

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 30, 2016

1:32 p.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 8

"An Act relating to the regulation and production of industrial hemp."

- MOVED CSSB 8(JUD) OUT OF COMMITTEE

OVERVIEW: U.S. SUPREME COURT DECISION STURGEON V. FROST

- HEARD

SENATE BILL NO. 165

"An Act relating to the presence of minors in the licensed premises of manufacturers, wholesalers, and retailers of alcoholic beverages; relating to the Alcoholic Beverage Control Board; relating to the offense of minor consuming; relating to revocation of a driver's license for a minor consuming offense; relating to the effect of the revocation of a driver's license for a minor consuming offense on a motor vehicle liability insurance policy; and amending Rule 17, Alaska Rules of Minor Offense Procedure."

- MOVED CSSB 165(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 103

"An Act relating to school boards; relating to approval of educational programs at residential psychiatric treatment

centers; providing for funding of educational services for students in residential psychiatric treatment centers; and providing for an effective date."

- MOVED CSSSSB 103(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 8

SHORT TITLE: INDUSTRIAL HEMP PRODUCTION LICENSES

SPONSOR(s): SENATOR(s) ELLIS

01/21/15 (S) PREFILE RELEASED 1/9/15
01/21/15 (S) READ THE FIRST TIME - REFERRALS
01/21/15 (S) RES, JUD, FIN
03/20/15 (S) RES AT 3:30 PM BUTROVICH 205
03/20/15 (S) Heard & Held
03/20/15 (S) MINUTE(RES)
03/27/15 (S) RES AT 3:30 PM BUTROVICH 205
03/27/15 (S) Moved SB 8 Out of Committee
03/27/15 (S) MINUTE(RES)
03/30/15 (S) RES RPT 1DP 4NR
03/30/15 (S) DP: WIELECHOWSKI

BILL: SB 165

SHORT TITLE: ALCO. BEV. CONT. BOARD; MINORS; ALCOHOL

SPONSOR(s): SENATOR(s) MICCICHE

02/01/16 (S) READ THE FIRST TIME - REFERRALS
02/01/16 (S) L&C, JUD
02/11/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/11/16 (S) Scheduled but Not Heard
02/23/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/23/16 (S) Heard & Held
02/23/16 (S) MINUTE(L&C)
03/08/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/08/16 (S) Moved CSSB 165(L&C) Out of Committee
03/08/16 (S) MINUTE(L&C)
03/09/16 (S) L&C RPT CS 5DP SAME TITLE
03/09/16 (S) DP: COSTELLO, GIESSEL, MEYER, STEVENS,
ELLIS
03/23/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/23/16 (S) <Bill Hearing Canceled>
03/28/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/28/16 (S) Heard & Held
03/28/16 (S) MINUTE(JUD)
03/30/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

03/30/15 (S) NR: GIESSEL, COSTELLO, COGHILL,
MICCICHE
04/10/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/10/15 (S) -- MEETING CANCELED --
03/23/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/23/16 (S) <Bill Hearing Canceled>
03/28/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/28/16 (S) Heard & Held
03/28/16 (S) MINUTE(JUD)
03/30/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 103

SHORT TITLE: RESIDENTIAL PSYCHIATRIC EDUCATION FUNDING

SPONSOR(s): SENATOR(s) GIESSEL

04/10/15 (S) READ THE FIRST TIME - REFERRALS
04/10/15 (S) EDC, JUD
02/17/16 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/17/16 (S) EDC, JUD
02/25/16 (S) EDC AT 3:30 PM BUTROVICH 205
02/25/16 (S) Heard & Held
02/25/16 (S) MINUTE(EDC)
03/01/16 (S) EDC AT 3:30 PM BUTROVICH 205
03/01/16 (S) Moved SSSB 103 Out of Committee
03/01/16 (S) MINUTE(EDC)
03/02/16 (S) EDC RPT 3DP 1NR
03/02/16 (S) DP: DUNLEAVY, GIESSEL, HUGGINS
03/02/16 (S) NR: GARDNER
03/07/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/07/16 (S) Heard & Held
03/07/16 (S) MINUTE(JUD)
03/30/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

CRAIG RICHARDS, Attorney General
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided an overview of Sturgeon v. Frost from the state perspective.

MATTHEW T. FINDLEY, Attorney
Ashburn & Mason P.C.
Anchorage, Alaska

POSITION STATEMENT: Discussed Sturgeon v. Frost as counsel of record.

CHUCK KOPP Staff
Senator Peter Micciche
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided an explanation of Amendment 1 for SB 165.

KIRSTEN MYLES, Director
Cook Inlet CHARR
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 165.

DALE FOX, President and CEO
Alaska CHARR
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 165.

ELIZABETH RIPLEY, Executive Director
Mat-Su Health Foundation
Wasilla, Alaska

POSITION STATEMENT: Testified in support of SB 165.

KATIE KRAMARSYCK
Juneau Youth Services (JYS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 165.

JACK MANNING, President
Juneau CHARR and owner of the
Duck Creek Market
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 165.

PAUL THOMAS, Treasurer
Juneau Lynn Canal CHARR and owner of the
Alaska Cache Liquor
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 165.

LEEANN THOMAS, owner
Triangle Club Bar and member of
CHARR
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 165.

