ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
May 11, 2007
1:40 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. 255
"An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 141
"An Act relating to limited liability companies."

- MOVED SB 141 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 2
Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska.

- MOVED CSHJR 2(JUD) OUT OF COMMITTEE

SENATE BILL NO. 97
"An Act relating to identification seals for certain articles created or crafted in the state by Alaska Native persons; relating to the Alaska State Council on the Arts; and making certain identification seal violations unfair trade practices."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 255
SHORT TITLE: DUAL SENTENCING
SPONSOR(s): REPRESENTATIVE(s) JOHNSON

05/04/07	(H)	READ THE FIRST TIME - REFERRALS
05/04/07	(H)	JUD, FIN
05/11/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 141
SHORT TITLE: LIMITED LIABILITY COMPANIES
SPONSOR(s): SENATOR(s) MCGUIRE

03/28/07	(S)	READ THE FIRST TIME - REFERRALS
03/28/07	(S)	JUD
04/23/07	(S)	JUD AT 1:30 PM BELTZ 211
04/23/07	(S)	Scheduled But Not Heard
04/27/07	(S)	JUD AT 1:30 PM BELTZ 211
04/27/07	(S)	Moved SB 141 Out of Committee
04/27/07	(S)	MINUTE(JUD)
04/30/07	(S)	JUD RPT 2DP 2NR
04/30/07	(S)	DP: THERRIAULT, MCGUIRE
04/30/07	(S)	NR: FRENCH, WIELECHOWSKI
05/09/07	(S)	TRANSMITTED TO (H)
05/09/07	(S)	VERSION: SB 141
05/10/07	(H)	READ THE FIRST TIME - REFERRALS
05/10/07	(H)	L&C, JUD
05/10/07	(H)	L&C AT 3:00 PM CAPITOL 17
05/10/07	(H)	Moved Out of Committee
05/10/07	(H)	MINUTE(L&C)
05/11/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 2
SHORT TITLE: CONST.AM:NO GAMING WITHOUT VOTER APPROVAL
SPONSOR(s): REPRESENTATIVE(s) CRAWFORD, DAHLSTROM

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	STA, JUD, FIN
05/03/07	(H)	STA AT 8:00 AM CAPITOL 106
05/03/07	(H)	Moved Out of Committee
05/03/07	(H)	MINUTE(STA)
05/03/07	(H)	STA RPT 1DP 1NR 4AM
05/03/07	(H)	DP: LYNN
05/03/07	(H)	NR: GRUENBERG

05/03/07	(H)	AM: JOHNSON, JOHANSEN, DOLL, ROSES
05/10/07	(H)	JUD AT 1:00 PM CAPITOL 120
05/10/07	(H)	Moved CSHJR 2(JUD) Out of Committee
05/10/07	(H)	MINUTE(JUD)
05/11/07	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JEANNE OSTNES, Staff
to Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 255 on behalf of the sponsor, Representative Johnson.

ANTHONY NEWMAN, Social Services Program Officer
Division of Juvenile Justice (DJJ)
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 255.

MARIT CARLSON-VAN DORT, Staff
to Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 141 on behalf of Senator McGuire, sponsor.

DAVID D. SHAFTEL, Attorney at Law
Shaftel Law Offices
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 141.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:40:16 PM. Representatives Coghill, Samuels, Lynn, Holmes, Gruenberg, and Ramras were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress.

HB 255-DUAL SENTENCING

1:40:51 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 255, "An Act relating to dual sentencing of

certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

1:41:07 PM

JEANNE OSTNES, Staff to Representative Craig Johnson, Alaska State Legislature, on behalf of Representative Craig Johnson, sponsor, explained that HB 255 proposes to expand the dual sentencing provisions for juvenile delinquency statutes. She referred to Section 1, subsection (a), and indicated that it clarifies [when dual sentencing would be considered], and brings in some specific age ranges. She indicated that a representative from the Department of Health and Social Services (DHSS) is available to provide more details.

REPRESENTATIVE HOLMES mentioned she did not see any letters of support in the bill packet, and asked if there would be testimony from agencies on the bill.

