1971-72

HOUSE JUDICIARY COMMITTEE, VOL. 2

TABLE OF CONTENTS

1972 INDEX

1972 MINUTES: 1/11/1972 - 6/9/1972

1971-72
HJ
MINLOG
VOL.2

1972

INDEX

HOUSE JUDICIARY COMMITTEE MINUTES INDEX (1972)

Bill No.	Title	Page(s)
HB 5	Probate Code	4,7,20,30,31,32 (see SB 248)
HB 25	Personal & property protection motor vehicle insurance	2,4,30,31,41,104,121-123, 124-128,142,156,159,173,191 (See HB 464)
HB 45am S	Concerning driver licensing	41,107-109
HB 108am S	Notice of emergency regulations	103,129
HB 113	Children needing supervision	2
CSHB 124am H	Use of firearms in state parks	41,115,116,136
HB 174	Uniform Consumer Credit Code	4,25-29,41
HB 176am	Comparative negligence	2,30,36,41,105,117,131
CS SSHB 239 (Jud) am S	Architecture, engineering and land surveying	103 110-114 69-73,104,111-115,132-136, 138-139,148-149,153,156,173, 175,188,189,
HB 275	Point system for motor vehicle violations, establishing	160
HB 289	District court jurisdiction	13,14
CSHB 308am S	Jurisdiction of district courts	13,37
HB 319	Homestead exemption extended to trailer homes and mobile homes	2
CSHB 321	Increase in homestead exemption	2
HB 335	Powers of city or borough to provide mass transportation facilities and services	110
HB 341am S	Criminal responsibility, mental competency	12,36,46,267
HB 342	Place of trial	2,11,38,
SCSHB 349	Attorney fees/small tort actions	3,13,36,
HB 350	Fifth district/superior court	11,36,
HB 357	Trailer Home Code	2,14,
HB 363am	Driving under influence of drugs	17,34-36,37-39,

Bill No.	Title	Page(s)
HB 369	Uninsured motorist coverage	146
HB 379am	Nat'l Guard/Civil liabilities	41,146,155,247
CSHB 393	Appt. of Magistrates	32,33,41
HB 394	Special Session of Legislature	3
HB 448	Survivor's benefits/Judicial Retirement	3,13,41,46,47,117
HB 451	Uniform Foreign Money/Judgments	30
HB 452am S	Uniform Enforcement of Foreign Judgments	30
HB 453	Consumer transactions	25,26,27-29
CSHB 459	Workmen's Comp/3d party liable	261,262
CSHB 464am	Automobile Liability Insurance	124-128,142,187,191,230-239, 250-252,318
HB 479	Admission/Out-of-State Attorneys	1,9,32
CSHB 480	Establishing Office of Administrative Adjudication	30,173,187
SCS CSHB 503	Supplemental Appropriation/Dept. of Law	5-7
HB 508	Supplemental Appropriation/Public Defender	6,7,14
HB 517	Appropriation/Alaska Court System	12,18,19,41,105,115
SCS CSHB 518	Appropriation/Operation of State Government	19
HB 524	Revision AS 11, Criminal Law (Criminal Code)	4,7,9,10,18,20,21,22-24,31,37 41,42-26,47-62,74-102,117,118 119,120,143,156,198,249,254-258,263-266,297
HB 529	Regents of University of Alaska	173,267
HB 551	Disposition of Certain Bodies	104,110,111,146,314
HB 553	Tort actions against the state	41
HB 557am	Juvenile Records	159,172
HB 558	Taxation of retirement income	41,172

Bill No.	Title	Page(s)
CSHB 563	Privacy of Criminal Justice Information Systems	41,64,65-69,159,240,249,268, 269,270-301
CSHB 566	Removal of magistrates from office	40,41,64,65
HB 585	Mobile Home Standards	7,18,297
HB 588	Coverage/Correctional Officers/ Public Employees Retirement System	41,104,115
HB 590	Relating to assistant and district attorneys	41,104,117,129,130,150-153, 173
HB 611	Providing for State chartered credit unions	173,199-203
SCS 2d CSHB 620am	FCC - Definition of 'contractor' and 'subcontractor' under Alaska Workmen's Compensation Act	130,131,136,137,143,144,146
HB 625am S	High voltage electric lines	155,156
HB 626	Public Defender hiring resident law students as research assistants	106,107
HB 629	Laymen on Professional Boards	153,247
HB 631	Venue	109,189
HB 638	Arbitration of small claims	105,117,141,247
HB 648am	Applications for employment	145,173,187-189
HB 650	Criminal Law Revision Commission	103,104,118
HB 664	Grievance/School Teachers	173,177-180
SCS CSHB 670	Judges' Retirement	117
HB 681	Cumulative voting by shareholders	63
HB 685	Relating to cruelty to animals	247
CSHB 687	Relating to commercial fishing	262
HB 700am	Licensure to practice medicine	246,247
HB 722	Clarifying inheritance rights of adopted children	154,159,162,164,165
CSHB 731	Implementing Alaska Native Claims Settlement Act	159,162-164,166-168,173, 181-186,216,217,221

Bill No.	Title	Page(s)
HB 734	Public Drunkenness	253,262
HB 751am	Suspension of Driver's Licenses	141,142,302,302,308
HB 752	Expenses of public defender agency	141,180
HB 753	Protecting individual's privacy	(See HB 563 and SB 387)
HB 758	Declaration of taking	247,248
HB 759	Power of eminent domain/ASHA	247,248
CSHB 763am	Certificate of need/Health care facilities	302-307,312-315
HB 774	Relating to Sex Discrimination	172
CSHB 781am S	Penalties/Alaska Income Tax	172,173,217
HB 787am	Liability/damage to underground utilities	296
HB 790	Boundaries/local governments	173
HB 798	Purchase of lots/Anchorage	311
HB 799	Penalty for embezzlement	267
HB 801	Courtroom facilities/rural	298,311
HB 803am	Protective headgear/motorcycles	246
HB 804am	Incorporation under Alaska Native Claims Settlement Act	189-191,203-209
HB 805	Amending the Alaska Business Corporation Act	189-191,192-194,195,196,203
HB 806am	Discharge of firearms/highways	203
HB 811	Establishing a fifth district	311
HB 816	Estab. Alaska Academy of Science	253

HOUSE RESOLUTIONS

Bill No.	Title	Page(s)
HCR 9am S	Western Interstate Commission for Higher Education/Law	41,63
HCR 49	Leasing space/ASHA/court facilities	189,209,297,298
HR 1	Senate and House/Joint Session	41
HJR 7	Unicameral	4,41,140,141,146,159,316,317
HJR 92	Amending amendments of Alaska Constitution	41,63,64
HJR 102	Amending Constitution/Civil rights	41
HJR 103	Amending Constitution/Grand Jury	64,68,69,137,159,171,172, 176,177,196-198,213-216
HJR 136am	Official recognition of the American square dance	266

Bill No.	Title	Page(s)
SB 28am	Violent Crimes Compensation Board	30,41,63
CSSB 56am	Medical assistance for needy persons	317
SB 112	Execution of judgements	39
SB 137	Personal jurisdiction/over nonresidents defendants	308,309
CSSB 151am	Mechanics' and materialmen's liens	310,311,320
SB 155am	Escrow Agents	9,15,16,39,41,248
SB 166	Trustee's Sale of Real Property	3
SB 248am H	Probate Code (See HB-5)	41,143,156,169,170,198, 226-229,240-245,261
SB 253	Public agency meetings	39
SB 259	License suspension hearings	247,248
CSSB 285am H	Board of Parole	147
HCS CSSB 296	Point System/motor vehicles	153,160,161,174,175,218-221, 267,308,311
CSSB 310am H	Venue	109,189,209,221,222
SB 346	Notary public seals	103
SB 356	Motor vehicle insurance (see HB 25 and HB 464)	122,124-128
SB 377am H	Alaska Securities Act	259-261
HCS SB 383am H	Revisor's Bill	173,186,209-213,223-226
HCS CSSB 387	Privacy/government records	270-301

SENATE RESOLUTIONS

Bill No.	Title	Page(s)
SCR 19	Estab. law center and school	253
SCR 20	Study of no-fault insurance	159,317,318
SCR 33	Statutory discrimination based on sex	247
SJR 1	Eliminating grand juries	171,196,197,198
CS SJR 44am	Qualifications of legislators	147
SJR 51am	Age qualifications of legislators	147,262
HCS SJR 68	Individual's right of privacy	315,318,319
SJR 73am	90-day session	315-318

SUBJECTS

Title	Page(s)
Administration of Justice Budget Document	18
Alaska Bar Association Meeting	20,30-33
Bids, Letting of	4
Bush Justice	156,157
District Judges - Salary Increases	131,147
Expungency Statute	249
Judicial Council Proposals	158
Judicial Retirement	36
Legislative Continuance	310
Mental Competency	308
New category for misdemeanors	8
Probationers	32
Reapportionment and Realignment of districts	8,9,32
Reciprocity for attorneys	32
Rules Changes	19
Temporary Permit to Practice Law	32

1972

MINUTES

1/11/1972 - 6/9/1972

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, January 11, 1972

Chairman Moran called the meeting to order at 4:10 p.m. in the Masonic Temple. Present were: Randolph, Flynn, Rose, Hillstrand,Banfield, Barber, and Peterson.

The chairman conducted a discussion on the most convenient time to hold our committee meetings. It was decided that whatever arrangements could be worked out by the chairman would be acceptable to committee members. It was to be kept in mind that the 4:00 p.m. meeting was inconvenient for state workers who might be called upon to testify besides they would be on overtime pay for time spent with the committee.

Mr. Hillstrand was interested in reapportionment and requested that Mr. Peterson do some research as to what laws we already have on this subject. His request was granted. Rep. Hillstrand did not want this done to prove the governor wrong but wanted to know what the legislature could do to make it better.

of-
e Att.

Mr. Hillstrand was assigned to research HB-479 - Out-of-State Attorneys. Mr. Peterson commented that this bill would make the court rules and the statutes the same. At the present there is a conflict between the two.

HB 479

There was general discussion of bills to be discussed and how to get all bills of the same subject up for discussion at the same time. This would facilitate consideration of some pieces of legislation.

Mr. Hillstrand wanted to gather all the materials on campaign expenditures.

Rep. Randolph moved to adjourn the meeting at 4:40 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, January 11, 1972

Chairman Moran called the meeting to order at 4:10 p.m. in the Masonic Temple. Present were: Randolph, Flynn, Rose, Hillstrand,Banfield, Barber, and Peterson.

The chairman conducted a discussion on the most convenient time to hold our committee meetings. It was decided that whatever arrangements could be worked out by the chairman would be acceptable to committee members. It was to be kept in mind that the 4:00 p.m. meeting was inconvenient for state workers who might be called upon to testify besides they would be on overtime pay for time spent with the committee.

Mr. Hillstrand was interested in reapportionment and requested that Mr. Peterson do some research as to what laws we already have on this subject. His request was granted. Rep. Hillstrand did not want this done to prove the governor wrong but wanted to know what the legislature could do to make it better.

t-of-
ate Att.

Mr. Hillstrand was assigned to research HB-479 - Out-of-State Attorneys. Mr. Peterson commented that this bill would make the court rules and the statutes the same. At the present there is a conflict between the two. HB 479

There was general discussion of bills to be discussed and how to get all bills of the same subject up for discussion at the same time. This would facilitate consideration of some pieces of legislation.

Mr. Hillstrand wanted to gather all the materials on campaign expenditures.

Rep. Randolph moved to adjourn the meeting at 4:40 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, January 12, 1972

Meeting was called to order by Chairman Moran at 1:25 p.m. in the Masonic Temple. Present were: Randolph, Rose, Barber, and Peterson. (Flynn joined the group at 1:40 p.m.)

The chairman reviewed the bills before the committee and from the discussion developed a list of bills to be considered for our first work session to be held tomorrow.

No-fault insur. / Comp. Neg.

Mike Rose expressed his desire that comparative negligence be considered even if no-fault insurance was passed since none of the packages on no-fault contain anything on comparative negligence. This will be discussed fully when placed on the agenda. — HB 25, HB 176

Homestead ex. for trailers

Chairman Moran asked for a motion to indefinitely postpone HB 319 - Homestead exemption for trailers - since it has been incorporated into HB 321 - Homesteads, increase exemption which is now in the Senate Judiciary Committee. Rose moves and asked unanimous consent to indefinitely postpone HB-319. There was no objection. So ordered. — HB 319 & HB 321

Trailer Home Code

HB 357 - Trailer Home Code. Rose moved to have the committee instruct Art to prepare a Judiciary Committee Bill to undo what was done on this last session and simply instruct the administration to adopt a code that is acceptable and they can make any changes to this by regulation. Otherwise it would mean new legislation every time there was a change in construction patterns. This was agreed upon by the committee. Mr. Peterson will draft such a bill. — HB 357

Crim. Proc. Rules Change

HB 342 - Criminal Procedure Rules Change - Rose moved to table this bill because the change that this bill was going to make has already been done in a similar senate bill. Unanimous consent was given to table this bill. — HB 342

Tomorrow the committee will consider the following bills: HB 349 - Attorney fee/small tort action; HB 394 - Special Sessions of the Legislature; SB 112 -Execution of Judgments; SB 166 - Sale of Real Property; and SB 155 am - Escrow Agents.

