

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 7, 2008

3:40 p.m.

MEMBERS PRESENT

Senator Donald Olson, Chair
Senator Albert Kookesh, Vice Chair
Senator Gary Stevens
Senator Joe Thomas
Senator Thomas Wagoner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 161

"An Act relating to the Alaska coastal management program."

MOVED CSSB 161(CRA) OUT OF COMMITTEE

SENATE BILL NO. 235

"An Act relating to shipping, sending, transporting, or bringing alcohol to a local option area and providing alcohol to others in the local option area, including penalties for violations; relating to furnishing alcohol to a minor and to civil penalties for licensees whose agents or employees furnish alcohol to a minor; relating to manslaughter as a direct result of ingestion of alcoholic beverages brought in violation of a local option prohibition; relating to reports of the court concerning certain alcohol violations by minors; making conforming amendments; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 161

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): SENATOR(S) OLSON

04/25/07	(S)	READ THE FIRST TIME - REFERRALS
04/25/07	(S)	CRA, RES, FIN
10/23/07	(S)	CRA AT 3:30 PM BELTZ 211

01/17/08 (S) CRA AT 3:30 PM BELTZ 211
 01/17/08 (S) -- Meeting Postponed to 1/22/08 --
 01/22/08 (S) CRA AT 3:30 PM BELTZ 211
 01/22/08 (S) -- Meeting Postponed to 1/29/08 --
 01/29/08 (S) CRA AT 3:30 PM BELTZ 211
 01/29/08 (S) Heard & Held
 01/29/08 (S) MINUTE(CRA)
 02/07/08 (S) CRA AT 3:30 PM BELTZ 211

BILL: SB 235

SHORT TITLE: ALCOHOL: LOCAL OPTION/LICENSING/MINORS
 SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/08 (S) READ THE FIRST TIME - REFERRALS
 01/18/08 (S) CRA, JUD, FIN
 01/31/08 (S) CRA AT 3:30 PM BELTZ 211
 01/31/08 (S) -- MEETING CANCELED --
 02/05/08 (S) CRA AT 3:30 PM BELTZ 211
 02/05/08 (S) Scheduled But Not Heard
 02/07/08 (S) CRA AT 3:30 PM BELTZ 211

WITNESS REGISTER

SKIP RYMAN, Manager
 City and Bureau of Yakutat
 Yakutat AK

POSITION STATEMENT: Spoke in support of SB 161.

MARLENE CAMPBELL, Director
 Government Relations
 City and Borough of Sitka
 Sitka AK

POSITION STATEMENT: Spoke in support of SB 161.

MARV SMITH, Coordinator
 Community Development and Coastal District
 Lake and Peninsula Bureau
 Iliamna AK

POSITION STATEMENT: Spoke in support of SB 161.

DAN EASTON, Deputy Commissioner
 Department of Environmental Conservation (DEC)
 Juneau AK

POSITION STATEMENT: Had question regarding SB 161.

LINDSAY WOLTER, Assistant Attorney General
 Environmental Section

Department of Law
Anchorage AK

POSITION STATEMENT: Expressed concern over SB 161.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau AK

POSITION STATEMENT: Presented SB 235.

DIANE CASTO, Manager
Prevention and Early Intervention Services
Department of Health and Social Services (DHSS)
Juneau AK

POSITION STATEMENT: Spoke in support of SB 235.

SUE MCLEAN, Chief Assistant Attorney General
Criminal Division
Department of Law

POSITION STATEMENT: Spoke in support of SB 235.

MATT FELIX, Director
National Council on Alcohol and Drug Dependence
Juneau AK

POSITION STATEMENT: Spoke in support of SB 235.

PATRICIA LEEMAN, Deputy Directory of Operations
Division of Juvenile Justice
Department of Health and Social Services
Bethel AK

POSITION STATEMENT: Spoke in support of SB 235.

ACTION NARRATIVE

CHAIR DONALD OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at [3:40:19 PM](#). Senators Olson, Stevens, Thomas, and Kookesh were present at the call to order. Senator Wagoner arrived shortly thereafter.

SB 161-COASTAL MANAGEMENT PROGRAM

CHAIR OLSON announced the consideration of SB 161. The committee substitute, Version 25-LS0883\C, was before the committee.

SKIP RYMAN, Manager, City and Bureau of Yakutat, said he served as Yakutat's planner and its coastal district coordinator. When Alaska decided to participate in the Coastal Management Program

it chose to use a model of multiple separate districts. The state could have chosen a single statewide umbrella plan, but Alaska's diversity made that impossible. The Northwest Arctic is radically different from Southeast Alaska, for example. He recalled Governor Murkowski eliminating the DGC [Division of Governmental Coordination] and the Coastal Policy Council, and then centralizing habitat and permitting functions within the Department of Natural Resources (DNR). Those actions were portrayed as a streamlining effort in order to make permitting less complicated for developers. As the administration's efforts took shape, it became obvious that it was the individual coastal districts that were viewed as impediments to development, and the actual goal was the muting and the elimination of their voice in development issues.

