

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 30, 2007

1:08 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present.

COMMITTEE CALENDAR

HOUSE BILL NO. 163

"An Act relating to real property foreclosures, executions, and deeds of trust."

- MOVED CSHB 163(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 3

"An Act relating to issuance of identification cards and to issuance of driver's licenses; and providing for an effective date."

- MOVED CSHB 3(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 151

"An Act requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions."

- MOVED CSHB 151(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 225

"An Act relating to misconduct involving weapons and bail."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 163

SHORT TITLE: PROPERTY FORECLOSURES AND EXECUTIONS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/28/07 (H) READ THE FIRST TIME - REFERRALS
02/28/07 (H) L&C, JUD
03/30/07 (H) L&C AT 3:00 PM CAPITOL 17
03/30/07 (H) -- MEETING CANCELED --
04/20/07 (H) L&C AT 3:00 PM CAPITOL 17
04/20/07 (H) Moved CSHB 163(L&C) Out of Committee
04/20/07 (H) MINUTE(L&C)
04/23/07 (H) L&C RPT 1DP 4NR
04/23/07 (H) DP: RAMRAS
04/23/07 (H) NR: BUCH, LEDOUX, NEUMAN, OLSON
04/27/07 (H) JUD AT 1:00 PM CAPITOL 120
04/27/07 (H) Heard & Held
04/27/07 (H) MINUTE(JUD)
04/30/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 3

SHORT TITLE: REQUIREMENTS FOR DRIVER'S LICENSE/I.D.

SPONSOR(S): REPRESENTATIVE(S) LYNN

01/16/07 (H) PREFILE RELEASED 1/5/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) STA, JUD
02/27/07 (H) STA AT 8:00 AM CAPITOL 106
02/27/07 (H) Scheduled But Not Heard
03/01/07 (H) STA AT 8:00 AM CAPITOL 106
03/01/07 (H) Scheduled But Not Heard
03/06/07 (H) STA AT 8:00 AM CAPITOL 106
03/06/07 (H) Moved Out of Committee
03/06/07 (H) MINUTE(STA)
03/07/07 (H) STA RPT 3DP 2DNP 2NR
03/07/07 (H) DP: JOHNSON, ROSES, LYNN
03/07/07 (H) DNP: GRUENBERG, DOLL
03/07/07 (H) NR: JOHANSEN, COGHILL
03/07/07 (H) FIN REFERRAL ADDED AFTER JUD
04/20/07 (H) JUD AT 1:00 PM CAPITOL 120
04/20/07 (H) Heard & Held
04/20/07 (H) MINUTE(JUD)
04/23/07 (H) JUD AT 1:00 PM CAPITOL 120
04/23/07 (H) Heard & Held
04/23/07 (H) MINUTE(JUD)
04/30/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 151

SHORT TITLE: INDEMNITY CLAUSE IN PUBLIC CONTRACTS

SPONSOR(s): REPRESENTATIVE(s) JOHNSON BY REQUEST

02/22/07 (H) READ THE FIRST TIME - REFERRALS
02/22/07 (H) STA, JUD
03/20/07 (H) STA AT 8:00 AM CAPITOL 106
03/20/07 (H) Heard & Held
03/20/07 (H) MINUTE(STA)
03/24/07 (H) STA AT 10:00 AM CAPITOL 106
03/24/07 (H) Moved CSHB 151(STA) Out of Committee
03/24/07 (H) MINUTE(STA)
03/26/07 (H) STA RPT CS(STA) NT 6DP
03/26/07 (H) DP: JOHANSEN, JOHNSON, COGHILL, DOLL,
GRUENBERG, LYNN
04/02/07 (H) JUD AT 1:00 PM CAPITOL 120
04/02/07 (H) Heard & Held
04/02/07 (H) MINUTE(JUD)
04/30/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 225

SHORT TITLE: POSSESSION OF WEAPON WHILE ON BAIL

SPONSOR(s): REPRESENTATIVE(s) JOHNSON

03/27/07 (H) READ THE FIRST TIME - REFERRALS
03/27/07 (H) JUD, FIN
04/13/07 (H) JUD AT 1:00 PM CAPITOL 120
04/13/07 (H) Heard & Held
04/13/07 (H) MINUTE(JUD)
04/25/07 (H) JUD AT 1:00 PM CAPITOL 120
04/25/07 (H) Scheduled But Not Heard
04/27/07 (H) JUD AT 1:00 PM CAPITOL 120
04/27/07 (H) <Bill Hearing Canceled>
04/30/07 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

STEPHAN ROUTH, Attorney at Law
Routh & Crabtree, APC
Anchorage, Alaska

POSITION STATEMENT: Testified on a proposed amendment to HB 3.