Children Needing Supervision

Chairman Moran distributed material relevant to HB-113 - Children Needing Supervision - to be used during our discussion of this measure. — HB 113

The chairman will notify the appropriate parties for the bills to be considered at the Thursday, January 13, 1972 meeting.

Meeting adjourned at 2:15 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, January 13, 1972

Chairman Moran called the meeting to order at 2:50 p.m. in the Masonic Temple. Present were: Flynn, Banfield, Barber, Hillstrand, and Peterson.

Att. fees/ small tort actions

HB-349 - Attorney fee/small tort actions. The chairman reported that the sponsor, J. Kerttula, asked to have this bill scheduled for a later date since he was not available to meet with the committee today. This has been scheduled for Tuesday, January 18. HB 349

Judicial Retirement

The committee was to discuss HB 448 - Judicial Retirement - but Bob Reeves and George Morrison are not in town today. We are prepared to discuss this whenever they are prepared to come before us. They will be notified. HB 448

Sale of Real Prop.

SB-166 - Sale of Real Property - The thing to be considered here is whether or not it is fair to dispose of Kodiak property in Anchorage or at the court house serving the area in which it is situated. The chairman noted that some research had been done on this by John Beard and Roger Cremo. They listed three alternatives to be considered to alleviate this problem. Mrs. Banfield noted that it could be possible for the people to live in Anchorage but have their property located elsewhere. Moran noted that some banking institutions do their business from one location to accommodate their officers. There was discussion as to the limitation of a judicial district as compared with a recording district. Rep. Hillstrand was concerned about protecting the best interests of the individuals involved. Banfield moves SB-166 out of committee with a "Do Pass' recommendation. Hillstrand objected to have further discussion. Hillstrand withdrew his objection. There were five "Do Pass" votes. It was hoped that when attorneys draw up deeds of trust in the future that they will specify the location of sale in case of default. SB 166

Special sess. of Legis.

HB-394 - Special sessions of the legislature. Mr. Orbeck appeared before the committee in favor of his bill. His purpose for introducing this bill was to put more pressure on the legislature where there were differences that couldn't be resolved. Presently there is a 15-day waiting period. Most of the other states have a provision to accomplish this. If Jay Hammond's bill regarding a 90-day session passes, we may have need of a bill like his. After some discussion as to what "immediate" would mean, Mr. Orbeck noted that he would not object to adding an amendment stating a time limit. A CS will be prepared giving a four-hour limitation. Mr. Peterson will have this prepared. Banfield moves CSHB-394 out with a "Do Pass" recommendation. Hillstrand objected in order to ask a question. (Rose arrived at 3:20 p.m. and was filled HB 394

in on our discussion to this point.) Hillstrand withdrew his objection. This measure was unanimously voted out of committee with a "Do Pass".

Mr. Peterson told the committee that he had talked with Justice Dimond and that he would be happy to testify before the committee whenever his expertise was desired.

Uniform Com. Credit Code
Probate Code
Criminal Code
No-Fault Insur.

Moran alerted committee members to be prepared on the several large bills we have in this committee; Uniform Commercial Credit Code, Probate Code, Criminal Code, and No-Fault Insurance. He announced that we would have a joint session with the Commerce Committee on the Uniform Commercial Credit Code. Mr. Dean Ehrich commented that he would like time to notify people from the national committee and also a legislator from Utah to testify before the House Judiciary Committee when it considers the Retail Sales Act. The Probate Code will go through the Senate before it comes to our committee. Our first consideration will be the Uniform Criminal Code. Mrs. Banfield reported that she had attended a five-day seminar on consumer sales and that nobody was happy about the code.

HB 174
HB 5
HB 524
HB 25

Letting of Bids

Mr. Hillstrand brought up the subject of letting bids for contracts. He gave an example of the Anchorage Times receiving the bid for publishing delinquent tax lists even though it was not the lowest bidder. He also mentioned the letting of bids by the University of Alaska for air service. Mr. Peterson was directed to review this subject for the committee showing what the state law requires. If there is anything that the legislature can do, the Judiciary Committee will introduce a bill to cover the situation.

Unicameral Legis.

Mr. Rose reported that the Unicameral bill may come to us tomorrow. He felt that we should get some testimony on this from experts in the field. He felt that U of A, AMU, Western Conference on State Legislation would be good sources to appeal to for their knowledge in this field. Mrs. Banfield said that Wendell Kay would be a good source of material for this since he has been very interested in this matter.

HJR 7

Meeting adjourned 3:55 p.m.

No meeting Friday, January 14, 1972-

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, January 17, 1972

Vice Chairman Rose called the meeting to order at 1:30 p.m. in the Masonic Temple. Present were: Randolph, Rose, Banfield, Barber, Flynn, and Peterson.

Supplemental Approp. Dept. of Law

Attorney General Havelock, Mr. Warren Wiley, and Mrs. Roberta Johnson testified before the committee on the supplemental budget requests for the Department of Law and the Office of the Public Defender--HB 503 and HB 508. HB 503

Mr. Havelock explained the reasons for his request of a (503) supplemental appropriation. The main increased expenditures by his department was because of extraordinary occurrences in the area of litigation necessary to protect the interests of the state. He also noted that two attorneys had left his agency to begin private practice. Due to the increased workload and the complexity of the Cook Inlet case, it was determined to obtain the services of Mr. Tom Phillips from the State of Texas. He is an expert on this type of litigation and he has been previously working with us as a consultant. Mrs. Banfield asked how much of this supplemental appropriation was for the Cook Inlet case. Mrs. Johnson said it was $50,000. Under prosecution and civil litigation there was an $83,000 increase mainly precipitated by the additional costs arising out of actions of the Supreme Court. Such as make-up of juries, location of trials, change of venue, and travel expenses. Also additional witness fees were necessary this year and this is something that is hard to determine in advance. Mrs. Banfield asked Mr. Havelock where they hold the trials--in school rooms or is it necessary to rent private space. Mr. Havelock noted that the Court system makes all these arrangements.

(HB-503) - Supplemental Appropriation for the Department of Law. The third item to be covered was "special litigation". The main subject of litigation will be in the Environmental lawsuits. A lot of time will have to be spent in Washington, D. C. One such suit is Wilderness Society against the Secretary of Interior and the Cordova Fisheries suit is another. Special counsel has been required in the first case in Washington. Both of these cases also involve a lot of travel. There is also the Native Land Settlement Act which makes it necessary to have some of our staff back in Washington a great deal of the time. We probably have used more than one-man-year in Washington representing the state's interests. Mr. Rose asked if there would be much litigation involving class actions. Mr. Havelock thought there probably would be, especially in and related to the subject of the pipeline. (Moran arrived at 2:00 p.m.) Mr. Barber asked about the governor's remark in connection with supplemental budget appropriations in the future. Mr. Havelock explained that what he was getting at was that some of the expenses could have been anticipated. He gave the example of firefighting, health and social services. He wanted the agencies to prepare their budget to cover these circumstances which call for a supplemental every year.

Mrs. Banfield asked Mr. Havelock what kind of lawsuits would be likely under the native land claims. He felt that it would probably involve whether or not the state should participate monetarily and whether or not some villages meet the qualification of having a population of at least 25. Mr. Rose asked Mr. Havelock to provide back-up material for the committee and he will provide same.

(Hillstrand arrived 2:05 p.m.) Moran noted that he felt that Finance Committee would probably carry the bill on the Floor, he wanted the Judiciary Committee to be well prepared to support this request. Therefore, copies of the back-up material will be provided to all committee members.

Vice Chairman Rose turned the chair over to Mr. Moran.

HB 508

Supplemental Approp. Public Defender

HB-508 - Supplemental for Public Defender. Mr. Warren Wiley noted that he would not be able to supply as detailed material on this budget since he did not have all the materials available as did Mr. Herb Soll. Mr. Moran reviewed the governor's letter that accompanied the bill. There was discussion as to what types of cases the public defender covers and the request was made by Mr. Hillstrand that we receive a break-down of these submitted to the committee. Mr. Havelock noted that if the penalty could be one day in jail, then the public defender was required to work on these. Mr. Havelock noted one area of concern that should be investigated. This was relative to the drawing of juries. He felt that the Court Rule had gone beyond what the Constitution called for in this regard. Mr. Barber asked if it would be necessary to change this rule on venue in the outlying areas. Mr. Havelock thought that it probably would need to be changed. He thought that the court may decide to modify the rules without any legislative action. Mr. Barber asked which took precedent--Court Rule or Legislation. The Legislature by a 2/3 vote can override a court rule.

Mrs. Banfield asked Mr. Wiley if the increased costs included the hiring of new attorneys and staff. Mr. Wiley noted that this agency is overloaded with casework. This was especially true when the Alexander decision was made. These people had been requested in the 1973 budget but as a result of the Alexander case they were hired now. Mr. Wiley noted that part of the increase could be attributed to additional travel expenses. There was a brief discussion on salary range and whether or not that would make any problem in the decisions. Mr. Havelock said it would not since the DA's have more functions involved on the defense side of cases.

Detailed information on the type of cases involved will be submitted to the committee since Mr. Wiley did not have that with him and Chairman Moran felt we should move on this and not wait for Mr. Soll to come from Anchorage. The committee desires to be well informed on this so they can help this measure when it reaches the Floor. Mr. Hillstrand wanted

to know if most of these cases involved a car why the person couldn't pay the bill for services of an attorney. Mr. Wiley noted that under the Public Defender's Act that if any of the individuals served come into some money within three years they must pay for the services rendered. Moran asked if in this case would the individual be exempt from execution say on his car since it would be considered tools of his trade. Mrs. Banfield also requested information about the efforts made for restitution. Mr. Havelock noted that most people in Juneau, if they have a car, have a nominal amount in equity.

Chairman Moran requested comments from the Attorney General on HB-524 - Criminal Code and later on the Probate Code which will come out of the Senate. Mr. Wiley will call Mr. Soll and get his comments on the Criminal Code, also. Mrs. Banfield asked if the chairman had noted the letter from the Tanana Bar Association asking the committee not to consider the criminal code this year because they wanted to study it further. It was noted that studies have been being conducted on this matter for at least six years.

Criminal Code
Probate Code
HB 524
HB 5

Mrs. Banfield moved to have HB-503 - Supplement for Department of Law - signed out with a "Do Pass". She asked unanimous consent. No objection was heard.

HB 503

Mrs. Banfield moves that we pass HB-508 - Supplement for Public Defender - with a "Do Pass" and asked unanimous consent. Hillstrand objects. Vote was taken with Hillstrand and Randolph voting "Do Not Pass".

HB 508

The next item to be discussed was in connection with the regulations of mobile homes. Art prepared this draft for the committee. Mr. Rose explained that this was a result of his motion the other day. We put in some requirements beyond what anybody in the industry can or does do in constructing trailers. There was no way to by-pass the law. This legislation would leave it up to the administration to make any changes necessary be regulation using the APA guidelines. Art explained what he had done and noted that if the committee wanted it to cover more than this that there would be additional rewriting necessary. Randolph wanted to know if we repealed the law we passed last year would we still have this on the books. Art said there was some question on this. Mr. Rose suggested adding a saving clause saying that they would keep the code as adopted but that they now would have the authority to make modifications when necessary by means of regulation.

Mobile Home Code
HB 585

Mr. Rose gave an example of the effect of the new trailer code for the state of Alaska. The Department of Education sent out invitation to bid on mobile homes for use in Kodiak. No part of the mobile home industry could meet our code so these bids were cancelled and another set of bids went out for modulars at a great increase to the state. The main items that could not be met were roof load and heat loss. Mr. Peterson will take another look at this and copies of his draft will be made for all committee members to be

placed on their desks in the Chambers. We will have to hold hearings on this and probably they could be held jointly with the Commerce Committee who would be considering this too.

New category for misdemeanors

Mr. Rose mentioned that he would like to consider the idea of getting away from misdemeanors. Especially in minor offenses, traffic citations, etc. This would be done by creating a new category which would cover things that did not carry a jail sentence. Just having a trial that is not considered criminal. Moran asked if he would vest in the AG the right to enjoin the sale of vehicles, mobile homes, etc., if they did not meet the codes. Mr. Rose gave the example of public utilities imposing fines without going through the criminal trial procedure.

Reapportionment

The chairman noted that Mr. Peterson had prepared a memo showing what the legislature could do about reapportionment. Copies of this memo will be made and placed on the members desks in the Chambers.

Meeting adjourned at 3:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, January 18, 1972

Vice-Chairman Rose called the meeting to order at 1:30 p.m. in the Masonic Temple. Present were: Randolph, Rose, Hillstrand, Barber, Banfield, Flynn, and Peterson.