MR. RYMAN said HB 191 was an honest attempt to reduce bureaucracy and was never an attempt to eliminate participation by Alaskans in development issues. But that was the intent of many regulations that followed the bill. He said he attached a position letter on the draft environmental impact statement for approval of amendments to the Alaska Coastal Management Program. It is signed by him for the City and Borough of Yakutat and by Bert Adams for the Yakutat Tlingit Tribe. The letter expresses their position on the issue. SB 161 seeks to reestablish full participation of Alaskans in their affairs, and he extended Yakutat's support for SB 161, including the reestablishment of the Coastal Policy Council.

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MARLENE CAMPBELL, Director, Government Relations, City and Borough of Sitka, said she has been the coastal management coordinator and has been around for the entire revision process. "I can only thank anyone who has had anything to do with the development of SB 161, and especially sponsor Senator Olson for the major step in the right direction." Sitka used to be extremely proud of its coastal program as a responsive supportive entity, working with developers while protecting the environment in the coastal zone. That relationship changed with the onset of HB 191, and it further changed with the forced revision of Sitka's coastal plan, which removed any effective policies related to subsistence or habitat "or most of the other areas within our coastal plan that had been so helpful to us ... in developing workable compromises for taking care our local area." Sitka's coastal district is 4,710 square miles.

MS. CAMPBELL thanked Senator Olson for sponsoring the bill. She strongly supports broadening public involvement in permitting;

it is especially true with the Department of Environmental Conservation (DEC), which is now reviewing air, land, and water quality permits with absolutely no communications with the coastal districts or the public. Legislation requiring a public process for DEC permits will provide an "excellent ability for the communities to reconnect with the permit process." The subsistence component is important and is mentioned in Sitka's coastal plan, "but we have not been able to effectively promulgate any enforceable polices related to it." Reconnecting subsistence with the coastal plan is very important to all communities that feel strongly about subsistence uses.

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CHAIR OLSON asked about future coastal development in Sitka.

MS. CAMPBELL said there is ongoing development, but there is nothing large scale like a big mine in the immediate future. But any current development is outside the ability of Sitka's coastal managers to comment effectively, and it is outside the public's ability to be notified. "I'm no longer up to speed on what may be happening, and I think this legislation will go a long way to, at least, providing public notice of those kinds of situations." Sitka could use some development, she opined.

CHAIR OLSON asked if the plan was approved.

MS. CAMPBELL said it was approved in April.

[3:48:30 PM](#)

MARV SMITH, Community Development Coordinator and Coastal Coordinator, Lake and Peninsula Bureau, Iliamna, said he supports SB 161 because it reestablishes the Coastal Policy Council and gives the district a say in consistency reviews. Presently, air, land, and water quality is not included, making it difficult to do consistency reviews properly. The local districts do not have the power to adopt meaningful enforceable policies. In comparing the old plan with the new one for his borough, it is significantly different. Local people should have input. There is development in the area that is detrimental to the communities, and "we want to have the local input." The plan under the previous administration did not consider all the ramifications. All 17 communities of the borough are on freshwater or saltwater. Fishing is an important livelihood, and the communities should have input on how the coastal zone can be developed. SB 161 heads in that direction.

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CHAIR OLSON asked if any recent developments have been affected by the past administration.

MR. SMITH said there will be a big one in the future.

CHAIR OLSON asked what difficulties the district will encounter.

MR. SMITH said the bill will give the local governments some say-so in what development goes on in their coastal districts. His district is trying to use statewide standards when a coastal consistency review comes before it. The planning commission was presented with a project for review under those standards "and they simply said we need to go back to the old plan."

[3:52:41 PM](#)

CHAIR OLSON asked if his coastal plan has been approved.

MR. SMITH said they are waiting for it to be approved and hope it will be approved soon.

SENATOR STEVENS said before HB 191 there was a council "in control of things." Now the department seems to be running things. Communities keep saying that there is no forum or role for the locals in policy development. Is there some middle ground? Is the best answer to go back to the previous policy council? Or is there "some middle way of including communities and still keeping the department involved?" Some testifiers say they don't want to change the day-to-day operations of the department, they just want more balance and to be at the table.

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MR. SMITH said being at the table is very, very important. He said to go back is not the answer, but suggested molding what is present into something that will work for everybody. The current plan has been a lot of hard work. Maybe the present regulations need to be tweaked. He can't answer whether the state must have the council, but it was made up of locals who understood what happens and could convey that to the staff. That was a good working relationship. He is not 100 percent sure it will work. Having that local input to the DNR staff is a great asset. There was also a working group, which is also gone. The people at the local level can give critical input.

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SENATOR STEVENS said he is struggling with it, and this committee may not be the place to go over the details of how a council would be created. He suggests passing it to the

Resources Committee. It is an important issue and he has heard both sides. The department felt they had no control of the outcome, and the local districts had no place at the table.