REPRESENTATIVE LYNN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 3.

DUANE BANNOCK, Director
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Answered questions on HB 3.

LEANNE BOLDENOW, Vice-President
Marsh USA Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 151.

JAMES CANTOR, Chief Assistant Attorney General - Statewide
Section Supervisor
Transportation Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided assistance during discussion of
HB 151.

BOYD MORGENTHALER, P.E., Client Contract Task Force
Alaska Professional Design Council (APDC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 151.

TREVOR FULTON, Staff
to Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 151 on behalf of the sponsor,
Representative Craig Johnson.

JEANNE OSTNES, Staff
to Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Discussed HB 255 on behalf of the sponsor,
Representative Craig Johnson.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided legal assistance for HB 225.

GERALD LUCKHAUPT, Attorney

Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Spoke as the drafter of HB 225 and answered questions.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:08:09 PM](#). Representatives Dahlstrom, Coghill, Lynn, Holmes, Gruenberg, and Ramras were present at the call to order. Representative Samuels arrived as the meeting was in progress.

HB 163 - PROPERTY FORECLOSURES AND EXECUTIONS

[1:08:26 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 163, "An Act relating to real property foreclosures, executions, and deeds of trust." [Before the committee was the proposed committee substitute (CS) for HB 163, Version 25-LS0630\K, Bannister, 4/24/07, which had been adopted as the work draft on 4/27/07.]

CHAIR RAMRAS referred members to page 3, lines 25-26.

[1:11:25 PM](#)

STEPHAN ROUTH, Attorney at Law, Routh & Crabtree, APC, stated that what happens at a foreclosure sale is reinstatement, wherein the owners pay the delinquent amounts, but the reinstatement should have happened prior to the auction. Other states have addressed the problems associated with last minute reinstatements by moving back the deadline for reinstatement; for example, Washington has set the reinstatement deadline at 10 days prior to the auction, which in his view, he remarked, was too long, though it might be acceptable if the deadline were left at 5 days, or perhaps even reduced to 2 or 3 days. He said another reason he felt the reinstatement should occur prior to the auction is to maximize bidding for the benefit of the borrower, and reiterated his belief that reinstatements should not be considered at the time of the auction.

STEPHAN ROUTH said he calculated that if the reinstatement date were left at 5 days, as current law allows, then the minimum

time to complete foreclosure in Alaska would be 120 days, with 90 days for foreclosure, and 30 days after default on the loan. He explained that the timeframe for a foreclosure does not include the three-month delinquency period that institutions typically allow prior to initiating a foreclosure process, which makes the standard timeframe for the borrower to reinstate actually closer to six months. Under current law, the parties have 5 days prior to the sale to reinstate, and in about 97.3 percent of the time the reinstatement time is approximately a total of 175 days. He said that he would feel satisfied if the date were moved away from the sale time, which is the auction date.

REPRESENTATIVE HOLMES asked whether the owner often makes payment of the foreclosure costs within 48 hours of the auction time.

STEPHAN ROUTH responded that payment close to the date of sale does not often happen, but when it does occur it creates big problems.

REPRESENTATIVE HOLMES asked whether a two-day deadline would be amenable to Mr. Routh.

STEPHAN ROUTH concurred that a two-day deadline would be amenable.

REPRESENTATIVE GRUENBERG indicated that he supported a two-day deadline.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 163.

[1:15:09 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt a Conceptual Amendment 1, to replace "five" with "two" on page 3, line 25. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 163, Version 25-LS0630\K, Bannister, 4/24/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 163(JUD) was reported from the House Judiciary Standing Committee.

HB 3 - REQUIREMENTS FOR DRIVER'S LICENSE/I.D.

[1:16:21 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 3, "An Act relating to issuance of identification cards and to issuance of driver's licenses; and providing for an effective date."

CHAIR RAMRAS announced that public testimony on HB 3 was closed.

REPRESENTATIVE LYNN, as sponsor of HB 3, indicated that since the bill was last heard, work had been done to address concerns regarding the grace period.

[1:18:07 PM](#)

CHAIR RAMRAS referred to Amendment 1, labeled 25-LS0040\C.4, Luckhaupt, 4/24/07, which read:

Page 3, line 20:

Delete "**expired**"

Insert "**been expired for more than 12 months**"

CHAIR RAMRAS explained that Amendment 1 would give Alaskans ample opportunity to replace their expired driver's license with a new driver's license.

