custody; again, under such circumstances, the prisoner is never officially released from custody.

10:44:08 AM

CHAIR McGUIRE surmised that HB 329 would take away the court's discretion to issue temporary releases for someone who has not made bail, and so a person's only recourse, then, will be to petition the DOC for a temporary release under escort. She remarked, however, that she doesn't know how accessible the DOC's process in that regard is.

MS. PARKER relayed that the DOC receives one or two requests per month, from both sentenced prisoners and those awaiting trial, and usually those requests are for funeral escorts. The DOC then approves them or not depending on the risk the individual poses as well as other criteria. The DOC has a whole process that must be followed; for example, once the inmate goes to his/her probation officer, the probation officer explains to the inmate how to go about making the request and speaks to family members and the victim - ensuring that the victim is notified and that he/she will not also be in attendance - and gets the victim's opinion regarding the possible release. There is often a need for a quick turnaround on these requests and so they come directly to either the commissioner or deputy commissioner. An inmate or his/her family then pays for the escort, and this is usually a minimal amount, though even that can be waived in certain cases. Again, these requests are addressed very quickly because they are time sensitive.

REPRESENTATIVE WILSON asked whether there will always be an escort.

MS. PARKER said it depends on the situation; for example, the DOC has granted short duration furloughs when an inmate is only six or seven days from release anyway and then the inmate doesn't actually have to come back to the facility. In response to a question, she indicated that [in the majority of cases], if

the DOC allows a prisoner to attend an event, he/she must be escorted.

REPRESENTATIVE GARA said he is not comfortable limiting one's release to the discretion of one's jailer. In some cases a fair decision will be made but not in other cases, he predicted. He offered his recollection that in the past, people have requested temporary release for the purpose of attending fish camp, for example, because they were the only able-bodied person in the family. Such an inmate wouldn't be able to afford to have an escort at fish camp for a week.

10:49:19 AM

CHAIR McGUIRE asked the sponsor whether he'd considered any other solutions to the perceived problem; for example, perhaps establishing a higher threshold for the court when it decides whether to grant temporary release.

REPRESENTATIVE STOLTZE indicated that he didn't think that the bill would completely remove judicial discretion, and suggested that in the example involving fish camp, such a situation would warrant a request for bail modification. He reiterated his belief that the DOC will have a better picture of what the person is really like and can better predict what the person's behavior will be if released, and commented on the quickness of the DOC's procedure.

CHAIR McGUIRE asked how other states treat this issue.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 329.

REPRESENTATIVE WILSON said she is concerned that too much is being changed via HB 329, though she has no problem with making the crime of unlawful evasion a class C felony.

REPRESENTATIVE GRUENBERG observed that Section 3 of the bill proposes to repeal AS 12.30.020(b)(3), which says:

> (3) require the person to return to custody after daylight hours on designated conditions;

REPRESENTATIVE GRUENBERG suggested that instead of just repealing that provision, it might be best to add other conditions for temporary release to AS 12.30.020(b).

CHAIR McGUIRE suggested that the sponsor research that issue further, adding that it would be an extreme measure to take away judicial discretion completely, particularly given that the bill will also impact innocent people. Similarly situated people oughtn't be treated differently just because some don't have the resources to make bail, but under the bill, even if a person is innocent, if he/she can't make bail, he/she would not get to attend a funeral or the birth of a child, for example. She offered an example of a DOC employee who's got a beef with a prisoner who can't make bail, perhaps even an innocent prisoner, and so goes out of his/her way to ensure that the prisoner is not permitted to attend a funeral or other significant event. However, she remarked, she is also keeping in mind the situation that occurred with Mr. Smith, and therefore she is hoping that the sponsor and department representatives can find another solution that will achieve a middle ground.

MS. PARKER, in response to a comment, explained that Mr. Smith was wearing a monitoring device but he cut it off before escaping.

AN UNIDENTIFIED SPEAKER, in response to a question, said that she is not aware of any type of monitoring device that is impossible to remove.

MS. PARKER pointed out that releasing someone for the purpose of attending a funeral or birth of a child is not that common; much more often a temporary release is sought for drug or alcohol assessments, though she acknowledged that the DOC accommodates providers doing such in house.

CHAIR McGUIRE pondered whether they should address that issue as well as beefing up the conditions listed in AS 12.30.020(b). For example, they could simply limit the types of events that may even be considered for temporary releases. She concluded by saying that she believes that they ought to send a message that incidents such as occurred with Mr. Smith won't be repeated.

11:02:26 AM

REPRESENTATIVE GARA questioned whether precluding temporary releases for the purpose of alcohol or drug assessment is practical from a financial standpoint. After noting that the bill proposes to add the language, "The defendant in a criminal case may be admitted to bail after conviction only as permitted under AS 12.30.040", asked what effect that language has on current law.

REPRESENTATIVE GRUENBERG suggested that the reason for including that language is that the current language of AS 12.30.010 pertains to bail before conviction, and since the bill proposes to address situations involving bail after conviction, that additional language is needed as a conforming change.

