ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 19, 2006
1:12 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE CONCURRENT RESOLUTION NO. 4
Encouraging the establishment of a methamphetamine watch program.

- MOVED CSHCR 4(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 502
"An Act amending the Alaska Stranded Gas Development Act to eliminate the opportunity for judicial review of the findings and determination of the commissioner of revenue on which are based legislative review for a proposed contract for payments in lieu of taxes and for the other purposes described in that Act; and providing for an effective date."

- HEARD AND HELD

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

- MOVED HCS CSSB 20(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 261(FIN)
"An Act relating to the designation of traffic safety corridors; relating to the bail or fine for an offense committed in a traffic safety corridor and to separately accounting for such fines; and providing for an effective date."

- HEARD BUT NOT SCHEDULED

HOUSE BILL NO. 240
"An Act relating to brewery and brew pub licensing."

- MOVED CSHB 240(JUD) OUT OF COMMITTEE

SENATE BILL NO. 273
"An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

- BILL HEARING POSTPONED TO 4/21/06

PREVIOUS COMMITTEE ACTION

BILL: HCR 4
SHORT TITLE: METH WATCH PROGRAM
SPONSOR(S): REPRESENTATIVE(S) RAMRAS

03/04/05	(H)	READ THE FIRST TIME - REFERRALS
03/04/05	(H)	STA, JUD
03/15/05	(H)	STA AT 8:00 AM CAPITOL 106
03/15/05	(H)	Moved Out of Committee
03/15/05	(H)	MINUTE(STA)
03/16/05	(H)	STA RPT 7DP
03/16/05	(H)	DP: GARDNER, LYNN, GATTO, GRUENBERG, RAMRAS, ELKINS, SEATON
04/19/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 502
SHORT TITLE: COURT REVIEW OF STRANDED GAS DECISION
SPONSOR(S): JUDICIARY

04/18/06	(H)	READ THE FIRST TIME - REFERRALS
04/18/06	(H)	JUD
04/19/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 20
SHORT TITLE: OFFENSES AGAINST UNBORN CHILDREN
SPONSOR(S): SENATOR(S) DYSON

01/11/05	(S)	PREFILE RELEASED 12/30/04
01/11/05	(S)	READ THE FIRST TIME - REFERRALS
01/11/05	(S)	STA, JUD
03/01/05	(S)	STA AT 3:30 PM BELTZ 211

03/01/05	(S)	Heard & Held
03/01/05	(S)	MINUTE(STA)
03/15/05	(S)	STA AT 3:30 PM BELTZ 211
03/15/05	(S)	Moved CSSB 20(STA) Out of Committee
03/15/05	(S)	MINUTE(STA)
03/16/05	(S)	STA RPT CS 4AM 1NR SAME TITLE
03/16/05	(S)	AM: THERRIAULT, ELTON, WAGONER, HUGGINS
03/16/05	(S)	NR: DAVIS
03/16/05	(S)	FIN REFERRAL ADDED AFTER JUD
03/31/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/31/05	(S)	Scheduled But Not Heard
04/04/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/04/05	(S)	Heard & Held
04/04/05	(S)	MINUTE(JUD)
04/12/05	(H)	JUD AT 8:00 AM CAPITOL 120
04/12/05	(S)	Heard & Held
04/12/05	(S)	MINUTE(JUD)
04/19/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/19/05	(S)	Moved CSSB 20(JUD) Out of Committee
04/19/05	(S)	MINUTE(JUD)
04/19/05	(S)	JUD RPT CS FORTHCOMING 3DP 1NR
04/19/05	(S)	DP: SEEKINS, THERRIAULT, HUGGINS
04/19/05	(S)	NR: GUESS
04/20/05	(S)	RETURNED TO JUD COMMITTEE
04/21/05	(S)	JUD CS RECEIVED SAME TITLE
04/26/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/26/05	(S)	Moved CSSB 20(2nd JUD) Out of Committee
04/26/05	(S)	MINUTE(JUD)
04/27/05	(S)	JUD RPT CS(2D JUD) 3DP 2AM SAME TITLE
04/27/05	(S)	DP: SEEKINS, THERRIAULT, HUGGINS
04/27/05	(S)	AM: FRENCH, GUESS
04/27/05	(S)	FIN REFERRAL ADDED AFTER JUD
04/28/05	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/28/05	(S)	Moved CSSB 20(JUD) Out of Committee
04/28/05	(S)	MINUTE(FIN)
04/29/05	(S)	FIN RPT CS(JUD) 2DP 3NR
04/29/05	(S)	DP: GREEN, DYSON
04/29/05	(S)	NR: WILKEN, HOFFMAN, OLSON
05/01/05	(S)	JUD CS ADOPTED Y11 N5 E3 A1
05/03/05	(S)	TRANSMITTED TO (H)
05/03/05	(S)	VERSION: CSSB 20(JUD)
05/04/05	(H)	READ THE FIRST TIME - REFERRALS
05/04/05	(H)	JUD, FIN
05/05/05	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/05	(H)	Scheduled But Not Heard
05/07/05	(H)	JUD AT 3:30 PM CAPITOL 120
05/07/05	(H)	Meeting Postponed to 5/8/05

05/08/05	(H)	JUD AT 12:00 AM CAPITOL 120
05/08/05	(H)	Meeting Postponed
05/09/05	(H)	JUD AT 0:00 AM CAPITOL 120
05/09/05	(H)	<Bill Hearing Canceled>
02/15/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/15/06	(H)	Heard & Held
02/15/06	(H)	MINUTE(JUD)
02/22/06	(H)	JUD AT 2:30 PM CAPITOL 120
02/22/06	(H)	<Bill Hearing Postponed to 2/23/06>
02/23/06	(H)	JUD AT 10:00 AM CAPITOL 120
02/23/06	(H)	Scheduled But Not Heard
03/15/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/15/06	(H)	-- Meeting Canceled --
03/20/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/20/06	(H)	-- Meeting Canceled --
03/22/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/22/06	(H)	Heard & Held
03/22/06	(H)	MINUTE(JUD)
03/24/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/06	(H)	Tabled
03/24/06	(H)	MINUTE(JUD)
04/19/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 261
SHORT TITLE: REGULATION OF HWYS; TRAFFIC OFFENSES
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/01/06	(S)	READ THE FIRST TIME - REFERRALS
02/01/06	(S)	TRA, FIN
02/09/06	(S)	TRA AT 1:30 PM BUTROVICH 205
02/09/06	(S)	Heard & Held
02/09/06	(S)	MINUTE(TRA)
03/09/06	(S)	TRA AT 1:30 PM BUTROVICH 205
03/09/06	(S)	Moved CSSB 261(TRA) Out of Committee
03/09/06	(S)	MINUTE(TRA)
03/15/06	(S)	TRA RPT CS 3DP SAME TITLE
03/15/06	(S)	DP: HUGGINS, FRENCH, KOOKESH
03/21/06	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/21/06	(S)	Moved CSSB 261(FIN) Out of Committee
03/21/06	(S)	MINUTE(FIN)
03/22/06	(S)	FIN RPT CS 5DP 1NR SAME TITLE
03/22/06	(S)	DP: WILKEN, GREEN, BUNDE, DYSON, STEDMAN
03/22/06	(S)	NR: OLSON
04/05/06	(S)	TRANSMITTED TO (H)
04/05/06	(S)	VERSION: CSSB 261(FIN)
04/06/06	(H)	READ THE FIRST TIME - REFERRALS

04/06/06	(H)	JUD, FIN
04/12/06	(H)	JUD AT 1:00 PM CAPITOL 120
04/12/06	(H)	Moved HCS CSSB 261(JUD) Out of Committee
04/12/06	(H)	MINUTE(JUD)
04/18/06	(H)	JUD RPT HCS(JUD) NT 5DP 2NR
04/18/06	(H)	DP: ANDERSON, WILSON, KOTT, GRUENBERG, MCGUIRE;
04/18/06	(H)	NR: GARA, COGHILL

