

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 12, 2010

1:12 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative Carl Gatto  
Representative Bob Herron  
Representative Bob Lynn  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Lindsey Holmes

**COMMITTEE CALENDAR**

HOUSE BILL NO. 253

"An Act relating to the time periods affecting certain liens related to providing labor, material, service, or equipment to real property, including buildings and other improvements."

- MOVED HB 253 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 38

Proposing amendments to the Constitution of the State of Alaska relating to and increasing the number of members of the house of representatives to forty-eight and the number of members of the senate to twenty-four.

- MOVED CSHJR 38(STA) OUT OF COMMITTEE

HOUSE BILL NO. 408

"An Act relating to misconduct involving weapons."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 253

SHORT TITLE: MECHANIC/MATERIALMEN LIENS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/08/10            (H)            PREFILE RELEASED 1/8/10

01/19/10 (H) READ THE FIRST TIME - REFERRALS  
01/19/10 (H) L&C, JUD  
03/01/10 (H) L&C AT 3:15 PM BARNES 124  
03/01/10 (H) Moved Out of Committee  
03/01/10 (H) MINUTE(L&C)  
03/04/10 (H) L&C RPT 5DP  
03/04/10 (H) DP: LYNN, BUCH, CHENAULT, T.WILSON,  
OLSON  
03/12/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HJR 38

SHORT TITLE: CONST. AM: INCREASE NUMBER OF LEGISLATORS

SPONSOR(S): REPRESENTATIVE(S) P.WILSON

01/19/10 (H) READ THE FIRST TIME - REFERRALS  
01/19/10 (H) STA, JUD, FIN  
02/02/10 (H) STA AT 8:00 AM CAPITOL 106  
02/02/10 (H) Heard & Held  
02/02/10 (H) MINUTE(STA)  
02/18/10 (H) STA AT 8:00 AM CAPITOL 106  
02/18/10 (H) Moved CSHJR 38(STA) Out of Committee  
02/18/10 (H) MINUTE(STA)  
02/19/10 (H) STA RPT CS(STA) NT 4DP 1DNP 1NR  
02/19/10 (H) DP: SEATON, GRUENBERG, P.WILSON,  
PETERSEN  
02/19/10 (H) DNP: GATTO  
02/19/10 (H) NR: LYNN  
03/12/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 408

SHORT TITLE: MISCONDUCT INVOLVING WEAPONS

SPONSOR(S): JUDICIARY

02/26/10 (H) READ THE FIRST TIME - REFERRALS  
02/26/10 (H) JUD, FIN  
03/12/10 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

DON HEBIGER, Staff  
Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 253 on behalf of the sponsor,  
Representative Ramras.

ROCKY PAVEY, President

Rocky's Heating Service  
Fairbanks, Alaska

**POSITION STATEMENT:** Characterized HB 253 as a "win-win situation."

GRACE RUDY  
Overhead Door Company  
Fairbanks, Alaska

**POSITION STATEMENT:** Concurred with Mr. Pavey's testimony regarding HB 253.

WAYNE LONG  
Wayne's Air Supply  
Fairbanks, Alaska

**POSITION STATEMENT:** During hearing of HB 253, concurred with the testimony of Mr. Pavey and Ms. Rudy.

JIM SLATER  
Slater Construction  
Fairbanks, Alaska

**POSITION STATEMENT:** During hearing of HB 253, offered his belief that extending the time period beyond 120 days would be beneficial.

REPRESENTATIVE PEGGY WILSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Spoke as the sponsor of HJR 38.

MARGARET PATON WALSH, Assistant Attorney General  
Labor and State Affairs Section  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** During hearing of HJR 38, answered questions.

BRUCE BOTELHO  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HJR 38.

KARLA SCHOFIELD, Deputy Director  
Accounting  
Legislative Administrative Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** During hearing of HJR 38, answered questions.

BEN MULIGAN, Staff  
Representative Bill Stoltze  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 408 on behalf of the sponsor,  
the House Judiciary Standing Committee.

REPRESENTATIVE BILL STOLTZE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided information on HB 408.