REPRESENTATIVE GARA asked whether there are other ways to be released after conviction other than by using AS 12.30.040.

MS. PARKES noted that those who have been convicted but are awaiting sentencing could also be applying for temporary release.

REPRESENTATIVE GRUENBERG pointed out that AS 12.30.040 refers back to AS 12.30.020.

CHAIR McGUIRE indicated that HB 329 [Version F] would be held over.

SB 186 - EXECUTIVE BRANCH ETHICS

[Contains brief mention of SB 187 and of possible amendments to it.]

11:04:49 AM

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 186(JUD), "An Act relating to the Alaska Executive Branch Ethics Act; and providing for an effective date." [Before the committee was HCS CSSB 186(STA).]

11:05:20 AM

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor of SB 186, opined that the state's ethics codes should be clear, fair, and enforceable. Remarking that he's never read all of [the legislature's standards of conduct], he characterized them as complex, and suggested that the Alaska Executive Branch Ethics Act is clearer and more logical. He indicated that the situation that arose last year [involving Gregg Renkes] prompted the Senate Majority to question whether the ethics codes need to be revised, noted that Bob Bundy had given the legislature recommendations regarding how to correct certain weaknesses in current law, and offered his belief that those recommendations are provided for in SB 186.

SENATOR SEEKINS mentioned that SB 186 now contains thresholds regarding how much stock, gauged by either monetary value or by a percentage, that a public official can own or have options to buy before it results in him/her having a conflict of interest. He then remarked on a provision regarding blind trusts that he said was removed in the House State Affairs Standing Committee, and on the governor's personal financial portfolio. He also indicated that one of the goals of the legislation is to allow people to serve the state without having to divest themselves of stock they own and thereby become subject to tax penalties.

11:11:20 AM

SENATOR SEEKINS referred to existing AS 39.52.340(a), and noted that it says in part:

> Except as provided in AS 39.52.335, before the initiation of formal proceedings under AS 39.52.350, the complaint and all other documents and information regarding an investigation conducted under this chapter or obtained by the attorney general during the investigation are confidential and not subject to inspection by the public. ...

SENATOR SEEKINS offered his understanding that in the executive branch ethics complaint process, when there is a finding of probable cause, that is when "everything" becomes public. He then read AS 39.52.440, which pertains to civil penalties and says: "The personnel board may impose on a current or former public officer civil penalties not to exceed $5,000 for a violation of this chapter. A penalty imposed under this section is in addition to and not instead of any other penalty that may be imposed according to law."

SENATOR SEEKINS opined that this means that if someone violates the confidentiality provisions of AS 39.52 but is not a state employee, he/she would not be subject to the aforementioned $5,000 civil penalty, even though a state employee would be. He characterized this as an example of unequal justice, and indicated that SB 186 would change current law such that if someone violates the confidentiality provisions, he/she could be subject to that civil penalty regardless of whether he/she is a state employee. He offered his belief that in addition to that change, SB 186 also defines when a conflict of interest exists, and provides for adequate disclosure.

SENATOR SEEKINS, in response to a question, offered his understanding that under the legislative standards of conduct - which, he indicated, are being addressed via SB 187 - a violation of the confidentiality provisions by the complainant can result in the complaint being dismissed; however, either the Select Committee on Legislative Ethics could still go forward with that complaint, or another person could file the same complaint. Essentially there would be no penalty imposed on someone who used the complaint process simply as a means of tarnishing another person's reputation. He indicated that the same is true with regard to the Alaska Executive Branch Ethics Act; there is no penalty imposed on a member of the general public for violating the confidentiality provisions.

11:20:22 AM

REPRESENTATIVE ANDERSON offered as example a situation involving accusations of ethic violations by a former commissioner of the Department of Health and Social Services that were "leaked" to the press, and surmised that one of the goals of SB 186 is to ensure that in filing complaints about violations of the ethics laws, people must follow those same laws, particularly with regard to confidentiality.

SENATOR SEEKINS concurred, and provided a synopsis of that situation.

REPRESENTATIVE GARA opined that they should quickly implement Mr. Bundy's recommendations, which were to define what constitutes a conflict of interest. He said that he has trouble with the provisions of SB 186 that impose penalties on members of the public for speaking about government misconduct, and that he doesn't agree with the sponsor's equal protection analogy. He noted that language on page 7 proposes a new violation under which members of the public can be penalized, adding that the concept of prohibiting members of the public from speaking about government misconduct until the government says its okay to do so rubs him the wrong way. For example, language on page 7, [beginning on] line 5, says that a member of the public can't talk about whether he/she filed a complaint against a government official, can't talk about the contents of a complaint, and can't talk about matters related to the complaint; he offered his understanding that a member of the public who violates this proposed provision would be subject to a $5,000 civil penalty.

SENATOR SEEKINS remarked that the fine could be less than $5,000.

REPRESENTATIVE GARA said it seems like telling members of the public that they can't discuss government misconduct is an inappropriate public policy. With regard to the aforementioned equal protection argument, he pointed out that there are a lot of laws that penalize government officials for certain behavior, and it just doesn't follow that those laws should be changed such that they penalize members of the public for that same type of behavior. He said he is comfortable with the bill's conflict of interest provisions, but is not comfortable with the provisions that say members of the public will be subject to a $5,000 penalty for speaking about government misconduct related to a complaint they've filed.