Escrow Agents — SB 155 am

The first item of discussion was SB-155 am. Rose read the Commerce Committee Report.(SB-155am - Escrow Agents). The main point discussed was the bond requirements and whether or not the amount was too high to allow qualified persons to become escrow agents. Mr. Hillstrand felt that he could not pass this without the surety bond requirement. Mrs. Banfield noted that on Page 2, in comparing the original bill with the committee substitute, they have taken "attorney at law" from under these provisions. She would like to find the answer to this question. Rose did not know why they took this out but explained how escrow agents started in Anchorage and that other companies in the same type of business felt there should be some type of regulation of these agencies, such as banks and real estate brokers. He thought that the attorneys may have been deleted since they have separate trust accounts which cannot be attached by creditors. Rose felt that the purpose of this bill was to be a preventive device against some agent taking the funds and leaving town. Flynn wanted to know if this was putting an undue burden on a person who was willing to perform a good service for the community. Mr. Hillstrand didnot think this would amount to more than $250 and in the end you would be protecting the public. Mr. Randolph thought the cost of a bond might run much higher and would like to find out for sure. Since there were so many unanswered questions on this bill, it has been scheduled for January 25, at which time we will have testimony from the Juneau Bar, insurance companies, Transamerica Title Company, and banking institutions. The secretary will notify these concerned parties. Mr. Randolph expressly wanted the insurance companies to bring information with them showing what kind of financial statement they would have to have before approving a bond for an escrow agent.

Reapportionment brief

Mrs. Banfield thanked Art for the brief he prepared on reapportionment. All other committee members concurred in expressing their appreciation.

Out-of-state attorneys — HB 479

Moran arrived and assumed the chair. He noted that he had attempted to reach Rick Lauber without success, and Orbeck or Huber were not present so HB 479 - Out-of-state attorneys - will be delayed until we hear from the Board of Governors. They will be here January 31. Rose was going to move to indefinitely postpone this bill but the chairman felt we should listen to the sponsors first.

Criminal Code — HB 524

HB-524 - Criminal Code. Moran noted that in many instances subcommittees were assigned to bills of greater size or of depth of material, but in this instance he wanted all members

to be prepared for discussion. Moran requested that the committee members read this bill through carefully. There was some discussion as to how much should be considered at one time and how soon before we would begin scheduling discussion of this code. Randolph moved to take 30 days to read and mark their bills before discussion. He asked unanimous consent. Banfield and Rose objected. Flynn called for the question. Hillstrand, Flynn and Randolph voted Yes; Banfield, Rose, Moran and Barber voted No. Motion failed. Rose felt that an index would be useful in consideration of this bill. Banfield noted that Joel Bennett did a considerable amount of work on this bill and thought it would be of assistance to the committee to have him present during the discussions. The secretary will check to see if there has been an index prepared, otherwise one will be provided for committee members by the secretary. Moran scheduled work on the first three chapters of the code for consideration on January 25.

Criminal Code

HB 524

Meeting adjourned at 2:15 p.m.

No meeting on Wednesday, January 19, 1972.

No meeting Thursday, January 20, 1972

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, January 21, 1972

Chairman Moran called the meeting to order at 1:15 p.m. in the Masonic Temple. Present were: Banfield, Randolph, Barber, and Peterson.

Venue

Moran noted that HB-342 - Place of trial - had been tabled on January 12, 1972. There is a problem connected with this in reapportionment. Some members of the legislature want to appeal to the courts on the Governor's order. We have to assume that the order is valid for the purposes of our planning. Hb 342 will be used as the vehicle by which we will amend this to show the revision. There are two problems with reapportionment: composition of election districts, Anchorage being the immediate problem. The second problem was not mentioned. Art will prepare a CS to handle the problem of additional election districts. HB 342

Mr. Reeves, Court Administrator, met with the committee to discuss several bills in the area of his concern.

Fifth Dis. Sup. Ct.

HB 350 - Fifth District-Superior Court. He noted the problems in the area of judicial services for people in the Lower Kuskokwim Area, for example. He noted the fine work of Nora Guinn in handling cases for Judge Sanders out of the Second Judicial District. She has handled juvenile matters and also probate cases. He drew a map showing the difficulty of handling cases because of the boundary lines not being compatible with transportation routes. There would be a budgetary impact in setting up a complete superior court. This would include facilities, staff and supplies. He mentioned that Nora Guinn held court in her own office and had to move her things out in the hall while she held court, and then transfer the things back to her room after court was over. Something will have to be made ready by 1974. Mrs. Banfield asked if this would require the services of a full-time judge. Mr. Reeves noted that this would probably be a circuit-riding judge. He noted that at the present Nora has been given special powers to do a lot of the superior courts' work. She does this in a Master's capacity. HB 350

(Rose arrived 1:30 p.m.) Moran noted that this committee had not received any information from the Judicial Council letting us know what was needed. Moran asked Mr. Reeves how they would go about setting up a superior court system where there are no practicing attorneys. Reeves noted that in Nome they have a District Attorney and a couple of Public Defenders. Rose asked whether we could create new districts. Art noted that new districts were set up "by law". Reeves noted that he could poll the Judicial Council by phone and contact some of them in Anchorage since they were due to have a meeting in Juneau soon. Moran felt that if the main problem centered around geography that he would like to have the Judicial Council study the problem. Reeves agreed that the areas of population, or geographical centers,

do not coincide with our judicial districts.

Moran noted that a formal request will be sent to the Chief Justice to review and study the matter for purposes of making recommendations to the Eighth Alaska Legislature. Barber wanted the request to note that if there was a change in reapportionment that it wouldn't make any difference. Rose felt that the venue statute should be rewritten to take into account geographical conditions. We could still deal with the current problem of reapportionment. We should see that the allocation of the geographical areas of Alaska should correspond to the several judicial districts and that a determination of a more satisfactory allocation of areas within the judicial district for purposes of venue in both civil and criminal cases should be studied carefully. A formal letter will be written. HB 350

Reeves felt that there was a great need for an amendment and thought that Art and some others could work up such an amendment that would pass this year because it is such a pressing problem.

Banfield moves to table HB 350 and asks unanimous consent. No objection.

Criminal Responsibility-Mental competence

HB 341 - Criminal Responsibility--Mental Competence. Moran noted that the M'Naghten Rule has been adopted in this state. It was felt that the committee should be moving on something more modern in that area. Mr. Reeves was asked to comment on this. He noted that they had a case pending before the Alaska Supreme Court. He noted that ALI has done extensive research and they have published a treatise of one volume on this subject. They have been successful in about three federal cases and their defense has been accepted. Mr. Reeves noted that the Chief Justice has appointed a committee of the Alaska Bar and some members of the Judiciary, chaired by Justice Rabinowitz. They are working on revising the rules of criminal procedure. I could contact Millard Ingraham and you might be able to coordinate with that committee. Moran asked if they were following the federal rules. Reeves assured the committee that they were. Art asked if this was ready to present to the council for their annual meeting. Mr. Reeves said he would have to find out. HB 341

Appropriation-Alaska Court System

Mr. Reeves asked the committee to delay action on HB-517-Appropriation - Alaska Court System. He outlined how he polled the divisions of the court system as to how much money they would need. After the governor said they should cut back, they were polled again to see how much they could take out of the budget and then the new figures were presented to the Legislature. He wanted George Morrison to appear before the committee on this measure. He is the one that has all the back-up material for HB-517. HB 517

Attorney fees-small tort

HB 349 - Attorney fees in small tort actions. Mr. Reeves has read and considered this bill but felt that someone from the Alaska Bar should comment on this bill. HB 349

Survivor's Benefits-Jud. System

HB-448 - Survivor's Benefits - Judicial System. Art has some technical questions on this bill. Moran noted that he would get with Justice Erwin, George Morrison, and probably Vic Carlson to have Art's questions answered and then make the necessary changes. The finished product will be brought before the committee at that time. The problem with this bill seems to be that as written it doesn't do what was intended. Rose asked if the judges has been asked for their opinions on this. Reeves said that all judges were canvassed. HB 448

Juris. of Dist. Courts

HB-308 - Jurisdiction of district courts. This bill was put out of this committee, but was recommitted when a question arose regarding "court of record." Putting this bill through as it was would have required a 12-man jury. This would have been costly for the court system. Mr. Reeves noted that there was one thing that he was going to file a bill on and that was service of process. Now service of process only runs to the judicial district line. If there is any doubt as to place to serve, attorneys are filing in superior court, so you are not reducing the case loads. Mr. Reeves noted that it was difficult to determine the complete impact because of the increase of case load in all courts. He also noted that criminal cases seem to take precedence over civil cases, at least in the Anchorage area. In some cases the delays have been as long as 6-8 months. This, of course, many times is at the attorneys' request. HB 308

Moran noted the air of informality in a district court over a superior court proceeding. It was noted that the "Court of record" point was important when it referred to liens and whether or not they would be recorded. Rose suggests making the district court a "court of record" stating they would use a 6-man jury. Moran noted the reason for having lower courts in the beginning. He did not want the flexibility of the lower courts destroyed. Randolph noted that he had prepared a draft of a bill, or was having it prepared, to have probation supervision taken out of the superior court and given to the Department of Corrections. Reeves thought this would be a good thing. Art noted that courts of record entitled one to a 12-man jury in the criminal area but was not sure in civil matters. Mr. Moran directed him to look up the affect of the statute and precisely what it says about judgment lien.

Juris. of Dist. Courts

Art noted that HB 289 - Jurisdiction of District Courts - file has some information on this. HB 289

Reeves requested that the committee add the following to HB-308: District Court should have statewide jurisdiction over criminal and civil cases. HB 308

Juris. Dist. Courts

HB 289

HB-289 - had some material on this. Moran read from memo in the file. Mr. Reeves noted that this was when Jim Hurley became interested in this. Moran noted that there were examples of cases in the courts here in Juneau that reflected that liens were recorded. Mr. Reeves revealed that all areas do not conduct business in the same way.

HB 308 CS

Rose moved and asked unanimous consent that the district court have civil jurisdiction statewide the same as for criminal jurisdiction. Mr. Peterson will prepare a CS for HB-308.

Appro. Alaska Court System

HB 517

Mr. Morrison and Mr. Reeves will come before the committee on January 26 at 1:15 to consider the appropriation for the Alaska Court System (HB-517).

Trailer Home Code

HB 357

Trailer Home Code: Art checked into a provision to recognize regulation and after checking his set of APA changes he did not find anything on this subject. The register is published quarterly and he has the latest editions. Banfield wanted Art to study this further and find out why they haven't adopted the code. Art will report back to the committee on this matter.

Meeting adjourned at 3:00 p.m.

January 24, 1972

No meeting today.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, January 25, 1972

Vice-Chairman Rose called the meeting to order at 1:20 p.m. in the Masonic Temple. Present were: Barber, Flynn, and Banfield.

Escrow Agents

Rose announced that since there was not a quorum that the committee would proceed to hear the testimony of Joseph A. McLean and Mr. Glen Prince on SB-155 am - Escrow Agents. He asked the committee members present whether they would like to have the testimony preserved by taping it so the other members could have it available to them. This was done. He also noted that Mr. Peterson would not be present and since we would not be taking action on this measure at this time, his services would not be required. SB 155 am

The committee heard the testimony of Mr. McLean first. He noted that he was an attorney and that he has experience in writing bonds. His firm handles most of the bulk of such bonding in this area. Mrs. Banfield provided him with a copy of the Commerce Committee HCS for this bill. This version takes out the exclusion for attorneys. She asked Mr. McLean to comment on this. He said he didn't think they should be included since they handle most of their funds through trust funds and not as escrow. There would only be rare times that an attorney would act as an escrow agent. Mr. McLean said he thought what the committee wanted from him was an opinion as to whether a bond could be obtained under the provisions of this bill. He outlined the risk involved in bonding escrow agents. This mainly centered around the fact that they fall in the "hazardous category". They would need to have a financial statement over and above what would be required in the law because of the category designation. They would require liquid assets, not property or investments, unless they could be given to the bonding company to be held as collateral. This amounts to or is equivalent to a financial guarantee. From this it is easy to see that no person would like to have $200,000 tied up in this manner. $50,000 would be more readily available but you can draw the conclusion that bonding companies would ask for cash collateral.

Mr. McLean commented on the provision in the bill calling for the bond and then later requiring a certain amount in clear assets. He felt this was a repetition but Mr. Flynn noted that there was an "or" in between the two statements. This was the end of Mr. McLean's testimony.

Committee members questioned Mr. McLean on the point of why this was considered a business in the hazardous category. He noted that holding of documents is hazardous because of the possibility of misplacing the papers and also to have an employee release the document before the contract is fulfilled. Maybe the papers would get into the hands of the wrong people. One incident could easily run into more than $50,000.

SB 155 am

Banfield asked if Mr. McLean thought this bill should be passed. He said he thought things should be left just as they are--in the hands of banks, title companies, he doesn't think that lawyers do this very often.

There was a brief discussion of bonding for small contractors. Banfield related that a man had called her and said he could not get a bond and that he was told that they were not writing performance bonds in this area. Mr. McLean said this was not true, but that insurance companies did not want to write bonds for small contractors from a CPA financial statement. They wanted a true picture of the man's financial condition. He said it is easier and better for the contractor to put up the amount of the bond in cash by borrowing from the bank or from his own funds. That way he will get his bond immediately. You deposit the money with the state, proceed with the work, and when it is done you get the money back. Rep. Flynn gave his own experience in this regard. Banfield felt this was something that the committee should investigate. Mr. McLean commented further that bonding companies want to deal with regular contractors and not with the one building a duplex or some other small project such as this. Banfield also noted the danger in a small community where one insurance company who does bonding could regulate or control the business in that town.