MS.OSTNES explained that a representative from the Department of Law (DOL) had planned on being present but left to attend another hearing. She offered to compile a list of questions for the DOL to review.

1:43:12 PM

ANTHONY NEWMAN, Social Services Program Officer, Division of Juvenile Justice (DJJ), Department of Health and Social Services (DHSS), stated that Ms. Ostnes met with the division director, Steve McComb, and Representative Johnson several weeks ago to discuss their concerns with juvenile sentencing. While the division has seen an overall decrease in referrals of delinquent juveniles to the agency in the past several years, the division finds unacceptable levels in the number of felony crimes, weapons crimes, and gang-related violence. Some youths finish their sentence at McLaughlin Youth Center, or other youth centers, but remain a public safety concern. However, these juveniles are no longer monitored once they reach the age of majority at 19 years of age and drop out of the juvenile system.

MR. NEWMAN said that the staff at these juvenile correction facilities often recognize the potential danger from individual juveniles being released from their facility. Some of those youth offenders continue criminal activity as adults. The agency has looked for some means to provide for public safety and monitor these repeat offenders. This has lead to a review of the dual sentencing law, under AS 47.12.065 and AS 47.12.120

and was the basis for developing SB 141. The bill's concept is that a juvenile can receive both a juvenile [sentence] and an adult sentence for committing certain offenses. The adult sentence is only triggered when the juvenile has failed in the juvenile system in some way, either by committing another felony crime, escaping the facility, or failing to meet treatment goals. He went on to explain that one problem with the current dual sentencing laws is that the criteria that would make a youth eligible for dual sentencing provisions is so stringent that it is almost never used as an option. In reviewing agency statistics, dual sentencing provisions were used in only four instances in ten years, with only one instance wherein a youth offender was sanctioned in the adult system.

MR. NEWMAN stated that under HB 255, the types of offenses and ages of juveniles eligible would be expanded. The division estimates that about 55 more juveniles would be eligible for dual sentencing. The department or the district attorney might determine that some juveniles are not appropriate candidates for dual sentencing, so the actual number of juveniles referred for dual sentencing might prove significantly less. Still, the division believes that expanding the dual sentencing adds one more option to help ensure public safety. He explained that the division also believes that HB 255 could help enable the agency provide seriously dangerous juvenile offenders with an opportunity and motivation to succeed in the juvenile justice system. He offered his hope that the division would be able to provide a range of options with how youth who do not respond to juvenile services can be dealt with, for example, ensuring the possibility of suspended sentences and probation instead of prison. The division also hopes that the bill would require the division to do a better job of understanding and justifying treatment that juveniles receive in facilities; and will help the division to question why the treatment has succeeded or failed, and whether there is a need to recommend transfer of the juvenile to the adult system.

MR. NEWMAN stated the division has a number of concerns about the bill as it is currently written. For one thing, it needs to ensure that younger juveniles are not bumped into the adult system prematurely. He said he felt initially that the bill intended to put 12-year-olds into the adult system, which is not the intention of the division or the bill’s sponsor. The division also thinks it needs to be clear that youth under the age of 16 or 17 won’t be placed in adult prison until they have been given the chance to succeed in the juvenile system. The bill additionally needs to clarify how a youth who successfully

completes juvenile treatment can avoid the adult sentence, and the age limits and offense types still need significant scrutiny from law enforcement personnel, criminal prosecutors, correctional officers, public defenders, and the courts. In closing, the division does not want to see any juvenile go to adult jail. Division staff views keeping kids from becoming adult criminals as the most important and rewarding aspect of their jobs. The evidence solidly supports that the juvenile system provides the best outcome to help juvenile offenders avoid a life of crime and victimizing others. While the division wants to continue to work to help juveniles to succeed, the division also has a duty to protect public safety. For these reasons, the division thinks HB 255 merits consideration, he added.

1:48:48 PM

CHAIR RAMRAS asked what the recidivism rate is amongst juvenile offenders, and also what the recidivism rate is for those that re-offend as adults.