[1:20:05 PM](#)

DUANE BANNOCK, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), concurred [although no formal motion was made to adopt Amendment 1].

REPRESENTATIVE LYNN objected for the purpose of discussion. He offered his understanding that non-residents have up to 90 days to obtain a license.

CHAIR RAMRAS said he believes that is set out in regulation and would apply to military personnel and new residents.

MR. BANNOCK explained that current statutes provide that persons are not required to hold an Alaska driver's license if they are in the state for less than 90 days, and stipulate that persons are required to have a driver's license if they reside in the state longer than 90 days.

REPRESENTATIVE LYNN questioned whether it would be more appropriate to match Amendment 1 to that specific timeframe for consistency.

MR. BANNOCK, recalling a question from a prior hearing, pointed out that this entire bill section is not compliant with the federal REAL ID Act of 2005, so any changes made to [paragraph (8)] will not affect other parts of the statute, therefore, the division has no preference regarding the specific timeframe.

REPRESENTATIVE LYNN suggested an amendment to Amendment 1, to change "12 months" to "90 days".

REPRESENTATIVE COGHILL asked what the current grace period is if one's driver's license is expired.

MR. BANNOCK responded that under current statute there is no grace period, and one cannot drive with an expired license. If a person comes into the DMV office a day or so after his/her license expires, the division would continue the renewal process without penalty, though by regulation, if more than 12 months has lapsed since the license expired, the person must retake the written exam. After 5 years have lapsed, he/she would need to retake the skills test, commonly referred to as the "road test." He noted that the DMV does not impose any fines for an expired driver's license.

[1:24:46 PM](#)

REPRESENTATIVE COGHILL agreed that 90 days seems consistent and mentioned driver's licenses are also used for identification purposes.

REPRESENTATIVE DAHLSTROM questioned whether extending the grace period any length of time would cause problems within the division, for example, for the purpose of address changes, or other administrative and police functions.

MR. BANNOCK responded that placing the change in statute would establish a grace period. He stated that other than an exception for military or college exemption, he was not aware of any other grace period allowed. But he said that the question of grace periods also raises the issue of whether a person with a lapsed license is considered to hold a valid license, or if his/her driving privilege is in limbo; regardless, the change to grace period would still only apply to the driver's license function.

REPRESENTATIVE COGHILL said he thought that Amendment 1 applied to renewal of a license, or issuance of a duplicate license. He added that Amendment 1 would not affect the issuance of initial driver's licenses.

CHAIR RAMRAS [although no formal motion was made] said he accepted the amendment to Amendment 1. He explained that the effect of the amendment to Amendment 1 is that the text being inserted would read "been expired for more than 90 days".

REPRESENTATIVE LYNN concurred.

CHAIR RAMRAS [treating Amendment 1 as having been amended], asked if the objection was maintained. After determining that it was not, announced that Amendment 1 [as amended] was adopted.

[1:28:20 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 25-LS0040\C.5, Luckhaupt, 4/30/07, which read:

Page 2, line 11:

Delete "the person's legal status and presence in the United States"

Insert "(1) a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States, (2) a pending or approved application for asylum in the United States, (3) entry into the United States in refugee status, (4) a pending or approved application for temporary protected status in the United States, (5) approved deferred action status, or (6) a pending application for adjustment of status to legal permanent residence status or conditional resident status"

Page 3, lines 30 - 31:

Delete "the person's legal status and presence in the United States"

Insert "(i) a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States, (ii) a pending or approved application for asylum in the United States, (iii) entry into the United States in refugee status, (iv) a pending or approved application for temporary protected status in the United States, (v) approved deferred action status, or (vi) a pending application for adjustment"

of status to legal permanent residence status or
conditional resident status"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that there are people who are unable to obtain their green card timely due to bureaucratic reasons. He stated that the language in Amendment 2 is based on Virginia law [Virginia Acts of Assembly--Chapter [H2471]], which would allow a person with a pending application to get a driver's license.

[1:29:43 PM](#)

MR. BANNOCK stated that the division supports Amendment 2.

REPRESENTATIVE LYNN announced that he accepts Amendment 2.

REPRESENTATIVE DAHLSTROM removed her objection to Amendment 2.

CHAIR RAMRAS objected for the purpose of discussion.