BILL: HB 240
SHORT TITLE: BREWERY & BREWPUB LICENSES
SPONSOR(S): JUDICIARY

03/30/05	(H)	READ THE FIRST TIME - REFERRALS
03/30/05	(H)	L&C, JUD
04/06/05	(H)	L&C AT 3:15 PM CAPITOL 17
04/06/05	(H)	<Bill Hearing Postponed>
03/22/06	(H)	L&C AT 3:15 PM CAPITOL 17
03/22/06	(H)	<Bill Hearing Postponed>
03/29/06	(H)	L&C AT 3:15 PM CAPITOL 17
03/29/06	(H)	Heard & Held
03/29/06	(H)	MINUTE(L&C)
04/12/06	(H)	L&C AT 3:15 PM CAPITOL 17
04/12/06	(H)	Moved CSHB 240(L&C) Out of Committee
04/12/06	(H)	MINUTE(L&C)
04/18/06	(H)	L&C RPT CS(L&C) 5DP 1AM
04/18/06	(H)	DP: CRAWFORD, LYNN, KOTT, GUTTENBERG, ANDERSON;
04/18/06	(H)	AM: LEDOUX
04/19/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HCR 4.

JANE PIERSON, Staff
to Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HCR 4 on behalf of the sponsor, Representative Ramras.

STEVEN B. PORTER, Deputy Commissioner

Office of the Commissioner
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: Relayed that the administration supports HB 502, and responded to questions.

LARRY OSTROVSKY, Chief Assistant Attorney General - Statewide Section Supervisor
Oil, Gas & Mining Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Presented HB 502 on behalf of the sponsor, the House Judiciary Standing Committee, and responded to questions.

JIM SYKES
(Address not provided)
POSITION STATEMENT: Testified in opposition to HB 502.

MARK MYERS
(Address not provided)
POSITION STATEMENT: Provided comments and responded to questions.

CRAIG JOHNSON, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 240 on behalf of the sponsor, the House Judiciary Standing Committee.

CHUCK EDWARDS, Chair
Government Affairs
Anchorage Cabaret, Hotel, Restaurant, & Retailers Association (CHARR)
Anchorage, Alaska
POSITION STATEMENT: During the hearing on HB 240, answered questions.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:12:58 PM. Representatives McGuire, Anderson, Wilson, Coghill, Gruenberg, and Gara were present at the call to order. Representative Kott arrived as the meeting was in progress.

HCR 4 - METH WATCH PROGRAM

1:13:04 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 4, Encouraging the establishment of a methamphetamine watch program. [In committee packets was a proposed committee substitute (CS) for HCR 4, Version 24-LS0693\G, Kurtz/Luckhaupt, 4/13/06.]

1:13:13 PM

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, opined that a methamphetamine watch program, which is encouraged by HCR 4, is an excellent step because preventative maintenance is better than criminal proceedings.

1:13:55 PM

JANE PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, on behalf of Representative Ramras, paraphrased from the following written sponsor statement [original punctuation provided]:

> Throughout the past decade there have been a number of public awareness programs, which have educated communities about the dangers of alcohol and drugs. Meth Watch is a voluntary program started in Kansas as a public/private partnership in 2001. Meth Watch educates communities about the perils of methamphetamine. Today, twelve states have implemented a Meth Watch program. Although a relatively new campaign, since its implementation, states have reported reductions in the number of methamphetamine laboratories, and have seen a unification of grant programs that fund the education of communities; particularly parents, teachers, and others that work with youth.
>
> The Meth Watch program engages retailers, law enforcement officials, schools, state and local agencies, and other key partners in reducing the diversion of precursor products for the manufacturing of methamphetamine, and increasing awareness about methamphetamine's dangers. The program is also

instrumental in educating students and teachers in our schools and communities.

House Concurrent Resolution No. 4 urges that the Meth Watch program be implemented in the State of Alaska, by applying for available grants, and encouraging and assisting communities to apply for funding from both government and private sources.

MS. PIERSON characterized the "meth watch" program as a win-win program. She noted that although there has been across-the-state interest in implementing the program, someone must still be willing to champion it. Originally, the Department of Health and Social Services was asked to be the point person, but it seems that it would be best to have a private organization take the lead.

1:15:49 PM

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HCR 4, Version 24-LS0693\G, Kurtz/Luckhaupt, 4/13/06, as the work draft. There being no objection, Version G was before the committee.

CHAIR McGUIRE, upon determining that no one else wished to testify, closed public testimony on HCR 4.

1:16:06 PM

REPRESENTATIVE GRUENBERG moved to report the proposed CS for HCR 4, Version 24-LS0693\G, Kurtz/Luckhaupt, 4/13/06, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHCR 4(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:16 p.m. to 1:17 p.m.

HB 502 - COURT REVIEW OF STRANDED GAS DECISION

1:17:12 PM

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 502, "An Act amending the Alaska Stranded Gas Development Act to eliminate the opportunity for judicial review of the findings and determination of the commissioner of revenue on which are based legislative review for a proposed contract

for payments in lieu of taxes and for the other purposes described in that Act; and providing for an effective date."

1:17:56 PM

STEVEN B. PORTER, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), relayed that the administration supports HB 502, and that the DOR has submitted a zero fiscal note because it feels that the bill simply provides clarification regarding the DOR's responsibilities as they relate to the Alaska Stranded Gas Development Act.

1:18:36 PM

LARRY OSTROVSKY, Chief Assistant Attorney General - Statewide Section Supervisor, Oil, Gas & Mining Section, Civil Division (Anchorage), Department of Law (DOL), indicated that he would be presenting the bill on behalf of the sponsor, the House Judiciary Standing Committee.

REPRESENTATIVE GARA opined that the fiscal note should at best be indeterminate because, by losing the right to appeal, the public may lose the right to find that a part of the contract is costing the state billions of dollars [in revenue]. To call it a zero fiscal note is quite inaccurate, he added, because [adoption of HB 502] might end up costing the state a lot.

MR. OSTROVSKY offered his understanding that during the legislative process in 1998, the legislation that became the Alaska Stranded Gas Development Act - House Bill 393 - was amended such that the legislature was provided with the final authority to determine whether a contract can be executed. Originally House Bill 393 provided the commissioner of the Department of Revenue with the authority to execute a contract if he/she determined that it was in the "long term fiscal interests of the state," and that that decision would be a final agency decision, which are normally subject to administrative appeal. Amended versions of House Bill 393 provided the legislature with more authority regarding a contract; that language says:

> The governor may transmit a contract developed under this chapter to the legislature together with a request for authorization to execute the contract. A contract developed under this chapter is not binding upon or enforceable against the state or other parties to the contract unless the governor is authorized to

execute the contract by law. The state and the other parties to the contract may execute the contract within 60 days after the effective date of the law authorizing the contract.

MR. OSTROVSKY said that in the administration's view, this language allows a premature challenge because the contract cannot be executed until the legislature authorizes it. He characterized this language as unusual because by and large in all other statutes, once certain findings have been made, commissioners are granted the authority to take an action.

MR. OSTROVSKY ventured that everyone would agree that it's appropriate that there be judicial review if there is a finding that allows a commissioner to take an action. In the original version of House Bill 393, it made sense that the commissioner's decision would give rise to the right to appeal, because there'd be no step in between the commissioner's decision and the execution of a contract. But in the amended version of House Bill 393, and under current law, the fiscal interest finding itself doesn't enable either the commissioner or the governor to take an action on the contract; instead, the legislature has to authorize the contract, and therefore people have recourse via the legislature if they feel that the contract isn't any good, or that there isn't sufficient factual basis, or that the commissioner's analysis is faulty.

MR. OSTROVSKY said that although [the language of current law] does remove an intermediate judicial review, it replaces it with an intermediate legislative review.