JEFF JESSEE, Chief Executive Officer
Alaska Mental Health Trust Authority

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 165.

ELLEN GANLEY, Vice Chair

ABC Board

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 165.

CHYSTAL SCHOENROCK, owner

Forelands Bar and member of

CHARR

Nikiski, Alaska

POSITION STATEMENT: Testified in opposition to SB 165.

LARRY HACKENMILLER, representing himself

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 165.

SENATOR CATHY GIESSEL

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 103.

EVELYN ALSUP, Educational Director

North Star Behavioral Health

Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 103.

MICK GRAHAM, Chief Academic Officer

Anchorage School District

Anchorage, Alaska

POSITION STATEMENT: Answered questions related to SB 103.

ED GRAFF, Superintendent

Anchorage School District

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 103.

KARI NORE, Staff

Senator Cathy Giessel

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 103 on behalf of the sponsor.

CAELA NIELSEN, Parent

North Star student

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 103.

ACTION NARRATIVE

[1:32:13 PM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Coghill, Costello, and Chair McGuire. She reviewed the agenda.

SB 8-INDUSTRIAL HEMP PRODUCTION LICENSES

[1:32:44 PM](#)

CHAIR MCGUIRE announced the consideration of SB 8.

[1:32:47 PM](#)

SENATOR COGHILL moved to report CSSB 8, labeled 29-LS0195\W, from committee with individual recommendations and attached fiscal note(s).

[1:33:06 PM](#)

CHAIR MCGUIRE announced that without objection, CSSB 8(JUD) is reported from the Senate Judiciary Standing Committee.

Overview: U.S. Supreme Court Decision Sturgeon vs. Frost

[1:33:36 PM](#)

CHAIR MCGUIRE announced the next item on the agenda would be an overview of Sturgeon v. Frost by Attorney General Craig Richards and counsel of record, Matthew Findley. She relayed the committee's interest in: understanding the implications of the case; the state's past and future interest; and the remand points.

[1:34:32 PM](#)

CRAIG RICHARDS, Attorney General, Department of Law (DOL), explained that the procedural history of the case came from John Sturgeon riding his hovercraft on the Nation River, which is part of the Yukon-Charlie Rivers National Preserve and a conservation system unit regulated by the National Park Service. Alaska law permits the use of hovercraft, whereas the National Park Service forbids their use in areas it regulates and has jurisdiction. [In 2007] Mr. Sturgeon was stopped by Park Service officials and told he couldn't operate his hovercraft on the Nation River. He protested saying he viewed it as state-owned

land not subject to Park Service regulation. Mr. Sturgeon did remove his hovercraft and subsequently filed suit in federal district court challenging what the National Park Service can regulate under the Alaska National Interest Lands Conservation Act (ANILCA).

ATTORNEY GENERAL RICHARDS explained that ANILCA provides that the Park Service can regulate public lands, but Section 6 of the Statehood Compact and the Equal Footing Doctrine of the U.S. Constitution show the State of Alaska received title to its navigable waters at statehood. That includes the Nation River. Mr. Sturgeon argued that the Nation River is not a public land under ANILCA due to the fact that the state received title to the riverbed at statehood.

The U.S. District Court for Alaska rejected Mr. Sturgeon's argument and the Ninth Circuit Court of Appeals upheld the decision. Under that reading, the prohibition against the Park Service regulating nonpublic lands only applied to Alaska's specific regulations, and did not apply to the larger national set of regulations that apply to all parks. The federal government also argued that even though Alaska received title to the riverbeds, the Park Service reserved sufficient interest in them that they were still considered public lands for purposes of ANILCA.

The Supreme Court ultimately rejected the logic of the lower courts in a unanimous 8:0 vote. While this was a great win, the U.S. Supreme Court did not reach the core of the parties' arguments. Specifically, it did not decide whether the Nation River qualifies as public land under ANILCA. It also did not decide whether the Park Service has authority to regulate activities on the Nation River, even if it is not public land. The case is remanded to the Ninth Circuit to address those questions.

ATTORNEY GENERAL RICHARDS complimented Mr. Findley who argued the case for Mr. Sturgeon and Department of Law (DOL) employees Ruth Botstein and Janell Hafner who argued the case for the state. He noted that Ms. Hafner paid her own way due to travel restrictions. He expressed hope that everyone reads the transcript because it has some very good language. In particular, Chief Justice Roberts took the opportunity to lay out some history and make the case that Alaska is unique. It is the exception and not the rule in terms of land management on federal lands. He opined that this will be a case that is cited in many Department of Law briefs going forward because it sets

the stage for the unique treatment of Alaska under ANILCA, the Alaska Native Claims Settlement Act (ANCSA), and other Alaska-specific federal laws.

He concluded his comments saying everyone owes Mr. Sturgeon a debt of gratitude for taking on what is essentially public interest litigation.

[1:39:31 PM](#)

CHAIR MCGUIRE asked if Mr. Sturgeon would qualify for Public Interest Litigant Doctrine (PILD) reimbursement.

[1:39:56 PM](#)

MATTHEW T. FINDLEY, Attorney, Ashburn & Mason P.C., said his most recent read of the law is that Mr. Sturgeon would not qualify for PILD reimbursement. Responding to a further question, he clarified that the issue is in federal court and under federal law.