SENATOR SEEKINS offered his understanding that the bill won't penalize someone for speaking about government misconduct; instead, the bill simply says that a person filing a complaint cannot disclose either the contents of that complaint or that he/she has filed a complaint. He indicated that the bill provides a meaningful penalty for those who violate the [proposed] confidentiality requirements. He then asked why there should be a different standard for state employees than there is for members of the public; a state employee who violates the current confidentiality requirements could be subject to a $5,000, but a member of the public would not be.

SENATOR SEEKINS then referred to the situation involving Mr. Renkes, and questioned why the press just happened to be there when the complaint was filed against Mr. Renkes.

11:28:51 AM

CHAIR McGUIRE asked what changes were made in the House State Affairs Standing Committee. She said she was under the impression that "the fining authority was removed."

BRIAN HOVE, Staff to Senator Ralph Seekins, Senate Judiciary Standing Committee, Alaska State Legislature, sponsor, said on behalf of Senator Seekins that "it was."

SENATOR SEEKINS concurred. He said that the "blind trust" provisions were also removed, adding that he didn't object [to that change].

CHAIR McGUIRE asked for a copy of the amendments that were offered in the House State Affairs Standing Committee.

MR. HOVE agreed to provide them.

REPRESENTATIVE GRUENBERG said he has those amendments and would provide copies to the committee.

REPRESENTATIVE GARA acknowledged that under current law, the $5,000 civil penalty would only apply to public employees.

SENATOR SEEKINS concurred, adding that the bill no longer provides a penalty for members of the public who violate the confidentiality provisions.

REPRESENTATIVE GRUENBERG indicated that the penalty provision pertaining to members of the public was removed in the House State Affairs Standing Committee.

REPRESENTATIVE GARA referred to page 7, line 1, and noted that the language proposes to now require complainants to keep certain things confidential.

SENATOR SEEKINS offered his understanding, however, that AS 39.52.340 already requires complainants to keep certain things confidential.

11:35:13 AM

REPRESENTATIVE ANDERSON asked Representative Gara to provide an example illustrating his concern. He then offered an example involving an erroneous complaint that becomes public.

REPRESENTATIVE GARA noted that the language on page 7, line 1, specifically adds complainants to the list of those who must keep certain things confidential, and that language on line 5 specifies that what must be kept confidential includes, "the filing of a complaint, its contents, or related matters"; it is this last item that gives him the most concern, because that could be interpreted to mean everything associated with the public official's misconduct. He acknowledged that his earlier understanding was that members of the public could be fined, but he now knows that that provision has been removed. Nonetheless, he opined, the bill proposes, as a matter of public policy, to preclude members of the public from speaking about government misconduct. He then offered his belief that language on page 6 is proposing to make a report by the personnel board "more confidential that it was before." He said he would prefer to limit the bill to just the recommendations of Mr. Bundy and Mr.

Daniel, that being to simply define what constitutes a conflict of interest.

CHAIR McGUIRE asked Representative Gara whether he thinks there should be "some care taken." She added:

> We had a difference of opinion [regarding imposing jail terms] ... and some of these other things, but I understood the point behind it. We just kind of disagreed about how to get there. ... I have very strong beliefs that you have to err on the side of giving members of our community the opportunity to challenge their government, to challenge the ethics of the members of their government, and to do so without fear of imprisonment or monetary penalty. I think that that's really important, and I think there's a really tenuous balance. ... I respect ... the bill's sponsor and think his motives are pure, but I fall on that side of saying we're probably never going to get it right and there'll be people that abuse it one way or the other, but I want members of the public to feel as comfortable as possible challenging the ethics of the government.
>
> That being said, an ethics complaint is a very serious thing: it's quasi criminal in nature, [and] it has the ability to curtail your political life, maybe your economic opportunities. In a small community like Alaska, ... what do you have left if you don't have your honor? ... What I ... want to hear ... is [a response to the question of whether] there be no care taken to the process that protects the individual who ... may well be innocent. ... What I hope we can do is send a bill out of here that achieves a balance between the rights of the citizen bringing the complaint and the rights of that person who is accused and may well be innocent.

REPRESENTATIVE GARA characterized those as perfect points, and offered his belief that the committee will be able to achieve those goals. He then drew members' attention to language on page 8 [lines 6-24], and offered his understanding that it would allow someone to be penalized for filing a complaint that contained a false statement; he characterized that provision as too broad because it would also apply in instances where the complainant doesn't know he/she is making a false statement. He acknowledged that imposing a penalty on someone who knowingly

uses a false statement when filing a complaint might be appropriate.

REPRESENTATIVE GARA, returning members' attention to language on page 7, pointed out that it restricts [a member of the public] from speaking about government misconduct even in instances when the accusation is accurate. Regardless of the fact that the bill no longer provides a civil penalty for a member of the public who violates the confidentiality requirements, the courts will say that a statutory violation can form the basis for a cause of action for civil damages even though the complaint was accurate. He opined that that's no comfort to the good citizen who raises a matter of public misconduct but who then gets told by the government official that if he/she talks about it, he/she will get sued.