1:24:13 PM

REPRESENTATIVE GARA pointed out, though, that although the phrase, "intermediate judicial review" implies that there is judicial review later on, HB 502 [appears] to get rid of all judicial review.

MR. OSTROVSKY offered his belief that "there is judicial review under the [Alaska Stranded Gas Development Act]; within 120 days of the contract, one can challenge its constitutionality. Furthermore one can always challenge the constitutionality of a statute.

REPRESENTATIVE GARA offered his understanding, however, that currently, judicial review is available to determine whether the contract is in the state's best interest [and whether or not we

gave away the farm," and yet that provision will be removed and there will be no other judicial review if HB 502 passes.

MR. OSTROVSKY posited that there will be a different kind of judicial review. [Under HB 502], when the legislature goes through its authorization process, there will be additional facts developed, and so the court won't necessarily look at only the commissioner's recommendations in isolation but may instead also look at the entire record, depending on the nature of the challenge.

1:27:01 PM

REPRESENTATIVE GARA asked whether under the bill, on the question of whether a contract is in the state's best interest and gets "us" the best deal possible, someone will still be able to go to court and challenge the best interest finding.

MR. OSTROVSKY said, "I believe not." He added:

> I think the purpose of the [bill] ..., and [under] the language of the [bill], it will be very difficult for somebody to come in, after a commissioner's determination, and challenge that determination [by saying], "Well, they didn't have a reasonable basis for it; you can't advance it to the legislature," because this [bill] says that decision is not subject to review, stay, or injunction by the court.

REPRESENTATIVE GRUENBERG, after reading portions of existing AS 43.82.430, offered his understanding that the language currently in AS 43.82.430(b) won't be affected by the language in proposed AS 43.82.430(c) of HB 502. Furthermore, he noted, existing AS 43.82.440 states:

> **Sec. 43.82.440. Judicial review**. A person may not bring an action challenging the constitutionality of a law authorizing a contract enacted under AS 43.82.435 or the enforceability of a contract executed under a law authorizing a contract enacted under AS 43.82.435 unless the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract.

REPRESENTATIVE GRUENBERG pointed out that that statute of limitation and ability to seek judicial review of the contract

itself - after ratification by the legislature - won't be affected by HB 502 either.

MR. OSTROVSKY acknowledged that perhaps [AS 43.82.430] could be interpreted to mean that the commissioner's determination of the long-term fiscal interests of the state is not subject to judicial review but the final finding and determination that the contract is consistent with the statute is.

REPRESENTATIVE GRUENBERG predicted that such language will engender litigation. He suggested that they should make sure that the language is written correctly as a whole; in other words, they should draft the language so that there is no question of the intent - once that intent is decided upon.

1:33:50 PM

MR. OSTROVSKY suggested changing proposed AS 43.82.430(c) such that it applies to both (a) and (b) of AS 43.82.430.

REPRESENTATIVE GRUENBERG suggested adding to AS 43.82.430(c) a reference to AS 43.82.440 as well; "it seems to me that you might want to put everything involving judicial review in one statute, and make sure that there is no way they can't be read congruently."

MR. OSTROVSKY said that as a general rule, courts prefer to take up final decisions. Otherwise, for example, in a situation involving the Alaska Stranded Gas Development Act, if someone challenges the fiscal interest finding, it might not yet be known how the legislature will ultimately deal with the contract; conversely, if the legislature authorizes a contract, it will be after considerable testimony and deliberation, and thus the facts and circumstances surrounding a contract will be more developed than before the commissioner makes his/her decision.

MR. OSTROVSKY suggested that if someone were to challenge a commissioner's decision on the basis that the economic analysis that formed the commissioner's decision was faulty, it could well be that ultimately the legislature would come to that same conclusion. Under the change proposed by HB 502, the court, in such a situation, will look at the whole record; whereas if the court were to look only at the commissioner's determination, it would not have the benefit of being able to look at any additional work that the legislature could chose to undertake. House Bill 502 merely takes away the step that allows for

judicial review in the middle of the process, he remarked, and puts in a step, that is not normally there, allowing for legislative review. The [administration] would prefer that any judicial review take place after the process is completed rather than in the middle of it.

REPRESENTATIVE GARA offered his understanding that under HB 502, no one will be able challenge the best interest finding.

MR. OSTROVSKY concurred. Without the adoption of HB 502, the court could find itself inserted into the relationship between the executive branch and the legislature, whereas normally one can't challenge either the administration or the legislature for proposing something. Under current law, when the legislature reserved the power to authorize a contract under the Alaska Stranded Gas Development Act, this normal relationship was changed; essentially, the administration is simply submitting a recommendation to the legislature not much different than submitting proposed legislation, and so without the adoption of HB 502, a person would be allowed to come in and stop the process.

CHAIR McGUIRE said she believes that it is in the best interest of the people of Alaska to have the issue before [the legislature] to decide. In the end, the legislature may not approve a particular contract; it may decide, for various reasons, that it wants to challenge different parts [of a contract]. But if the process includes the possibility that an injunction can be filed, then it can become difficult for the legislature to decide when and how to deal with the contract. She opined that there is role for the judicial branch, but that it should be at a different point in time - at the end. Furthermore, the legislative should also play a role, she remarked, surmising that the legislature, back in 1998, felt the same way and so interjected itself into the process via the changes it made to House Bill 393. She offered her hope that legislators will listen to the electorate and then take actions that reflect its wishes.

1:42:10 PM

REPRESENTATIVE GRUENBERG mentioned that perhaps Section 1 of the bill is unnecessary. With regard to Section 2 of HB 502, he suggested that perhaps they could change it such that it simply says that except for a constitutional challenge, "this" process isn't ripe for review "until it's over." In response to comments and a question, he remarked on the concept of judicial

economy; because things can change, courts don't normally get involved until the process is complete - this is a very well established legal principle as well as sound public policy. If faced with a challenge before the process is complete, one ought to be able to ask the court for a stay on the basis that the situation is not ripe for review.

MR. OSTROVSKY concurred.

CHAIR McGUIRE pointed out, though, that in including itself as a real player in the process, the legislature neglected to state how it felt about judicial review of a final finding. She posited that changing the current language as HB 502 proposes to do is a way for the legislature to say, "These are recommendations; these are not a final finding; and we want the legislative process to take its normal course, to not have the court intervene."

1:46:21 PM

REPRESENTATIVE GRUENBERG suggested simply changing the bill to say that "the process" should not be considered a final decision and ripe for review until after the legislature has approved it.

MR. OSTROVSKY said that captures the intention and is consistent.

CHAIR McGUIRE relayed that they would hold the bill over so as to provide members with more time to consider some of the issues raised.

REPRESENTATIVE GRUENBERG suggested that interested parties meet with him before the bill is heard next for the purpose of developing alternative language.

AN UNIDENTIFIED SPEAKER indicated that the administration's representatives would make themselves available.

REPRESENTATIVE GARA said his question is whether, under the bill, one would be able to challenge whether a contract is in best interests of the state even at the end of the process. Having judicial review at the end of the process would be fine, he remarked, but he wants to ensure that people aren't precluded altogether from challenges regarding the best interest findings.

REPRESENTATIVE COGHILL questioned whether they really want a challenge regarding the best interest findings to occur after

both the administration and the legislature have acted - perhaps such a challenge should be precluded altogether.