REPRESENTATIVE SAMUELS asked for clarification and for an example of a person who is in refugee status pending asylum.

MR. BANNOCK responded that the division has attempted to define a person's legal status, but the state has not yet adopted a legal presence law, although 40 other states have. For example, the State of Virginia adopted a six-point plan for its legal presence law. He said that his division staff could not find a single circumstance or instance in which an immigrant's application status did not fit within the six points of the Virginia Act.

REPRESENTATIVE SAMUELS asked for clarification of the source of the language in Amendment 2 and asked about asylum status.

MR. BANNOCK replied that the language in Amendment 2 was taken verbatim from portions of the Immigration and Customs Enforcement (ICE), provisions. While he said he could not speak specifically to the asylum status, he said that the federal government clearly offers protection to those in one of the six statuses. He stated that the DMV has maintained inclusion of all who are legally present in the U.S. Those legally present in the U.S. will fit one of the six categories [listed in Amendment 2].

[1:32:48 PM](#)

REPRESENTATIVE HOLMES agreed with the director that immigrants fit within the six federal criteria in the Virginia law embodied in Amendment 2, and pointed out that all these immigrants had a legal right to be in the United States. She related a situation in which a family member experienced a significant delay in obtaining a green card, even though he/she had followed all the rules required to apply for legal immigration status. However, due to a significant ICE backlog, he/she could not obtain a green card timely. During this limbo period he/she had not been given any written documentation to prove legal status in the United States. If contacted, the ICE, would verbally verify that the person had a legal right to be in the country. In this situation, the person's legal status was considered, "pending adjustment of status."

REPRESENTATIVE SAMUELS inquired as to how long a driver's license would be valid under the proposed amendment if that party had made an application for asylum in the United States.

MR. BANNOCK replied that all drivers' licenses are valid for five years, until the person's next birthday in five years, regardless of whether the party was rejected by the immigration office.

REPRESENTATIVE GRUENBERG suggested a conceptual amendment to Amendment 2, to read, "to expire on the next birthday in five years unless rejected, and if rejected the driver's license would expire immediately".

REPRESENTATIVE SAMUELS expressed concern that a person could potentially physically possess a valid driver's license, even if the driver's license was expired, or the person's immigration application had been denied, because the expiration date would actually reflect future date. He asked if it would be possible to set the initial expiration date for a shorter timeframe to allow for immigration processing time.

MR. BANNOCK replied that the federal government posts and updates an estimated wait period on its website, which sometimes exceeds two years. He explained that the federal agency's backlog sometimes creates a problem for the division, and using the Virginia language embodied in Amendment 2 will help address and mitigate these issues.

[1:36:29 PM](#)

REPRESENTATIVE COGHILL asked whether the driver's license would be valid only during the time the person has authorized legal status. He also asked whether Amendment 2 would place tension in its directive to the agency because the person's authorization status was listed as indefinite.

REPRESENTATIVE GRUENBERG referred members to the Virginia Act included in the committee packet. He stated that although the language in the Virginia Act is mirrored in Amendment 2, other portions of the Virginia Act could potentially address this issue. He indicated that he would support amending Amendment 2 to reflect the rest of the Virginia language.

MR. BANNOCK explained that another portions of HB 3 pertains to immigrants' indefinite statuses. He opined that if Amendment 2 were adopted, even when a person's pending status is continued into perpetuity he/she would still only be issued a driver's license for a one-year period. After one year, he/she would have to renewal annually during the application pending status.

REPRESENTATIVE GRUENBERG said that he could also support the entire Virginia language as alternative language.

REPRESENTATIVE COGHILL asked whether the division could renew a license that was in pending status if the person provided documentation that showed the application was still pending.

MR. BANNOCK replied yes. The division would require a one year renewal on applications without an end date. However, if the individual's documentation allowed him/her legal status in the United States for 18 months, the division would issue the license up until the 18-month date. He noted that these licensing circumstances are addressed in HB 3.

REPRESENTATIVE COGHILL questioned whether the limitation for license issuance and renewals ought to be clarified further to identify the applicant's status, such as identifying "pending legal status" or "indefinite status."

MR. BANNOCK responded that it would not be necessary to do and referred to the limiter in Section 6.

MR. BANNOCK, in response to Representative Coghill, confirmed that a pending application would be treated as an indefinite application status.

1:40:42 PM

REPRESENTATIVE GRUENBERG asked whether the division preferred the language in Section 6 or the additional language from the Virginia Act.