11:42:37 AM

SENATOR SEEKINS offered his understanding that everyone in the investigatory process is required to maintain confidentiality until there is a finding of probable cause, and that the bill simply proposes to require the same thing of the complainant. He offered his belief that most findings of probable cause are made in less than 90 days, and suggested that waiting that period of time will not be burdensome. If someone has done something wrong, he/she should be brought to justice, but that should occur via a fair system that preserves the presumption of innocence until there's a finding of probable cause.

SENATOR SEEKINS said that the "wrongful use of complaint" provision - proposed AS 30.52.352 - is not meant to create a whole new cause of action.

CHAIR McGUIRE suggested that they could add language clarifying that point.

SENATOR SEEKINS offered his understanding that complaint forms are signed under oath.

REPRESENTATIVE GRUENBERG surmised that proposed AS 39.52.352 simply extends existing law regarding wrongful use of a complaint, to the complainant.

SENATOR SEEKINS concurred.

REPRESENTATIVE GRUENBERG pointed out that because AS 39.52.310(b) requires a complaint to be filed under oath, if one

knowingly and intentionally lies on the complaint form, one would be guilty of perjury, a class B felony under AS 11.56.200.

CHAIR McGUIRE pointed out, though, that the district attorney must be willing to pursue such a case.

REPRESENTATIVE GRUENBERG concurred.

11:46:06 AM

REPRESENTATIVE GARA, on the argument that state officials are being treated differently than members of the public with regard to violating confidentially requirements, pointed out that the state officials handling such complaints have the additional burden of treating complaints objectively, and so to punish a member of the public in the same fashion is tantamount to saying that the public has no legitimate interest in whether government is doing something wrong. He remarked, however, that he does agree with the concept of punishing people who lie in order to make a political point.

SENATOR SEEKINS opined that if a penalty is being imposed in a situation wherein a public employee violates the confidentiality requirements, a penalty should also be imposed in a situation wherein a private citizen violates those requirements. His goal, he indicated, is to protect the subject of the complaint until there is a finding of probable cause.

REPRESENTATIVE WILSON concurred with that latter point.

SENATOR SEEKINS offered his understanding that after that point in time, everything becomes public.

REPRESENTATIVE COGHILL expressed agreement with Representative Gara's comments regarding having a different standard for public officials, but pointed out that if a person misuses the complaint process in order to slander [a government official] under the guise of an ethics violation, he/she should be held accountable. He said he doesn't want to dissuade citizens from challenging the actions of government officials when those officials are abusing the public trust. Even though this issue is being approached from a civil standpoint, members of the public view it as a criminal matter. He offered his belief that if [a public official] is slandered, he/she does have recourse, both civilly and criminally.

CHAIR McGUIRE remarked, though, that it can be difficult, when one is a public official, to bring a liable suit.

REPRESENTATIVE COGHILL concurred. He opined that it is inappropriate for the complaint system to be misused as a political tool, and therefore he applauds the effort to preclude such from happening. He cautioned against making the law so complex that it dissuades people from either filing a complaint or serving in public office, and recounted what occurred to him when someone once chose to use the system as a political tool against him. He concluded by noting that complaints against public officials are also complaints against them as individuals.

SENATOR SEEKINS concurred with that point, but said that "this" is not meant to shield ethical misconduct by public officials. "I want the scoundrel brought to justice, [but] I want the innocent person who's been wrongly accused to have some preservation of their reputation prior to a finding of probable cause," he remarked, and offered his understanding that the Alaska Bar Association (ABA), in disciplinary actions, requires confidentiality to be maintained until there is a formal hearing, and that a violation of that requirement results in a contempt of court charge. He relayed that the wrongful use of complaint provision closely resembles Pennsylvania law, and that his research has not turned up any instances wherein similar language has been found to be unconstitutional.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 186.

11:57:23 AM

REPRESENTATIVE GRUENBERG recounted for the committee the amendments that were offered in the House State Affairs Standing Committee.

REPRESENTATIVE GARA, on the issue of how long it can take for the personnel board to find probable cause, said he doesn't trust that the personnel board will be able to find probable cause within 90 days. Furthermore, under the bill, if there is no finding of probable cause, the complainant would never be able to speak about the complaint; that's a problem because this is trusting that the personnel board, which is a political body, will come up with the right decision. He added:

> I don't think I want to ask members of the public to trust the judgment of their government as to whether they're not allowed to talk. And ... the way this is written, as long as the government decides that you shouldn't be able to talk about it, you don't get to talk about it; as long as the personnel board finds in favor of government, then you don't get to talk about it.

SENATOR SEEKINS relayed that some states require confidentiality when there isn't a finding of probable cause and others do not, and that as matter of policy, he doesn't feel strongly either way. He does believe, however, that prior to a finding of probable cause, confidentiality should be maintained because the presumption of innocence takes precedence over whether something is newsworthy. He offered his understanding that "everything" becomes public if the subject of the complaint violates confidentiality.