MR. OSTROVSKY, in response to a question, said:

> The legislature has powers to determine what's in the best interest of the state, [though] it can't perform unconstitutional acts. And a commissioner is sometimes empowered by [the] legislature ... to make a best interest finding, and a court will review it under [the] standards of review that it's articulated. It's different, however, [if] ... the legislature determines something's in the best interest of the state before it takes an action. ... In a sense, it's really implicit in all legislative actions - everything the legislature does is because, as a collective body, it believes it's in the best interest of the state. And that's normally not a basis for challenge of legislative action.
>
> So I think Representative Gara is correct that if the commissioner makes a determination [and] then the legislature looks at [it] ... - and does whatever it's going to do with the contract ... - and makes a determination to pass that contract, that there's probably not a viable claim that it's not in the best interest of the state, because the legislature is the ultimate determiner of what's in the best interests of the state. However, somebody might claim, for example, that notwithstanding that legislature, you can't have a tax contract or the contract violates another constitutional provision.
>
> So, in my opinion, there wouldn't be a basis for a challenge [of] either the commissioner's finding or ... the best interest [finding] because that's what the legislature will determine, and the court would look at the whole record. And the courts generally ... won't second-guess that because that is the essential legislative function. ...

CHAIR McGUIRE suggested that in addition to a "process problem," there is also the fundamental policy question of what the appropriate role of the legislature is and what did it intend when it amended the Alaska Stranded Gas Development Act to include legislative authorization. She offered her belief that the legislature intended to insert itself in the process so as

to be in the position of making the best interest finding, because, as representatives of the people of the state, legislators were better suited than the courts for that task. She characterized HB 502 as providing clean up language in the sense that no one understood at the time that the judicial branch was being left in along side of the legislature - seemingly to duplicate the process that the legislature [and administration were] supposed to be doing; HB 502 is merely further effectuating the legislature's intent in included the provision regarding legislative authorization. She stated that she would not support a proposal that authorizes the court to duplicate all the work done by the legislature, or one that would allow a person to challenge the legislature's decision-making; such a proposal would raise constitutional separation of powers issues for her.

1:56:26 PM

REPRESENTATIVE GARA opined that the real issue pertains to the legislature and public's access to information. Currently, if someone challenges the best interest findings, he/she would be entitled to all the documents relevant to whether a contract is in the best interest of the state. He offered an example of documentation that might prove that the state didn't need to offer a particular concession to the oil companies. If the legislature gets rid of the right to challenge the contract on the basis of best interest, then what right will anyone - public member or legislator - have to the necessary documentation? He noted that some limitations regarding access to documentation already exist under AS 43.82.310(e), and indicated that these limitations illustrate the legislature's importance in its current roll under the Alaska Stranded Gas Development Act. Currently under HB 502, he opined, the public will lose the right to access important documents, documents that will prove whether a contract is fair. He said that he wants this issue addressed such that a person will have the right to look at documents regardless of whether the administration approves such disclosure.

MR. PORTER said, "It is our intent to provide a full and complete record to assist both the legislature and the public to do the same evaluation that we did." In response to a question, he offered his belief that HB 502 already stipulates this.

REPRESENTATIVE GARA, in response to comments, offered his understanding that what Mr. Porter said was that the administration is going to provide documents that it believes

are relevant. Representative Gara indicated that his concern pertains to what happens if a person disagrees with the administration with regard to what documents really are relevant. He again offered his understanding that AS 43.82.310(e) says that it is the administration that gets to determine what documentation is relevant.

REPRESENTATIVE COGHILL expressed disagreement with that interpretation.

REPRESENTATIVE GARA argued that it is not correct to think that AS 43.82.310(e) would allow a legislator to get information directly. He mentioned that he would support a change that would allow a legislator to request information from the administration.

REPRESENTATIVE COGHILL asked for clarification regarding who is considered to be the applicant under AS 43.82.310.

MR. OSTROVSKY offered his belief that the first sentence of AS 43.82.310(e) ought to contain a comma between the words, "by" and "request" so that it is clear that a legislator may request information directly. Without that comma, the language does suggest that a legislator would need to go through the administration in order to request information.

2:06:17 PM

REPRESENTATIVE GRUENBERG concurred, but remarked that if that comma were to be inserted it would constitute a very substantive amendment.

REPRESENTATIVE GARA expressed concern that even if that problem is fixed and it is clear that a legislator can request documents, they must be provided in a timely fashion - as in, "immediately" - and even then it will be hard to know exactly which documents to request.

CHAIR McGUIRE surmised that a legislator could craft a request that would be similar to a discovery order wherein it would apply to all documentation related to a particular subject, and then, if those documents aren't forthcoming, that in and of itself will create serious questions about the contract. She reiterated that HB 502 would be set aside in order to address members' concerns, and, in response to a comment, indicated that she would not be assigning the bill to a formal subcommittee.

REPRESENTATIVE GRUENBERG offered his understanding that a letter written by Jim Clark addresses AS 43.82.310(f), and that Representative Gara is suggesting that a lawsuit might be filed as a means of discovery to get documents. Representative Gruenberg then made remarks regarding the issue of privilege - specifically, executive privilege and deliberative privilege.

CHAIR McGUIRE mentioned that she would be keeping public testimony open on HB 502.

REPRESENTATIVE GARA said that at some point he would like the administration to describe what documents are available and how they can be obtained under current law as well as under the bill.

MR. PORTER agreed to provide that information.

2:13:29 PM

JIM SYKES said he opposes HB 502. He elaborated:

> There is a process that is established - I've been through it a number of times - where, if you don't like a decision [the Department of Natural Resources (DNR) comes out with, you can ask for reconsideration, you can appeal it, and you can appeal it to court. I think where you're going with this, in terms of trying to write the legislature [in] as the authority on this because you've had all these deliberations, I don't think that's likely to stand up under a separation of powers test. I don't know how many laws, but there have been perhaps hundreds of laws passed by the legislature that have been successfully challenged in the court system, and [just] because you have deliberated doesn't necessarily mean that you found all the wisdom that was there to be found before the law was passed and signed into law. And so I think it's very important to recognize the role of the judiciary, and it probably invites a separation of powers kind of test, then, in itself. So you may wish to consider that.
>
> In terms of the rest of the bill, even if a court were to consider what the legislature has done, the legislature has already been provided evidence, by it's own contractors, that plainly states that the [Alaska Stranded Gas Development Act] probably doesn't

apply. And so you've already got [that] legal question preceding all of what is taking place up until now. And so that's certainly a fair question for any court to consider as part of the record. ... As has been expressed in the past, I don't think that there [are] a lot of people out there just intending to scuttle the contract - I think the public gives the legislature a great deal of deference if they've done something, and gives them the benefit of the doubt. And so if you come up with something that's a decent contract, if you've thoroughly investigated the options and the alternatives and shown the public that you've really prepared what's available and made of that deal, I don't think there's going to be problem with it.

But this has the appearance to me of, is the legislature trying to create a greater role for itself in government than it deserves, and I don't think that's going to help the process of getting a gas contract. And so - as everybody knows, you have to choose your battles - I'd let this one go. ... I'll be happy to answer any questions if there are any.

2:16:17 PM

MARK MYERS said he would like to second some of Representative Gara's concerns regarding the ability of the legislature to get information. A third dynamic to also consider is ensuring that the public gets the information. Part of the finding process that has been so critical, particularly with regard to royalty oil sales, is that the public comments are meaningfully taken and received, and that the finding adequately addresses public concerns. Therefore, if the public doesn't have access to the data or if the public's concerns are not addressed in the finding and there is no legal recourse available to the public, it will have its ability to influence the process greatly diminished.

MR. MYERS said he understands the legislature's desire to be the final authority on the finding, but when one considers the magnitude of the finding and the issues, the legislature simply doesn't have the expertise, necessarily, to look at the finding in the time allotted. That's why public input becomes critically important, as does the administration's responsibility to answer questions in an unbiased manner and prove that the finding is in the state's interest. He mentioned

that a couple of key issues and concerns pertain to whether it can be demonstrated that the gas is actually stranded. If the administration, in its finding, chooses not to go into a quantitative or reasonable analysis of that issue, and the legislature doesn't [indisc] it, the public will never know whether that standard was met.