JIM ADAMS  
Chugiak, Alaska

**POSITION STATEMENT:** During hearing of HB 408, related his  
personal experience with losing the ability to possess firearms.

ERIC STANLEY  
Kenai, Alaska

**POSITION STATEMENT:** Testified in support HB 408.

RICHARD PATTERSON  
Barrow, Alaska

**POSITION STATEMENT:** Testified in support of HB 408, but  
suggested changes.

DON CLARK  
Palmer, Alaska

**POSITION STATEMENT:** During hearing of HB 408, urged the  
committee to change the law regarding restoring the right for  
convicted felons to hold firearms.

WAYNE ANTHONY ROSS, Attorney at Law  
Anchorage, Alaska

**POSITION STATEMENT:** Provided remarks on HB 408.

BRIAN JUDY, Alaska Liaison  
National Rifle Association (NRA)  
Sacramento, California

**POSITION STATEMENT:** Suggested changes to HB 408.

#### **ACTION NARRATIVE**

[1:12:38 PM](#)

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 1:12 p.m. Representatives Ramras, Gruenberg, Dahlstrom, Herron, Gatto, and Lynn were present at the call to order. Representative Chenault was also in attendance.

**HB 253 - MECHANIC/MATERIALMEN LIENS**

1:14:39 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 253, "An Act relating to the time periods affecting certain liens related to providing labor, material, service, or equipment to real property, including buildings and other improvements."

1:15:16 PM

DON HEBIGER, Staff, Representative Jay Ramras, Alaska State Legislature, explained that HB 253 came at the request of constituents. This legislation extends by 30 days the period of time in which a mechanic or material man may work with a customer for payment or settlement of a bill or an invoice before being able to file a lien. Therefore, the time period would be changed from 90 days to 120 days.

CHAIR RAMRAS, speaking as the sponsor, relayed that HB 253 addresses those who live in a diesel-dependant community. He explained that the harder a boiler works the more inclined it is to go out and rarely does the boiler go out during normal business hours. Therefore, bills for such services are often high and in cases in which there is other damage, such as water damage, the insurance claims can take time. Moreover, the check for insurance claims can be made to the occupant rather than the individual who actually performed the work/repair. Chair Ramras mentioned that the Home Builder's Association is opposed to HB 253 and believes that [the mechanic/material man] should secure a promise of payment for the work.

1:21:14 PM

ROCKY PAVEY, President, Rocky's Heating Service, opined that small business is the economic backbone of any community. This legislation will help small businesses across the state in terms of securing payment for their hard work. The intent of HB 253, he offered, is to extend the amount of time allowed to file a mechanic's lien by another 30 days. He characterized it as a

timing issue, and explained that when he does work for a customer at the beginning of the month, the bill isn't generated until the end of the month. Once customers receive the bill, they often feel they have 30 days to pay the bill. Therefore, companies face 60 days before payment is received from a multitude of customers. He noted that if a customer calls and requests an extension, it's often given. However, he said it shouldn't be at the company's own peril. In such a case, after 75-85 days of nonpayment the company faces making a judgment call around regarding whether to file a lien against the individual.

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

MR. PAVEY characterized HB 253, which adds 30 more days, as a "win-win situation" for the contractor as well as the homeowner. After the 90 day period has expired, the company would know within 10-15 days whether the customer is going to pay or not. This legislation allows small businesses to provide better payment terms to customers without filing a lien, creating an adversarial relationship, and damaging the credit history of the customers.