DAN EASTON, Deputy Commissioner, Department of Environmental Conservation (DEC), said he will focus on the "DEC carve-out" that will be removed by the bill and on single agency reviews. He has an incomplete understanding of SB 161. The DEC carve-out has two parts: "a definition that says that the DEC standards for air quality, water quality, and solid waste disposal, as well as spill prevention and response planning, are the sole enforceable policies of the ACMP for those purposes." The second part is when DEC issues a permit for an activity, it establishes that activity as consistent with those ACMP policies. So "when we issue a permit, that establishes consistency automatically with those policies." The effect is that project activities that require a permit from DEC are not subject to the ACMP process - they are carved out from the ACMP process. Current law reflects the thought that DEC has the duty to interpret the state environmental standards, "and that DEC would authorize only activities that comply with those standards."

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MR. EASTON said, "Because the state environmental standards are the only enforceable ACMP policies for those purposes, DEC authorization is both necessary and sufficient to establish consistency with the ACMP standards." That carve-out is removed by SB 161. DEC's authorizations typically include air emissions, water discharge, and pesticide permits, and approvals for oil spill prevention and response/contingency plans. When DEC issues an authorization, those activities aren't subject to ACMP review but are subject to an administrative process of public notice and comment. The permitting decisions are subject to administrative and judicial appeals processes, "so it may not be an ACMP process, but it's not a closed process either."

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MR. EASTON said when DEC is the only permitting authority for a project, it determines if it should go through an ACMP review, but only for activities that are not carved out. Any project could have parts that would be subject to an enforceable district policy, and it is up to DEC to make a decision with DCOM as to whether there are parts of the project that should be subject to local district review. "We have internal guidance that tells us how to operate this process." The first step is sending a letter to the coastal district, and it includes project information and asks the district to identify any

enforceable policies that it has. If there are none, there is no ACMP review. If the district says there are enforceable policies, and if DEC agrees with that, DEC will subject the project to an ACMP review for the purposes of deciding whether or not these other parts of the project - those beyond DEC's permits - are consistent with coastal district policies. "Our actual experience with these single agency reviews is limited, largely because there have been so few approved, effective coastal management plans." Since the carve-out has been in effect, DEC has only sent out 11 project scope letters to districts to see if any enforceable policies applied. Of those, one ACMP review was conducted. As more district plans are approved, the number of project scope letters and single agency reviews that DEC will conduct will increase.

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MR. EASTON said SB 161 "retains the part of the carve-out - the provision that the DEC environmental standards as established by statute and regulation are the sole enforceable policies of the ACMP for those purposes -- but the bill eliminates the second part of the carve-out, such that no longer would simply our authorization of an activity establish that activity as consistent with the ACMP program." That change will have unclear impacts. DEC would continue to develop permits and other authorizations, "but it would appear that the Coastal Policy Council would also be called on to determine whether permitted activities comply with state environmental standards." That potential transfer of authority concerns him.

CHAIR OLSON asked how DEC will make sure there's not a subjective issue when it approves plans. "You had stated that in order for some of these plans to be consistent -- and this bill does away with that consistency -- isn't there a subjective element to that that is what got us to where we are today?"

MR. EASTON said there are two parts to consistency. One is: "Is a project ... consistent with the DEC standards?"

CHAIR OLSON said that part is still in place with SB 161.

MR. EASTON said DEC attorneys don't advise it that way. That is the question. "We actually read ... that now this is no longer. While that standard remains, and there's a statement in statute to that effect, that the Coastal Policy Council, now, would ... also have say as to whether an activity complies with the state air quality standards, for example. That's what worries us. At least it's a question we have."

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LINDSAY WOLTER, Assistant Attorney General, Environmental Section, Department of Law, said page 11 refers to the DEC carve-out. DEC has statutes and regulations as their exclusive enforceable policy of the ACMP, but (d) on Page 11 refers to the extent that DEC doesn't cover certain projects, the coordinating agency shall review all project activities to ensure consistency with water and air. That is where the confusion is raised. "What does it mean to the extent that DEC doesn't cover the topic?" "We're not sure how it would be interpreted."

CHAIR OLSON asked how subjective that is since there is not a clear interpretation.

MS. WOLTER asked if the program has been subjective to date.

CHAIR OLSON said if there is confusion in the interpretation of what Mr. Easton was alluding to, then that makes it a subjective issue.

MS. WOLTER said she is not sure of the question, but it is not clear what (d) does in relation to (b). It seems that DEC's statutes and regulations are the exclusive enforceable policy for the ACMP, but then (d) opens up the scope of any review, saying that, to the extent that those statutes and regulations don't apply, then all project activities will be reviewed to be consistent with statewide standard enforceable policies, which are the local policies. She questioned what that means.

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SENATOR WAGONER said it looked like Mr. Easton wanted to say "we're having conflicting or dueling groups, because you might make a decision, and then this group would have the authority to review that decision and take further action on your decision."

MR. EASTON said that is correct.

SENATOR WAGONER said that is counter productive to what the legislature tried to do when a bill was passed three years ago.