MR. MYERS pointed out that another major issue revolves around the question of whether the contract was legally negotiated, legally in the sense of occurring within the constraints placed on the administration by the Alaska Stranded Gas Development Act at that particular point in time. Again, this is information that the [public] needs to have and needs to be able to comment on, and those comments need to be meaningfully addressed. Furthermore, historically, if the state has made procedural errors in its process, the public "has a bite of that apple." And yet that [right] will be taken away via the adoption of HB 502.

MR. MYERS acknowledged that the legislature could make a de facto finding that every contract it approves is in fact in the state's interest, but in such instances, "the whole question of having a finding comes into question." He added:

> Our findings, historically, have been the public's vehicle, to comment on our major policy decisions; unless [there is] some sort of ability for the public, if they're unsatisfied, to get some review beyond the constitutional issues, I think we undermine a fair amount of public trust - we also don't place the administration in the position of having to write the very best finding.

MR. MYERS opined that some of the issues that should be thoroughly addressed and reviewed in the finding are things like whether the gas is in fact stranded; whether, compared to other available alternatives, [the contract] is in the interest of the state; and whether there is a quantitative comparison of alternatives. If those issues are not addressed in the finding, what is the public's recourse to obtain that information? Or should the public rely totally on the legislature's belief that those areas of concern have been satisfied?

2:20:15 PM

CHAIR McGUIRE asked Mr. Myers to comment on how he envisions the situation playing out if HB 502 is not adopted.

MR. MYERS said that one must first consider what the purpose of the finding is. He offered his belief that if the purpose of the finding is to provide a vehicle and justification for the contract, and the public has a role in that, then there simply must be a way for the public to challenge the decision-making process regarding major issues: major factual issues, omissions and errors, major procedural issues, and constitutional issues. If there is no way for the public to do that, the public will never have any faith or trust in the process. Should such challenges occur later in the process? Possibly. Public review during the best interest finding process has not only improved the administration's findings but has always been a critical element of public acceptance. If issues raised by the public during the process are not addressed by the administration, then the courts play a role.

MR. MYERS said that if the legislature chooses to step in and play the role [currently handled by the courts], then the legislature will have to really micromanage the finding and research whether the issues raised by the public really have been adequately addressed by the administration. [Under HB 502] the judicial system can't be used to ensure that the public's best interest is served. Somewhere in the process there has to be the ability to challenge the contract - on judicial issues, on procedural issues, and on constitutional issues - in order to build public confidence. Again, he remarked, the ability to challenge could occur later in the process and perhaps that makes more sense, but it should occur somewhere or else the public trust won't be gained.

MR. MYERS said:

> And I'll give you an example. [In] the shallow gas leasing program, we removed the finding process altogether, [and] the legislature made a determination that the shallow gas leases were in fact [in] the best interest of the state. That whole program blew up on us, and we ended up having to spend all that time with the legislature but also with [the Department of Natural Resources' (DNR's)] public process. The fundamental reason it blew up: there was no public input into a best interest finding process. So that to me was a living example, where fixing it after the fact took years and we still, probably, haven't totally regained public trust.

2:23:37 PM

CHAIR McGUIRE asked Mr. Myers to suggest a way to change the bill so that it provides the public with the assurance that the best interest finding was really made.

MR. MYERS suggested preserving the traditional checks and balances and allow the public - at that latter date - to address not only constitutional issues but also substantive issues and procedural errors. In other words, provide a demonstration that the statutory requirements have in fact been met. The legislature sets a policy by the way it writes a law and by the way it might amend the law before the process is done. Therefore, the legislature must make sure that the contract complies with the law, and the finding is the vehicle that pertains to substantive issues such as whether the gas is actually stranded. Though if that is not the goal, then the law should be dramatically changed such that it doesn't require a demonstration that the gas is stranded. Also, all other reasonable alternatives should be looked at, and a balancing test performed on them. He predicted that during any court review, the court will give the legislature a lot of discretion with regard to its determination.

MR. MYERS, in conclusion, said that the ability of the public to challenge the administration forces the administration to ensure that the finding is very, very good.

REPRESENTATIVE GARA asked how long the public has to look at a draft contract after it is released by the administration.

MR. OSTROVSKY and MR. PORTER said a minimum of 30 days.

REPRESENTATIVE GARA asked how they could ensure that the public gets access to the documentation it needs before running out of time to comment.

MR. MYERS offered that the logical time for the data to be released is at the same time that the preliminary best interest finding comes out. Usually the public comment period is long enough to sufficiently absorb the data and provide meaningful input; this should also gives the administration adequate time to adjust the final contract appropriate to the comments.

REPRESENTATIVE GARA asked how much time should be allowed in this case once the documents are made public.

MR. MYERS suggested a 90-day period at a minimum.

REPRESENTATIVE GARA asked Mr. Myers whether he would be amenable to a change that would provide for a 90-day public comment.

MR. MYERS acknowledged that delaying the legislative process could be problematic if the contract engenders early spurious lawsuits. He reiterated the need for the finding and its supporting documentation to be made available to the public at the same time.

2:31:02 PM

MR. MYERS, in response to a question, stressed the importance of building the public trust via allowing public input and of the administration's responsibility in addressing the public's comments. In the case of the proposed gas contract, however, it is going to be very difficult for the public to provide input without first seeing the economic and other analyses that the administration and its consultants have performed. Public confidence is built in a robust finding process where the public's input has to be considered and, if it's failed to be considered, then there is redress via the courts. He mentioned that the aforementioned failed shallow gas leasing program had to be repealed and replaced with a program that had a meaningful finding process.

REPRESENTATIVE GRUENBERG characterized that as an important point, offered his recollection of what occurred when the Trans-Alaska Pipeline legislation was passed in Congress, and suggested that perhaps taking a similar approach might prove a viable alternative.

REPRESENTATIVE WILSON questioned whether the legislature is really going to get enough information in to order make a decision.

MR. MYERS remarked on the Legislative Budget and Audit Committee's arranging for its members to be able to see the confidential contract if they signed a confidentiality agreement. He acknowledged that absorbing the information is a daunting and challenging task, and pointed out that currently the public has almost no information. So what is needed is either some mechanism in place to release that information or some way that the public can engage in a discovery process of some sort. He acknowledged that releasing the data is also a difficult process for the administration to undertake, but in

order for a member of the public to truly understand the underlying analyses, he/she must be provided with some information from all categories. Under current law, a lot of that type of information wouldn't have to be released if the administration chose not to release it; therefore, some form of discovery process might have to occur in order for members of the public or legislature to be satisfied that they have enough data.

CHAIR McGUIRE, in response to a question, expressed a preference for addressing this bill separately from any others that might be somewhat related.

[HB 502 was set aside.]

SB 20 - OFFENSES AGAINST UNBORN CHILDREN

2:37:53 PM

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 20(JUD), "An Act relating to offenses against unborn children."

REPRESENTATIVE COGHILL made a motion to take from the table the proposed House committee substitute (HCS) for SB 20, Version 24-LS0197\B, Mischel, 3/24/06, which was tabled at the 3/24/06 hearing.

REPRESENTATIVE GARA objected.

2:38:45 PM

A roll call vote was taken. Representatives McGuire, Coghill, Wilson, Kott, and Anderson voted in favor of taking from the table the proposed HCS for SB 20, Version 24-LS0197\B, Mischel, 3/24/06. Representatives Gruenberg and Gara voted against it. Therefore, Version B was before the committee by a vote of 5-2.

The committee took an at-ease from 2:39 p.m. to 2:56 p.m.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, labeled 24-LS0197\U.9, Mischel/Luckhaupt, 3/24/06. [The text of Conceptual Amendment 1 can be found at the end of the minutes on SB 20.]

REPRESENTATIVE COGHILL objected.

The committee took a brief at-ease.