CHAIR MCGUIRE asked if the state intends to be a financial participant during remand.

ATTORNEY GENERAL RICHARDS said, to the extent Mr. Sturgeon wants, the Department of Law will provide the level of support it did at the U.S. Supreme Court level. In the best situation the state would intervene and take an active part in the case, but there is some question as to whether the state can get standing due to the Ninth Circuit's fairly narrow reading of what standing is for the state.

[1:42:13 PM](#)

SENATOR COSTELLO asked when a decision can be expected on the remand.

MR. FINDLEY said the Supreme Court has about 20 more days before the decision becomes final and the case goes back to the Ninth Circuit panel. It's hard to tell how long that court will take to issue an order saying what happens next.

SENATOR COSTELLO asked Attorney General Richards to explain the significance of the Sturgeon case.

ATTORNEY GENERAL RICHARDS said the case has the potential to be extremely significant. ANILCA is the law that effectively resolved aboriginal land claims in Alaska and created a unique federal management structure for federal lands. The particular question in the case is the extent to which the federal

government has the power to regulate Alaska lands that fall in conservation units and National Parks. That includes almost all the navigable waters, private inholdings in federal land, and the substantial Native corporation holdings within the different federal management areas. He reiterated that Chief Justice Roberts was very helpful in giving guidance to the federal courts to view Alaska as different.

[1:46:01 PM](#)

SENATOR MICCICHE joined the committee.

CHAIR MCGUIRE asked how this ruling might affect the facts underpinning the Katie John case.

ATTORNEY GENERAL RICHARDS replied this was a much narrower question about Park Service regulations; it wasn't the intention of any of the parties to relitigate the subsistence question in Katie John.

CHAIR MCGUIRE clarified she was asking about the underlying question of whether the state has the authority to regulate its own navigable waters.

MR. FINDLEY confirmed that the state and Mr. Sturgeon took the position that a 100 percent favorable ruling would not disturb the holding of Katie John. They took the same position before the Supreme Court and it never came up in oral argument. They will take the same position going back to the lower courts. The court can rule for Mr. Sturgeon and the state affirming that these navigable waters aren't public lands and therefore not subject to ANILCA regulations. That can be done wholly independent of what the Ninth Circuit said in Katie John. The cases are very distinguishable.

CHAIR MCGUIRE asked Mr. Findley to discuss the case.

[1:48:38 PM](#)

MR. FINDLEY explained that he's been Mr. Sturgeon's counsel since 2011 and had the distinct honor and privilege of arguing the case before the U.S. Supreme Court in January. He said this case has always been about more than Mr. Sturgeon and his hovercraft. It's about getting the Park Service and federal government to abide by the agreements made when ANILCA passed in 1979. At the time, both the state and Native corporations registered concern about putting over 100 million acres of land in Alaska into conservation system units and removing any potential for development. The reasons were that the state

relied on some of these lands for economic development, and a significant portion of the lands Native corporations selected under the Alaska Native Claims Settlement Act were about to be surrounded by these new conservation system units. One of the critical issues before Congress was the notion that any land within these parks that isn't owned by the federal government, shouldn't be affected. Lands that are not subject to federal park regulation before ANILCA, are not subject to federal park regulation after ANILCA. That was the idea behind Section 103(c) of ANILCA, and the centerpiece of the Sturgeon case. The first sentence of 103(c) clearly says that any land not owned by the federal government is not part of these parks. The second sentence says these nonfederal lands can't be regulated as though they were part of the parks. The third sentence says if the federal government wants to regulate the nonfederal lands as part of the park, they need to buy them to do so.

The Park Service in Alaska didn't try to test the boundaries of Section 103(c) until 1996 when they issued a regulation saying they could regulate navigable waters without regard to who actually owns the rivers. The state's and Mr. Sturgeon's position was that under the Statehood Act, the Submerged Lands Act, and the Equal Footing Doctrine, the state owns the submerged lands and the waters going through. They are not part of the parks and shouldn't be regulated as though they were.

By the time the matter got to the district court and the Ninth Circuit level, the Park Service was going further and arguing it could apply any of its nationwide management regulations to any nonfederal land at their discretion. The district court and Ninth Circuit Court accepted that interpretation, but the U.S. Supreme Court emphatically rejected the Park Service's position in an 8:0 decision. He stressed the importance and rarity of such a ruling and said it's a very real win for Mr. Sturgeon and the entire state.

MR. FINDLEY said it wasn't a surprise that the Supreme Court didn't take up every issue in the case and no reason to be disheartened by a remand on the technical questions about reserve water rights and who has jurisdiction over the rivers. The lower courts didn't take up these questions so it would be rare for the court of last review to take them up on the first instance.

One of the things the Supreme Court did do in ruling unanimously is to send clear guidance to the lower courts in this case and to courts every time they pick up an Alaska land use case. That

is that Alaska is unique and should be viewed as the exception not the rule.

MR. FINDLEY said this case reaches far beyond this particular case and the decision will live on for a very, very long time. There aren't many Alaska-specific U.S. Supreme Court decisions and none of them go into as much detail regarding Alaska land use and Alaska land policy. That being said, there are very important things at stake going forward. The Park Service hasn't entirely abandoned its position that it can still promulgate regulations to regulate uplands. It has also continued to take the position that it has inherent authority over all state-owned navigable waters and can regulate them whether they are part of the park or not. These are issues of critical importance to the state that will be litigated on remand.