REPRESENTATIVE GRUENBERG referred to a February 20, 2006, memorandum from Jack Chenoweth, the assistant revisor, and indicated that he would be seeking to change the bill's effective date to comply with Mr. Chenoweth's suggestions on that issue.

REPRESENTATIVE GRUENBERG opined that if one violates one's professional cannons of ethics and it affects job performance, that too should be a violation of the Alaska Executive Branch Ethics Act. He mentioned that he would be offering a similar amendment to SB 187 when it comes before the committee.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, labeled 24-LS0874\C.1, Wayne, 2/21/06, which read:

> Page 3, following line 21:
> Insert a new bill section to read:
> "*** Sec. 7.** AS 39.52 is amended by adding a new section to read:
> **Sec. 39.52.165. Professional misconduct.** A public officer may not, in taking official action, violate or be required to violate a provision of a code or canon of professional ethics if the public officer's professional conduct is bound by the code or canon of professional ethics as a condition of obtaining or retaining a license to engage in or to practice the profession."

Renumber the following bill sections accordingly.

REPRESENTATIVE COGHILL objected for the purpose of discussion.

12:06:27 PM

SENATOR SEEKINS said he has no objection to Amendment 1.

REPRESENTATIVE COGHILL said he just wanted to make sure that the language is inserted in the correct location. He then removed his objection.

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

SENATOR SEEKINS, in response to a question, said he had no objection to having the bill's effective date provision changed; he suggested changing it to January 1, 2007.

REPRESENTATIVE GRUENBERG began a motion to adopt Amendment 2, to alter the last page and line of the bill [page 10, line 12].

CHAIR McGUIRE interjected to ask a question.

AN UNIDENTIFIED SPEAKER said, "January 15th would be better; that's after the inauguration."

CHAIR McGUIRE asked what would be the purpose of waiting until 2007 for the bill to take effect.

REPRESENTATIVE GRUENBERG read a portion of the aforementioned memorandum: "Additionally, there will be gubernatorial inauguration, with a new four-year term to start, on Monday, December 4, 2006. Since the changes in the bill are being made to the Executive Branch Ethics Act, the committee may want to consider linking the amended requirements to the employment of public officers and executive branch employees as of that date." He asked the sponsor how he would feel about the effective date being December 5, 2006.

SENATOR SEEKINS indicated that he wouldn't object to that change.

12:09:07 PM

REPRESENTATIVE GRUENBERG [finished the motion] to adopt Amendment 2, to change the date on page 10, line 12, to December 5, 2006.

REPRESENTATIVE GARA objected for the purpose of discussion. He suggested that they shouldn't wait that long for the bill to become effective, and that perhaps a 90-day delay would be sufficient for the administration to come into compliance.

REPRESENTATIVE GRUENBERG said he wouldn't have any objections to that.

SENATOR SEEKINS said that was fine with him.

CHAIR McGUIRE agreed.

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 2, to simply strike Section 21 of the bill - thus removing the effective date clause - and conform the title. There being no objection, Amendment 2 was amended.

CHAIR McGUIRE asked whether there were any objections to Amendment 2, as amended.

REPRESENTATIVE GARA removed his objection.

CHAIR McGUIRE announced that Amendment 2, as amended, was adopted.

12:11:01 PM

CHAIR McGUIRE referred to Amendment 3, which read [original punctuation provided]:

> Page 8, lines 11 - 13:
> Delete "or with reckless disregard of the truth or falsity of the allegation; or
> (2) did not reasonably believe that the facts alleged in the complaint, if proven, would constitute a violation of this chapter."

REPRESENTATIVE GARA posited that Amendment 3 would address points raised by Representative Coghill. He explained that Amendment 3 will narrow the proposed provision regarding wrongful use of compliant such that if one files a false complaint, there can be action, but if one doesn't intentionally file a false complaint, there can't be action. He said he

doesn't want to punish people for making a mistake, even a bad mistake, because that could have a chilling effect on the public. Instead, to simply tell people that they must not lie is a bright line.

12:12:07 PM

REPRESENTATIVE ANDERSON [although no formal motion was made] objected to Amendment 3 for the purpose of discussion.

SENATOR SEEKINS opined that reckless disregard is a very high standard. Those who knowingly and intentionally break the law should be held accountable, and reckless disregard is almost at that point. He suggested that everyone knows people who, with reckless disregard, have "thrown around complaints that had no basis in fact." He offered his understanding that the standard of reckless disregard is used in other states.

REPRESENTATIVE GARA offered as an example a situation involving someone who thinks a public official did something wrong and had he/she done further research would have realized that it wasn't so, but, not having done that research, files a complaint. Under the current language of the bill, that person could be pursued for reckless behavior.

CHAIR McGUIRE indicated that reckless disregard is defined as a conscious disregard of a known risk.