Next witness was Mr. Glen Prince, Transamerica Title Company. He noted that his firm does a lot of escrow work. His impression of the bill is that it is not restricted to a collection account or short term transactions. It seems to include long also. He felt that long-term transactions were turned over to banks or other institutions of this type and held there. He felt the public needed to be protected in the short-term area. He is not sure of the amount of money for bond purposes but felt that the public needed to be protected. Rose asked if Mr. Prince had heard of any problems with escrow services, either here or in the lower "48". He had heard of no such incidences. Banfield asked what was considered a short-term closing. Mr. Prince said that it would probably take three or four days. Barber asked if earnest money was considered the same as escrow. He said it was. This ended Mr. Prince's testimony.

Rose felt that the question was on how much of a limitation should be set. Flynn would like to have one of these escrow agents appear before the committee. They may already have bonds but he would like to have a statement from them. Banfield noted that we have a legislative office in Anchorage and they could contact these escrow agents to get their comments. A request will be made to the legislative office providing them with copies of SB-155am and the HCS and ask them to contact the escrow companies now in business in Anchorage and request them to make such comments or to indicate their desire if any to appear and testify either in person or in writing and to report back on whatever they may find out.

Driving under Infl.-Alcohol, drugs

Rose mentioned that HB-363-Driving under influence - alcohol and drugs - had been recommitted to this committee. Banfield noted that she did not want to make another decision on this bill until the committee had testimony from the medical and health and welfare people, especially as to how you would tell whether a person is under the influence of drugs. HB 363

The Alaska Medical Association and the Health and Welfare people will be asked to appear and testify one week from today, February 1, either presenting written testimony or in person. They will be provided with a copy of the bill and the amendments that are proposed and indicate to them that our concern is in the feasibility of measuring the extent to which persons may be affected by drugs which are administered so as to determine whether or not they are under the influence or not. Any other comments they may have concerning the bill would be welcomed. It was later requested that the Department of Public Safety and the Department of Law be included in this hearing.

Meeting adjourned 2:10 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, January 26, 1972

Vice-Chairman Rose called the meeting to order at 1:20 p.m. in the Masonic Temple. Present were: Barber, Randolph, Banfield, Flynn and Peterson.

Admins. of Justice Budget Documents

Mr. Peterson turned over the entire Administration of Justice Budget documents to vice-chairman.

Mobile Home Standards draft

Mr. Peterson gave Rose a copy of the mobile home standards draft bill that he had prepared. Art reported that there have been no administrative regulations adopted. They had been prepared, but never adopted. HB 585

Criminal Code

Joel Bennett, Legislative Affairs, met with the committee on HB-524 - Criminal Code. HB 524

Appropr. Alaska Court System

The first item of discussion was HB-517 - Appropriation for Alaska Court System. Mr. Reeves and Mr. Morrison were here to answer questions for the committee. Mr. Reeves had prepared brief explanatory material that covered the main portions of the budget material, which consisted of 464 pages. He noted that this was the new program of budgeting. The court system is not asking to be put on a par with other agencies of the state, but want to cover expenses of on-going programs. (Mr. Reeves provided all committee members with brief explanatory material.) The greatest expense under capital improvement was for upgrading of law libraries. There will be new libraries started and new books will be purchased. These expenses also include monies to provide for shelving for the books. The recording office is installing micro-filming equipment to record land documents, past and present. There was some question about appropriating for books and equipment before they were required. Mr. Reeves explained that this money would carry over and when everything was ready they would be able to proceed and not wait until the following year to appropriate monies for same. He noted that the Fairbanks Court House would probably be finished in 1973 and that the Juneau Court House construction was to begin May 1, so it should be completed within 18 months. HB 517

Under "Operating Budget" the largest expenditures fell under personal services and contractual services. Most of the increase under personal services was the result of the increase of five justice positions formed last year. He said he would provide the committee with some graphs which would show the number of cases terminated and those still pending at the end of the year. (Moran arrived 1:40)

Randolph asked if there had been any projections on the cost of trials being held in the jurisdiction where persons reside. Mr. Morrison said it would be about $1 million. Mr. Reeves noted that the supreme court had enacted a rule to try and ease the situation because in some areas there is no place to hold the court or for jurors to stay during trial. He

gave some examples. He said his office is asked to make an investigation of facilities in outlying areas and then it is decided where to hold the trial. One case at Gamble was held in Nome. One from Chignik was held at Cold Bay. Mr. Reeves noted that Election District 15 is very large--reaches from McGrath to Tanana and there is no place to hold a trial in that area. Reeves said he did not agree with the spirit of the Act or the theory of a man being given a trail by his peers or neighbors, but tieing the election district to the judicial district was the part that was unworkable. Gave the example of Bethel. HB 517

There was some discussion as to the quality of the justice rendered in the bush areas. Mr. Reeves gave the example of something coming up in a case where you would need a law book. With none available in isolated areas, you would probably lose the case and have to appeal which in turn would cost more money. (Randolph left 1:55)

Mr. Reeves noted that there were two schools of thought on justice in the bush with some wanting to repeal this in toto and another to try to amend the bill to make the concept more acceptable and workable. Barber asked about the cost of trials in the bush and Mr. Reeves said that they were working on statistics, mostly estimates, showing comparative costs of trials.

Moran asked about the large increase in personnel. Reeves noted that the cities do not want to furnish services as they have in the past and he has to be prepared to cover these positions if the municipalities don't continue working with the court system on this. They did this on a percentage basis for collection of fines, etc. This was brought to light in the Baker vs. Fairbanks case. They have tried to get a written contract with Anchorage but have not been able to agree on this.

Rules Changes

Barber noted that consideration was being given to a change in the rules whereby finance committee matters in connection with certain executive, judicial, and legislative matters will be handled by the appropriate committee. How rapidly will those changes of the rules be adopted? Banfield noted that this was a House proposal and would take 2/3 majority vote of the entire body to change the rules.

Appro. state gov. HB 518

Appro. Alaska Court System HB 517

Mr. Reeves alerted the committee that HB-518 would follow HB-517 but that the figures in that measure were not actual figures. They did not talk to anyone in the Court System when they prepared their budget. Rose suggested that Mr. Reeves and Mr. Morrison come back at a later date to answer any questions committee members have after studying this measure further. Rose suggested reconsideration of this bill to be held on February 8. There was no objection.

ABA Meeting

Rick Lauber, Bar Association, asked if the House and Senate could meet jointly with the ABA. This meeting was scheduled for January 31, 1972 at 1:15 p.m. in the Governor's Conference Room. Mrs. Banfield asked Mr. Lauber if committee members could attend the ABA meetings when they considered the Probate Code and the Criminal Code. She would like to know when they were being scheduled, that is, if outsiders could be present.

Probate Code HB 5
Criminal Code HB 524

HB-524 - Criminal Code. Joel Bennett gave a brief explanation of the summary of events so far in the preparation of this document. Legislative Council and its staff was instructed to prepare a criminal code revision. This was based primarily on the ALI Model Penal Code of 1962. There had been a prior criminal code revision based on the Illinois Law. It was determined basically to follow the Model Penal Code. Joel noted that the Council wanted to remain flexible, but used the Model Penal Code as the base. It was the feeling of the council that present Alaska law which appropriately fit the Alaska situation or statutes recently enacted should be incorporated into the code. Example: Abortion law. HB 524

The code is basically a substantive revision. We undertook revision of basic crimes and some procedural material insofar as it was necessary to the crime to conform to the Model Penal Code approach. He noted the comparison between the revision and present law contained at the back of the bill. Joel noted that he had a complete copy of the back-up material contained in 14 or 15 volumes printed by the ALI that would be available to committee members.

The secretary has prepared a "Table of Contents" which will be used in the analysis of this bill. When this is completed all members of the House will be provided with a copy. Rose noted that a subject index is also being prepared for this bill.

Mr. Bennett reminded committee members that he had prepared three memos to assist in the consideration of this bill. He had written these to the Council during the different stages of drafting. This bill is the third draft. If committee members use these memos they can trace the changes made throughout the process of drafting. The first six chapters deal with general applicability and after that it gets into the specific offenses.

For crimes there is a four-part breakdown. This allows the penalty to be more appropriately tailored to the gravity of the offense.

There is the concept of extended terms and ordinary terms in the code. The code claims to have flexibility even though, as in the matter of sentencing, there is a minimum and maximum limit, the judge can give less if he feels the case merits this. This is one of the points that has evoked a lot of discussion.

There has been a change in the test for insanity. Whether or not to use the M'Naghten rule or to propose something

more modern. This is a very controversial area.

Another main decision was to incorporate present narcotic and hallucinogenic drug laws into the code. There has been a redesignation of penalties.

Mr. Bennett was requested to join the committee in meeting tomorrow to continue discussion of the criminal code.

Moran asked one more question regarding the classifying of crimes. Federal classification only had felony and misdemeanor and not petty misdemeanor. What was the reason for this? Mr. Bennett did not know the reasoning behind this change.

Meeting adjourned at 3:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, January 27, 1972

Chairman Moran called the meeting to order at 1:20 p.m. in the Masonic Temple. Present were: Randolph, Barber, and Rose.

Criminal Code

Consideration of HB-524 - Criminal Code continued. Mr. Bennett was in attendance to assist the committee in its discussion.

HB 524

The committee heard Mr. Bennett's brief overview of the bill. A page by page consideration was given to the contents. Sec. 040, page 2, was awkward language but the Alaska Statutes at present have one brief provision on territorial applicability. Since this was not in existing AS 12, code of criminal procedure, it was felt that it was necessary to keep all sections and subsections of the model code in this bill. (010, 015, and 020 were all new sections.) (030 was the same)

Rose commented on what was to be accomplished in this new code. Three areas are covered: punishment, prevention or deterrent effect, and rehabilitation. If we are agreed that deterrent and rehabilitation are the main purposes intended, then they would be the governing principles throughout the other sections of the code.

Randolph asked if you were released from a penal institution were your basic rights restored? Joel said in most cases unless your crime involved moral turpitude all rights would be restored. Under 093 there is a restriction if you were in public office. Several examples were given in this regard. What if the judge put the person on probation so they wouldn't forfeit their office? There will be further consideration of this point. We also want to consider uniformity in sentencing, so one person doesn't get a real tough sentence and others a mild sentence for the same offense.

Rose noted that we were talking in terms of prevention and deterrent and rehabilitation, therefore he felt we should change the word "punishment" to"sentence" in Sec. 060, page 4, on lines 10-14. Joel noted that this language was taken from existing law and that was why it was not consistent. Rose moved to make the change of word as mentioned above and asked unanimous consent. No objection. To conform the rest of the language to the new change it was suggested that "inflicted" be changed to "impose". No objection. So ordered.

Sec. 110, page 6, was discussed in regard to "costs" in addition to fine. Joel noted that this was present law but Rose and Moran both stated that this has not been enforced. Moran noted that in cases where costs are allowed, they are not realistic as to time spent, etc. Before deciding on this point, a request was made to find

out exactly what costs we are talking about. Rose moved to delete "and costs" on line 15, page 6. Also delete "and for the costs and disbursements" on line 21, page 6. There was no objection.

Sec. 120, page 6, change "penalty" to "sentence" on lines 23, 25, 27, and 28. Joel will note these changes throughout the bill to be in the committee substitute.

Secs. 130, 140 and 150, and part of common law of evidence and are not reflected in our criminal law now. These sections will be included.

Sec. 160(5) has a problem in language. Moran suggested that on line 24, page 8, "as" be changed to "which". This was more meaningful. There was no objection to this change. There was some discussion of the word "negatives" on line 29, page 8, but after further thought and definition it was decided that this was the correct word.

Rose noted that now we had grades of misdemeanor that he felt we should add "petty" on line 18, page 11. Moran didn't feel that regulating bodies should be able to impose punishment. He questions whether that kind of deterrent is necessary in the administration of these rules. We would be providing more serious punishments for this than for petty misdemeanors. It was finally decided to add "petty" on line 18, page 11. Request to Legislative Affairs Agency to review the code to evaluate changing the $500 fine to $1000 was made.

Sec. 080, pages 11 and 12 sets out fines. Joel didn't have too much background material on the limits set. Joel noted that present law sets limit at $500 and now the code has raised this to $1,000 as the ceiling. Rose noted that to be consistent we should call this petty misdemeanor or change the fine. Randolph moved to change this to $1,000. Joel thought this would bring a problem because there is no act in any other title that will be called petty misdemeanor.

Back to 070, page 11. Moran noted that a petty misdemeanor now was a $500 fine and a misdemeanor was $1,000. This would make it consistent with the fine schedule. Line 25, page 11. Joel was asked how hard it would be to comb the statutes and find all this in the books. He noted that all 47 titles would have to be read.

Sec. 110, page 12, raised a question. Rose asked why it wouldn't be feasible just to set a maximum fine and not a minimum since the judge had the right to give a lesser fine or penalty. Joel noted that this was the prevailing attitude but that minimum sentences were necessary to meet probation statutes eligibility. Minimum sentence has to be set by the courts before a person would be eligible for parole. Joel will give us some advice as to what affect this has on our parole statutes if we eliminate the minimum sentence. Joel noted that our only concern would lie in the felony category, not in petty misdemeanors

or misdemeanors.