MR. BANNOCK explained that the difference between Section 6 in HB 3 and the Virginia Act is that the Virginia Act is very specific to items listed in paragraphs (1) through (6), whereas Section 6 pertains to the whole gambit. He said he understood that very few people actually hold permanent residency cards, but that those in permanent residency status must still renew their card every 10 years. He said that he thought the result would be the same, whether the Virginia Act is altered to make it specific to the six paragraphs listed in Amendment 2, or whether Section 6 is maintained.

CHAIR RAMRAS stated he was satisfied with the language in Section 6. He asked whether Amendment 2 dealt with the issues adequately within Section 6 or if additional language should be added to further clarify how renewals on pending applications are handled.

MR. BANNOCK responded that he thought the instructions to the division are crystal clear.

REPRESENTATIVE SAMUELS described an instance where the ICE indicated there would be an a delay in processing an application for about two-and-a-half years. And whether the DMV would consider applicant in the aforementioned pending status an indefinite status.

MR. BANNOCK responded yes.

REPRESENTATIVE SAMUELS related his understanding that the bill's goal, is to stop potential terrorists from obtaining a driver's license. He expressed concern that the DMV might issue an identification card]from one to five years] to a person whose intention is to harm our country. However, he said he would not offer any amendments to Amendment 1 if the DMV is satisfied with issuing one-year licenses for those persons holding indefinite status.

REPRESENTATIVE GRUENBERG stated he was satisfied with Amendment 2.

CHAIR RAMRAS removed his objection to Amendment 2. There being no further objection, Amendment 2 was adopted.

[1:44:59 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HB 3, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objections, the CSHB 3(JUD) was reported from the House Judiciary Standing Committee.

HB 151 - INDEMNITY CLAUSE IN PUBLIC CONTRACTS

[1:45:57 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 151, "An Act requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions." [Before the committee was a proposed committee substitute (CS) for HB 151, Version 25-LS0479\L, Bannister, 3/28/07, which had been previously adopted by the House Judiciary Standing Committee on 4/2/07].

[1:46:57 PM](#)

LEANNE BOLDENOW, Vice-President, Marsh USA Inc., explained that Marsh USA Inc. is an insurance brokerage that works with about 30 design firms statewide. She related that she previously wrote a letter of support for HB 151 because she often has reviewed poorly written, uninsurable contracts released by public agencies that contain onerous indemnification clauses. Those contracts often require the design consultant to take on liabilities that are not typically his/her responsibility. She said that insurance generally covers liability in tort law and that a firm would be held responsible even if a written contract is not in place. She said she also supports HB 151 because it is in alignment with professional liability insurance for the design professionals.

[1:48:26 PM](#)

JAMES CANTOR, Chief Assistant Attorney General - Statewide Section Supervisor, Transportation Section, Civil Division (Anchorage), Department of Law (DOL), stated that he agreed with the last speaker. He opined that HB 151 pertains to insurability and the negligent acts that cause liability and third party claims not contract claims between the contractor

and the agency or claims between the subcontractor and the contractor. He said that HB 151 applies to a person who is injured and who sues the person that built, designed, or owns the project, which amounts basically to tort claims. Insurance is already available to cover the risk between consultants and the public agency, but that co-insurance is not available. This legislation addresses how risk should be handled when insurance is not available. He said that the Department of Law supports CSHB 151, Version L, as written.

REPRESENTATIVE HOLMES asked whether the standardized language contained within HB 151 was in the state's best interest or at the least would not adversely impact the state.

MR. CANTOR responded that HB 151 is similar to language the Department of Transportation & Public Facilities (DOT&PF) already uses. The bill is aimed at the few agencies that do not currently use the DOT&PF provisions.

[Chair Ramras passed the gavel to Vice Chair Dahlstrom.]

[1:50:38 PM](#)

BOYD MORGENTHALER, P.E., Client Contract Task Force, Alaska Professional Design Council (APDC), explained that the APDC is a consortium of professional societies that represents about 5,000 architects, engineers, and land surveyors registered in Alaska. He related that APDC and himself, as a mechanical engineer, strongly support HB 151. He said that the bill levels out the playing field for insurance and liability questions in tort and would help the design professionals more smoothly negotiate contracts. There is a wide range of how terms are written and that this proposed standardization would help the design professionals.

VICE-CHAIR DAHLSTROM, upon determining no one else wished to testify, closed public testimony on HB 151.