MR. FINDLEY emphasized that the state has been a very good partner to Mr. Sturgeon, particularly at the Supreme Court level. He thanked Attorney General Richards and the Department of Law for their support and described the amicus brief that Janell Hafner and Ruth Botstein wrote as wonderful and said the argument Ms. Botstein delivered made both presentations better. He concluded saying "This is the finest legal team I can imagine. If we had to do it again, I'd want the same people at my side."

CHAIR MCGUIRE said she looks forward to this committee following the case as it goes back to the Ninth Circuit. Continuing to update the legislature bolsters more awareness of the rights Alaskans have and may help Mr. Sturgeon with financial support going forward. She said it's remarkable that one individual would go this far to benefit so many Alaskans into the future. She thanked Attorney General Richards and Mr. Findley.

SB 165-ALCO. BEV. CONT. BOARD; MINORS; ALCOHOL

[1:56:42 PM](#)

CHAIR MCGUIRE announced the consideration of SB 165. She noted this is the second hearing and the committee substitute, version W, is before the committee.

[1:57:03 PM](#)

SENATOR MICCICHE moved Amendment 1, labeled 29-LS1384\W.1.

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSSB 165(L&C)

Page 5, line 1, following "completion of":
Insert "(1)"

Page 5, line 2:
Following the first occurrence of "program":
Delete ", "
Insert "or"
Following the second occurrence of "program":
Delete ", or a community diversion panel"

Page 5, line 4, following "AS 47.37":
Insert "; or
(2) a community diversion panel"

Page 5, line 18:
Following "completion of":
Insert "(1)"
Following "program":
Delete ", "
Insert "or"

Page 5, line 19, following "program":
Delete ", or a community diversion panel"

Page 5, line 20, following "AS 47.37":
Insert "; or
(2) a community diversion panel"

Page 6, line 14:
Delete "selected by the court to serve"
Insert "serving"

CHAIR MCGUIRE objected for an explanation.

[1:57:21 PM](#)

CHUCK KOPP Staff, Senator Peter Micciche, Alaska State Legislature, explained that Amendment 1 for SB 165 distinguishes between the Alcohol Safety Action Program (ASAP) and the Juvenile Safety Action Program (JSAP) that are approved by the Department of Health and Social Services (DHSS) and community diversion panels that are used by tribal circles and youth courts. These are the treatment options a person has for getting a fine reduced from \$500 to \$50.

[2:01:49 PM](#)

CHAIR MCGUIRE removed her objection and Amendment 1 was adopted.

CHAIR MCGUIRE opened public testimony.

[2:02:34 PM](#)

KIRSTEN MYLES, Director, Cook Inlet CHARR, testified in opposition to SB 165. She expressed concern that SB 165 will do away with the balanced decision-making of the current Alcoholic Beverage Control (ABC) Board and turn it into a group with an anti-alcohol agenda. As currently written, the potential is great that three of the five board members will have backgrounds from rural, public safety, and health and social services, all of which are traditionally anti-alcohol. A board with this perspective could differ greatly from the interpretation of business that recognizes the economic and social benefits of the hospitality industry. She urged the committee to hold SB 165.

[2:04:00 PM](#)

DALE FOX, President and CEO, Alaska CHARR, testified in opposition to SB 165. He stated that the board and government affairs committee voted unanimously to oppose SB 165. He said he attended the meetings in good faith for three years and consensus was not reached in the committee process. Claims to the contrary are simply not true. Research on other boards in Alaska shows they are made up of a majority of industry members with a few public members. As currently drafted, the composition of the ABC Board will be anti-alcohol, which will not lend itself to a reasonably regulated industry. He reiterated that Alaska CHARR does not support SB 165 and doesn't believe the industry supports it.

[2:06:39 PM](#)

SENATOR WIELECHOWSKI joined the committee.

ELIZABETH RIPLEY, Executive Director, Mat-Su Health Foundation, testified in support of SB 165. She reported that that Mat-Su Health Foundation conducted a community health needs assessment in 2013 and alcohol and substance abuse was ranked as the number one health issue. When asked, the local police captains reinforced that alcohol was the number one problem. She related that the foundation is a funding partner of Recover Alaska, which aims to reduce the harm done by alcohol throughout the state by employing environmental strategies. This includes uniform enforcement which SB 165 provides for minor consuming. They also support the change in composition of the ABC Board.

She pointed out that alcohol isn't an ordinary commodity; it brings in revenue but it has enormous costs associated with its use. She highlighted that Alaska is the only state that has given the alcohol industry such a prominent voice on its regulatory board, and insisted that the board instead needs to more fairly represent the interests of all Alaskans. This can be accomplished by designating seats for public safety and public health and ensuring that they clearly outnumber industry seats. She urged the committee to pass SB 165.

CHAIR MCGUIRE asked for an example of the laws that she hopes to change as a result of the change in composition of the board.

MS. RIPLEY clarified that the foundation is not advocating for policies that eliminate the sale of alcohol but would advocate for higher alcohol taxes and policies that restrict the density of alcohol outlets, create an environment where youth are prevented from having access to alcohol and where they see social norms that do not promote heavy use and abuse of alcohol.