REPRESENTATIVE GRUENBERG offered his understanding that in the 1964 U.S. Supreme Court case, New York Times Co v. Sullivan, the court said that a person cannot be sued for libel or slander if it involves a public figure or an issue of public importance, unless the person knows he/she is telling a deliberate lie or the person is saying something in reckless disregard of the truth. The language on page 8, lines [10-13], contains three aspects: knowing the allegation to be false, reckless disregard of the truth or falsity of the allegation, and "did not reasonably believe" [that the facts alleged constitute a violation]. The Sullivan case speaks to the first two aspects, but not the third. He suggested that punishing somebody because he/she "did not reasonably believe" could be unconstitutional. An allegation either has to be a knowing lie, or stated with reckless disregard as to its truth or falsity, he opined; therefore, he would not object to striking the language on page 8, lines 12-13 - "(2) did not reasonably believe that the facts alleged in the complaint, if proven, would constitute a violation of this chapter" - but suggested that they retain the

words, "or with reckless disregard of the truth or falsity of the allegation".

CHAIR McGUIRE remarked that in an instance involving reckless disregard the behavior must be conscious.

REPRESENTATIVE GARA suggested that this portion of the bill should just address knowing lies.

REPRESENTATIVE COGHILL offered his belief that AS 39.52.352(b) provides a bit of a safeguard in that there would have to be an action more deliberate than just what is provided for solely in AS 39.52.352(a)(2). He surmised that anyone filing a complaint will be doing so under some advisement, and subsection (b) speaks to that issue. He opined that there is a responsibility to research the facts.

12:18:15 PM

REPRESENTATIVE GRUENBERG, speaking as a member of the Select Committee on Legislative Ethics, noted that [the legislative standards of conduct] is very similar to "this." He remarked:

> I absolutely know and have been involved in cases where there could not have been anything other than a person going down and just, really, recklessly making a statement. So I wish people acted that responsibly, but people, particularly in the heat of politics, ... just do it, and they may be people who aren't thinking straight or they may be people who are just misinformed or they may be people who are really just so politically into it that they lose all sense of balance. ... I hope we don't have any problem with striking [paragraph] (2). ...

REPRESENTATIVE GRUENBERG surmised that [Representative Gara] thinks that even if someone makes an allegation with reckless disregard, that he/she should be protected.

REPRESENTATIVE GARA clarified that he is concerned about the person who may not have much in the way of financial resources and is thus dissuaded from filing a complaint of government wrongdoing because of the language currently in the bill that says if he/she is at all reckless, he/she could be subject to a $5,000 [civil penalty].

SENATOR SEEKINS again pointed out that the bill no longer contains a civil penalty provision pertaining to members of the public.

CHAIR McGUIRE characterized this language as simply a strong message to the public because it has "no teeth." She said she is inclined to agree with Representative Gruenberg's suggestion to remove [paragraph (2)] and keep the language pertaining to reckless disregard.

12:21:07 PM

REPRESENTATIVE GRUENBERG [made a motion to] divide Amendment 3. There being no objection, Amendment 3 was divided [into Amendment 3a and 3b, with Amendment 3a deleting the language pertaining to reckless disregard, and with Amendment 3b deleting paragraph (2)].

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 3b. There being no objection, Amendment 3b was adopted [thus deleting proposed AS 39.52.352(a)(2)].

CHAIR McGUIRE indicated that the committee would now address the question of whether to adopt Amendment 3a.

REPRESENTATIVE GARA said he thinks that by adopting the language currently in proposed AS 39.52.352, it will mean that a complainant, even one who is a member of the public, will be subject to the penalties provided for in AS 39.52.410 - 39.52.440 even though those sections of statute currently refer to public officers.

REPRESENTATIVE GRUENBERG, referring to language in AS 39.52.440 [text provided previously], opined that the bill should clarify the issue of whether the intent in adopting proposed AS 39.52.352 is to expand AS 39.52.440 to include non public officers.

SENATOR SEEKINS offered his belief that such clarification won't be necessary.

REPRESENTATIVE GRUENBERG disagreed, pointing out that the language of proposed AS 39.52.352 says that the board may recommend sanctions under AS 39.52.410 - 39.52.440, and does not specify that it would be only for public officers. He again suggested that this issue should be clarified.

CHAIR McGUIRE expressed her belief that a solution to this issue could be arrived at quickly. She suggested that when the House State Affairs Standing Committee deleted the board's ability to impose a fine on members of the public, it merely neglected to make a conforming amendment to the board's ability to recommend sanctions against members of the public. She remarked, however that she is not sure that such should be done; they may still want to leave in the board's ability recommend sanctions, even against members of the public.

SENATOR SEEKINS suggested that if there isn't going to be a meaningful penalty for breaking the law, then all provisions regarding confidentiality should be removed.

REPRESENTATIVE GARA said that if everyone thinks that [the board's ability to recommend sanctions] only applies to public employees, then that should be clarified by inserting language to that effect.

CHAIR McGUIRE said she wants the law to apply to everybody notwithstanding the fact that the penalty is disparate; "I have [a] problem with ... [imposing a] penalty [on] a private citizen bringing [a complaint] ..., but I want ... [people] to know that when they file these complaints, it is serious."