Extended terms in the next related matter. In order for the court to impose extended terms it has to meet the criteria for that kind of sentencing. This is in keeping with enlightened thinking of other states to specify in the law criteria to follow. This is also the recommendation of the Bar committee. Moran noted that it brought jurisdictional discretion. He requested that the words "reduced to writing and" be added on line 2, page 14. It is difficult to get transcripts of court proceedings. Rose so moves and Randolph seconds. No objection.

HB 524

Rose turned his attention to Sec. 140, page 15(a)(1). Discussion centered on the fact of raising the maximum sentence from one year to three years for a misdemeanor. Rose noted that this would equal a third degree felony sentence. Mr. Rose was reminded that this was for repeaters only, not first time offenders. Moran noted that the person had to be a professional criminal.

Moran noted another instance where courts should reduce the findings to writing. This was on Line 11, page 16. Add "reduced to writing and".

Line 16, page 16. There was discussion of age "19" and changing it to "18". Rose moved to make changes wherever noted. There was no objection. These were noted on lines 5 and 11 on page 14, and line 16, page 16. Any other instances were to be changed also. This was without objection.

Also on page 16, Rose noted the word "prostitute" and would like to have this deleted on line 27.

Pg. 18, Sec. 160, relating to fines, was the next item for discussion. Committee members asked about letting persons sit out their fines. Joel noted that it would be unconstitutional to earn your fine while you were in jail. Moran said he had never heard of a judge giving so many days in jail or a fine but he had heard of giving both. Moran noted that usually you would fine a person rather than put them in jail, and sometimes the fine is suspended until a date certain--date of receiving your salary check. Joel noted that page 5 of the analysis might be helpful to committee members.

Sec. 170, page 19, Rose asked why we had to say "authorized by law"? He felt the court should be able to order commitment. Moran noted that we might find problems if we made this change. Joel will examine this question for us, so that all categories of persons are examined. This is on line 8 of page 19. Work will continue on this bill.

Meeting adjourned at 3:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETINGS
Friday, January 28, 1972

Moran chaired the joint meeting of the House Judiciary and Commerce Committees. Meeting was called to order at 1:30 p.m. in the House Conference Room, Second Floor, Capitol Building. Present were: Judiciary: Hillstrand, Barber, Rose, and Moran. Commerce: Kerttula, Bowman, and Peratrovich. Rep Marty Farrell, sponsor, also attended.

Uniform Consumer Credit Code & Consumer Transactions

HB 174 & HB 453

This hearing was on the subject of consumer credit--HB-174 Uniform Consumer Credit Code - and HB 453 - Relating to consumer transactions. The bulk of the testimony was in favor of House Bill 174 and against HB 453.

The committees heardthree witnesses, all of which were in favor of HB 174. Neil Butler, Esquire, of Denver, Colorado, representing the Commission on Uniform Laws, was the first to be heard. He noted that the UCC Code was formulated to bring order to consumer credit laws since they were so many and varied a great deal. There are three basic approaches to credit: Establish a competitive market among creditors; set restrictions on creditors' rights; and provide for an administrator, who is to protect the debtors' rights. You have two philosophies on credit: Calvinistic--All credit is bad--and the George Wiley approach--allowing welfare recipients to get credit. Mr. Wiley felt it was better to have these people watching their own TV sets instead of paying to go to the movies, buying washing machines instead of going to the laundromat, and buying cars for transportation to jobs instead of paying taxi or bus fares. Mr. Butler felt that if you were going to allow credit to welfare recipients, why not just give them the money for the goods so they won't have to pay the cost of financing. There is a feeling that the cash buyer has in effect been subsidizing the credit buyer. Credit costs should not be buried in the cash price of an item. There are five basic costs in doing credit business. Cost of facilities, cost of processing, cost of bad debts, etc. Note was made of the portion of the bill relating to second holder of a note. This has received a great deal of criticism. This is where a contract is sold to a finance company, and then the finance company sells it to a second holder. The second holder is not aware of the point of origin.

The next witness was Richard Wheatley, Esquire, of Stillwater, Oklahoma. He was in favor of House Bill 174. A prepared statement was given to the chairman by Mr. Wheatley. A program to educate the public in consumer credit has been undertaken in Oklahoma and has been very successful. This is very important. In Oklahoma they have instituted programs in the schools to aid schoolage youngsters to be able to use credit wisely. He noted that labor unions were against the code. Since it is in operation most opposition has diminished to a very low point. Bankers are still the only ones who really don't like it. Their main objection lies with the "truth in

lending" portion. The attorney that worked on the staff of the Administrator was not associated with the attorney general's office in Oklahoma. It costs Oklahoma about $300,000 per year to operate their office under the code. Mr. Wheatley did not feel that the business community could live with House Bill 453, but that they could live with the UCCC. HB 174 & HB 453

The next witness for this portion of the hearing was Mr. Dick Hall, who read a presentation by Tom Downes, for the State Chamber of Commerce. His testimony was in favor of HB 174. This presentation brought up the subject of garnishment. Mr. Wheatley commented that Oklahoma had prepared a handbook for judges on garnishment which had proved to be very beneficial. He noted that in his state they give a weekly assignment of wages even if the person is paid on a monthly basis.

Dean Ehrich made a brief statement in favor in HB 174 noting that he did not want to repeat what had already been stated. He represented the Alaska Retail Association. He felt it was necessary to pass this during this session. He said that there had been mention made of a lack of a repealer. He thought this should be included. He noted that in order for the state to get an exemption from the federal act, it should return to the original language in a couple of sections. These proposed amendments will be submitted to the committee in writing. He also noted a change in the definition section. This was in Sec. 45.90.060(o) on Page 13, Line 22, add, "or from that person or any other person." This would permit concessionaires to sell their goods under the credit card of the lessee. Mr. Ehrich presented a study by Washington State on their Initiative 245, entitled "The Impact of a Consumer Credit Interest Limitation Law".

Further discussion of amendments was allowed. Mr. Tom Waterman, J. C. Penney Co., noted that there were six amendments that had to be put in this bill. Mr. Ehrich will submit these in writing.

Moran announced that this meeting would be recessed until tomorrow, Saturday, January 29, at which time we would view a 30-minute film on the UCCC and also hear further testimony.

Meeting adjourned at 4:45 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Saturday, January 29, 1972

Vice-Chairman Rose called the joint meeting with House Judiciary and House Commerce Committees on House Bill 174 and HB 453 to order at 9:40 p.m. Present were: Judiciary Committee: Rose, Barber, Moran. Commerce Committee: Bowman and Kerttula. Sponsor Marty Farrell also attended.

Unifrom Consumer Credit Code & Consumer Transactions — HB 174 & HB 453

Mr. Fred Eastaugh introduced Mr. J. B. Harper, of Beneficial Finance Corporation to the committees. Mr. Harper did not have prepared testimony but will submit same when he returns to his home state. Mr. Harper is from New York and is Beneficial Finance counsel.

Beneficial has six companies in Alaska with nine offices. His company did not object to the principles or the purposes of the code per se. We do think it should be modified and improved. Rate structures were designed to meet the needs of the lower "48". We would suggest that the rates be raised for Alaska. When the rate for the small loan was cut we were forced to close our Sitka office. We have lost 141 accounts, amounting to $81,000. It depends upon whom you wish to serve. If you want to serve the people in general, than you must set a higher rate. A lower rate cuts more people from having credit. Beneficial serves a clientele in the smaller communities whereas Household serves the people in the larger populated areas. That is why Beneficial needs the higher rate to survive in this high cost area. He mentioned that this code is not a small loan act, applies up to $25,000.

Mr. Harper believes that the supervised lender should be licensed at 10 per cent. Since there are people in the state who can extend credit without controls, it would be very expensive to administer this code. We think there should be a mandatory annual examination. This will be a protection to the public. If the lender knows he will be examined each year he will run a clean operation.

There was some discussion of "convenience and advantage". This was noted to be a means of control as to who would be allowed to do business.

Rep. Bowman asked Mr. Harper about the possibility of getting a $25,000 loan. He noted that his company was issuing loans of $15-$20,000 for property, but not in Alaska. Our average loan is in the $700-$800 loan bracket. These loans have maximum interest rates. Moran asked the difference between regulated lenders and supervised lenders. Mr. Harper noted that regulated lenders charge from 10-18 per cent interest and supervised charge above 18. Mr. Harper noted one example of a practice that loan sharks used that he would like to see this code cover. This was the practice of making the person getting the loan buy a product from the lender

HB 174
&
HB 453

which was greatly overpriced or inferior in quality or both. He noted that one party was charging $10 for a 50¢ bottle of vitamin pills with each loan.

Mr. Harper brought up the question of which state law would apply in a loan situation when the person is not a resident of the state. It would be hard to bind a person, not a resident of the state, to abide by Alaska state law. He feels that the law of the state of residence would apply, rather than the law where the transaction is entered into. This is only too true in Alaska where there are many persons who are legally residents of another state. This problem originated in the Philadelphia-Camden Area. People would go across the state line and borrow money even if it cost more for the interest rate. There seems to be a problem in the area of deferment. The code says if you make a deferment that you must keep track of them. This involves a lot of book work. The reason they require this is so that if the party getting the loan pays his loan in advance of the time schedule, he must get a refund.

Mr. Harper suggested to strike two words in the "Unconscionable" section. He felt the words "in itself" should be removed. He felt that the creditor needed more protection. He noted that his company was not against the disclosure provision. They do feel that since there is a federal law on this that the states should let the federal take care of this. Moran noted that the federal government deals with many of our problems, but not always in a satsifactory manner. Therefore, he would like to see the state maintain the operations of the consumer credit industry. Bowman asked Mr. Harper to submit his recommended amendments to the committee in writing. He is participating in the educational program in Oklahoma and Household Finance has a complete library for education in this field. Other states are trying to improve their education, but Oklahoma is the only state with a really good program.

Next witness was Kirk Henry, of Seattle, Washington, and representing Household Finance Corporation. He agreed with Mr. Harper that all lenders should be subject to the same requirements and have a regular examination. He did not agree with Mr. Harper on convenience and advantage. When convenience and advantage are administered tightly, this gives a territorial monopoly to whomever is allowed to practice business. Some states have set population limits. Washington has 12,000 limit; Oregon 8,000. We think there should be a free market. Mr. Henry felt that his company should be able to make the decision as to whether they could make a profit in an area or not. He recommended taking all limitations off rates. He felt that competition is what will control the rates.

Mr. Henry noted that in the six states that have passed the code, five are charging less than the maximum rates. Setting a maximum rate would require a social decision on

the part of the legislators. Just who will be allowed to be in the market will be by the ceiling set by the legislature. He hopes that the legislature gives consideration to a rate with which consumer finance companies can survive in Alaska. Average loan in Alaska for HFC was $700. Mr. Henry stated that most of their loans was for furniture. They have no loans for cars, mobile homes in Alaska. He noted that they purchased contracts from independent dealers.

HB 174 & HB 453

All present viewed a film on the UCC. Meeting adjourned at 11:55 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, January 31, 1972

ABA Meeting

Vice Chairman called the meeting to order in the Governor's Conference Room at 1:30 p.m. This was a joint committee meeting of the Senate and House Judiciary Committees to listen to the proposals of the Alaska Bar Association. Present were: Judiciary: Flynn, Rose, Barber, Randolph, Moran, and Mr. Peterson. Rep McVeigh also attended. Senate: Josephson and Croft.

(Moran arrived 1:35) Moran asked the Bar about several bills which the House Judiciary Committee has to consider.

Comparative Negligence — HB 176

HB-176 - Comparative Negligence. Millard Ingraham thinks that this is a good bill. Most favor this bill, others think it should be delayed. He noted that comparative negligence would apply to other than automobile cases. Millard, for himself, favors the Senate version as opposed to the House version. Moran noted that House Judiciary had held up consideration of this bill because

No-fault insur. — HB 25

of no-fault insurance - HB-25. Dan noted that there should be some consideration of contribution among tortfeasors if you are proposing comparative negligence. Jim Powell commented that if there is to be no fault, contribution among tortfeasors should be considered carefully. Moran noted that he would talk with Sen. Ziegler and see what he was going to do on this.

Rose asked if the Bar had a prepared list of priorities. Millard said one would be provided. Mr. LaBate noted

Probate Code — HB 5
Hearing Officers — HB 480
Unif. Enfor. Foreign Judgm. — HB 452
Violent Crimes Comp. Board — SB 28am

that the Bar desired to see the Probate Code completed this year. Mention was made of HB-480 - Hearing Officers; HB-452 - Uniform Enforcement of Foreign Judgments Act; SB-28am - Violent Crimes Compensation Board. Moran noted that the Judiciary committee had requested information in the form of statistics in order to prepare a fiscal note that would portray more reasonably the approximate cost

Uniform Foreign Money-Judgments Recognition Act — HB 451

of such a board. They also have considered HB-451-Uniform Foreign Money-Judgments Recognition Act. Millard noted that the Bar hadn't considered foreign countries, but felt a need for such an act between states. Moran said he introduced these bills thinking it would contribute to a happier and healthier business climate for foreign investments.