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

MR. PAVEY acknowledged that the Alaska Homebuilder's Association has pointed out that small businesses have the ability to file a notice of intent to lien. However, he said it doesn't necessarily work in the service industry as it does in new home construction when only one to two customers are dealt with once or twice a month. Mr. Pavey pointed out that it's very difficult to get a customer to sign something. Furthermore, there are often cases in which the property owner/landlord, business owner, or homeowner isn't present when the work is done. "It really is quite impractical to assume that we can file one of the notice of right to lien papers every single service call," he emphasized. Furthermore, to expect his technicians to track down owners to sign the notice of lien would create a massive amount of paperwork. The aforementioned would be unnecessary if HB 253 is passed. Mr. Pavey informed the committee that his company has lost tens of thousands of dollars, perhaps even hundreds of thousands of dollars, from customers who take advantage of the current 90-day timeframe. Providing the additional 30 days would weed out those customers who are struggling but intend to pay the bill from those who are working the system. Unlike an automobile repair shop or other shop to which equipment is brought to the shop, the heating

services industry can't hold the equipment until payment is received. Mr. Pavey encouraged the committee to give careful consideration to HB 253.

[1:27:49 PM](#)

REPRESENTATIVE GATTO asked Mr. Pavey whether any of his clients are opposed to HB 253.

MR. PAVEY said that he didn't know. However, he didn't believe providing extra time to pay the bill would negatively impact his customers. He reiterated his belief that HB 253 is a "win-win situation." In further response to Representative Gatto, Mr. Pavey related that colleagues who perform similar work, including plumbing, mechanics, or electrical, and with whom he has spoken are in support of [HB 253]. Mr. Pavey reiterated that the 120 days provides the extra days necessary to weed out those who absolutely aren't going to pay versus those who will. With regard to the suggestion of a time period of 180 days, he said that the longer he has to work with the customer the better. Still, 120 days is sufficient.

CHAIR RAMRAS noted that Lobbyist Ashley Reed and bankers are opposed to HB 253. He further noted that bankers don't want another entity before their lien.

MR. PAVEY, in response to Chair Ramras, shared examples of services his company provides and the price of each. For example, the standard rate for annual servicing is \$325; after-hours calls incur an additional \$50 fee.

[1:31:42 PM](#)

GRACE RUDY, Overhead Door Company, concurred with Mr. Pavey's testimony. In response to questions, Ms. Rudy indicated that her company also has after-hours callouts for which the owner of the building isn't really known. In these cases, the company is going on a call in good faith, trusting that the customer will pay the bill. She informed the committee that the Overhead Door Company charges \$120 an hour during normal hours and \$180 an hour for after-hour calls. The company also charges for travel. Therefore, a service call will be a minimum of \$120. In further response to questions, Ms. Rudy related that the Overhead Door Company employs an average of 13 employees and Rocky's Heating Service employs 16 employees.

[1:34:12 PM](#)

WAYNE LONG, Wayne's Air Supply, concurred with the comments of the previous two speakers. He related that he's currently working with an insurance company that owes him \$5,000. In response to questions, he recounted the specifics of the case in which he performed work for a customer who made a claim with an insurance company that says the check is the mail while the homeowner has a different story. He noted that companies want to be fair and just and the extra time would be helpful in making the decision whether to file a lien.

[1:36:14 PM](#)

JIM SLATER, Slater Construction, offered his belief that extending the time period beyond 120 days would be beneficial. He related that he has been in numerous situations in which he has had to place a lien on a customer's property. He recounted an example wherein the existing lien timeframe of 90 days was insufficient to prevent court services and paperwork, which are expensive. For small repair services the 120 days should be fine, however, for contractors a longer time period would be more appropriate as it would limit or minimize issues for the homeowner, subcontractor, and suppliers, all of which are at a disadvantage under the 90-day time period. He opined that a 180-day time period would be more advantageous for everyone. If a lien needs to be filed, there are other issues, such as honesty and credibility, involved beyond just the funds owed. In response to questions, Mr. Slater informed the committee that he is a general contractor who either works on his own or subcontracts out his work with bills that total \$10,000 or more. Although extending the timeframe is desirable, he suggested that the lien issues should be reviewed as well. He informed the committee that when claims are filed, it doesn't go to small claims court because it involves property and deeds of trust, which are Alaska Superior Court issues. Due to the amount of cases in Fairbanks, it can take a year to a year-and-a-half to merely obtain a court date at the Alaska Superior Court.

[1:40:26 PM](#)

REPRESENTATIVE GRUENBERG offered his understanding that HB 253 will benefit homeowners as well as companies since it will help avoid additional legal fees.