2:59:44 PM

CHAIR McGUIRE clarified that Amendment 1, which was drafted for Version U, had been offered as conceptual in order that the drafters can conform it to Version B. She explained that the basic tenet of Version B is that it doesn't include any reference to the pregnant female being charged with murder. She noted that Representative Gara had provided committee members with a document entitled, "Excerpts from the Supreme Court's Decision in Roe v. Wade".

REPRESENTATIVE ANDERSON relayed that research has indicated that several states have codified what Senator Dyson wants to do via SB 20, and that several states have codified what Representative Gara is proposing via Conceptual Amendment 1, which is to provide, without reference to "an unborn child", enhanced penalties for those who hurt a pregnant woman. Representative Anderson indicated concern with regard to a situation in which someone harmed or killed a pregnant woman, who was then found to be only 10 weeks pregnant.

REPRESENTATIVE ANDERSON surmised that under Version B, the person could be charged with two separate crimes; however, under Conceptual Amendment 1, the person would only be charged with one crime, though one that had a stiffer penalty. He said he wants to provide for enhanced penalties, but is unclear whether [this legislation] is deciding when human life begins and thus perhaps overriding Roe V. Wade. He said he didn't like that this legislation provides for charging an individual for the harm or death of a pregnant woman and her unborn child from the time the sperm meets the egg.

REPRESENTATIVE GARA said he struggles with the same issue. However, there is no clean way in statute to specify the impact of these situations on an individual's life. Normally, sentences deter an action; therefore, the punishment is important rather than the mere statutory language. Conceptual Amendment 1 will impose at least the same minimum sentence as if there were two crimes for all of the major crimes in SB 20. For example, Version B refers to the crime of first degree murder of an unborn child that assigns a minimum of 20 years for the act against the woman and a minimum of 20 years for the act against the unborn child, whereas Conceptual Amendment 1 would provide for a minimum sentence of 40 years for that same behavior.

REPRESENTATIVE GARA pointed out that one of the flaws of Version B is that it refers to murder of the baby for incidents that happen [beginning] from one day after the pregnancy begins. Therefore, one may say it's necessary to make it murder once the baby is viable. However, that requires some sort of medical evidence that the baby is viable, which is the route that Indiana took. The problem with the aforementioned is that the child that would've been present after nine months is taken away, and thus to recognize the incident differently depending upon when in the pregnancy the incident occurred disregards the fact that the woman and the father lost the child regardless of its viability. Conceptual Amendment 1, in comparison, recognizes a sentence that reflects the seriousness of the crime.

REPRESENTATIVE COGHILL interjected to note that Section 5 defines an unborn child as, "a member of the species Homo sapiens, at any state of development, who is carried in the womb."

REPRESENTATIVE GARA interpreted that language to mean that it is a baby at day one and so from that point on [killing the baby] would be considered murder.

REPRESENTATIVE COGHILL offered his understanding that the term "unborn child" refers to a fetus at any stage of development.

REPRESENTATIVE GARA acknowledged that point and characterized that as a problem. He opined that he didn't believe the committee should determine when viability occurs and then make the crime different than if it had occurred the day before, because that's an artificial delineation.

3:10:35 PM

REPRESENTATIVE ANDERSON mentioned that he is in favor of rejecting Conceptual Amendment 1. He opined that if one harms a woman, he/she risks harming or killing an unborn child if the woman is pregnant, and thus he/she ought to be doubly punished because of the harm or death of the woman and potentially to the unborn child.

REPRESENTATIVE COGHILL surmised that the concept being set forth in Conceptual Amendment 1 is that the crime is against one individual. However, Version B stipulates that the crime is against two individuals. He announced that he would oppose Conceptual Amendment 1 because an individual who attacks a

pregnant woman and injures and/or kills her unborn child has harmed two victims.

REPRESENTATIVE GARA recalled that Representative Anderson wanted to provide for additional punishment even if the perpetrator didn't know that the woman was pregnant. The aforementioned is accomplished via Conceptual Amendment 1 because even if the perpetrator didn't know the woman was pregnant, her pregnancy would be considered an aggravating factor.

REPRESENTATIVE GARA offered his belief that Roe v. Wade is partly predicated on language that says society hasn't yet recognized that the fetus is a person from day one of the pregnancy. However, if states pass laws such that the pregnancy shall be treated as involving a second person, then the Roe v. Wade ruling could be in jeopardy because there are law scholars who predict that legislation such as SB 20 will be utilized to undermine the rights in Roe v. Wade.

REPRESENTATIVE GARA offered further examples of the lengths of sentences that are being proposed via Conceptual Amendment 1, and surmised that one of the questions being raised revolves around the issue of defining when life begins, and another is whether to impose a harsh penalty in recognition of the seriousness of the crime. He then referred to the current law regarding actions that cause a miscarriage.

REPRESENTATIVE COGHILL suggested that they proceed to vote on Conceptual Amendment 1.

REPRESENTATIVE ANDERSON reiterated his argument against Conceptual Amendment 1.

3:19:10 PM

REPRESENTATIVE GARA surmised that without the adoption of Conceptual Amendment 1, someone who causes a miscarriage three days after conception could be charged with the crime of murder.

CHAIR McGUIRE pointed out that a woman can't determine she is pregnant within three days of conception, and that the norm for determining pregnancy is five weeks.

REPRESENTATIVE GARA opined that it's a stretch to call a miscarriage caused negligently or recklessly at the earliest stage of development of a pregnancy a homicide, which is what SB 20 does, and therefore the crime should be recognized in terms

of the sentence. He reminded the committee that in any murder, no matter how many victims are left, it's not referred to as murder that has resulted in the damage of two children or three children or four children, it's referred to as murder and there is simply recognition that damage has been done to the rest of the family. Every single victim doesn't have to be named as a victim of a separate crime in order to protect society or honor the victims, because that's accomplished through the sentence, he opined.

3:21:59 PM

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

3:22:22 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 2, labeled 24-LS0197\U.10, Mischel, 4/10/06, and 24-LS0197\U.11, Mischel, 4/10/06, [text provided at the end of the minutes on SB 20.]

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GARA explained that Conceptual Amendment 2 utilizes the approach used in Indiana such that an unborn child is defined as a child at the point of viability. However, at the cellular level prior to viability, it's not an unborn child but rather a pregnancy albeit just as valuable as an unborn child. Conceptual Amendment 2 specifies that if a crime is committed against [a fetus] that is at the point of viability or afterwards, the [punishment] path laid out by the sponsor would be followed. If the crime is committed prior to viability, the penalties are enhanced substantially in terms of an aggravator. The aforementioned proposal recognizes the value of human life and pregnancy while avoiding the debate regarding viability, he opined.

REPRESENTATIVE COGHILL remarked that there is a legal and national debate occurring regarding when an [unborn] child is viable. If the [unborn] child is wanted and being nurtured by the mother, he considered it to be viable whether it could fit the description specified [in Conceptual Amendment 2] or not. He indicated he opposed moving down a path that would lead to trying to develop a definition of viability.

REPRESENTATIVE GARA clarified that he never said that a pregnancy is worth less at a certain stage.

3:27:28 PM

REPRESENTATIVE ANDERSON remarked on the difficulty of establishing a demarcation [with regard to when an unborn child is viable].

REPRESENTATIVE WILSON announced that she is speaking in opposition to Conceptual Amendment 2. Drawing on her experience as a nurse who worked in surgery for many years, she offered examples wherein expectant parents were devastated by miscarriages regardless of the stage of the pregnancy.

REPRESENTATIVE GARA stated that Conceptual Amendment 2 recognizes the sanctity of a pregnancy and the family that someone prevents from developing due to a crime [against the pregnant woman and unborn child] via its sentencing provisions. He specified that he wanted to remove the language that people could use to fight Roe v. Wade. Conceptual Amendment 2 allows the use of the language of murder when it involves a child after viability, and provides an enhanced sentence via an aggravator for terminating the pregnancy prior to viability. "In terms of the penalty and society's condemnation of your conduct, it's the same; it's just whether or not we're going to pick this fight over Roe v. Wade, which I don't think we need to do," he opined.