MR. EASTON said it is not entirely clear at this point that that will be the effect. It is muddled, "and we worry that that would be the effect, but it's just not that clear."

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SENATOR WAGONER said that is how he interpreted it.

SENATOR THOMAS said he is confused about "section (d)". It appears "that either somebody has a lot of foresight and that they're looking forward to issues that may not necessarily be considered in those particular statutes that deal with predominantly the DEC, or that, for whatever reasons, they want to create confusion and allow it to get channeled back to the more local communities." "Is that not, at least, one interpretation that people were looking forward to things that may not necessarily have been covered, and that was the reason for putting this language in, that if it wasn't, that they still had the opportunity to participate in the process?"

MR. EASTON asked what he was referring to.

SENATOR THOMAS said he is talking about small (d) on lines 22 to 26 on Page 11.

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MR. EASTON said it is a bit complex. Section 16 is the new subsection (b). State environmental standards allow effects on resources, so the water quality standards allow some change in water quality. It depends on the circumstances, but it is not a no-change standard. It is the same with air and spills. Reading the new section (d), he wonders if it is a provision that says that for the types of changes that would be allowed by state standards, that the coastal policy council is then required by (d) to actually look and see if those changes are going to comply with ACMP standards and enforceable district policies. So it provides both a second level of review and it invites the districts to make standards that are more restrictive than state standards. It is a question and a concern.

SENATOR THOMAS said, "It appears to me that you're incorporating, to the extent that, those particular statutes do not take into consideration some potential effect, that you just have this policy or this procedure that you go through." It appears to be incorporating existing statute -- not challenging it. Unless someone is trying to be creative, it does incorporate existing statute into it, and if something that was not anticipated pops up, there is this process to address it.

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MR. EASTON said the reference to 46.03.0409, 14 and (d), is a reference to the state statutes that underpin the standard regulations. DEC develops standards in regulation pursuant to AS46.03, so it refers to state water and air quality standards.

SENATOR THOMAS said that was his understanding, and "that's why I figured they were incorporated into the consideration already." That is why he is confused.

MR. EASTON said, of the loss of the DEC carve-out in SB 161, "it is probably clear that we continue to develop permits and other authorizations, but it appears that the Coastal Policy Council would also be called on to determine whether permitted activities comply with state DEC environmental standards." That transfer of authority concerns him. Interpreting standards requires expertise and oversight by federal agencies. DEC has engineering and environmental professionals, so it is qualified as arbiters of state environmental standards. DEC strives to be consistent and predictable. Involving the council is one effect, and secondly the bill would require developing procedures to meld DEC permitting into the ACMP process. "I hear that discussed a lot, as if maybe that was the sole effect of the bill, and again, we wonder about that." Bringing the DEC permitting process under the ACMP process without subrogating DEC authority to the council seems possible, but it would require an amendment.

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MR. EASTON said the bill eliminates 46.40.040 (b)(2), which establishes the standards for judging ACMP consistency for activities in the OCS [outer continental shelf] and activities outside of state jurisdiction. "By eliminating that direct statement of what the standards are to be used in the OCS, it creates a question of what standards are intended to be applied outside of state waters." The bill appears to do much more than "return activities authorized by DEC procedurally to the ACMP process." It raises questions as to the role of DEC and the Coastal Policy Council in the application of DEC statutes and regulations. It appears to invite ACMP standards that are different from DEC regulations and from one coastal area to another. The bill also removes the state environmental standards as a basis for determining coastal consistency in the OCS. He acknowledged that the coastal districts have been adversely impacted through changes in the ACMP process, and it needs to be addressed. There is opportunity to improve the procedural nexus between the ACMP process and the DEC process, "and we would welcome an opportunity with DNR to work on such improvements."

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SENATOR STEVENS said that Mr. Easton has heard the same concerns he has heard from the local districts. They don't have a seat at

the table and can't comment on projects. "You have said, very clearly, that this is something that we must address." "How do we bring the communities back into this process more, and I assume your position would be without giving them veto power over the department?"

MR. EASTON said it is a good question, and he doesn't know. He defers to DNR as the lead in how to improve the program. His only interest is the DEC carve-out. "We are interested in making sure that the districts feel like they have a seat at the table, at the same time we're very interested in not subrogating our final authority for interpreting and applying state environmental standards."

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CHAIR OLSON said it looks like there is a fear that DEC standards will come under the umbrella of ACMP standards, and he asked if there is a conflict between the two standards.

MR. EASTON said there is no conflict now, because it is clear that DEC standards are the policies. There is concern that, in certain areas, the districts may want different standards, and that could create a patchwork of different standards. It might not be based on science or subjected to federal approval. It would not create a good regulatory regime.

SENATOR WAGONER asked how many coastal districts there are and how many have submitted and approved plans.

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RANDY BATES, Director, Division of Coastal and Ocean Management (DCOM), DNR, said there are 28 participating districts. There is a federal granting agency (OCRM) that has approval authority over any program changes Alaska makes. There are 16 coastal district plans in effect and approved. Four were sent to OCRM, and he just received notice that those program changes have been approved. It also approved the transfer of authority to the new DCOM. Now those four plans will be filed with the Lieutenant Governor and go into effect 30 days after his signature.