CHAIR RAMRAS highlighted the difficulty some have when trying to pay their [service/repair] bills as well as home heating bills. He reiterated the further costly impact of diesel-dependent

communities. He then reviewed the next committee of referral for HB 253, which is the House Rules Standing Committee.

MR. PAVEY, in response to comments, reiterated that HB 253 will provide one more tool by which to protect his business's financial well-being, and in turn that of his clients. He, again, characterized HB 253 as a "win-win situation."

[1:47:05 PM](#)

REPRESENTATIVE GATTO asked whether the goal of HB 253 could be accomplished through a borough ordinance.

CHAIR RAMRAS answered that he didn't believe so, as it's in statute. He opined that it's likely a similar issue in other communities and thus would be meaningful throughout the state. He noted that the smaller the business the less access it has to the legal system due to the cost and the time involved. This legislation protects small contractors and allows for those who are merely slow to pay rather than those who just aren't going to pay.

MR. PAVEY concurred.

REPRESENTATIVE GATTO noted, however, that ordinances can make statutes more restrictive. Therefore, he asked if the time period could be reduced by an ordinance, even if the legislation is passed.

REPRESENTATIVE GRUENBERG replied no, adding that's because of the language of HB 253.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 253.

REPRESENTATIVE HERRON disclosed that passage of HB 253 would benefit the small businesses he owns in Bethel.

REPRESENTATIVE GRUENBERG objected, thus requiring Representative Herron to vote.

[1:51:18 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HB 253 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 253 was reported from the House Judiciary Standing Committee.

**HJR 38 - CONST. AM: INCREASE NUMBER OF LEGISLATORS**

1:52:59 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 38, Proposing amendments to the Constitution of the State of Alaska relating to and increasing the number of members of the house of representatives to forty-eight and the number of members of the senate to twenty-four. [Before the committee was CSHJR 38(STA).]

1:53:40 PM

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, paraphrased from the following written sponsor statement [original punctuation provided]:

HJR 38 will put a constitutional amendment before the voters in the 2010 general election that would increase the size of the legislature to 44 representatives and 22 senators. Upon voter approval, the measure would apply to the 2012 determination of new boundary's for the election district.

In the first 50 years of statehood, Alaska has not changed the 20 senator, 40 representative size of its legislative body, the smallest bicameral legislature in the nation. In this time span, the population of the state has more than tripled. Most significantly, the population increase is disproportionate, strongly favoring large urban areas over rural and small community areas. The task then of applying the proscriptions of Article VI, above, has correspondingly become more difficult and contentious. Except for the 1960 reapportionment, all subsequent reapportionments have faced successful legal challenges, requiring boundary adjustments and on several occasions, a court constructed plan.

Federal protections of the U.S. Voter Rights Act of 1965 for large minority concentrations further complicate Alaska's reapportionment process. Indeed, they can act to counter the Section 6 requirements. Rural election district distortions are evident in the current plan. There is a probability that the new population distribution of the 2010 census cannot

reconcile Section 6 and the Voter Rights Act without increasing the size of the legislature.

Between 1960 and 2006, twenty nine states have changed the size of their legislative body. For the nine states with small populations similar to Alaska (509,000 to 1,429,000), the average size of their legislative bodies is 134 members.

Another measure of the effect of the state's growth and complexity on the work of the legislature is its budget responsibilities. Legislative expenditures for government programs and projects has risen from a figure of \$104 million in FY 61 to somewhere in the neighborhood of \$7 billion currently. This is an increase from \$2700 per capita in 1961 nominal dollars to \$10,000 per capita today.

For these reasons, putting a proposal to increase the size of the legislature before the voters is timely and merited.

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

REPRESENTATIVE P. WILSON then remarked that HJR 38 would provide Alaskans that reside in expanding rural districts better access to their legislators. Although rural residents will never have the ease of access urban residents experience, an increase in the size of the legislature may maintain access similar to what currently exists. For the aforementioned reasons, Representative Wilson requested the committee forward HJR 38 so that the initiative can be placed before voters in 2010.