HB 25

Mr. Randolph held hearings on HB-25 - No-fault insurance- during the summer. We have been waiting for the Governor's bill. Moran was told that we would get it in about ten days. Mr. Young noted that this seems to be a national problem. Moran related that the committee had tried to get information from the National Conference and have this available to the committee. Mr. Eastaugh gave Moran an estimate of the time for the initial draft. It apparently has not been released from the Conference yet. Sen. Josephson felt that since federal legislation was pending

it was important that Alaska adopt some form of no-fault because federal requirements usually do not fit Alaskan circumstances. Mr. Young emphasized that there would still be automobiles crossing state lines and having their insurance policies which differ from state to state. This is a problem. He felt there should be some sort of uniformity of no-fault between states. LaBate felt we should look at the manufacture of our automobiles so they are not built so fragile. Millard said if this bill only covered personal injury, you still haven't solved the problem. Joe Young did not think no-fault would be an acceptable approach from the point of view of the Bar. He thinks we should wait for the Governor's bill. Barber noted that the Bar should be able to offer their guidance in this matter. Mr. LaBate asked if they should draw up a plan. Sen. Josephson answered "Yes" explaining that we would be in a better position to offer committee substitutes to this bill. Moran noted that the Bar would not be happy with pure no-fault, but we need some suggestions for a compromise. We need something that deals with the problems that everybody agrees exists. This would not deny that a person whose injury is above and beyond the ordinary should have the opportunity of recovering damages. LaBate noted that they had 550 members and it would take about a year to get a majority opinion. Randolph thinks the state should act before we get put under federal regulations. Young noted that we could pass comparative negligence and have that in operation before we go to the no-fault. Randolph brought out that people thought that no-fault would bring their insurance rates down, which is not the case. HB 25

Chancy Croft asked about the feelings of the Bar on the Probate Code. Mr. Peterson noted that they had approved the code and then last week they got another letter on this. The question was, "Which was the official position?" One letter was the official position of the Anchorage Bar and the other was for the State Bar. Mr. LaBate noted that he had signed the first letter in November which was drafted by Mr. McCaskey. HB 5

Criminal Code

Moran asked about the Criminal Code. Mr. Bradley noted that the bar had considered about five criminal codes up to this time and had given up on this one. The Bar is in favor of a complete revision of the criminal code, but this particular one has not been studied. Moran noted that this code was being considered in House Judiciary and that there will be quite a bit of rewrite on this. It had been scheduled for completion on February 18, but March 1 would probably be more realistic. Mr. Young asked if this followed the model penal code. Sen. Josephson said it was changed a little. There was some discussion of minimum and maximum sentences. Moran noted that Joel Bennett was working on this with our committee. HB 524

Probate Code

Sen Josephson noted that the chairman of Senate Judiciary, Sen Ziegler, was the head of Legislative Affairs and knew what the code contained. That was why it went through the Seante so quickly. HB 5

Reciprocity for attorneys

Sen. Croft asked what the Bars feeling was on reciprocity. LaBate said they would like to have all people take the bar examination, but that the Anchorage Bar favored a one-day attorney examination.

Rose asked about the bill for hearing officers. The bar was in favor of this measure. HB 480

Admission to Bar for out-of-state attorneys

There was some discussion about admission to the Bar. Huber has a bill for this. Millard commented that there had been two provisions, but that a person had to graduate from an accredited law school, besides practicing law for the previous 10 years in another state. LaBate noted that the Bar was opposed to this measure. HB 479

Probationers

Sen. Josephson told the Bar that there was a need for legislation to have probationers under the judiciary system rather than under health and welfare.

Realignment of Distr.

Moran noted that he had asked the chief justice to study realignment of districts rather than establishing a new one for Bethel. Possibly using election districts rather than judicial districts. LaBate noted that there was a need for an additional family court judge. Millard suggested that this area should be included with Nome to make further use of the facilities there. This would enable improvements in the library, etc., instead of setting up a whole new district. Bradley noted that there was a great deal of inconsistency in sentencing. He felt that eventually this should be done by computer and the recommendations submitted to the judge before sentencing.

Temp. permits to practice law

Mr. Stevenson asked for an appearance before the committees. This was granted. He related the history of his case and his problems in not being allowed to practice law in Alaska. He suggested that a temporary permit arrangement be instituted for Alaska because of the time lag in obtaining admission to the Bar. Work would be done in the office of a practicing attorney in Alaska. The ones who would qualify for this permit would have had to practice for at least five years in another state and not have been debarred or otherwise besmirched their character. They should have a good reputation. Millard noted that according to Supreme Court Rule you have to attend and graduate from an accredited law school to qualify for reciprocity without examination.

Attorney fees-small tort

Mention was made of Kerttula's bill on attorneys fees in small tort actions. Dan did not see any reason for this bill. He did not feel that it added anything to present law. HB 349

Moran requested Bar opinion on the magistrates being appointed HB 393

Appointment of Magistrates

by the supreme court. Kurtz said they didn't know just who should appoint magistrates, but that there were some problems in this field. There is valid argument for all three courts having jurisdiction. The Bar does not have a firm opinion on this.

HB-393

Meeting adjourned at 3:30 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, February 1, 1972

Moran called the meeting to order at 1:25 p.m. in the Masonic Temple. Present were: Rose, Barber, and Randolph.

Driving under influ.,drugs, liquor

HB 363 am

Moran introduced witnesses who wanted to be heard on HB 363am. He noted that of the amendments listed, the first three had been adopted by the House. We would be giving consideration to Amendments No. 4 and 5.

Dr. D. K. Freedman, Director of the Division of Public Health, was the first witness. His testimony was in favor of amendment No. 4 but did not want to have No. 5 included. Any amendments would have to show what tests would have to be conducted to tell if you were under the influence. At the present time there is no way to measure marijuana and LSD, but for hard drugs you can tell by blood and urine tests. You cannot tell how much a person has ingested, only that there is a trace of it in the body. In order to do this testing you would have to have a drug testing laboratory with professionals staffing it. This is the only way to provide uniform testing. He also mentioned that patients react differently to drugs as prescribed. Especially is this true when drugs are taken in combination. He thought that amendment 5 was probably all right if it was placed in the right portion of the statutes. It did not belong in the driving portion, but could be inserted under narcotic drugs and hallucinogenic drugs. (Flynn arrived 1:40 p.m.) The department does support amendments 1-4. No. 5 is not acceptable in its present form. Moran stated that the question of proof of being under the influence is decided in the courtroom. Rose asked if there was some way to establish criteria for considering a person to be under the influence of drugs. Randolph did not think this was necessary. Just as long as a person was driving erratically the police would be able to get them off the road. The reason could be determined at a later date. For instance, the amount of drugs or type of drugs ingested. Moran noted that his did not lend itself to easy enforcement. Dr. Freedman noted that it would be very difficult to say the reason for a person driving in an erratic manner at any time was due to "x" amount of drugs. There are many reasons why persons do not function well as drivers. Maybe they are emotionally upset, ill or had a combination of medicines which caused drowsiness. You would have to set a norm or depend on the officer who sees the individual weaving on the highway.

Moran announced that Dr. Langdon will arrive on Thursday at which time the committee will hear his comments.

Dr. Freedman presented a position paper to Moran on HB 363am.

HB 363
am

Attorney General Havelock was the next witness and he presented a letter to the chairman. He read his presentation. Rose noted that there had to be a certain level of alcohol in the blood before a person was charged with the crime of being under the influence. Havelock said this was not true and that persons could be considered under the influence at lower levels than the minimum. It depends upon the affect on the individual. He said he would look for a relationship between the alcohol or drug and the person's behavior. (Hillstrand arrived 2:05 p.m.) He is in favor of the first four amendments. Moran noted that the purpose of No. 4 was to conform this legislation with existing law. Moran felt that if you were not able to operate an automobile by acceptable standards that it actually meant that you had impaired judgment. Rose thinks this should be put in the bill.

Dr. Frank Pauls, Division of Public Health, was the next witness. He was in favor the the first 4 amendments. He noted the difficulty that would be experienced if drug testing were necessary. Stating that a laboratory and specially trained personnel would be necessary. He estimated that it would take approximately $30,000 to set up the laboratory and $15,000 to maintain it each year. There would be another problem relative to identifying the specimen. Strict controls would have to be maintained on this. He gave the example of specimens taken from Vietnam veterans for testing at U. S. laboratories. Dr. Pauls noted that they cannot tell what quantity of the drug or drugs is present, only that there is some. The field of drug testing is very new and in the next two years we may come up with more sophisticated means of determining amounts and kinds of drugs present in the blood and urine. Dr. Pauls did not feel that each drug should be listed separately. Dr. Pauls restated the opinion that amendment No. 5 should not be in the driving section of the statutes but under narcotics and hallucinogenic drugs. It is good to have the physician warn his patients. He also felt that there should be a revision of the laws on implied consent as respects urine tests. This is in the statutes for blood but not for urine.

The next witness was Commissioner Chappel and Captain Sydnam of the Department of Public Safety. Chappel said he would like to see a statute of one sentence that would say "when the ability to drive in impaired by alcohol, drugs, or a combination of both."

Captain Sydnam reported on a committee meeting on Uniform Traffic Laws. He noted there was a portion of the program devoted to the combination of alcohol and drugs. He submitted a copy of the activities to the chairman. He also particularly noted that there was an "absence of any drug testing criteria."

Creating a 5th Jud. Distr.	*Moran requested the committee to present a motion to indefinitely postpone HB-350 - Creating a Fifth Judicial District. Moran has requested a study for the realignment of districts. Mrs. Banfield moved to indefinitely postpone HB-350 and asked unanimous. There was no objection.*	HB 350
Attorney fees Small tort act.	*HB-349 - Attorney fees/small tort actions - The bar said that the supreme court had a rule that gave fees as suggested in this bill. They favored the purpose of the bill. Flynn moves and asks unanimous consent for a "Do Pass" on HB-349. There was no objection.*	HB 349
Changing Rules of Crim. Proc.	*Moran asked for a motion to table HB-341 - Changing Rules of Criminal Procedure. This was in deference to the criminal code that we are working on in this committee. This was agreeable with the committee.*	HB 341
Comp. Negl.	*Rose asked about HB-176 Comparative Negligence. Moran noted that we would take this up at a later time.*	HB 176
Jud. Retirement	*Art reported on judicial retirement. Mr. Reeves had given him a proposal but there were some question on it. It is being checked over. Judge Stuart has asked Art to review it once more before it comes to the committee.*	

There will be no meeting on Friday or Monday.

Meeting adjourned at 3:00 p.m.

February 2, 1972

Late session in the House re Rules changes.
No meeting held today.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, February 3, 1972

Moran called the meeting to order at 1:25 p.m. in the Masonic Temple. Present were: Randolph, Banfield, Rose, Flynn, Barber, and Peterson.

Criminal Code — HB 524

Randolph commented on a piece of legislation that he had requested from Legislative Affairs on joyriding. Moran informed him that we would try to deal with this in the criminal code. Mr. Peterson noted that his proposed bill would not do what he intended very effectively.

Moran announced that the schedule for the criminal code would be more realistic to be set at March 1. He gave that date to the Bar for their comments on this measure. Work will continue on this bill in committee as time permits.

Jurisdictional amount in Dist. ct. — HB 308

HB-308 - Jurisdictional amount in district court - This bill came back to this committee on the point of "courts of record". If we made district courts "courts of record" people would be entitled to a 12-man jury. Rose moves to return to the Floor with HB-308 - Randolph objects. Mr. Peterson noted that he had prepared a CS for this bill. This was presented to the committee. Randolph removed his objection. Rose moves and asks unanimous consent to accept the CS for HB-308 with a "Do Pass". There was no objection.

Driving under Influ. — HB 363 am

HB-363am - Driving While Under the Influence of Drugs - Dr. Langdon appeared before the committee in favor of amendments 1-4, but did not agree with #5. At the present time we think we can tell how much alcohol will affect a person, but there is no such test available for drugs. He gave an example of the FAA not allowing pilots to fly while taking drugs of any kind. He felt that the big problem was the mixture of alcohol and drugs. We realize that something should be done about driving while under the influence, but doesn't know how to do it. Moran noted the problem of listing drugs because some of the prescription drugs would not fall under the definitions in the statutes. Dr. Langdon noted that drugs affect different people in different ways. Some people would have improved judgment while driving if they were using drugs in moderate amounts.

Dr. Rod Wilson commented that he would like to see some kind of statistics showing how many people are driving while under the influence of drugs, or the combination of drugs and alcohol. He asked if the committee had considered common drugs, Dristan, tranquilizers, etc. Mrs. Banfield asked if she was drowsy after having eaten a heavy meal whether or not she could be charged with driving while under the influence of drugs. She may have been weaving on the road, but had not ingested any drugs. Dr. Wilson noted that on prescriptions he had it printed

on the bottle "If drowsy, do not drive". He doubted that this did any good since we are such an automobile oriented society. People will drive whether they have a license or not. He does not think it would be wise to specify which drugs should be included until a simple, reliable way of testing is developed. Banfield asked Dr. Wilson if he would vote for this measure. He said he would not. Rose asked Dr. Wilson if he would remove narcotics from present law. Dr. Wilson said that he would.

HB 363 am

Dr. Langdon also asked about the person who is driving with a very severe headache because he would not be permitted to take anything to relieve the pain. He could very easily have an accident under these circumstances. Moran noted that this law is for the person who intentionally takes drugs and drives while under the influence.