SENATOR WAGONER asked if eight have not been submitted or if they are being updated.

MR. BATES said Aleutians East, Bristol Bay, and Juneau have completed their plans and are pending submission to OCRM. The districts have to clean up those plans and get them in final form. They have DNR approval. Bering Straits, North Slope

Borough, and Northwest Arctic Borough have chosen to mediate the decision of the DNR commissioner. The other two, Cordova and Ceñaliulriit, are going to be submitted.

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CHAIR OLSON asked how long those will take.

MR. BATES said for the five that are not mediating, "the timeframe is largely their doing." As soon as DNR gets a clean version - incorporating the commissioner's recommendations -- DNR will submit it to the federal agency. That takes two to three weeks, and OCRM has a 28-day review process that can be extended. So that is two to three months after getting a clean plan from Aleutians East, Bristol Bay, Juneau, Ceñaliulriit, and Cordova.

SENATOR KOOKESH moved the committee substitute for SB 161, version 25-LS0883\C, Bullock, from committee with individual recommendations and attached fiscal note(s).

SENATOR WAGONER objected.

A roll call vote was taken. Senators Kookesh, Stevens, Thomas, and Olson voted in favor and Senator Wagoner voted against. Therefore, CSSB 161(CRA) passed from committee on a vote of 4:1.

[4:35:01 PM](#)

SENATOR STEVENS said he would like to hear about a middle ground because every community expressed frustration at not being at the table. He asked DNR to present that to the next committee.

SENATOR KOOKESH said that "middle ground" will need to be supported by the communities. The department has had a lot of time to work on this and the communities are still unsatisfied.

CHAIR OLSON said he has not heard a single district happy with it, and if there was middle ground it should have been put in place a long time ago.

SENATOR STEVENS said he agrees. He has heard enormous frustration. In the sponsor statement, Chair Olson said not to go back to the way things were. It needs discussion.

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SENATOR WAGONER said, "I understand some of the reasons. If you take authority for permitting in certain areas away from local areas, I understand why they are upset, and that is one of the

reasons they are upset." At the same time, one of the reasons it was done was because people were having trouble getting permits. He opposes SB 161 even if it may be a large improvement, "but until the districts do what they said they would do and get their plans through, reviewed, and approved and accepted - and we got all 28 of them that have done that - then if we need to make some modifications, that's the time to make modifications." He said some people haven't even complied with the law yet, and keep getting extensions "for years and years and years." He gets upset that these people delay and delay and delay. His borough is one of them. But there comes a time when "you do the work that you say you will do, and then ... if there are problems ... we'll work them out." He said the committee is talking about passing a new bill when people haven't complied with the bill that's in place.

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CHAIR OLSON said the ability to comply with the old one is almost impossible. Part of it was the problem that DNR had hiring people and redoing letterheads. "We need to go ahead and do something in a timely manner so we have some way to regulate what's going on out there." Yesterday there was a big sale in the Chukchi area, and people are upset because they didn't have any influence. It is federal lands, and that is the reason for the bill. Over the last six years, "attempt after attempt by people that I have been in close contact with, have been frustrated." There is a letter from one of the directors that said he won't talk about regulation review until June 2009. "I find that not just upsetting, I find that unreasonable." He said he offered the bill to get some movement.

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SENATOR WAGONER said it is also frustrating to sit here and have the people say they can't comply. "I can come up with 1,000 different reasons why I can't do something, and sometimes it's a lot easier to do that than do the work that's requested of me and then look at it and see if it works or doesn't work and then go from there."

CHAIR OLSON said that is valid.

SB 235-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

CHAIR OLSON announced the consideration of SB 235.

[4:41:57 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, said there are three sources for SB 235: recommendations from the Rural Justice Commission; a study by the Department of Health and Social Services in conjunction with federal guidelines to limit underage drinking; and an effort by the administration to enforce bootlegging laws in communities that have adopted local option.

[4:42:45 PM](#)

MS. CARPENETI said the holdover from the Rural Justice Commission prohibits sending alcohol to a local option community in plastic bottles. It is more difficult to detect alcohol in plastic bottles. Sections 2, 3, 4, and 5 require the Alcohol Beverage Control Board to impose civil penalties on liquor licensees if their agents or employees in bars and package stores are convicted of selling alcohol to a minor. This was a recommendation by the study on underage drinking. It follows the laws regarding tobacco sales, which have greatly reduced sales of tobacco to minors because store owners are paying more attention to employee behavior. By having civil penalties on liquor licensees, it is hoped that they will emphasize the law to employees. Currently, bootlegging is a Class A misdemeanor for small amounts of liquor, and it is a Class C felony for larger amounts. In support of local option, the bill makes it a Class C if convicted for a third time of supplying smaller amounts. There is a mandatory minimal penalty for bootleggers, which is almost exactly like the one for drunk drivers, except the look-back period will be 10 years. It will change the manslaughter statute. A person who bootlegged alcohol to one of these communities could be prosecuted for manslaughter if a person who drank it died from alcohol poisoning. That is similar to the methamphetamine law. The bill will also allow those charged to be eligible for therapeutic courts.