REPRESENTATIVE P. WILSON, in response to comments and questions, directed the committee's attention to a map entitled "State of Alaska - Amended Final Redistricting Plan" which highlights just one Senate district. She opined that the large and spread out district illustrates how difficult it has become for some legislators to represent and know the people in their district. If nothing is done, the highlighted district will become much larger, and the remaining districts will become more condensed in the urban areas. Representative P. Wilson characterized it as a fairness issue to the legislator and the constituents. She informed the committee that the district illustrated on the map is the largest district in the United States.

REPRESENTATIVE HERRON questioned why an individual would be concerned about the size of a state since the 1965 Voting Rights Act changed [national representation] to be based on population rather than area. Therefore, he inquired as to who would advocate for the ballot measure in rural areas besides rural legislators.

[2:02:28 PM](#)

REPRESENTATIVE GRUENBERG offered his belief that HJR 38 will benefit [urban districts]. For example, he represents the distinct socio-economic area of Mountain View and this resolution would allow the district to be small and cohesive much like in rural districts that have the same heritage, language, and economy.

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

REPRESENTATIVE GRUENBERG opined that to get HJR 38 passed and before the voters it will be essential for urban supporters of the resolution to join with rural supporters. Although the resolution may allow rural districts to retain a couple of seats, the main accomplishment of the resolution will be to keep districts small. In further response to comments, Representative Gruenberg said that he wouldn't have a problem advocating for the proposed ballot measure.

REPRESENTATIVE HERRON said he supports HJR 38.

CHAIR RAMRAS related a discussion he had regarding HJR 38 and keeping the Senate at 20 members and increasing the House to 60. Although the aforementioned would make the House the People's House, the fiscal note would be large.

[2:08:32 PM](#)

REPRESENTATIVE GATTO pointed out that under HJR 38, the representation doesn't change as every resident would continue to have one representative and one senator. With regard to the large district referenced earlier, the resolution would reduce its size but it would remain large. Furthermore, constituents aren't happy with [government], and therefore he questioned why anyone would vote to increase the number of legislators.

REPRESENTATIVE GRUENBERG surmised that if the resolution and subsequent ballot measure is approved, it would have to be

precleared by the U.S. Department of Justice. He inquired as to when the preclearance occurs.

2:11:28 PM

MARGARET PATON WALSH, Assistant Attorney General, Labor and State Affairs Section, Department of Law (DOL), explained that the preclearance would occur after the ballot measure is approved. However, the preclearance paperwork could be prepared ahead of time so that if the ballot measure is approved, the paperwork could be then filed with the U.S. Department of Justice (DOJ) the next [business] day. She further explained that the DOJ has a 60-day turnaround time during which it could ask for more information, approve, or disapprove of the ballot measure. If the U.S. Department of Justice requests more information, then another 60-day period begins. Ms. Paton Walsh said that although the timing would be tight, it could be achieved, particularly if the DOJ was amenable to the amendment.

2:12:38 PM

REPRESENTATIVE GRUENBERG surmised, then, that it would be possible to implement for the election in 2012.

MS. PATON WALSH related that the redistricting process will begin in early 2011 and each state's data will be issued from mid January through April. Although she said she didn't know when Alaska will receive its data, last time the states were provided the data in alphabetic order of the states. Therefore, DOL is planning to be prepared for an early January date. Ms. Paton Walsh explained that if the data is received in mid January, then the [redistricting] board would be provided 30 days to develop plans and another 60 days of hearings for those plans in order to have adopted a plan by April. By the time the [redistricting] board starts its work, DOL will want to know how many districts are going to be created. She reviewed a scenario in which it would be early January, which would be just prior to receipt of data from the U.S. Census Bureau. As long as the DOJ preclears within the 60-day timeframe, the process should proceed fine.

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REPRESENTATIVE GRUENBERG asked whether Ms. Paton Walsh is aware of any other issue in Alaska that will need to be precleared.