[2:10:33 PM](#)

KATIE KRAMARSYCK, Juneau Youth Services (JYS), testified in support of SB 165. She informed the committee that JYS provides outpatient substance abuse treatment to youth. She said JYS supports the new composition of the ABC Board. The hope is that it will provide a more balanced representation from community members and be more consistent with the new Marijuana Control Board. JYS also supports the change in the minor consuming law from a class A misdemeanor to a violation with a \$500 fine. The existing minor consuming laws are enforced inconsistently and have led to few referrals for treatment. The hope is that changing to a \$500 citation will lead to better enforcement and more referrals for treatment. JYS also supports reducing the fine to \$50 upon proof of participation in ASAP, JSAP or community treatment programs because it provides excellent incentive for youth to go to treatment.

[2:13:22 PM](#)

JACK MANNING, President, Juneau CHARR and owner of the Duck Creek Market, testified in opposition to SB 165. He stated that CHARR doesn't object to the youth portion of SB 165, but he doesn't understand the urgency of pulling the composition of the ABC Board out of the original SB 99. He questioned whether the board would function properly and result in litigation because the people wouldn't have business backgrounds. The 1,800 liquor license holders in the state ought to be made aware of these

changes and be factored into the formula of the makeup of the board, he said.

CHAIR MCGUIRE said she, too, was concerned about the board composition and didn't necessarily support it, but it's part of a package that has good provisions for young people. She asked if he anticipates similar problems as those that occurred when the Murkowski Administration put the board under the Department of Public Safety. It became an agenda-driven mission to perform stings and she and Senator Meyer felt compelled to sponsor legislation to move the agency back to DCCED.

MR. MANNING said DPS at the time focused its enforcement efforts entirely on alcohol licenses and doing stings. Nothing was spent on any other prevention methods despite the fact that the most common way for youth to access alcohol is at home. He related that during that time he could go to court and get \$1,000 from a minor who came into his store and tried to buy alcohol. He always thought it would be better to give the youth a choice of going to court or going to a school assembly to talk about minor consuming from their personal perspective.

CHAIR MCGUIRE said her concern about changing the makeup of the board is that rural, health, or public safety representatives may come in with an agenda.

[2:23:28 PM](#)

PAUL THOMAS, Treasurer, Juneau Lynn Canal CHARR and owner of the Alaska Cache Liquor, testified in opposition to SB 165. He said he was a member of two of the ABC committees that have been working on Title 4 since 2012, and he believes the bill is a step backwards and will have the effect of damaging the cooperative environment that the industry and board have been building. The diverse group working under the ABC steering committee did talk about the composition of the board, but this concept was not considered and would not have been supported. The current composition works well and should not be changed. He urged the committee to hold the bill and instead pass the complete package that reflects the cooperative work from stakeholders and the board.

[2:26:12 PM](#)

LEEANN THOMAS, CHARR member and owner of the Triangle Club Bar, testified in opposition to SB 165. She said that for two years she actively participated in the Title 4 rewrite and is totally against pulling elements from that comprehensive legislation and placing it in a separate bill. She emphasized the advantage of

bringing Title 4 forward in one piece to ensure that it works together. She pointed out that it doesn't work now because of the piecemeal approach. In particular, she objected to the composition of the board. She said two industry seats is insufficient, and that number could potentially drop to one. She maintained that the non-industry members would not be knowledgeable enough to make decisions about licenses.

2:30:40 PM

JEFF JESSEE, Chief Executive Officer, Alaska Mental Health Trust Authority, expressed dismay at some of the testimony he'd heard today on SB 165. He directed attention to the letter in the packets from the co-chair of the Title 4 revision committee that clearly sets out that the composition of the board was discussed and consensus was gained on adding public health and public safety seats to the board. To claim otherwise is simply not true, he said. He also stated that the argument that professional licensing boards are primarily made up of members of that profession is irrelevant because the ABC Board is regulatory and not a professional licensing board. Just as it wouldn't be appropriate to weight the Oil and Gas Commission with members from the oil and gas industry, it isn't appropriate for a majority of the ABC Board to be actively engaged in the industry that is being regulated. He agreed with previous testimony that the current composition of the board that includes two members from the alcohol industry is unprecedented nationwide. He said he'd be happy to discuss, in public meetings or with members separately, the kinds of problems that have occurred because of the industry domination of this board.

CHAIR MCGUIRE requested he give examples for the record.

MR. JESSEE said one example is that the ABC Board devised a scheme that allowed a Fairbanks bar to continue to operate after it failed to renew its liquor license. The ABC Board issued a second bar week-long catering permits that allowed it to cater the operations of the first bar whose license had lapsed. This went on week after week. Manipulation of a recreational site license provides a second example. That statute clearly states that those licenses are for seasonal events that allow the sale of beer and wine an hour before and an hour after the event. It is used for events like baseball and hockey games. A billiards parlor applied for and received a recreational site license, and the justification was that people play pool. Other billiards parlors then applied for licenses so they wouldn't be at a competitive disadvantage. At some point, the Alaska Club received a recreational site license that allowed the sale of

beer and wine during operating hours seven days a week. There was no event, no season, and had nothing to do with a recreational site as envisioned by the legislature. The board expanded this license type so far that even CHARR eventually objected saying it had the potential to diminish their licenses.