[1:52:49 PM](#)

TREVOR FULTON, Staff to Representative Craig Johnson, Alaska State Legislature, said that he wanted to be certain that the members' prior concerns have been addressed. He stressed that HB 151 pertains only to construction related contracts, which are addressed in the CSHB 151(STA), and are also included in the Version L. He noted that the bill does not address issues that arise between builders and public contracting agencies. The

Associated General Contractors (AGC) and the Associated Builders and Contractors, Inc., Alaska Chapter (ABC) support the bill, he related. The DOT&PF language does not extend to builders and he opined that doing so would expand the scope of the bill considerably. He explained that subcontractors are covered under the terms of a separate contract between them and the agency, or the company with whom they are contracting.

[1:55:44 PM](#)

REPRESENTATIVE GRUENBERG moved to report the proposed committee substitute (CS) for HB 151, Version 25-LS0479\L, Bannister, 3/28/07, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 151(JUD) was reported from the House Judiciary Standing Committee.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

HB 225 - POSSESSION OF WEAPON WHILE ON BAIL

[1:56:26 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 225,"An Act relating to misconduct involving weapons and bail."

The committee took an at-ease from 1:56 p.m. to 1:59 p.m.

CHAIR RAMRAS advised that the public testimony was previously closed on HB 225.

[2:00:32 PM](#)

JEANNE OSTNES, Staff to Representative Craig Johnson, Alaska State Legislature, indicated that the CSHB 225, Version 25-LS0710\M, Luckhaupt, 4/11/07, had previously been adopted by the House Judiciary Standing Committee.

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, labeled 25-LS0710\M.2, Luckhaupt, 4/23/07, which read:

Page 3, lines 15 - 20:

Delete all material and insert:

"(A) while the person is on release under AS 12.30.020 - 12.30.040 for a felony under AS 11; or

(B) in violation of AS 11.61.220(a)(6) and the person is on release under AS 47.12.080 for a delinquent act that would be a felony under AS 11 if committed by an adult."

Page 3, following line 20:

Insert a new bill section to read:

"* **Sec. 3.** AS 11.61.210(a) is amended to read:

(a) A person commits the crime of misconduct involving weapons in the fourth degree if the person

(1) possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body in circumstances other than described in AS 11.61.200(a)(7);

(2) discharges a firearm from, on, or across a highway;

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person under circumstances other than those described in AS 11.61.195(a)(3)(A);

(4) manufactures, possesses, transports, sells, or transfers metal knuckles;

(5) manufactures, sells, or transfers a switchblade or a gravity knife;

(6) knowingly sells a firearm or a defensive weapon to a person under 18 years of age;

(7) other than a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a person 21 years of age or older may possess

(A) a deadly weapon, other than a loaded firearm, in the trunk of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; [OR]

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession; or

(9) knowingly possesses a firearm that is concealed on the person

(A) while the person is on release under AS 12.30.020 - 12.30.040 for a

(i) misdemeanor crime against a person under AS 11.41;

(ii) misdemeanor crime involving domestic violence; or

(iii) crime under a municipal ordinance similar to a crime described in (i) or (ii) of this subparagraph; or

(B) in violation of AS 11.61.220(a)(6) and the person is on release under AS 47.12.080 for a delinquent act that would be a crime listed in (A)(i) - (iii) of this paragraph if committed by an adult."

Renumber the following bill sections accordingly.

Page 3, line 28:

Delete "sec. 3"

Insert "sec. 4"

Page 3, line 30:

Delete "applies"

Insert "and AS 11.61.210(a)(9), added by sec. 3
of this Act, apply"

REPRESENTATIVE DAHLSTROM objected.

MS. OSTNES explained that Amendment 1 separates out the second concealed weapon offense by aligning the to the level of the initial crime. She explained that if the initial crime was a misdemeanor, and he/she violated bail conditions in a subsequent crime [using a concealed weapon], he/she would be charged with a second misdemeanor. However, if the initial crime was a felony crime, and he/she violated bail conditions in a subsequent crime [using a concealed weapon], he/she would be charged with a second felony crime.

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CHAIR RAMRAS asked for clarification whether Amendment 1 was consistent with Amendment 2.

REPRESENTATIVE COGHILL responded that one amendment pertains to the charge and the other amendment pertains to the condition of probation. He expressed a concern that someone who has been convicted of a misdemeanor, and who is subsequently found in possession of a concealed weapon could be charged with a felony. Amendment 1 sets the charges for a concealed weapon offense equal to the level of the initial charge.