REPRESENTATIVE GARA, during a roll call vote, withdrew Conceptual Amendment 2.

[An amendment labeled Amendment 3 was also withdrawn because its language had already been incorporated into Version B.]

The committee took an at-ease from 3:33 p.m. to 3:34 p.m.

3:34:31 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 4, labeled 24-LS0197\U.3, Mischel, 2/22/06, which read:

> Page 1, following line 2:
> Insert a new bill section to read:
> "*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this Act is intended to limit or alter a woman's right to choose the outcome of her pregnancy, as guaranteed by the Constitution of the United States and the Constitution of the State of Alaska."

Renumber the following bill sections accordingly.

REPRESENTATIVE GRUENBERG offered his belief that Conceptual Amendment 4 is in accord with Senator Dyson's intent.

REPRESENTATIVE COGHILL objected.

CHAIR McGUIRE offered her understanding that from the beginning the sponsor has stated that SB 20 wouldn't be used to enter into a Roe v. Wade battle. The choice, she opined, is really about protecting pregnant women and their unborn children in the State of Alaska. Chair McGuire questioned how binding the intent language proposed in Conceptual Amendment 4 is.

REPRESENTATIVE GRUENBERG stated that the intent language is there and can be used by the court if and when it wishes.

REPRESENTATIVE COGHILL recalled that the sponsor had stated his intention to recognize that there are two victims when there has been a crime against a pregnant woman, and surmised, therefore, that the sponsor wouldn't have a problem with Conceptual Amendment 4.

REPRESENTATIVE COGHILL then withdrew his objection.

REPRESENTATIVE GARA objected and moved that the committee adopt an amendment to Conceptual Amendment 4 such that the intent language would be placed in statute.

REPRESENTATIVE GRUENBERG opined that doing so would be very unusual, and that he would rather address the proposed intent language as it's presented.

REPRESENTATIVE GARA opined that if everyone is representing that no one is trying to overrule Roe v. Wade, then [the intent language] should be included in statute.

REPRESENTATIVE GRUENBERG mentioned that [the intent language] will be referred to in the notes [of the statute].

3:38:40 PM

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

CHAIR McGUIRE, upon determining that there were no further objections, announced that Conceptual Amendment 4 was adopted.

3:39:18 PM

REPRESENTATIVE GRUENBERG, upon determining that an amendment labeled 24-LS0197\U.4, Mischel, 2/22/06, would stray from the purpose of having two victims, announced that he would not be offering that amendment.

REPRESENTATIVE GARA made a motion to adopt Amendment 6, which read [original punctuation provided]:

Page 2, lines 21-24
Delete all material.

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA pointed out that language on page 2, lines 21-24, creates a new crime called criminally negligent homicide of an unborn child if, with criminal negligence, the person causes a miscarriage. Doing the aforementioned for intentional and reckless crimes is one thing, but he said he didn't want to also include it for car accidents.

REPRESENTATIVE ANDERSON removed his objection.

REPRESENTATIVE COGHILL objected and pointed out that whether the child is in the womb or in the seat next to the woman and dies because of negligence, the responsibility and pain remain. Representative Coghill said he was speaking in opposition to Amendment 6.

REPRESENTATIVE GARA opined that if Amendment 6 passes, there should be an aggravator for those situations in which a miscarriage is caused. He reiterated that he is respectful of the value of a pregnancy regardless of its stage. He questioned whether the desire is to charge someone who was driving 10 miles per hour over the speed limit but gets in an accident with a

homicide and subject him/her to a lengthy jail sentence. Again, he expressed a preference for punishing such behavior with an aggravator.

REPRESENTATIVE GRUENBERG disagreed, and referred to a law wherein if a person strikes someone in the head and he/she has a really thin skull and is therefore killed by the blow, the assailant is responsible for the result even if excessive force wasn't used. Another example would be if a person is negligently driving and hits a truck which happens to have a drunken individual sleeping in the back and he/she dies, the negligent driver remains responsible. The situation to which Representative Gara referred is very similar, Representative Gruenberg suggested.

REPRESENTATIVE GARA clarified that that law pertains to situations in which a person causes an injury to someone who is very vulnerable, and even though the [assailant] doesn't know that the victim is vulnerable, [the assailant] is still liable for damages. However, in such a situation, he surmised, the [assailant] wouldn't be called a murderer; rather, the "eggshell theory" has to do with civil liability for damages.

REPRESENTATIVE GRUENBERG asked whether it also deals with criminal law.

3:45:25 PM

CHAIR McGUIRE offered her understanding that the eggshell theory is a civil theory, but the premise behind it is similar. She reminded the committee that AS 04.21.080(a)(1) says:

> a person acts with "criminal negligence" with respect to a result or a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation;

REPRESENTATIVE GRUENBERG suggested that two slightly different things are being discussed. One matter is the mental state with which the act was done, while the other is the responsibility for a second individual in the automobile that [the assailant] didn't know was present.

REPRESENTATIVE GARA argued that the only question is whether it should be called homicide in the aforementioned case of a car accident.

3:47:16 PM

A roll call vote was taken. Representatives Gara and Kott voted in favor of Amendment 6. Representatives Gruenberg, Wilson, McGuire, Anderson, and Coghill voted against it. Therefore, Amendment 6 failed to be adopted by a vote of 2-5.

3:47:38 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 7, which read [original punctuation provided]:

Page 2, line 7 following "life":

Insert:
"; for purposes of this paragraph, a pregnant woman's decision to remain in a relationship in which domestic violence as defined in AS 18.66.990 has occurred does not constitute conduct manifesting an extreme indifference to the value of human life."

Page 3, line 12 following "life":

Insert:
"; for purposes of this paragraph, a pregnant woman's decision to remain in a relationship in which domestic violence as defined in AS 18.66.990 has occurred does not constitute conduct manifesting an extreme indifference to the value of human life."

CHAIR McGUIRE objected for discussion purposes.

REPRESENTATIVE GARA reminded the committee that an earlier version of SB 20 stipulated that a pregnant woman's decision to remain in a relationship that involved domestic violence wasn't something that the woman could be charged for if it resulted in a miscarriage caused by the abuser.

CHAIR McGUIRE withdrew her objection, and asked whether there were any further objections to Amendment 7. There being none, Amendment 7 was adopted.

3:48:33 PM

REPRESENTATIVE COGHILL moved to report the proposed HCS for SB 20, Version 24-LS0197\B, Mischel, 3/24/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG objected.

A roll call vote was taken. Representatives McGuire, Wilson, Anderson, Coghill, and Kott voted in favor of reporting the proposed HCS for SB 20, Version 24-LS0197\B, Mischel, 3/24/06, as amended, out of committee. Representatives Gruenberg and Gara voted against it. Therefore, HCS CSSB 20(JUD) was reported from the House Judiciary Standing Committee by a vote of 5-2.

Conceptual Amendment 1 [24-LS0197\U.9, Mischel/Luckhaupt, 3/24/06] (failed to be adopted):

Page 1, line 1:
Delete all material and insert:
"**An Act relating to sentencing factors and penalties for crimes against pregnant women.**"

Page 1, line 3, through page 7, line 18:
Delete all material and insert:
"*** Section 1.** AS 11 is amended by adding a new chapter to read:

Chapter 32. Enhanced Penalties.