MS. PATON WALSH responded no, not other than the plan itself. Although she noted that the Division of Elections may have some changes that would require preclearance, the preclearance requests are independent. Therefore, she didn't believe that any other preclearance issues for the state would impact this situation.

[2:15:52 PM](#)

BRUCE BOTELHO, after mentioning that although he's the mayor of the City & Borough of Juneau, he's speaking in his private capacity. He then mentioned he has served as attorney general and deputy attorney general for the state and was intensely involved with reapportionment for the 1990 plus plan that was finally adopted in 1994 and in 2002. Mr. Botelho related his support for HJR 38. In response to earlier questions and comments, Mr. Botelho explained that since the U.S. Constitution has been interpreted to mean one person one vote, that will be the case regardless of the size of the legislature. With regard to why, then, it should be changed and who will speak for the ballot measure, Mr. Botelho opined that people intuitively know that a person who represents a more compact district will have an easier time communicating with his/her constituents than a person with a larger district. Without a change to the state constitution, the challenge to the next reapportionment board will be great and will exacerbate the geographic disparity in the state. In conclusion, Mr. Botelho recommended the resolution as it was originally proposed with a House body of 48 as it would minimize the increase of the footprint of any given district while preserving the symmetry in the constitution, particularly with regard to super majority votes whether they be two-thirds or three-quarters votes.

REPRESENTATIVE GATTO opined that although there is an optimum number, he doubted that it's 48 and suggested that it's more likely that we should reflect New Hampshire. He asked why Mr. Botelho chose 48.

MR. BOTELHO answered that 48 most nearly represents districts in geographic size as they are today, that is the largest districts. He remarked that there is no optimum number as one must consider the expense, the space, and the functionality of the body versus the ability to provide better access between representatives and their constituents.

[2:21:23 PM](#)

REPRESENTATIVE GRUENBERG asked if Mr. Botelho knows how other local governments feel about this proposal.

MR. BOTELHO related his understanding that the only body that has extensively debated the issue is the Conference of Southeast Mayors, which has adopted a resolution in support.

[2:22:09 PM](#)

REPRESENTATIVE GATTO, referring to the fiscal note, asked if there is any part of analysis of this proposal that will cost the state money that isn't included in the fiscal note.

[2:22:53 PM](#)

KARLA SCHOFIELD, Deputy Director, Accounting, Legislative Administrative Services, Legislative Affairs Agency, answered not that she is aware of, although she said the fiscal note is the best judgment of what to expect. In further response to Representative Gatto, Ms. Schofield pointed out that there are funds in the contractual line item for an increase in office space rent. However, until after redistricting it won't be apparent whether the Anchorage Legislative Information Office (LIO) or the smaller LIOs will require increased space or whether there would be the need for an LIO in a new location. There is also funding for a position for part-time LIO officers for session only. She pointed out that the funding is included in the personal services line item and is outlined on page 2 of the fiscal note. The \$1.9 million in personal services includes salaries and benefits for the legislators and their staff as well as additional LAA staff, including an additional attorney, two LIO officers, and one enroller or Help Desk technician. She then pointed out that the office rent is included in the contractual line item, which includes an increased amount for allowance accounts for the additional legislators as well as connectivity costs and an increase in office space rent.

[2:25:31 PM](#)

CHAIR RAMRAS, upon ascertaining no one else wished to testify, closed public testimony on HJR 38.

[2:25:43 PM](#)

REPRESENTATIVE HERRON moved to report CSHJR 38(STA) out of committee with individual recommendations and the accompanying

fiscal notes. There being no objection, CSHJR 38(STA) was reported from the House Judiciary Standing Committee.

**HB 408 - MISCONDUCT INVOLVING WEAPONS**

[2:26:16 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 408, "An Act relating to misconduct involving weapons."

[2:27:08 PM](#)

BEN MULIGAN, Staff, Representative Bill Stoltze, Alaska State Legislature, explained that HB 408 is before the committee as the result of the court case Caron vs. U.S. that is now being interpreted by the federal government as restricting firearm possession. This legislation proposes to change the affirmative offense in AS 11.61.200(b) to a non-applicability provision. He further explained that under the Caron case the interpretation is that if there is any restriction for carrying or possessing firearms, that right is no longer retained under the federal government.