MR. NEWMAN responded that it depends on the definition of recidivism that's used, but the division defines recidivism as those who re-offend in either the juvenile or the adult system within a year of their release from a treatment facility, or within a year from their release from formal probation. That recidivism rate is 28 percent.

CHAIR RAMRAS noted that the recidivism rate is considerably less than the recidivism rate of adults, which is about 66 percent.

MS. OSTNES reaffirmed that the adult recidivism rate is 66 percent.

CHAIR RAMRAS expressed that this bill provides an opportunity to rescue a significant part of the juvenile offender population so that these offenders don't repeat in either of the juvenile or adult system during a one year increment. He asked if there were any other increment used to measure recidivism.

MR. NEWMAN responded that the agency did not currently use another increment to measure recidivism. Previously the division used a two-year increment but has since chosen to align with the standard window used by other states.

1:50:23 PM

CHAIR RAMRAS surmised that if a juvenile offended at the age of 15 but did not offend again until he/she was 19, the juvenile would not fall into the statistical captured demographic.

MR. NEWMAN responded that in some instances, juvenile offenders would not be captured in the division's statistics, but that most juvenile offenders who re-offend tend to commit further crimes sooner, if they are to re-offend at all.

REPRESENTATIVE SAMUELS indicated that he requested the Division of Legislative Audit to research all recidivism rates with different standards since different agencies and groups use different rates. He suggested the when that audit becomes public; the committee could hold a hearing to review its findings on recidivism, perhaps during the interim.

REPRESENTATIVE COGHILL added that not only are the recidivism rates for juveniles and adults worth reviewing, but that some crimes are considered more serious when committed by 16- to 18-year-olds, so that dynamic should be looked at as well. He noted that "aging out" still could be an issue.

REPRESENTATIVE SAMUELS asked what would be considered a class B felony crime against a person.

MS.OSTNES responded a class B felony crime against a person could be assault in the second degree.

REPRESENTATIVE SAMUELS asked for clarification of the definition of assault in the second degree.

MR.NEWMAN stated that he believed the difference had to do with whether or not a weapon was used.

1:53:52 PM

CHAIR RAMRAS offered his understanding that about $5,000 in discretionary funds had been allocated to the Fairbanks youth facility, and asked what kinds of things might be accomplished with that funding.

MR. NEWMAN responded that it would not be enough funding for a renovation or an addition, but it could possibly be spent on more equipment, but he had also heard that the facility needed a climbing wall.

CHAIR RAMRAS mentioned that Bernard Gatewood, Juvenile Justice Superintendent II, had indicated the facility could use additional funds for cardiovascular fitness equipment. He asked what might best help to strengthen the youths' spirit and self esteem.

MR. NEWMAN suggested that perhaps the most beneficial thing would be to enhance their job skills. One program that has been developed has been the Culinary Arts program and perhaps that could be enhanced.

MS. OSTNES noted that one high school teacher goes from school to the youth facility to provide training on how to interview for jobs, and helps juveniles prepare resumes so they can obtain employment.

CHAIR RAMRAS suggested that he would mention to Mr. Gatewood that the cardio equipment, culinary program, and job skills enhancement would be good items to consider using the funds for. He indicated he, too, would be interested in obtaining the audit results on recidivism.

CHAIR RAMRAS indicated that HB 255 would be held over.

SB 141-LIMITED LIABILITY COMPANIES

1:58:32 PM

CHAIR RAMRAS announced the next order of business would be SENATE BILL NO. 141, "An Act relating to limited liability companies."

MARIT CARLSON-VAN DORT, Staff to Senator Lesil McGuire, Alaska State Legislature, said on behalf of Senator McGuire, sponsor, that SB 141 is one of three bills that attempts to keep Alaska's trust laws competitive SB 141 addresses Alaska's limited liability laws to keep them competitive and attractive to those wishing to do business in the state of Alaska. SB 141 would clarify that an organization providing professional services can organize its business using a limited liability company. The reason for the change is to eliminate speculation on the authority for the use of professional services such as attorneys, accountants, and engineers, as defined in statute. The bill would also delete subsection (d) in AS 10.50.150, which allows a founder of an LLC established in Alaska to be a co-manager without having all the assets of a company included in the founder's gross estate for federal tax purposes.