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SENATOR WAGONER said he is from Washington where a person can't buy liquor without a special identification card. "There wasn't any under-aged purchase of alcoholic beverages from state liquor stores in the state of Washington."

MS. CARPENETI said there is a bill being considered that requires driver's licenses to be easier to read. That would be similar to the Washington situation.

SENATOR WAGONER said not at all. In Washington, a driver's license is not a recommended identification in a liquor store.

MS. CARPENETI said she will take that idea to DMV.

[4:48:39 PM](#)

SENATOR THOMAS expressed concern about the second paragraph and holding people responsible for another person's actions. It requires the ABC to levy fines and suspend licenses if a bartender or clerk is convicted of furnishing alcohol to a minor. So the owner will be punished for what the bartender does. He acknowledged that there is a big problem, but trying to hold one person responsible for another's action is difficult for him to accept. It may impact a responsible bar owner.

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MS. CARPENETI said she understands, but the experience with tobacco enforcement has been impressive in how these civil penalties can affect the way an owner runs a business. It is the owner who sets the tone of how important the laws are. The penalties are graduated so that the first offense has a small penalty. It has worked very, very well with tobacco enforcement.

SENATOR THOMAS asked if more distinct I.D.s. or marks on driver's licenses for DUI offenders have been considered.

MS. CARPENETI said there was a several-year discussion on a recently-passed bill on marking the driver's license. It was a real struggle to pass it, and it doesn't require licensees to check licenses, but it requires DMV to have the mark on the license. That was a compromise.

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SENATOR THOMAS said someone with a fake I.D. is a different circumstance than if someone was not asked to show one. If they were required to ask, that would make a difference to him.

MS. CARPENETI said that was one of the problems; the licensees didn't want to have to ask everyone.

CHAIR OLSON asked if a person traveling with alcohol in their checked baggage has to have it in plastic containers as well.

MS. CARPENETI said the bill applies to licensees sending alcohol to local option communities in response to a written order.

[4:53:28 PM](#)

CHAIR OLSON asked if homemade wine needs to be in plastic.

MS. CARPENETI said SB 235 refers to licensees who are sending alcohol to a rural area.

DIANE CASTO, Manager, Prevention and Early Intervention Services, Behavioral Health, Department of Health and Social Services (DHSS), Juneau, said she supports SB 235. One of the main issues she deals with is substance abuse. To stem the tide of later alcohol abuse it is important to work with youth. She will supply the committee with Alaska's Plan to Reduce and Prevent Underage Drinking. The plan is now open to public comment. The acting Surgeon General came to Alaska when the plan was released. Alaska's plan is based on a national movement. In 2002, the Institute of Medicine and the National Research Council put together a strategy called "Reducing Underage Drinking, a Collective Responsibility." It helped Alaska develop its plan. All of the research asserts that access to alcohol is the main issue. Not all access comes through vendors, but the plan calls for higher penalties for retailers, which is a critical component.

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MS. CASTO referred to the Biannual Youth Risk Behavior Survey. It is a CDC survey that is done by the Department of Education and DHSS. The 2007 results show a small decline in substance abuse in Alaska. She said 73.6 percent of students in grades 9 - 12 reported having had at least one drink of alcohol one or more days during their lifetime, and 20.4 percent of students had their first drink -- other than a few sips -- before age 13. Research shows that rates of lifetime dependence on alcohol decline from more than 40 percent among individuals who start drinking at age 14 or younger, to roughly 10 percent for those who start drinking at age 20 or after. "So it is critical when kids start drinking as to what their lifetime dependence will be." She said 39.7 percent of students had at least one drink in the last 30 days, and 25.8 percent of students reported having five or more drinks in a row -- binge drinking -- on one or more occasions. Over 9 percent reported driving and drinking at least once in the past.

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MS. CASTO said it is a problem that over 70 percent of our children have started drinking by high school. "We need to find ways to curb that."

SENATOR WAGONER asked how it compares nationally.

MS. CASTO said Alaska is often high, but she doesn't have the current national data. In 2005, Alaska is a little below the national average, which is good. "Hopefully we're starting to see some progress."

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SENATOR THOMAS asked the sources of alcohol for the kids.

MS. CASTO said that question is not asked in the survey. The tobacco survey does ask. She referred to a chart. In 1995 27 percent of Alaska high school youth purchased tobacco at a store, and in 2003 it dropped to 12 percent. "We changed our laws related to penalties for selling tobacco to a minor in 2002." There was a significant drop in how many youth were buying at the store. In 2007 only 3 percent were purchasing tobacco from a store. She doesn't have the data for alcohol.

SENATOR THOMAS said it would be wise in figuring how to spend resources.

MS. CASTO said it is a CDC survey. There is a process for adding questions, and that question has been discussed.