Randolph did not think that because the substances could not be measured accurately that this was a valid reason for not passing this legislation. Wilson asked if this was for the purpose of giving the police another means of apprehending and convicting people who are using drugs. Randolph didnot feel this was the case, but that it allowed the police to handle people that were under the influence.

Moran noted that in the criminal code almost all traffic offenses will be treated as violations. No sentence would be imposed. Rose thought there could be something arranged whereby the police could take the person off the highway but that he could call someone to take his car home and not be charged with a crime. He would like to have some research done on this aspect. Dr. Carol commented that there should be some standards set for quantitative measuring of drug ingestion. You should not pass a law until you have standards. Barber noted that if we didn't pass this bill it could be taken that this committee favors drugs. (Randolph left 2:35 p.m.) If this measure passes today Randolph will write a minority report.

Moran thanked and commended the medical profession for taking an interest in this legislation. Moran announced that this bill would have to be reported back to the Floor by February 7. He is asking all members to give this some serious thought and it will be brought back before the committee at a later date. Rose suggested that we study this measure further. Rose moves to report this back to the Floor with the recommendation that it be referred back to the Judiciary Committee for more detailed study. He asked unanimous and there was no objection.

Moran noted that HB342 is the same as a Senate bill. This was tabled. Mrs.Banfield so moved and asked unanimous consent. There was no objection to tabling. (Venue/Place of Trial)

Venue/place of trial

HB 342

Barber asked if glue sniffers, paint sniffers, or gas sniffers would be covered under this law. Captain Sydnam stated that it did not include these. The Commissioner said that people who did this came out of it suddenly--like as soon as they got a good clean breath of air. Rose felt he did not want to make a criminal out of a person if they didn't know about combined effect of drugs and alcohol. Chappel feels that the criteria for charging a person would be his impairment while driving. Chappel noted that his department was trying to take emotionalism out of police work but this was hard to do, especially with the new officers. He had also noted where physicians before prescribing drugs for patients have not concerned themselves with the skills necessary in the patient's line of work--truck driver, cab driver, heavy machine operator. Captain Sydnam did not want the committee to reconsider the portion on "implied consent" since they had worked hard to get this through in the first place and it has been working for their department. Rose wanted to know if we should put implied consent for urine tests. Sydnam noted that the only one they had now was for the breathalizer test. We could operate under the degree of impairment for the criteria of driving while under the influence of drugs. Rose asked if this had to have criminal penalties. Captain Sydnam said that it was necessary in order to provide a safe flow of traffic. HB 363 am

Moran stopped discussion of this bill to go on to other matters. This will be discussed again on Thursday when Dr. Langdon will appear before the committee.

Escrow Agents

Mr. Barber noted that Chairman Moran will be receiving a letter about the Escrow Agents' bill. SB 155 am

Open Meetings for Legis. bodies

SB-253 - Open Meetings for Legislative Bodies - This amends present law to include legislative bodies. There will still be the provision to hold executive sessions when discussing personalities. Randolph moves "Do Pass" on SB-253 and asks unanimous consent. There was no objection. SB 253

Exec. on Judgments

SB-112 - Execution on Judgments - Sponsored by Senator Ziegler. We passed legislation last session to correct this problem and since there is no need for this Moran asked for a motion to "Table" this bill. Rose so moves and asks unanimous consent. There was no objection. SB 112

Meeting adjourned at 3:15 p.m.

February 4, 1972

Anchorage delegation left for Anchorage to attend AMATS hearing.

No meeting held today.

February 7, 1972

Anchorage delegation has not returned to Juneau.

No meeting held today.

February 8, 1972

No meeting today.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, February 9, 1972

Chairman Moran called the meeting to order at 1:45 p.m. in the Masonic Temple. Present were: Flynn, Rose, Barber, Hillstrand, and Peterson.

Removal of magis from office

HB 566

Magistrate Jess Nicholas appeared before the committee on HB-566. He is serving in the Kenai area. Moran noted that he had introduced this bill to cover a problem, as outlined by Mr. Nicholas, regarding line of supervision. Rep. Moran asked Mr. Nicholas to testify before the committee on this measure. Moran noted how magistrates are not necessarily legally trained. It is understood, though, that magistrates are the initial contact with the whole judicial system for many Alaskans. They are a tradition of America in the administering of justice. (Randolph and Banfield arrived 1:50 p.m.)

Mr. Nicholas presented a draft committee substitute for HB-566. This draft was approved by a meeting of magistrates. The bill as introduced does not do what it was intended. The magistrates from the Second and Fourth Judicial Districts have a fear of being under the superior court judge. At the present time there is a magistrates' supervisor, district court judge, and presiding superior court judge that he works under. We just want to know where to get answers to our problems under this arrangement. We do ask for some type of a hearing before removal. Hillstrand asked if this was slanted toward tenure. Hillstrand felt that this could be handled in the courts themselves and not in the legislature. Moran noted that for courts generally below the supreme court that it would be a legislative function. The provision for a hearing panel to have one magistrate is to ensure that there is one person participating who is knowledgeable of the problems in administering justice at the magistrate level. Rose felt that this was a way of arriving at an impartial determination of whether a wrong had been committed by a magistrate rather than leaving it up to the determination of his immediate supervisor in the instance where there could be a personality conflict. Discussion was held regarding the words "complaint" and "accused".

Rose moved to consider the draft CS instead of the original house bill. Banfield seconded. Hillstrand objected. Barber called for the question. Hillstrand voted no.

After further discussion of the wording, the section containing "good cause" was dealt with. Mr. Peterson was asked to research the definition of the word "cause" in the statutes. Mr. Nicholas said that the magistrate group did not ask for this but that there were parts of it that the magistrates from the Second and Fourth districts pre-

pared. Bruce Monroe prepared the draft that Mr. Nicholas presented to the committee. Art noted that the second section of the original bill had been left off the draft. Mr. Nicholas noted that this was an oversight. They do want this section included. Rose amended his motion to include section 2 in the draft provided by Mr. Nicholas and this would be the cs for the original bill. Banfield seconded. Hilstrand objected. Banfield moved that the committee pass CS for HB 566 as amended with a "Do Pass". She asked unanimous consent. Hillstrand objected. The CS was to be prepared and returned to the committee before submitted to the Chief Clerk. HB 566

Hillstrand felt that the new section should be written in the positive rather than the negative. Mr. Peterson will take care of the changes as outlined by the committee and return the prepared CS to them for consideration. Hillstrand noted that when Art was preparing this that he consider the material immediately preceding the new material. Mr. Reeves mentioned that the committee should not

Appt of Magis.

overlook the CS for HB-393 which passed the House last year and is now in the Senate. This had been considered. Mr. Nicholas had one more question. He wanted to know if the limits had been raised for jurisdiction of magistrates. Mr. Reeves reported that there was a draft bill that will amend the amount from $500 to 1,000. CS HB 393 HB 566

Mrs. Mason has prepared a list of bills that have not had any action taken on them. Moran asked what the committee desired in the way of priorities. Each member was given an opportunity to express their own priorities. Randolph- HB-590; HB-553; SB-28am (Moran distributed report from Public Safety on this measure); HB-176. Flynn-HB-379; CSHB-124; Probate Code; and Criminal Code. Rose- HJR-92; HJR-7; HB-45; and HB-566. Hillstrand - HJR-103 and SB-155am. Barber noted that we were to have a letter on this measure. HB-25; and Mr. HIllstrand would like to introduce some legislation on homestead exemptions.

Moran noted that HB-448 had a CS prepared and it would come back to this committee to be considered.

Banfield - HCR-9; HR-1; HB-588; HB-517; and HB-563.

Barber - HB-558. HJR-102 was also mentioned. (If the bill was mentioned by a member previously, I did not list it. Merle)

Moran noted that he would like to get the probate code and the criminal code out of committee this year. Consumer credit code is still in commerce committee.

Minutes

Mrs. Banfield requested a copy of the minutes. The Chairman directed the secretary to prepare and maintain notebooks for individual committee members containing the minutes of the meeting.

Meeting adjourned at 3:15 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, February 10, 1972

Vice-Chairman Rose called the meeting to order at 1:15 p.m. in the Masonic Temple. Present were: Banfield, Rose, Barber, Flynn, and Bennett.

Criminal Code

Rose outlined the changes made in HB-524 - Criminal Code to date. Joel proceeded with his consideration of the material. (Randolph arrived 1:30 p.m.) On page 19, lines 7 and 8, Joel noted that "chronic alcoholic" should be deleted because this is already provided for in another section. There was discussion on "mental problems".

HB 524

The following were changes decided upon in this meeting:

page 19, lines 8-11. It should read: "abnormality, the court may order the civil commitment of the person to a hospital or other institution for medical, psychiatric or other rehabilitative treatment and dismiss the prosecution".

Rose noted that under this change you could treat a chronic alcoholic for his illness instead of treating him as a criminal. (Moran assumed the chair.) Joel again suggested to delete "chronic alcoholic" because this is covered in AS 12. Either that, or take it out of AS 12 and leave it in in this section. Rose suggests that we put a reference to show that this is in the "chronic alcoholic" section. This will be considered further when we reach AS 12.

Rose had a question on (e) Page 22. This was very hard to understand. Joel had information from the commentary which he read. It was difficult to think of any situations where this could be illustrated. Joel read two examples from the book. Burglary--Defendant's purpose was to steal if no one was at home or if he found the object he was after. The condition does not negative the evil that the law defining burglary is designed to control. Rape-- It would not be an assault with the intent to rape if the defendant's purpose was to accomplish the sexual relation only if the mature victim consented; the condition negatives the evil which the law has been framed to deal. On the other hand, if his purpose was to overcome her will if she resisted, he is guilty of the crime.

Under Possession an Act, lines 10-14, Mrs. Banfield asked if this covered stolen cars. Joel said that it did and that it gives a time period for which to consider in possession.

Rose still did not understand (e) on Page 22. Joel took the whole section point by point and noted that the purpose in (e) is conditional. A person's action is not to do some-

thing unless something else happens, then negligence is still a factor unless a condition eradicates the harm or evil sought to be prevented by the law.

There was a joint meeting at 2:00 p.m. so the meeting adjourned at this time.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, February 11, 1972

Moran called the meeting to order at 1:30 p.m. in the Masonic Temple. Present were: Rose, Barber, Banfield, Hillstrand, Flynn, and Bennett.

A copy of the complete index to HB-524 was distributed to all committee members.

Criminal Code — HB 524

Joel began his consideration of this measure on Page 22. Joel mentioned that Section 060, Page 24 is a deviation from existing law. (b) and (c) have not generally been adopted by other jurisdictions. Rose thinks this is a good thing. If you don't know about a statute, regulation, or other edict, it would be difficult to comply. This allows for reasonable time to know about these things. Barber asked if other members of the committee felt this might violate the old concept that the person should know the law. Moran felt that this was providing a basis on which a person's conduct would be excusable even if in violation of the law. This would allow the person to know that this was a misdemeanor. If he had no reasonable opportunity to know then it would be a defense. Barber thought that this would be only a measure of defense. Moran thought it would be a absolute defense. Rose gave an example. The Commissioner of Revenue is publishing a series of articles on a new tax code for Alaska. He tells you what you may or may not do under the code. This is considered an official interpretation. Afterwards it is discovered that the Commissioner gave the wrong interpretation. Under this I could say I had been relying on the official interpretation. The way it is now it wouldn't matter, you would still be guilty as charged. Moran invited members to consider the commentary by ALI that was kept on the front table to answer any of their questions. Moran gave the example of the AG giving opinions is Alaska. These are not always right when they are brought into court. This should be a defense. Hillstrand wanted to know if this would deter public officials from making too many public statements. Moran did not think this would be the case.

Joel went on to the section on Intoxication. This is similar to what we have now. Rose asked about Line 23, Page 27, where it mention intoxication not being "self-induced". Flynn noted that this was defined on Page 28. If you were to be considered under this statute, you could not be charged for first degree murder but you could be charged for manslaughter if you killed a person while intoxicated.

Hillstrand wanted to make sure that these words did not make it more simple to defend a person's intent to commit murder or other violation. Moran didn't think this portion made it easier or more difficult. There was some mention of mixing drugs and alcohol. Moran noted that this would be a defense because it could happen to the person unknowingly.

Moran wanted to know what would the common law require when a person was coerced into taking the life of another because their own life was in danger. Joel is checking into what the commentary says on this. There was some discussion as to whose life was the more important, yours or the other persons. Joel noted that there was a distinction between the light crimes and the more serious crimes. Three states do not allow duress to be a defense. Moran thinks crimes against property and against a person should be treated differently. Hillstrand questioned what "reasonable firmness" consisted of in respect to this portion of the statute. Moran felt that this would have to be decided in each case. It is really a value judgment. Joel will check into this further for the committee. Rose suggests that we do make an exception in the case of homicide to provide that the defense of duress to the extent of going to manslaughter but not an absolute defense. Joel will prepare a revision of this section.

On consent. Moran gave an example of athletic games. A participant could consent to a bribe. Moran does not have any problem with this section. There are many things that consent cannot enter into because they are already prohibited by law.