MR. JESSEE said the forgoing examples are exactly why public health and public safety should be represented on the ABC Board. That voice needs to be heard consistently so other agencies don't need to constantly birdog the board's activity and interpretation of the statutes. The legislature recognized the importance of public health and safety when it formed the marijuana board and it's just as appropriate for this board, he said.

[2:37:29 PM](#)

ELLEN GANLEY, Vice Chair, ABC Board, related that she serves as a public member of the board and has a public health background. She fully supports the changes to the composition of the board, and believes that it gives an opportunity to bring in voices that represent other constituencies. She also stated support for the changes to the minor consuming statutes, because issuing tickets as opposed to misdemeanors will help identify the scope of the problem in the state.

[2:39:22 PM](#)

CHYSTAL SCHOENROCK, Business owner, Forelands Bar, and CHARR member, testified in opposition to SB 165. She questioned whether the bill wasn't a backdoor approach to return oversight of the ABC Board to the Department of Public Safety. She stressed that there is no reason to change a fair system that has worked for many years.

[2:40:29 PM](#)

LARRY HACKENMILLER, representing himself, testified in opposition to SB 165. He said the concerns Mr. Jessee expressed have been addressed in three years of regulation writing. He continued to say that contrary to the sponsor's remarks and Mr. Klein's representation, the Alaska CHARR government affairs committee did not arrive at a consensus to change the makeup of the ABC Board. He said the existing composition of the board works and does allow for someone from the fields of public health and public safety to be appointed. This mandated change isn't warranted and the accompanying education component isn't called for in the statute. He also questioned the purpose of putting law enforcement on the board, because public safety concerns are not impaired by having two public members on the

board. The changes to the minor consuming laws does cut some red tape but would be more appropriate in the comprehensive SB 91. Finally, he described the ABC Board as a licensing board that is appropriately housed under DCCED.

[2:43:30 PM](#)

CHAIR MCGUIRE closed public testimony on SB 165.

[2:43:48 PM](#)

At ease

[2:48:02 PM](#)

CHAIR MCGUIRE reconvened the meeting and offered Conceptual Amendment 2 to SB 165.

CONCEPTUAL AMENDMENT 2

OFFERED IN THE SENATE JUDICIARY COMMITTEE

TO SB 165

AS 12.62.400(a) is amended by inserting a new paragraph (18) that reads:

(18) a registration or license to operate a marijuana establishment 31 under AS 17.38.

AS 17.38.200(a) is amended to read:

(a) Each application or renewal application for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days **before** [PRIOR TO} THE EXPIRATION OF THE MARIJUANA ESTABLISHMENT'S REGISTRATION. **When filing an application under this subsection, the applicant shall submit the applicant's fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check. The board shall forward the fingerprints and fees to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400.**

SENATOR COGHILL objected for an explanation.

CHAIR MCGUIRE explained that the bill that gave the Marijuana Control Board the authority to issue licenses, included a requirement that all applicants submit to a criminal background check. This was to ensure that licenses are not issued to felons. In an oversight, the bill didn't give the Department of Commerce, Community and Economic Development (DCCED) the specific statutory authority to request a national criminal history record check. She said she is offering the amendment conceptually so the drafter can comport it to SB 165.

[2:49:31 PM](#)

SENATOR COGHILL removed his objection.

SENATOR WIELECHOWSKI highlighted a clerical error in the new paragraph (18).

[2:49:55 PM](#)

At ease

[2:50:48 PM](#)

CHAIR MCGUIRE reconvened the meeting and asked Senator Wielechowski to offer an amendment to Conceptual Amendment 2.

SENATOR WIELECHOWSKI moved to strike the number "31" in the new paragraph 18. [It appears between the words "establishment" and "under".]

CHAIR MCGUIRE found no objection and announced that Conceptual Amendment 2, as amended, is adopted.

[2:51:50 PM](#)

SENATOR MICCICHE spoke of the testimony he heard today and clarified that he does not support moving the ABC Board back to the Department of Public Safety and he does have documents that clearly show what CHARR agreed to. He said his perspective is that after a great number of steering committee meetings that included the industry, they had a bill that was ready and at the last moment CHARR indicated it wasn't ready. Because of that he introduced SB 165 that includes two things that everybody had agreed on. He read excerpts from steering committee minutes on 10/5/15 regarding composition of the board and a letter from the CHARR government affairs committee dated 1/22/16. In that letter, CHARR said:

Alternatively, the industry committee suggests that the composition of the ABC Board and the minor

consuming sections could remain intact if we added a section to reduce the class A misdemeanors for licensees in Title 4 to violations with language approved by both the steering committee and the CHARR government affairs committee.

SENATOR MICCICHE emphasized that the Title 4 rewrite effort will continue and the remainder of the original bill will deliver the results that CHARR wants. But the provisions in SB 165 were agreed upon and it's appropriate to make those changes now, this legislative session. He reiterated support for the alcohol industry as an important part of Alaska's economy and again emphasized that the bill does not have a hidden agenda and the industry should not be blamed for the social ills associated with over-consumption of alcohol. The bill is an effort to help the industry partner with communities to attain a healthier Alaska.