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MS. CASTO said alcohol and youth is a lethal combination. The highest suicide rates for Alaskans are for 15-24 year olds. Nationally the age is much older. In Alaska 43.7 percent of all suicides involve alcohol or drugs. "So we know that alcohol is mixing with youth who are having a bad day and often times ending up in suicide." Alcohol increases the natural impulsivity of youth. Many are driving and drinking, creating critical injuries and fatalities. The three things in SB 235 that will impact under-aged drinking include the development of a statewide system to track minor consuming citations. Data is kept sporadically in the court system, but there is not one source where a judge, a treatment facility, or a probation officer can find out how many minor consuming offenses a youth has had. A judge might think the youth has only had the current offense, when he or she has actually had several. SB 235 will provide a tracking system for these youth and make sure they are getting the treatment they need. The bill will also reduce access to alcohol from vendors by increasing penalties. Alaska is proud of its stringent tobacco penalties. It has significantly reduced the sale of tobacco to Alaska youth.

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MS. CASTO said that holding both the clerk and owner responsible is the critical element. The other piece that has made the tobacco law successful is the consistent and mandatory penalty. Alcohol penalties are not now mandatory or consistent. Sometimes there is no penalty at all. New laws have worked for tobacco. The third impact of SB 235 is putting more emphasis and more control in the damp and dry communities. The kids are getting some of the alcohol coming into those communities.

SENATOR WAGONER asked why the proposed penalties for clerks are greater than for the licensee and business owner.

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MS. CASTO said there are no proposed changes for the clerks in this bill. It will make the owner part of the responsibility.

SENATOR WAGONER said the owner should have the primary responsibility. It should be more stringent for the business owner selling alcohol than the clerk. The clerks are getting \$8.00 an hour, and the first offense is \$10,000 and a year in jail. The penalties for the licensee are much smaller.

MS. CARPENETI said current law will not change for the clerks and the agents. This bill will impose the only penalties on the licensee and the owner of the business. Right now there are no penalties. This would make it more rational.

SENATOR WAGONER said maybe we should make it more stringent.

MS. CASTO said the penalties are not mandatory now. The normal penalty for a clerk is some community service hours or a suspended penalty.

SENATOR WAGONER said his son owned a sport bar in Washington and the laws were strict; if he had a violation of drugs on the premises or serving tobacco or alcohol to a minor, he would lose his license for good. Alaska is not stringent.

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SENATOR THOMAS asked how the tobacco data was confirmed.

MS. CASTO said the state is responsible to the federal government because of a \$4.6 million block grant. Alaska has to do a Synar inspection, named after former U.S. Senator Mike Synar. Three investigators work with student interns to do compliance checks. There is a stratified sample across rural and urban Alaska.

SENATOR THOMAS asked if the investigating interns use an I.D. showing their ages.

MS. CASTO said they use their own I.D. Most of them are around 16 years old. There are strict requirements to keep from tricking anyone. Boys can't have facial hair, for example. There is an annual Synar Report.

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SENATOR STEVENS asked about waitpersons.

MS. CASTO said they're included, as is anyone who sells alcohol.

SUE MCLEAN, Chief Assistant Attorney General, Criminal Division, Department of Law, said she spent years as a prosecuting attorney and wants to address the importation of alcohol into communities that exercise local option. She worked in Kodiak, Kenai, Bethel, and elsewhere. She was the District Attorney in Bethel and then started a rural prosecution program to assist attorneys in western Alaska. Crimes there are so much more serious than elsewhere. The villages that have kept alcohol from their communities have done it purposefully. The violent crime in those places when alcohol turns up is much more violent. Tragically, it is often directed at another family member or friend. It is tragic all around; it isn't a drive-by shooting.

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MS. MCLEAN said of the few cases that she helped, two involved young people who were intoxicated and threatened to shoot themselves and ended up shooting their parents. One involved chasing an unarmed peace officer with an ax. "I don't think those things would have happened if it weren't for alcohol." Alcohol plays a large part in almost every crime she has seen in western Alaska. Yesterday she read a transcript of a taping of a bootlegger who said he had R & R Whiskey, which he would get \$150.00 for each 1.5 pints. That is the going rate -- if not more. The bootleggers are making a business decision, because the first time they are caught the likelihood of serving any time is nil. It is probably true for the second time they are caught. The villagers are trying to keep the tragedy of alcohol from their families. It is indescribable to stand in a courtroom where a brother has killed another brother, or where a sister tried to burn down a house with her brother and his children inside. When she was brought into court the next morning, she can't even believe she did that. There are so many conflicting emotions. People don't remember what they have done. The

families love the victim and the offender. That they have chosen to have the village dry, is something we should all support.

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MS. MCLEAN said one way to support those communities is to make the bootlegger's business decision a little more expensive -- knowing that he will go to jail -- knowing that the third time he gets caught, he will have a felony - knowing that if someone drinks themselves to death, he will be held criminally responsible. That puts the bootlegger in touch with the consequences of what, for them, is simply a business. She referred to the bootlegger who was selling the \$10 whiskey for \$150. He had 76 bottles and would make \$11,000. "There's no reason that a person wouldn't bootleg if they know they're not going to jail and they're going to get \$11,000 for six cases of alcohol."