REPRESENTATIVE GARA suggested making it clear that [this provision] does apply to private citizens. He elaborated:

> Let's say that if you make the factual allegation and it's false, whether you're a public employee or a citizen, the penalties apply to you. So let's make both of those changes. Let's say ... that it applies to private and public people, but just for the ... intentionally false statement.

12:27:52 PM

REPRESENTATIVE COGHILL said he has a problem with allowing public officials to violate the public trust without a penalty.

REPRESENTATIVE GARA clarified that he is suggesting that they alter the bill such that it is clear that the sanctions for intentionally making a false statement would apply to both public and private [individuals]. He indicated that he would still like to remove the language pertaining to reckless disregard.

REPRESENTATIVE COGHILL pointed out that that language refers to a reckless disregard for the truth, not just to a reckless statement.

REPRESENTATIVE GRUENBERG posited there are two questions to be addressed - who "it" applies to, and what the standard is - and Amendment 3a pertains to the standard. Surmising that everyone agrees that they don't want people lying and that there shouldn't be a penalty pertaining to whether one reasonably believes something constitutes a violation, he suggested that the first question to be address is, "Do we want to potentially punish somebody who does this recklessly."

CHAIR McGUIRE concurred.

SENATOR SEEKINS mentioned that he'd attempted to use the same standard that's used regarding filing a false police report.

12:31:54 PM

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

12:32:32 PM

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

Page 7, line 1 through Page 8, line 4:
Delete all new language.

REPRESENTATIVE GARA noted that the language [Conceptual] Amendment 4 proposes to delete is that which precludes a complainant from discussing the complaint until he/she receives permission from the personnel board.

REPRESENTATIVE ANDERSON objected, suggesting that maintaining someone's reputation until there is proof of wrongdoing should take precedence.

12:33:52 PM

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Conceptual Amendment 4. Representatives

McGuire, Coghill, Wilson, and Anderson voted against it. Therefore, Conceptual Amendment 4 failed by a vote of 2-4.

12:34:21 PM

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

Page 6, lines 7-9:
Reinsert existing statute language:
"or superior court makes the matter public under (h) of this section."

Page 6, line 13:
Delete "The report is confidential".

Page 6, lines 13-17:
Reinsert existing statute language:
"If the matter is confidential and the board determines that publication of the name of the subject is in the public interest, the report may include a recommendation that the matter be made public."

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GARA explained that Amendment 5 would reinsert language in existing statute that allows the [Alaska] Superior Court to make a matter public; would delete the language which specifies that the report issued by the personnel board on the disposition of a complaint is confidential; [and would reinsert language in existing statute allowing the board to make recommendations that certain information be made public].

SENATOR SEEKINS remarked, "This is a personnel-file issue." He indicated that [he doesn't have] any objections to the findings of the personnel board being made public, but he would not want a subject's financial and personnel file information made public before there is a finding of probable cause.

REPRESENTATIVE ANDERSON said he would be maintaining his objection to Amendment 5.

REPRESENTATIVE GRUENBERG, referring to the language in existing statute that allows the [Alaska] Superior Court to make a matter public, remarked that there might be a reason for someone to go to the Alaska Superior Court and ask a judge to review a matter

in camera and perhaps redact or black out a portion of certain documents, and then, under judicial scrutiny, make at least part of the matter public; thus he could see merit for reinserting the language authorizing that sort of judicial discretion. With regard to whether to delete the language which specifies that the report issued by the personnel board on the disposition of a complaint is confidential, he indicated that he would like to keep that language in the bill. With regard to language in existing statute that gives the board the ability to make recommendations that certain information be made public, he said he thinks the board should have the discretion to do that.

REPRESENTATIVE GRUENBERG made a motion to divide Amendment 5 into two parts: Amendment 5a pertaining to the first and third provisions of Amendment 5 - which propose to alter page 6, lines 7-9, and page 6, lines 13-17 of the bill; and Amendment 5b pertaining to the second provision of Amendment 5 - which proposes to alter page 6, line 13 of the bill. There being no objection, Amendment 5 was divided into Amendment 5a and Amendment 5b.

CHAIR McGUIRE asked members to consider the question of whether to adopt Amendment 5a.

12:39:28 PM

REPRESENTATIVE ANDERSON objected to Amendment 5a.

REPRESENTATIVE GARA offered his understanding that the provisions being altered by Amendment 5a and Amendment 5b pertain to the whole subject of an ethics complaint, not just personnel files. He indicated that he would be amenable to changing the bill so that personnel files are kept confidential.

CHAIR McGUIRE surmised that items would be kept confidential when a finding of innocence is made.

SENATOR SEEKINS said yes, adding that if there is a finding of probable cause, the whole matter becomes public.

CHAIR McGUIRE surmised, then, that the question is whether items will be kept confidential until there is a finding of probable cause.

SENATOR SEEKINS concurred.

12:40:54 PM

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 5a. Representatives Coghill, Wilson, McGuire, and Anderson voted against it. Therefore, Amendment 5a failed by a vote of 2-4.