[2:29:18 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, interjected that HB 408 attempts to develop a logical path for those who have lost their right to own a gun to reestablish their right to bear arms. He noted the similarity of this effort to that of reestablishing voting rights. In discussing this with legislators from rural areas of Alaska, there are circumstances in which the inability to own a firearm affects the essence of the way of life in some areas.

CHAIR RAMRAS related that he doesn't see language in HB 408 that creates two classes of rights, one for those who have lost the right to possess firearms due to a felony conviction and those who have a felony conviction that involved weapons. He asked if it's possible to address that in the legislation.

REPRESENTATIVE STOLTZE characterized HB 408 as a starting point and the language to which Chair Ramras referred could certainly be part of the discussion.

REPRESENTATIVE GRUENBERG expressed interest in any citations for relevant cases other than the Caron v. U.S. and Gabrielle v. State of Alaska cases.

[2:36:03 PM](#)

JIM ADAMS related his personal experience in which he was convicted in 1985 and the judge waived the anti-gun [possession provision] but was given five years of probation. He, then, applied for and received a federal firearms license in 1986. After attending gun smith schools outside of Alaska in 1986 and 1989, he was informed by the state in 1998 that he would have to turn over his federal firearms license due to changes in the law. He was told that under the State of Alaska law he couldn't own handguns. He was also told by the federal government that he could either own any type of firearm or no firearm. At this point, Mr. Adams said that he isn't allowed to purchase a handgun, rifle, or shotgun in his own name. He informed the committee that he never had any difficulties with the law prior or after the 1985 conviction. Therefore, he would like to be able to enjoy the use of firearms again, including gunsmithing.

REPRESENTATIVE GRUENBERG characterized Mr. Adams' case as very compelling.

[2:41:42 PM](#)

ERIC STANLEY related his support for HB 408. Mr. Stanley characterized himself as an "average Joe" who has paid his debt to society, received a pardon under suspended imposition of sentence (SIS). He noted that he has also fulfilled all the obligations, terms, and conditions of his probation after being charged with theft in the second degree due to receiving stolen property when he was 19 or 20 years of age. Mr. Stanley, an outdoorsman, said that he sometimes asks himself whether he should have the right to protect his own life. He related that due to his inability to carry a gun he has stopped taking his daughter fishing [and other things such as biking and camping] as he refuses to place his daughter in a situation in which he can't protect her. "I have no desire to break the law and carry a gun unlawfully, so what choices or rights do I have? I feel as if my right to spend quality time with my family has somewhat been encroached on also," he opined. Mr. Stanley expressed his hope that someday his rights and the rights of others in similar situations will be restored. Although fishing is a major part of his life and he isn't willing to give it up, he fears that it

is only a matter of time before he finds himself in an encounter with a bear during which he won't be unable to defend himself.

CHAIR RAMRAS remarked that Mr. Stanley illustrates his earlier point regarding the difference between individuals who have committed a felony with a weapon versus those who've committed a felony without a weapon. He inquired as to the details of Mr. Stanley's case.

MR. STANLEY related that in his case, the theft in the second degree was due to receipt of a stolen weapon. At the time, he said he didn't know the weapon was stolen. He clarified that he didn't use a weapon in the commission of a crime.

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RICHARD PATTERSON relayed that he has been a pilot in the Bush for the last 30 years, the last 15 years he has been engaged in medivac and search and rescue operations encompassing the North Slope and the Northwest Arctic Borough. He related that a firearm is a tool that he must have in his profession and thanked the legislature for addressing this issue for those with felony convictions. He told the committee that years ago he erred, saw it was wrong, and corrected the situation. Mr. Patterson said that his success is the result of hard work, dedication, loyalty to Alaskans, and those he serves. He further said that he has made exemplary rehabilitative efforts and performed extraordinary acts that have been recognized by a duly elected executive officer of Alaska. Mr. Patterson was granted a full, unconditional pardon in order to allow him to have handguns to protect others. He recounted various bear encounters he has experienced and opined that a firearm is not a luxury but is instead a necessity. Mr. Patterson then related his support for HB 408, but suggested that it be amended such that all rights to bear firearms are restored. He pointed out that the federal government is intervening in the legislature and the power to pardon lies in the executive branch and legislative instruments that interfere with that pardon clearly violate the separation of powers. In conclusion, Mr. Patterson expressed hope that the inadequacies in HB 408 will be rectified.