MS. OSTNES, referring to Amendment 1, explained that for the change proposed to page 3, lines 15-20, of Version M, subparagraph (B) refers to a juvenile on release under AS 47.12.080 and also separates out misdemeanors from felonies.

REPRESENTATIVE DAHLSTROM inquired as to whether a person who charged is subsequently found innocent, would face additional proceedings for a concealed weapon charge.

MS. OSTNES specified that when someone is charged with a crime the judge, as a provision of bail release, advises the party not to carry a concealed weapon. If the person subsequently is found carrying a concealed weapon, he/she would incur a second charge for violation of the judge's order.

REPRESENTATIVE DAHLSTROM said that although she agrees with the intent of the bill and the amendment, both appear to be aimed at persons carrying concealed weapons. She pointed out that the sponsor statement refers to gang-related crimes, yet the bill doesn't seem to be restricted to gang-related instances. She inquired as to the constitutionality of the bill.

MS. OSTNES explained that the bill drafter did not find a constitutional problem because the judge would order the person not to carry a concealed weapon, as a condition of bail release.

REPRESENTATIVE DAHLSTROM again expressed concern about the constitutional rights of a person who has not yet been convicted of a crime.

REPRESENTATIVE COGHILL offered his understanding that conditions of bail do curtail some personal rights. He said that the bail limitations are set to correlate to the magnitude of the crime.

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MS. OSTNES, in response to Representative Lynn, indicated that HB 225 applies only to concealed weapon use.

REPRESENTATIVE LYNN asked whether the bill should be expanded to cover non-concealed weapon use for felony crimes. He posed an instance involving a domestic violence dispute in which someone did not carry a concealed weapon but could brandish a weapon out in the open.

MS. OSTNES opined that in crimes involving a domestic violence, a person [the victim] would be able to react to a situation in which he/she could visibly see a gun, as opposed to when a gun was concealed. She opined that she did not think some organizations, such as the National Rifle Association (NRA), or others would support a blanket restriction, unless the judge ordered and imposed, as a condition of bail, that the individual could not carry any firearm at all.

REPRESENTATIVE DAHLSTROM asked if the crime was serious wouldn't the person already be incarcerated and not be released on bail.

MS. OSTNES pointed out that all domestic violence charges are misdemeanors and that a person could have numerous misdemeanors on his/her record [and could still be released on bail].

REPRESENTATIVE DAHLSTROM maintained her objection.

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A roll call vote was taken. Representatives Coghill, Samuels, Lynn, Holmes, Gruenberg, and Ramras voted in favor of Amendment 1. Representative Dahlstrom voted against it. Therefore, Amendment 1 was adopted by a vote of 6-1.

REPRESENTATIVE COGHILL made a motion to adopt Amendment 2, labeled 25-LS0710\M.3, Luckhaupt, 4/26/07, which read:

Page 3, lines 21 - 25:

Delete all material and insert:

"Sec. 12.30.018. Possession of concealed firearms while on release. A court may prohibit a person from possessing a concealed firearm while on release under AS 12.30.020 - 12.30.040 for a felony crime against a person under AS 11.41."

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE COGHILL explained that Amendment 2 outlines the conditions of bail and defines the authorizing language for the judge's sentencing guidelines. She noted that AS 12.30 covers misdemeanor offenses, while AS 11.41 covers felony offenses.

The committee took an at-ease from 2:11 p.m. to 2:26 p.m.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), expressed concern that Amendment 2 gives the court the discretion to prohibit firearms for certain crimes. Currently, the court has the discretion to impose that condition on any crime and by adding this language, a court might interpret the language to mean that these are the only crimes for which it can impose the limitations. She said that there are many crimes for which a court would want to prohibit a person from carrying a firearm, let alone a concealed weapon, as a condition of bail.

REPRESENTATIVE COGHILL clarified that he thought current law applies to both misdemeanors and felonies.

MS. CARPENETI concurred.

REPRESENTATIVE COGHILL questioned whether dividing the charges in Amendment 1 altered the situation between misdemeanors and felonies.

MS. CARPENETI said that she did not necessarily think they were connected.

REPRESENTATIVE COGHILL questioned whether that permissive language was clear in statute elsewhere.

MS. CARPENETI related that indicated she would have to research the issue of bail law further but that sections of bail law address firearms specifically, especially with respect to domestic violence offenses.

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REPRESENTATIVE HOLMES asked whether Amendment 2 replaces Section 3 of the bill, and whether Ms. Carpeneti shared the same concern about Section 3 as she had expressed with Amendment 2.