REPRESENTATIVE GARA made a motion to adopt Amendment 5b. He said the way he is reading the language currently proposed in the bill, the report of the findings will be confidential even if there is a finding of probable cause.

SENATOR SEEKINS said the intent is to ensure that once there is a finding of probable cause, everything will become public, and that prior to that, everything will remain confidential. He suggested that a conceptual amendment might be in order.

CHAIR McGUIRE indicated that she would be voting against Amendment 5b, but would be amenable to a conceptual amendment conforming with the sponsor's intent.

REPRESENTATIVE GARA withdrew Amendment 5b. He indicated that he might bring forth amendments to SB 186 on the House floor.

12:43:11 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 5c, "at page 6, line 13, we state, 'The report is confidential', and add the words, 'until a finding of probable cause'."

SENATOR SEEKINS indicated that he was amenable to such a change.

CHAIR McGUIRE remarked, "We want it to be clear that it's confidential up until that point of [a] probable cause finding; after that, all bets are off."

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He asked what will happen if there is a finding of "no probable cause."

CHAIR McGUIRE and REPRESENTATIVE ANDERSON said the report will remain confidential.

REPRESENTATIVE GRUENBERG suggested, however, that one who is exonerated ought to be able to seek a method of publicizing "that."

CHAIR McGUIRE offered her understanding that the language being altered via Conceptual Amendment 5c pertains to the personnel board, whereas the subject of the complaint is free to disclose whatever information he/she wishes.

REPRESENTATIVE GRUENBERG said he wants the law to be clear on that point.

SENATOR SEEKINS, in response to a question, concurred that the subject of a complaint can make public whatever he/she so chooses.

REPRESENTATIVE GRUENBERG asked whether that is specified, either in the bill or elsewhere in statute.

SENATOR SEEKINS directed members' attention to page 7, [lines 19-23], which read:

> **(3) the complaint document and each related record are confidential and are not available for public inspection unless**
> **(A) the personnel board makes a finding of probable cause; or**
> **(B) the subject of the complaint waives confidentiality;**

REPRESENTATIVE GRUENBERG removed his objection to Conceptual Amendment 5c. He then referred to existing statutory language regarding the Alaska Superior Court.

12:46:27 PM

SENATOR SEEKINS suggested that that language allowed the court to research a matter to determine whether any information should be made public.

CHAIR McGUIRE pointed out that the bill does not affect other laws regarding access to public information.

REPRESENTATIVE GRUENBERG offered his belief that the language in the bill would trump "the open records law" because it is specific. He then surmised that the language that Amendment 5a would have reinserted provided the press with the ability to petition the court and the personnel board to make certain matters public; without that language the press will be precluded from doing so.

CHAIR McGUIRE characterized that summation as "a stretch." She offered her belief that the policy the committee is adopting is that people who are accused of ethics violations are presumed innocent, and that up until a finding of probable cause is made, items will remain confidential. She opined that this policy will give meaning to the ethics [complaint] process, and is not meant to thwart access or shield bad behavior.

12:49:29 PM

CHAIR McGUIRE asked whether there were any further objections to Conceptual Amendment 5c. There being none, Conceptual Amendment 5c was adopted.

12:49:45 PM

CHAIR McGUIRE referred to [another proposed amendment].

REPRESENTATIVE GARA referred to the issue of "legislative ethics," and, remarking on the shortness of time, said he might offer the proposed amendment on the House floor; that proposed amendment read [original punctuation provided]:

> Insert new bill sections to read:
>
> *** Section __.** AS 24.60.200(a) is amended to read:
>
> (a) A legislator, a public member of the committee, and a legislative director shall file a disclosure statement, under oath and on penalty of perjury, with the Alaska Public Offices Commission giving the following information about the income received by the discloser, the discloser's spouse or domestic partner, the discloser's dependent children, and the discloser's nondependent children who are living with the discloser:
>
> (1) the information that a public official is required to report under AS 39.50.030, other than information about gifts;
>
> (2) as to income in excess of $5,000 received as compensation for personal services, the name and address of the source of the income, and a statement describing **in detail** the nature of the services performed **and the approximate number of hours that have been or will be spent performing the services**; if the source of income is known or reasonably should be known to have a substantial interest in legislative, administrative, or political

action and the recipient of the income is a legislator or a legislative director, the amount of income received from the source shall be disclosed;

(3) as to each loan or loan guarantee over $1,000 from a source with a substantial interest in legislative, administrative, or political action, the name and address of the person making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a written loan agreement exists.

*** Sec.** __. This Act takes effect July 1, 2006.

Amend title as necessary.

CHAIR McGUIRE noted that that proposed amendment could also be considered when SB 187 comes before the committee.

REPRESENTATIVE GARA remarked that if it looks like SB 186 is the only one of those two bills that will make it to the House floor, he may offer that proposed amendment there. "The whole point is, I think we should probably change the legislative ethics law to say that if you do consulting work, you should state what it was so that we know you're not getting $60,000 for just being on retainer," he added.

12:50:45 PM

REPRESENTATIVE COGHILL moved to report HCS CSSB 186(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 186(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 12:51 p.m.