Sec. 11.32.100. Penalties for crimes committed against pregnant women. (a) Notwithstanding another provision of this title or AS 12, if a person commits a crime defined in this title against a pregnant woman who the person knew or should have known to be pregnant that results in a miscarriage or stillbirth, the crime shall be punished in the following manner:

(1) a crime defined as murder in the first degree under AS 11.41.100 shall be punished by a sentence of 40 - 99 years;

(2) a crime defined as murder in the second degree under AS 11.41.110 shall be punished by a sentence of 30 - 99 years;

(3) a crime defined in this title as a class A felony shall be punished as an unclassified felony in the manner provided for unclassified felonies in AS 12.55.125;

(4) a crime defined in this title as a class B felony shall be punished as a class A felony in the manner provided for class A felonies in AS 12.55.125;

(5) a crime defined in this title as a class C felony shall be punished as a class B felony in the manner provided for class B felonies in AS 12.55.125;

(6) a crime defined in this title as a class A misdemeanor shall be punished as a class C felony in the manner provided for class C felonies in AS 12.55.125;

(7) a crime defined in this title as a class B misdemeanor shall be punished as a class A misdemeanor in the manner provided for class A misdemeanors in AS 12.55.135.

(b) The penalties in (a) of this section do not apply to acts committed

(1) during a legal abortion to which the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, consented or for which the consent is implied by law;

(2) during any medical treatment of the pregnant woman or the fetus; or

(3) by a pregnant woman against herself.

(c) In this section,

(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth or by an induced abortion, resulting in the complete expulsion or extraction of the fetus from a pregnant woman;

(2) "stillbirth" means the death of a fetus before the complete expulsion or extraction from a woman, other than by an induced abortion, irrespective of the duration of the pregnancy.

*** Sec. 2.** AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. **A defendant convicted of murder in the first degree enhanced under AS 11.32.100(a)(1) shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years.** A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

*** Sec. 3.** AS 12.55.125(b) is amended to read:

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree **or a class A felony enhanced under AS 11.32.100(a)(3)** shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when **the sentence is enhanced under AS 11.32.100(a)(2) or when** the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this

subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

*** Sec. 4.** AS 12.55.155(c) is amended to read:

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking a presumptive range under this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assault behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense under an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or

conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; or

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony

charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, "incapacitated" has the meaning given in AS 11.41.470;

(31) the defendant's prior criminal history includes convictions for five or more crimes in this or another jurisdiction that are class A misdemeanors under the law of this state, or having elements similar to a class A misdemeanor; two or more convictions arising out of a single continuous episode are considered a single conviction; however, an offense is not a part of a continuous episode if committed while attempting to escape or resist arrest or if it is an assault upon a uniformed or otherwise clearly identified peace officer; notice and denial of convictions are governed by AS 12.55.145(b), (c), and (d);

(32) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900**;**

(33) the defendant is convicted of an offense specified in AS 11.41 and the offense involved physical injury to a pregnant woman.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 11.32.100, enacted by sec. 1 of this Act, and AS 12.55.125(a) - (c), as amended by secs. 2 - 4 of this Act, apply to crimes committed on or after the effective date of this Act."

Conceptual Amendment 2 [labeled 24-LS0197\U.10, Mischel, 4/10/06, and 24-LS0197\U.11, Mischel, 4/10/06] (withdrawn)

Page 5, lines 27 - 28:
Delete all material and insert:
"(64) "unborn child" means a fetus that has attained viability; in this paragraph, "viability" means the ability to live outside of the mother's womb."

Page 1, line 1, following "**children**":
Insert "**; and adding aggravating factors in sentencing**"

Page 7, following line 18:
Insert new bill sections to read:
"*** Sec. 9.** AS 12.55.155(c) is amended to read:
(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:
(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;
(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;
(3) the defendant was the leader of a group of three or more persons who participated in the offense;
(4) the defendant employed a dangerous instrument in furtherance of the offense;
(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;
(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;
(7) a prior felony conviction considered for the purpose of invoking a presumptive range under this chapter was of a more serious class of offense than the present offense;
(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense under an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; or

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, "incapacitated" has the meaning given in AS 11.41.470;

(31) the defendant's prior criminal history includes convictions for five or more crimes in this or another jurisdiction that are class A misdemeanors under the law of this state, or having elements similar to a class A misdemeanor; two or more convictions arising out of a single continuous episode are considered a single conviction; however, an offense is not a part of a continuous episode if committed while attempting to escape or resist arrest or if it is an assault upon a uniformed or otherwise clearly identified peace officer; notice and denial of convictions are governed by AS 12.55.145(b), (c), and (d);

(32) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900;

(33) the defendant recklessly, knowingly, or intentionally caused serious physical injury to a pregnant woman, whether or not the defendant knew of the pregnancy;

(34) the defendant caused physical injury to a woman the defendant knew to be pregnant.

*** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 12.55.155(c), as amended by sec. 9 of this Act, applies to offenses committed on or after the effective date of this Act."

[HCS CSSB 20(JUD) was reported from the House Judiciary Standing Committee.]

SB 261 - REGULATION OF HWYS; TRAFFIC OFFENSES

3:49:37 PM

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 261(FIN), "An Act relating to the designation of traffic safety corridors; relating to the bail or fine for an offense committed in a traffic safety corridor and to separately accounting for such fines; and providing for an effective date."

REPRESENTATIVE GRUENBERG moved that the committee adopt the letter of intent for HCS CSSB 261(JUD), which had been reported from the House Judiciary Standing Committee on 4/12/06. He explained that the letter of intent simply requests that the signs be placed every three miles rather than every 5 miles in order to alert drivers.

CHAIR McGUIRE, upon determining that there were no objections, announced that the letter of intent would accompany HCS CSSB 261(JUD).

HB 240 - BREWERY & BREWPUB LICENSES

3:50:40 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 240, "An Act relating to brewery and brew pub licensing." [Before the committee was CSHB 240(L&C).]

3:50:48 PM

CRAIG JOHNSON, Staff to Representative Lesil McGuire, Alaska State Legislature, presented HB 240 on behalf of the sponsor, the House Judiciary Standing Committee. He informed the committee that the Brewers Guild of Alaska represents six breweries and five brewpubs that operate within the state. The brewery owners and the brewpub owners have united and developed a compromise via CSHB 240(L&C) regarding the number of barrels and gallons that a brewpub can produce and the number of free samples that a brewery can produce. This legislation primarily impacts Anchorage and Fairbanks. Basically, HB 240 levels the playing field between breweries and brewpubs and with those breweries and brewpubs outside of the state.

CHAIR McGUIRE informed the committee that she has gotten involved with this issue because she believes it's an emerging area of Alaska's economy.

REPRESENTATIVE KOTT noted that he is in receipt of a letter from the Anchorage Cabaret, Hotel, Restaurant, & Retailers Association (CHARR) recommending a change to HB 240 such that all of those with beverage dispensary licenses would be allowed to provide small samples of beer and wine for promotional purposes. He asked if the aforementioned has been agreed upon.

3:55:59 PM

CHUCK EDWARDS, Chair, Government Affairs, Anchorage Cabaret, Hotel, Restaurant, & Retailers Association (CHARR), relayed that he spoke with the brewers and the distributors who would like the opportunity to provide samples and maintain a level playing field. Mr. Edwards commented, "Some of this stuff kind of makes me feel like we're getting into the tavern business here."

CHAIR McGUIRE, upon determining no one else wished to testify, closed public testimony on HB 240.

3:57:09 PM

REPRESENTATIVE KOTT made a motion to adopt Amendment 1, which would insert the following language [original punctuation provided]:

> Notwithstanding (a) and (b) of this section, a beverage dispensary licenses or licensee's agent or employee, or a holder of a general wholesale, wholesale malt beverage and wine licenses by non-resident brewer or the agent or employees of these

licenses may provide, without charge, any customer a small sample of beer or wine for promotional purposes.

REPRESENTATIVE GRUENBERG made a motion that Amendment 1 be amended such that the first reference to "licenses" be changed to "licensee". There being no objection, Amendment 1 was amended.

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

3:58:46 PM

REPRESENTATIVE KOTT moved to report CSHB 240(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 240(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 3:59 p.m. to a call of the chair. [The meeting was reconvened on April 20, 2006.]