MS. CARPENETI responded that although she was less concerned about Section 3, she maintained a little concern because one could argue that while it is mandatory for these crimes, the imposition is still discretionary. She stated that all bail provisions have a catch-all phrase that allows the court to order a condition of bail necessary to protect the public.

REPRESENTATIVE HOLMES questioned whether Ms. Carpeneti recommended that the committee not adopt Amendment 2, and delete Section 3, or if merely rely on the underlying bail statutes to address the issues.

MS. CARPENETI said that she recommended the committee not adopt Amendment 2. She opined that Section 3 is acceptable so long as the record is clear that the legislature does not intend to limit the court's discretion to impose a condition of bail in relation to any other charges.

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GERALD LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), acknowledged that there could be an issue raised for Amendment 2 vis-à-vis the authority that a court would have to restrict someone to possess a handgun. He opined that Section 3 does not pose a problem since there is nothing in that

section that would conflict with the court's ability to restrict a handgun as a condition of bail.

REPRESENTATIVE COGHILL suggested deleting Section 3 from the bill because he said he thought it imposes a directive in all circumstances. He expressed concern that Section 3 would infringe on the right to bear arms, and therefore he suggested that the condition should be more permissive

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REPRESENTATIVE COGHILL maintained his motion to adopt Amendment 2, but cautioned that the directive sets up a special circumstance that under all bail releases the judge must direct that the individual cannot keep a concealed firearm.

REPRESENTATIVE HOLMES surmised that the intent of Amendment 2 is to give the judge more latitude. She questioned whether the language of Amendment 2 was already covered under the current bail statutes.

REPRESENTATIVE COGHILL related his understanding that Ms. Carpeneti is saying that the discretion to impose restrictions for concealed and non-concealed weapons is covered under existing bail statutes. If that is so, he suggested the committee strike Section 3 and leave it to the court to decide.

REPRESENTATIVE GRUENBERG opined that the statute is quite clear that the court can impose any restriction necessary to assure the public's safety. He referred to AS 12.30.020 (b)(7) as follows: "if a judicial officer determines under (a) of this section that the release of the person will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community, the judicial officer may impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of the alleged victim, other persons, or the community." He related his belief that the aforementioned language specifically allows a judge to impose reasonable conditions for bail in any case.

A roll call vote was taken. Representative Lynn voted in favor of Amendment 2. Representatives Samuels, Holmes, Gruenberg, Dahlstrom, Coghill, and Ramras voted against it. Therefore, Amendment 2 failed by a vote of 1-6.

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REPRESENTATIVE COGHILL moved Conceptual Amendment 3 to strike Section 3 from HB 225.

REPRESENTATIVE HOLMES objected for purposes of discussion.

REPRESENTATIVE COGHILL said that the courts have discretion under current law to set conditions of bail.

MS. CARPENETI, in response to Representative Holmes, confirmed that under current law the courts have the discretion to set conditions for bail.

REPRESENTATIVE HOLMES removed her objection.

CHAIR RAMRAS asked if there were any further objections and there were none. Conceptual Amendment 3 was adopted. He asked Ms. Carpeneti if she had any concerns with the language in Amendment 1, which the committee previously passed.

MS. CARPENETI said that although she had some concern with Amendment 1, it might only require technical fine tuning. Under current statute, AS 11.56.757 (a), it is a Class A misdemeanor to violate any condition of release, except for a failure to appear, which is already a crime. She related her understanding that the sponsor did not intend to change that condition, but that the sponsor would like to make it more serious if the person were released under certain circumstances, for example, if he/she carried a concealed weapon after the court had ordered the person not to do so.

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MS. CARPENETI suggested a conceptual amendment could be made, and referred to page 1 line 13, (B), Version M, because the committee eliminated that section with the adoption of Conceptual Amendment 3. She reiterated her understanding that the sponsor and the committee wanted to make carrying a concealed weapon after an individual has been ordered by the court not to do so a more serious crime.. She suggested that she would work with the bill drafter to ensure that that condition was met.

CHAIR RAMRAS asked to set HB 225 aside to bring back to the committee for further review.

REPRESENTATIVE HOLMES referred Ms. Carpeneti and Mr. Luckhaupt to AS 12 30.018 in Section 4. The aforementioned statute was added by Section 3.

CHAIR RAMRAS set aside HB 225, Version M, as amended.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:43 p.m.