2:00:43 PM

CHAIR RAMRAS noted the House Judiciary Committee introduced a companion bill, HB 195, which has not yet had a hearing before the House Labor and Commerce Standing Committee, and that SB 141 is now before the committee with identical language. He indicated that accountants and other professionals who are licensed are regarded as individuals, and a limited liability company (LLC) currently is essentially treated the same as an individual.

REPRESENTATIVE DAHLSTROM asked for specific reference to the language within SB 141 that specifies a co-owner could be a co-manager.

MS. CARLSON-VAN DORT referred to the language on page 2, line 5, which repeals AS 10.50.150 (d).

REPRESENTATIVE DAHLSTROM pondered whether, if the LLC got into trouble, would the co-owner, who may have been a co-conspirator, be held responsible since he/she may have benefited from the financially from the LLC.

MS. CARLSON-VAN DORT offered that someone else might be able to better answer the question.

REPRESENTATIVE SAMUELS identified his potential conflict of interest and acknowledged that he is a partner in two LLCs, although the LLCs do not provide professional services.

REPRESENTATIVE DAHLSTROM stated that she is also a member of an LLC.

CHAIR RAMRAS stated that he also is owner of an LLC.

2:04:41 PM

DAVID D. SHAFTEL, Attorney at Law, Shaftel Law Offices, remarked that SB 141 simply clarifies that professionals can use an LLC as their business entity. The LLCs have been authorized in the state of Alaska for approximately 15 years, but the bill makes it clear in statute who is entitled to create an LLC. The Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, & Economic Development, approves the use of LLCs by licensed professionals in Alaska. He stated he had been part of the group that worked on the

original LLC legislation, but they somehow overlooked specific language to outline the specific authority. Furthermore, SB 141 clarifies that professionals can create LLCs, recognizing that many currently do create LLCs. The advantage of an LLC is that it combines the best attributes of a corporation and a partnership. He explained that an LLC has limited liability, just as a corporation does but it has a single level of taxation, just as if one were using a partnership. He suggested that this is why these entities have become the entity of choice for any business, whether the entity is a small family business, a small investment activity, or an operating business. Occasionally businesses form corporations because the bank may be federally regulated and requires it, or because a company intends to go public and so it may choose the corporate form.

MR. SHAFTEL stated that generally the LLC is significantly easier to use than an "S" corporation, especially for estate planning, and deleting AS 10.50.150(d) will assist in estate planning.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

REPRESENTATIVE SAMUELS asked for explanation of the repealed subsection of the bill.

2:08:04 PM

MR. SHAFTEL explained that an LLC provides a useful approach for senior members of families to contribute investment assets, security accounts, and make financial gifts over a period of years to their children and grandchildren. Using an LLC allows for a centralized management of assets, a diversification of assets, and a way to pass those assets on to the next generation free of transfer taxes, gift taxes, or estate taxes. Each person can currently transfer up to $12,000 per year per beneficiary, and over a lifetime can transfer an amount of $1 million dollars without paying any gift tax. These LLC entities are commonly used for these purposes.

MR. SHAFTEL explained that a problem has developed with where the Internal Revenue Service (IRS), under the Internal Revenue Code (IRC) has determined that founders retain too much control. The IRS challenged family LLCs in court and has taxed entire estates that have been previously gifted. The Internal Revenue code says that if the founder who is doing the gifting retains the ability to affect distributions, even if it is a loan to other persons or groups of persons, and even if that founder

voted on liquidation of the entity, then all assets are included in the estate and taxed upon his/her death.

MR. SHAFTEL described a scenario where parents could set up a family LLC and over a twenty year period give away almost all of their financial interest, leaving only a small interest intact. Under that scenario, the IRS could take the position that all the assets shall revert into the estate and be taxed upon his/her death, even though the assets were dispersed over a twenty year period, using the $12,000 annual allowable allowance, and the LLC had filed gift tax returns in accordance with the $1 million dollars total gift allowance limit.