CHAIR MCGUIRE offered her understanding that work would continue on the larger rewrite of Title 4.

[2:57:45 PM](#)

SENATOR WIELECHOWSKI said he supports a lot of things in the bill, but it's moving a little fast. The bill was heard previously in Senate Labor and Commerce but there is only one day of published minutes available. On Monday the bill received a quick introduction and 23 people were signed up to testify. Today the hearing has lasted just 45 minutes to an hour. He noted there is no other committee of referral and he'd feel more comfortable if there was more time to study it before reporting it out.

SENATOR COSTELLO, speaking as Chair of the Senate Labor and Commerce Committee, clarified that every bill that is referred to that committee receives at least two hearings and all the public comment.

CHAIR MCGUIRE said her inclination is to move the bill today, but she would take additional amendments.

[2:59:18 PM](#)

At ease

[3:00:10 PM](#)

CHAIR MCGUIRE reconvened the meeting and solicited a motion.

[3:00:18 PM](#)

SENATOR COGHILL moved to report the CS for SB 165, as amended, from committee with individual recommendations and attached zero fiscal note.

SENATOR WIELECHOWSKI objected.

CHAIR MCGUIRE asked for a roll call.

A roll call vote was taken. Senators Coghill, Costello, Micciche, and McGuire voted in favor of the motion to move SB 165 from committee and Senator Wielechowski voted against it. Therefore, by a vote of 4:1 CSSB 165(JUD) was reported from the Senate Judiciary Standing Committee.

[3:01:05 PM](#)

SENATOR MICCICHE stated his intention to remain engaged and ensure that members who are appointed to the board do not have a record of opposing the industry.

SB 103-RESIDENTIAL PSYCHIATRIC EDUCATION FUNDING

[3:02:07 PM](#)

CHAIR MCGUIRE announced the consideration of SSSB 103. She noted this is the first hearing and version I is before the committee.

[3:02:24 PM](#)

SENATOR COGHILL moved Amendment 1, labeled 29-LS0733\I.2.

AMENDMENT

OFFERED IN THE SENATE
TO: SSSB 103

BY SENATOR COGHILL

Page 1, line 1, following "Act":
Insert "**relating to school districts;**"

Page 2, line 9, following "treatment;":
Insert "and"

Page 2, line 12:
Delete "; and"
Insert "."

Page 2, lines 13 - 15:
Delete all material.

Page 2, line 20, following "(a)":

Insert "A school district may enter into a contract to provide payments to a residential psychiatric treatment center that provides an educational program for a student admitted to the center. If a school district and a residential psychiatric treatment center are unable to agree on a proposed contract on or before January 1 immediately preceding the first school year for which the residential psychiatric treatment center is seeking funding, the school board where a student who is admitted to the center is enrolled shall enter into a contract with the center as provided in (b) of this section.

(b)"

Reletter the following subsections accordingly.

Page 2, line 26:

Delete "(b)"

Insert "(c)"

Page 3, line 6:

Delete "(b)(21)"

Insert "(c)(21)"

Page 4, line 14:

Delete "(a)"

Insert "(b)"

Page 4, line 24:

Delete "(a)"

Insert "(b)"

Page 4, line 30:

Delete "(a)"

Insert "(b)"

Page 5, line 15:

Delete "AS 14.30.800"

Insert "AS 14.30.800(f) - (g)"

Page 5, line 17:

Delete "AS 14.30.800(b)"

Insert "AS 14.30.800(c)"

[3:02:46 PM](#)

At ease

[3:03:29 PM](#)

CHAIR MCGUIRE reconvened the meeting and objected for the purpose of an explanation of Amendment 1 for SB 103.

SENATOR COGHILL said the amendment adds "relating to school districts" to the title, deletes the uniform requirements provision on page 2, paragraph (7); and inserts language that a school district may enter into a contract that provides payments to a psychiatric treatment center. If a school district chooses not to enter into a contract, the school board where the child is admitted may enter into a contract with the treatment center.

He explained that the amendment is based on an existing contract in his district. Recognizing there are differing opinions as to how this should be handled in other districts, there is an avenue of appeal. He stated he disagrees with the legal memorandum that indicates that the state interest may not be provided.

[3:05:57 PM](#)

SENATOR CATHY GIESSEL, Alaska State Legislature, sponsor of SB 103, said she has no objection to Amendment 1.

SENATOR COSTELLO questioned what the added language on page 2, line 20, actually achieves.

SENATOR COGHILL replied it provides an appeal option. The school boards set the standards and will enter into the contract if the school district and treatment facility fail to agree.

[3:08:09 PM](#)

SENATOR COSTELLO said she'd like to hear from the drafter because it appears that the requirements the bill sets out do not apply if you go through the school board, but they do apply if you go through the school district.

SENATOR COGHILL said his expectation is that a school district would enter into a contract based on whatever the school board had established as standards for that community. If there's a direct appeal to the school board, he imagines the same standard of education would be applied.

SENATOR COSTELLO asked if the contract would be with the district where the student comes from.

SENATOR COGHILL answered yes.

SENATOR COSTELLO listed the number of students who would be affected from the different school districts and asked if the intention is to have a separate contract for each district.

SENATOR COGHILL said that's his understanding.