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REPRESENTATIVE GRUENBERG noted that HB 408 goes beyond the restorative right to bear arms but also affects his constituents. He related his intention to pursue the issue of

ensuring that the civil rights of rehabilitated individuals are fully restored.

CHAIR RAMRAS concurred.

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DON CLARK related the situation in which he found himself convicted of a controlled substance violation. He was told that if he pleads guilty he would face a fine, two years probation, SIS, and that upon completion of the conditions his record would be wiped clean and all his rights returned. The aforementioned happened, except that he was unable to purchase a weapon because federal law and state law have been interpreted differently. Mr. Clark noted that he utilized every avenue available, but nothing was enough for the federal government. Therefore, he approached Mr. Ross for help, which led to [HB 408]. He opined that in Alaska hunting and fishing are a way of life and a firearm is a necessity not a luxury. In closing, Mr. Clark stated that the law needs to be changed.

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WAYNE ANTHONY ROSS, Attorney at Law, reviewed Alaska's law with regard to the rights of convicted felons to own firearms. However, under the Caron case if there are any restrictions on an individual's right to own a firearm, then that individual can't possess any type of firearm. The aforementioned, in essence, changes the state's law. Although Mr. Ross remarked that HB 408 might need to be fine tuned, it stands up for state's rights and provides Alaskans with the rights the state's imposed [prior to the Caron case.]

MR. ROSS, in response to Chair Ramras, indicated his agreement with differentiating between those who used a weapon to commit a felony and those who did not. He opined that previously passed legislation already made such a distinction.

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BRIAN JUDY, Alaska Liaison, National Rifle Association (NRA), opined that although this is a complicated issue, there's a simple solution. He then pointed out that members' packets should contain detailed technical background information regarding how the state is in this situation.

REPRESENTATIVE GRUENBERG said he supports the bill, and would like to hear Mr. Judy's concerns so the committee can address them.

MR. JUDY explained that under the Caron decision unless a state restores 100 percent of an individual's rights and treats him/her as any other law-abiding individual who never lost rights, the individual has no rights for the purposes of the federal law. Alaska essentially restores 95 percent of the individual's rights [with regard to weapons]. With regard to the distinction in classes [of felons], Mr. Judy pointed out that it's already distinguished in law. There's a prohibition for carrying firearms that are capable of being concealed and there's a separate prohibition for concealed carry of a handgun. Both of those prohibitions can be found in AS 11.61.200 and for both there are affirmative defenses. The affirmative defense for carrying a concealed handgun is restoration of rights and a limitation on carry. Mr. Judy suggested that HB 408 be amended by repealing the limitations on concealed carry, as specified in AS 11.61.200(g)(2). He further suggested that the affirmative defenses need to be changed, as specified in AS 11.61.200(b) and (g), to exceptions. The aforementioned changes will, in effect, completely restore the rights of deserving individuals. If an individual who has had his/her rights restored can be arrested and charged with a crime and then raise an affirmative defense, that individual isn't treated the same as an individual who has never lost his/her rights and can't be charged with that crime in the first place. With regard to the specific classes, Mr. Judy reiterated that in statute there is already a distinction between felons who have their rights restored and the felony wasn't against a person and felons who did have a crime against another person. Furthermore, those individuals who violated AS 11.41, who committed a crime against another individual, can't get their rights restored.

REPRESENTATIVE GRUENBERG requested that Mr. Judy mark up HB 408 and provide it to Mr. Mulligan, who would forward it to the committee.

[HB 408 was held over.]

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:08 p.m.