MR. SHAFTEL indicated that because of this IRS interpretation, a planning technique has been developed to avoid the problem of senior members retaining too much control. The solution chosen is to set up two types of managers: a senior member [manager] who retains investment decision-making responsibilities, and a second, independent manager who makes distribution decisions pro rata to all the owners of the LLC; only the independent manager is responsible for deciding whether to liquidate. It is important to ensure that the senior member cannot vote on changing the special manager arrangement, because the IRS could assert that the member had too much control and then assess taxes on all financial interests upon his/her death.

REPRESENTATIVE SAMUELS asked if there could be a four-person partnership with only one person being able to make controlling decisions, instead of their being equitable control by all.

2:16:20 PM

MR. SHAFTEL responded that repealing AS 10.50.150(d) would give LLC members the flexibility to format the LLC in any way they choose, such as in specific situations where LLC members desire to have this special manager structure that the two manager setup.

REPRESENTATIVE SAMUELS asked whether one LLC member could then change the rules so that he/she retains control.

MR. SHAFTEL responded no, that the member could not arbitrarily make the change, and explained that one person would have control only if the LLC members had agreed to an operating agreement that contained those terms. Deleting subsection (d) will only allow the freedom to draft the operating agreement the

way the members choose and would not impose any rules for structuring the agreement.

2:19:11 PM

VICE CHAIR DAHLSTROM asked Mr. Shaftel about the potential liability for the managing partner if he/she was found guilty of wrongdoing.

MR. SHAFTEL responded that if one member is found guilty of wrongdoing, he/she is still liable because an LLC only protects the business liability, just like a corporation. For example, if a driver for a trucking business has an accident, is sued, and the business assets are insufficient to cover the damages, then the judgment cannot seek satisfaction from the business or from the corporate members who own the business; instead, the driver is always held personally liable for his/her own actions.

VICE CHAIR DAHLSTROM offered an example of an LLC that went out of business, and asked if liens could be placed on the individual owners to satisfy the LLC's debts.

MR. SHAFTEL responded no, and explained that the only way individual members are personally liable is if the members of the LLC personally guaranteed the debt when it occurred. For example, a bank might decide at closing that it will only execute the loan if the LLC members personally sign to secure the loan.

VICE CHAIR DAHLSTROM asked for clarification, when would members know whether they are signing on behalf of the LLC, or whether they are signing for themselves?

MR. SHAFTEL responded that if a person signs as a manager of the LLC, the person is signing on behalf of the LLC and would not be personally liable, but if the member signed where the contract indicated the party was personally liable, then the member would be liable as an individual.

2:23:31 PM

VICE CHAIR DAHLSTROM asked whether a couple that owned a business would be personally liable for debt incurred on a company credit card.

MR. SHAFTEL responded that it would depend on specific facts, but generally, even if it were a “closely held” LLC, where the

parties operated a small business but also held personal assets, the individuals would not be personally liable for the LLC debts if the company failed so long as the obligation was executed on behalf of the company, and the business operated correctly under the law, and the parties did not sign personally to guarantee the company credit card.

VICE CHAIR DAHLSTROM surmised that a judge would determine whether the company had operated correctly, which would affect whether the husband and wife would be held personally liable for the debt.

MR. SHAFTEL explained that if the husband or wife was personally negligent or reckless, then a lawsuit could be made against both the individual and the LLC assets. He then clarified that his earlier responses were based on the assumption that the parties were not negligent or otherwise acting wrongfully, that the business simply did not succeed, and that the outstanding business debts were greater than the business's assets. In those instances, he said, he felt the individuals would not be held personally liable for the LLC's debt.

REPRESENTATIVE SAMUELS asked for clarification of the repeal of subsection (d). He gave an example where a husband, a wife, and a friend form an LLC, but the couple subsequently needs money to pay for medical expenses. The minority member requires them to change the operating agreement in order to obtain money from the LLC. Under that scenario, with respect to repealing subsection (d), he asked whether the minority partner could leverage control of the LLC by changing the LLC’s articles of organization or operating agreement.

REPRESENTATIVE GRUENBERG responded that the minority partner could gain control.