[3:10:16 PM](#)

EVELYN ALSUP, Educational Director, North Star Behavioral Health, clarified that the contracts would only be with the district where the facility is located, not each individual district. Amendment 1 allows the Fairbanks North Star Borough and a local treatment facility to continue to contract as they have for 20 years, with the standard set forth by the local school board.

SENATOR COGHILL agreed with the explanation.

SENATOR COSTELLO asked to hear what the Anchorage School District thinks about the amendment.

CHAIR MCGUIRE asked Superintendent Graff to comment on Amendment 1.

[3:11:54 PM](#)

MICK GRAHAM, Chief Academic Officer, Anchorage School District said Superintendent Graff isn't available at the moment and they hadn't seen the amendment. He pointed out that there is a unique difference between the ways that the Anchorage School District and the Fairbanks North Star Borough School District work with North Star Behavioral Health. Fairbanks has only long-term care and the Anchorage facility has both long-term care and shorter term, acute care.

SENATOR COSTELLO said his response isn't addressed to the amendment and perhaps the sponsor of the amendment could provide an explanation.

SENATOR COGHILL explained that the amendment is meant to help an appeal process in the Anchorage district and to accommodate the existing contracts in the Fairbanks district. He opined that the operative part for Anchorage is the appeal option if the school district and the treatment center don't agree on a contract. In that circumstance, the school board enters into a contract with

the treatment center as provided in subsection (b), which lays out the qualifications of the treatment center.

SENATOR GIESSEL said she was just apprised that Superintendent Graff has seen the text of Amendment 1 when it was added to the House version of the bill.

SENATOR COSTELLO summarized that the amendment would allow the school district to enter into a contract but if it isn't signed before January 1 preceding the first school year, the school board may enter into a contract. She asked if the school board would approve a contract that the school district entered into.

MR. GRAHAM said Superintendent Graff had returned.

CHAIR MCGUIRE asked Superintendent Graff if he'd heard the explanation and Senator Costello's question.

ED GRAFF, Superintendent, Anchorage School District, Anchorage, Alaska, said the amendment is inappropriate because it provides the school board the statutory right to appeal the school district's decisions to the commissioner and the Board of Education. His research indicates that no other private vendor is afforded this type of appeal in Alaska's public education system. He relayed that on March 18 he submitted a letter to the House Education Committee outlining the concerns with the amendment.

CHAIR MCGUIRE said she understands the opposition and there is a letter in the packet clarifying the Anchorage School District's opposition.

[3:18:23 PM](#)

CHAIR MCGUIRE asked Senator Costello if she maintains her objection.

SENATOR COSTELLO said yes.

CHAIR MCGUIRE asked for a roll call.

A roll call vote was taken. Senators Micciche, Coghill, and McGuire voted in favor of the motion to adopt Amendment 1 to SB 103 and Senators Wielechowski and Costello voted against it. Therefore, Amendment 1 was adopted by a 3:2 vote.

[3:19:16 PM](#)

SENATOR COGHILL moved Amendment 2, labeled 29-LS0733\I.3.

AMENDMENT 2

OFFERED IN THE SENATE
TO: SSSB 103

BY SENATOR COGHILL

Page 6, line 8:
Delete "2019"
Insert "2020"

CHAIR MCGUIRE objected for discussion purposes.

SENATOR WIELECHOWSKI asked if the amendment extends the time the bill will remain in effect.

[3:19:36 PM](#)

KARI NORE, Staff, Senator Cathy Giessel, Alaska State Legislature, said that's correct. It conforms to Amendment 1 and ensures a full three-year pilot project.

[3:19:55 PM](#)

SENATOR WIELECHOWSKI objected, based on his objection to Amendment 1.

CHAIR MCGUIRE removed her objection and asked for a roll call.

A roll call vote was taken. Senators Micciche, Coghill, Costello and McGuire voted in favor of the motion to adopt Amendment 2 to SB 103 and Senator Wielechowski voted against it. Therefore, Amendment 2 was adopted by a 4:1 vote.

[3:20:49 PM](#)

At ease

[3:21:00 PM](#)

CHAIR MCGUIRE reconvened the meeting and opened public testimony.

[3:21:21 PM](#)

CAELA NIELSEN, Parent, North Star student, testified in support of SB 103. She described her background as an educator and her son's disorders and the services provided for him by the Anchorage School District. She recalled his suspension when he was 13 and the process they followed in his individual education plan (IEP) in the regular school district. He was in various

treatment programs, including North Star and Palmer, which put him behind in school. He ended up in a manic state and tried to overdose. She recalled his history in and out of treatment centers. She listed what she needed for her son and what she hoped to receive for him at treatment centers. She strongly encouraged support for the educational project found in SB 103.

CHAIR MCGUIRE asked Ms. Nielsen to submit her comments in writing.

[3:28:37 PM](#)

SENATOR COGHILL moved to report SSSB 103, as amended, from committee with individual recommendations and attached fiscal note(s).

[3:28:50 PM](#)

SENATOR WIELECHOWSKI asked Mr. Graff if he supports the bill.

MR. GRAFF stated that the Anchorage School District does not support SB 103.

[3:29:30 PM](#)

CHAIR MCGUIRE announced that without objection, CSSSSB 103(JUD) is reported from Senate Judiciary Standing Committee.

[3:29:36 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:29 p.m.