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MATT FELIX, Director, National Council on Alcohol and Drug Dependence, Juneau, said he is head of the legislative committee for the State Directors Association. He is in the trenches with the people who are addicted to or abusing alcohol. He has done this for 36 years. He was once the state director of the Division of Alcohol and Drug Abuse. He assisted Senator Binkley in developing and implementing local option. He supports the local option section of this bill. "Any time you can tighten up local option, then we certainly agree with it." It has been effective in dramatic reductions in a variety of health and social ills, as shown by studies. Barrow and Selawik were perfect research spots because they switched from dry to wet and back. He supports the enforcement section. He agrees with Senator Wagoner on enforcement; Washington does it right and Alaska doesn't. The licensee is the responsible person. They are licensed to sell alcohol - a product that has potential harm. If they don't follow the law, they should suffer the consequences. "I think this bill is a little light on that area."

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MR. FELIX said enforcement is prevention. Title IV is a statute that came into being with statehood, and it needs updating. The bill does this well.

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PATRICIA LEEMAN, Deputy Directory, Operations, Division of Juvenile Justice, DHSS, Bethel, spoke to the impact that alcohol is having on rural Alaska and its kids. She has spent 18 years as superintendent of the Bethel Youth Facility, which is a

juvenile detention and treatment facility. When youth drink, their judgment is reduced, and the awareness of the consequences of their actions becomes muddled. Between 50 and 80 percent of all crime by juveniles involve alcohol in some way. The youth may be intoxicated when committing an assault, or they may be breaking into someone's house to find liquor. Drinking makes young people easy targets for rape, assault, and sexual abuse and vulnerable to suicide. It is not unusual to see girls who have been so intoxicated when they were raped they don't even know it happened. Families become devastated. When she came to town 19 years ago, many youth who came to the attention of juvenile justice could not identify a single sober member of their family to be placed with. It remains true. The more readily alcohol is available, the more crimes youth commit. The more that access is limited, the more we can limit crimes.

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MS. LEEMAN said there were 521 minor consuming alcohol referrals to the Bethel District Attorney's office from January 1, 2007 to October 11, 2007. It represented 25 percent of all misdemeanor referrals and 20 percent of total referrals during that time. This bill does a lot of different things to keep alcohol out of the hands of young people. Making alcohol less accessible in the YK [Yukon-Kuskokwim] delta would make a big difference for all the villages. For juvenile justice, the most useful part of SB 235 is establishing a tracking mechanism for minor consuming. Currently, when someone is cited for underage drinking, there is no indication as to the number of times that youth has been cited before. There is lack of information on whether the person has complied with the treatment requirements that had been set. In 2006 some agencies convened a task force on minor consuming. They found that youth were listed as first-time offenders multiple times as there was no way to track their histories. Police couldn't appropriately charge a young person for consuming alcohol.

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MS. LEEMAN said the police could only contact a dispatch officer and ask to look at a four-inch stack of prior convictions, so the youth would often be charged as a first-time offender. The task force learned that 52 percent of the youth that were in court for the third time were convicted as first-time offenders. One youth was on the sixth offense and was convicted of having a first offense. Bethel now has a better tracking mechanism. This bill lays the groundwork for a statewide system. Bethel youth seem to be taking the charges more seriously now that they see that the justice system is more serious and following up with

increased penalties for subsequent offenses and increased treatment that they so desperately need.

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CHAIR OLSON obtained unanimous consent to redraft SB 235, Version A, to conform to the drafting manual.

SENATOR THOMAS said he is concerned that owners of a license are responsible for their agents. It seems to be no different than holding the commissioner of public safety responsible for all of the criminal actions of their personnel. There have been many police officers charged, and that is "no different than holding a bar owner responsible for their bartenders, when they may not even be on the premises."

CHAIR OLSON said Senator Wagoner is on the other end of that, but he has elected not to offer an amendment.

SENATOR THOMAS said part of the bill deals with problems in the bush, and that is most serious. That doesn't mean there are no problems in the urban areas. His concern is with licensees that "make a good attempt to control something, but this is twice in a five-year period of time." That's a long time to make sure that every employee does not violate the law. A person may be responsible for 30 or 40 employees. Senator Thomas said he is not prepared to offer an amendment today.

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CHAIR OLSON said he can hold the bill.

SENATOR THOMAS said he would not want to be held responsible for some of his employees' actions.

MS. CARPENETI said this is a civil penalty. A person is not criminally responsible for the acts of another person. It occurs only after a third offense in five years.

SENATOR THOMAS read the lines: levy fines, and for second or subsequent offense in a five-year period -- suspend license.

MS. CARPENETI said, "It's a 7-day license suspension for second, and it's a 30-day for third and subsequent ... in a five-year period."

The meeting was adjourned at [5:39:16 PM](#).