MR. SHAFTEL offered instead that subsection (d) refers to subsection (c), which only refers to amending the articles of organization or the operating agreement. In the example, the outcome would be the same regardless of whether subsection (d) is repealed. He explained that the operating agreement is essentially a contract between the parties which states that the agreement shall be followed unless there is unanimous consent to change the contract. Under current law, subsection (a) and (b) establishes a majority vote control. But in the hypothetical instance described, he surmised, the parties would probably have to litigate in order to get some relief and dissolve the LLC.

2:30:13 PM

REPRESENTATIVE GRUENBERG expressed concern about eliminating subsection (d). He said he agrees with Mr. Shaftel that with the proposed changes under subsection (c), that situation could happen even if there is nothing in the operating agreement or the articles of incorporation. He opined that what prevents the minority from leveraging the parties under current law is the provision contained in subsection (d). He suggested that subsection (d) is the default protection, and that the situation Mr. Shaftel described could not happen. He expressed concern about eliminating subsection (d) for that reason. He offered that the normal rule is that the written consent of all members of an LLC is required unless otherwise provided for in the operating agreement or the articles of incorporation. But generally, he explained, for decisions, the default is not less than a majority vote. He opined that provisions in the bill seem to be in conflict, and said that he was unsure how to harmonize them.

MR. SHAFTEL disagreed with that interpretation, and referred the committee to subsection (c); he explained that it states that unless another level of member consent is required in the LLC operating agreement, it requires all the member's signatures to change it. He explained that the LLC operating agreement is essentially a contract, and that subsection (c) sets up the two LLC contracts: the operating agreement and the articles of incorporation. He stated an example wherein a parcel of land is purchased by five people, and unless all the parties agree, the contract cannot be changed. He opined that subsection (c) means that written consent of all members is required to change the LLC contracts. Subsection (d) waters that down by allowing members to enter into a new contract that allows decisions to be made with less than all of the member's signatures. He stated that that authority is unusual, but it is sometimes granted. The reason to allow it in subsection (d) is for family limited partnerships and family LLCs that want special managers. Again, he opined, this is highly unusual, and it goes against all instincts when writing an agreement. Under ordinary circumstances, the parties all sign and all understand the agreement cannot generally be changed; the parties know they cannot lose their rights just because some members want a change.

MR. SHAFTEL stated that that is why subsection (c) says that unless one enters into a different agreement, the basic default rule is that all members must sign to change the contracts - the

articles of organization and the operating agreement. He gave another example of an LLC which was set up with ten members who initially agreed that if six people agree on a change, the other four will just have to accept their decision. He went on to explain that that type of agreement could be made under current law under subsection (c) because it reads, "unless another level of member consent is required".

2:37:17 PM

MR. SHAFTEL continued that the problem with subsection (d) is that it discourages family limited partnerships and family limited LLCs, and both are commonly used nationwide in estate planning for solutions to potential tax problems. He said he felt that if such solutions were not allowed in Alaska, that the state would lag behind what is being done in other states. He opined that there is no harm in repealing subsection (d). He stated that it was an anachronistic provision, and emphasized the importance of repealing subsection (d) for estate planning purposes.

REPRESENTATIVE GRUENBERG argued that repealing subsection (d) would allow an agreement to provide that a change could be made in the operating agreement or the articles of organization by less than a majority of the members.

MR. SHAFTEL agreed that repealing subsection (d) would allow parties to enter into that type of agreement, but pointed out that under current law one cannot make a change with less than a majority vote.

REPRESENTATIVE GRUENBERG asked what the benefit is in deleting subsection (d).

MR. SHAFTEL responded that the benefit of repealing subsection (d) is that it will address problems with respect to IRS taxation on estates.

2:40:21 PM

REPRESENTATIVE GRUENBERG asked whether repealing subsection (d) would create potential problems in other circumstances, and not just affect benefits for estate taxation purposes.

MR. SHAFTEL stated he did not feel misuse could occur because there is not a requirement for parties to enter into LLC agreements; rather, the effect of repealing subsection (d) is

that it would allow parties to knowingly enter into an agreement that states that less than a majority could make decisions. He said he felt that this is true in every contract, and that there is no rule that applies to protect parties if they knowingly agree to terms that are not in their best interest. He stated that the terms members agree to are in effect, unless coercion, lack of adequate notice, or some other legal issue arises. He said it seems a shame to not allow Alaskans to have the opportunity to avoid onerous taxation on their estates.

CHAIR RAMRAS explained that he had formed an LLC, and held fifty percent of the company but had foolishly agreed to make his partner a managing member, which he immediately regretted because it had substantial adverse personal financial ramifications. He reiterated what Mr. Shaftel stated, LLC members can state their own terms in an operating agreement. He agreed there are many benefits to repealing subsection (d), and said he thought the only detriment would be for someone who'd make a poor decision. He stated he did not see any harm in the repeal of subsection (d), and asked for feedback in his assessment of the proposed change.

MR. SHAFTEL agreed. He commented that many business people have made decisions that they have regretted, but the statutes cannot protect them from poor business decisions.

CHAIR RAMRAS acknowledged that in his own experience, he erred in changing the operating agreement, but his mistake was not relative to subsection (d). He opined that the repeal of subsection (d) could provide considerable benefits to Alaskans who choose to set up an LLC. He reiterated that repealing subsection (d) would not have helped or harmed him in his own business decision.

REPRESENTATIVE SAMUELS recapped his example of an LLC, and explained that he understood the benefits to repealing subsection (d).

2:48:26 PM

REPRESENTATIVE SAMUELS explained that while he understood the family estate planning benefits, he still has concerns that one could lose his/her business if one set up the operating agreement poorly.

REPRESENTATIVE GRUENBERG asked Mr. Shaftel the reason for including subsection (d) initially.

MR. SHAFTEL responded that the subsection was based on the partnership format but when the draft LLC language was reviewed, the implications of the provision were overlooked. He surmised that its purpose was probably to preclude members of an LLC from amending an operating agreement with less than a majority of members, but that is a policy decision and the benefit to families to use limited liability partnerships (LLPs) and LLCs greatly outweighs the limited protection this subsection provides.

REPRESENTATIVE GRUENBERG asked whether the committee should also review similar provisions in LLP statutes.

MR. SHAFTEL responded that he did not know for certain if problems exist in the LLPs.

MS. CARLSON-VAN DORT confirmed that this is the only committee referral for the bill.

2:52:31 PM

REPRESENTATIVE SAMUELS moved to report SB 141 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection SB 141 was reported from the House Judiciary Standing Committee.

HJR 2-CONST.AM:NO GAMING WITHOUT VOTER APPROVAL

2:53:30 PM

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

CHAIR RAMRAS announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 2, Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska.

REPRESENTATIVE DAHLSTROM made a motion that the committee rescind its action in reporting from committee the proposed committee substitute (CS) for HJR 2, Version 25-LS0257\E, Luckhaupt, 5/9/07, as amended. There being no objection, Version E, as amended, was before the committee.

2:54:18 PM

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HJR 2, Version 25-LS0257\K, Luckhaupt, 5/11/07, as the work draft.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He referred to a memorandum dated May 11, 2007, by Gerald Luckhaupt, and noted that on page 1, line 11, Version E was amended to read, in part, "approved by any municipality where the gambling may occur", whereas Version K reads in part, on page 1, lines 10-11, "and approved by the municipality where the gaming or gambling may occur". He said he felt this change was beneficial, but noted this will require that the activity occur within a municipality. He stated that under Version E, as amended, the gaming or gambling could occur outside a municipality, for example, outside the city limits.

REPRESENTATIVE DAHLSTROM, speaking as one of the resolution's joint prime sponsors, offered that the original intent was to address activity within a municipality, and so she appreciates the fix provided for in Version K. She added that she would want any municipality to be able to vote on whether this type of activity will be allowed in that community.

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR RAMRAS asked if there was any further objection. There being none, Version K was before the committee.

2:57:27 PM

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HJR 2, Version 25-LS0257\K, Luckhaupt, 05/11/07, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 2(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:58 p.m.