Entrapment. Joel noted that the inducement must be effective enough to persuade the average person to commit the offense. Not just anyone that is willing and ready to perform the crime. Rose thinks that is why it should be a question for the jury. It brings up the question of whether the average person would succumb or would they be showing reasonable firmness and be capable of resisting the advances or whatever. Joel will recheck the code on this.

Chapter 13. General Principles of Justification. This states principles of justification for affirmative defenses. This is typical in state statutes and deals with people who are executing their public duty. This covers use of force in self-protection, protecting another, and protecting your property. Force cannot be used which is not reasonably related to the action. One innovation is that it applies to all offenses rather than present AS 11 which gives this only to death or bodily injury. Present law considers principles of self-defense only in relation to homicide.

This leaves the use of force in the protection of property to case law. This is an attempt to codify this portion. I have attempted to introduce the principles of the Gray and Miller cases against the state. Joel noted that he had put "reasonably" that was suggested by the ones working on the Wisconsin law. They based their law on the model penal code, also. Moran noted that we did not have this in statute now and that this strengthens a person's rights to defend himself and his property.

Banfield asked what this said about school teachers. Joel noted that they could administer discipline.

Crim. Proc. Rule 12b

Page 46 - Mental disease or defect - We had a bill on this but thought we would incorporate it into the criminal code. Moran gave the history of the M'Naghten Rule. We are using a more modern concept in this bill. This is considered in HB-341. Joel said it amounted to asking two basic questions. "Did the defendant know the nature of his act, and did he know he was doing wrong?" Rose noted that a person could have a "Joan of Arc" complex. Under the M'Naghten Rule you would be guilty; under the Durham Rule society thinks you are wrong because of irresistible impulse.

HB 341

HB 524

Discussion of HB-524 will continue at a later meeting.

Survivor's bene. Judicial

Moran asked the committee to consider the CS for HB 448. This is covering retirement for judges after 20 years and also survivor's benefits for judges. (Barber and Flynn left at 3:30 p.m.) Hillstrand wanted more time to study this. Moran noted that he wanted it to go out soon. Rose does not object to this bill. Hillstrand didn't think that if you were a student after reaching the age of majority that your benefits would keep coming until you were 23 years of age were fair. He gave the example of a young person who did not want to go to college but worked. The latter would not be eligible for benefits and maybe was unemployed. This would be unfair. Banfield asked what the state plan was. No one knew at the time. Banfield moves this bill CS for HB448 out of committee to be individually signed. Members not present will be given the opportunity to sign.

HB 448 CS

Meeting adjourned at 3:40 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, February 14, 1972

Chairman Moran called the meeting to order at 9:30 a.m. in the Masonic Temple. Present were: Flynn, Barber, Rose, Banfield, Hillstrand, and Bennett.

Criminal Code

Continuation of the review of HB-524 - Criminal Code - started on Page 46. Joel noted that section (c) page 47, line 29, was not found in existing law. HB 534

Survivor's Bene. Jud. Retire.

During consideration of HB-524 the chairman passed around the CS for HB-448 - Survivors' Benefits/Judicial Retirement. Hillstrand signed this "Do not Pass". Barber, Flynn, Rose, Banfield and Moran signed "Do Pass". HB 448

Joel noted that conspiracy was dealt with piecemeal in present statutes but this code brought them all together under one section and applies to any crime. Rose mentioned that the Public Defender has expressed concern over this section. PD intends to submit comments to the committee. He felt that this was just a trap. Rose doesn't know what to suggest in lieu of this but thought it merited our discussion. Moran wanted to know if he meant that conspiracy should not be a crime. Rose just felt that it makes it hard to disprove conspiracy. This really puts the burden of proof on the defendant. Hillstrand noted that you can't be convicted of the crime of conspiracy if it doesn't apply to a felony of the first or second degree. Joel brought out that you can be convicted of a lesser crime than a first or second degree felony. You do have to show an overt act, though. Hillstrand felt that it was good to talk about the defense aspects and be familiar with these, but wondered if we were going to consider the prosecution's position, too. Moran established that the prosecution's problem is to establish that the elements of the offense are present. The elements of crime are spelled out. Hillstrand thought that the Public Defender wanted this section taken out. Joel commented that Bruce Monroe had recommended that the committee invite certain people to testify on this. This is true for the district attorney and the judges. Moran recalled that we had invited the Bar to participate and gave them until March 1 to prepare a statement. Moran asked committee members if they would like to invite Mr. Havelock or the prosecutors. Hillstrand would like to have a prosecuting attorney with some experience to react to whatever changes we propose. Banfield suggested Gail Fraties and Moran suggested Seaborn J. Buckalew, Jr. Banfield could see that maybe we were letting others be open to false arrest. Letters will be written to Gail Fraties and Seaborn Buckalew. By that time, we will know what questions we want answered. In the letter, a copy of the bill will be enclosed, and their comments will be solicited. HB 524

Jim Bradley had been contacted and told that we wanted

to have in-put from the Bar by March 1. He said he had not considered it because he thought it was the same draft he had considered in previous years. Joel noted that there were three letters sent out to the members of the Bar. They invited comments and said that a draft would be sent upon requrest. They got only about 60 requests for drafts of the bill.

HB 524

Page 50. Rose noted a possible amendment for Lines 5 and 6. "And by those with whom he conspired". Banfield asked if the word "or" would make it read better. You don't have to have any overt act. In order to abandon your agreement, it is upheld only if he advises those with whom he is conspiring or the law enforcement authorities of his participation in the conspiracy. How would you prove this? Hillstrand felt that it was reasonable that the person should communicate that he had fallen out of the conspiracy. The others may continue their efforts. Flynn asked how you would communicate with them if as in organized crime they don't even know the other persons with whom they are working. Banfield noted that somebody is doing the planning. Rose felt that this was a problem and thought the police could use this to say "Give us a statement about a conspiracy and we will let you go free." Moran asked about the principal in the conspiracy. He organized the whole thing, then he tells the authorities that he is not connected with the conspiracy any longer and he gets off scott free. This leaves the DA with a choice as to who he will prosecute. That is the threat in this kind of situation. Banfield did not object to the DA having that kind of power. Banfield asked how many would be doing this sort of thing. Rose said he was concerned about an individual being accused of this. He mentioned the Nazis accusing the Jews of things such as this. He doesn't think that a tool like this should be turned over to the police that can be used against anybody for which you could not come up with a reasonable defense. Banfield said her main concern was to prevent organized crime. These people can get the best legal advice. We can't let these criminal elements take over. We need to stop them some way. Hillstrand suggested that we set aside sections 030-060 until we get the reactions of the prosecution and public defender.

Joel noted that section 070 was enumerating cases in which possession of firearms are not for criminal purpose. Rose asked Joel to look at section (b). "If a person possesses a firearm or other weapon on or about his person, in a vehicle occupied by him, or otherwise readily available for use, it shall be presumed that he had the purpose to employ it criminally, unless..." There is a great danger in this sort of treatment. You may forget in include something. Barber objected to (3) where it says "in lawful sport". He wanted to have his gun for protection. Joel suggested to change lawful sport to recreation. Barber feels that it should cover those that carry guns as a means of livelihood. Moran asked if we had an exception that would cover this situation. Banfield asked about lawful hunting or target practice.

Barber questions the word "lawful". The word "recreation" will be placed in this section in lieu of "lawful sport." Moran asked Joel if he could rewrite this section on Page 52 to meet the situation that exists in Alaska. This is (1) on line 17 and 18. Rose mentioned that Colletta had introduced a bill on registration of guns. Moran said that most of the committee members had not lived in a country where they have a gun economy. In situations like this, the individuals just get in an argument and shoot it out on the spot. There is a big difference in having a gun in an urban area and in the wilderness as Ed mentioned. Rose noted that there were articles of where in this country the number of guns sold related to the number of crimes committed. The armed criminal usually does not shoot unless he is threatened. He usually is after some property. The U. S. rate of homicide is five times greater than any other country. These are not committed by strangers. It is usually a friend or acquaintance of the family. Moran felt that it should say under normal Alaska conditions. Hillstrand objected to that and Barber didn't think the natives would like it. Moran said we would leave it as "recreation". Joel will check this out. Banfield noted that you could be a passenger and not even know how to handle a gun. Joel will report back to the committee on this point.

Joel said that the chapter on Offenses Against the Person deserved a line by line consideration. Generally he said that there was a statement of intent. There were four basic reasons or actions. Murder--the basic difference between this and the present law is that it eliminates the distinction between first and second degree murder. It is only given the title "murder". Then it would be placed under the four actions. Second category includes the felony-murder rule. (Gray Case). No intent is required. This applies if you are attempting to commit forcible felony. Rose noted that we talked about this last year. Nearly all of the modern penologists are advocating doing away with that. Moran noted that it was traditional to charge the person with murder if it was to be considered a natural consequence of his actions. Particularly if it was expected to lead to violence during the commission of the crimes. These are serious crimes. Rose thinks he should be charged with the crime that he committed and given additional sentence to cover any other happenings. I mean if the individual has nothing to do with the murder. Of course, if he does the shooting, then he should be so charged. Let's go on to the next section.

Rose has a question on definition of "negligently". This is in Section 010. Joel noted that the definitions were on Page 21. These definitions apply throughout the code. Rose asked if Joel could look up articles on this and particularly for articles on the California Case. He wants to have the decision of the court and the Law Review articles. Banfield did not want this changed so that you can't get the guy unless he happened to be the one that did the shooting.

Joel thought the reason most people did not accept this concept was because this lacked the malice aforethought. Nevertheless, it is all murder. Hillstrand noted that we were taking out first and second degree murder. We still had manslaughter, voluntary and involuntary. There are extreme acts committed under emotional and mental disturbance conditions. We must remember that there is a reduction in most of the penalties. Joel noted that the commentary emphasized the feasibility of this system.

Section 070. Banfield asked if leaving poisons about within the reach of somebody would be negligent homicide. Joel said this would be true. Banfield made reference to Page 21, Line 15. Rose felt this meant gross deviation. Joel noted that his notes indicated "ordinary negligence". Rose didn't feel that a person should be charged with murder if what they did was just ordinary negligence. Banfield thought that if you were going to use negligence in all instances we are talking about gross deviation. Joel looked at his material and noted that Mrs. Banfield was correct. Rose noted that you would have to be found grossly negligent before you would be culpable. Hillstrand asked about Page 54, subsection 2. This was in regard to "reasonableness of an explanation or an excuse". Lines 5-10. Here again, we concern ourselves with a situation that could be explained as an excusable homicide on the basis of the person not being emotionally or mentally competent so he could not commit the crime. Because of this he was only guilty of manslaughter instead of murder. Rose said that obviously the prerequisite for murder is the state of mind. If they don't qualify for murder then they are given punishment for manslaughter. Banfield didn't think this would include the woman who was afraid of her husband, so she shot him.

Suicide. Banfield mentioned that this leaves the way open for people who are incurably ill and want to do away with themselves. Joel noted that this is in the present law. There is no distinction as to the solicitation. In the code it is only a misdemeanor. The actual causing is a second degree felony. Rose asked for an explanation of "deception". Banfield mentioned a suicide pact. Then one would not go through with it. There was a brief discussion of euthanasia. This is another term for "mercy killing". Joel gave the example of the husband telling his wife that she has an incurable disease. Then this would cause her to commit suicide.

Assault. This is dealt with simply. We had in-put from prosecuting attorneys. We have assault with intent to kill in stabbing, armed robbery, poisoning, dangerous weapons, etc. These are in present AS 11. We have simple and aggravated. One is a petty misdemeanor and the other being a felony in the second degree, unless under criteria of (b)(2) where it would be a felony in the third degree.

Rose asked why there should be third degree. Joel said he could see this for attempting to steal something but not for bodily injury. Banfield asked about the differences. Joel said the distinction was based on having done serious bodily harm to someone. Banfield doesn't see any need for (2). Barber asked about trying to defend yourself. Is there a defense that would cover this in case you did serious bodily injury to another. Barber again gave his example of the fight. This would not be with mutual consent. Rose said he could leave the area. Moran noted that it is the concept that you have to maintain the public peace. You would have to "retreat to the wall" before you could fight back. Barber asked what would be the case if you got "knocked back to the wall". Hillstrand said this would be simple assault. Here a man is guilty if he attempts assault--doesn't have to cause these things. Joel felt that Hillstrand was right and thought that the first phrase could be taken out. This was taken out of Washington law. We could leave this to the earlier coverage of attempt. Rose noted that we do have a catch-all for attempts which already cover this. Strike "(1) attempts to cause serious bodily injury to another, or" and "such". This is on Lines 6 and 7 on Page 55. Insert on line 7 "serious bodily" after the first word "causes". Also in (2) line 9, strike attempts to cause or. Also note the misspelled word on line 10. The word is "deadly".

Meeting recessed at 11:40 a.m. Meeting will reconvene at 1:15 p.m.

Meeting was called to order at 1:30 p.m. in the Masonic Temple by Chairman Moran. Present were: Randolph, Rose, Barber, and Bennett.

Mr. Rose presented the committee with an amendment for subsection 2 of 11.19.020. Instead of felony-murder rule he suggested a replacement. This would use the Wisonnsin approach which would charge them with the crime committed plus not more than 15 years if they committed a felony in the commission of the crime. Merle will provide copies for all committee members. Joel read from the commentary on this point. California law was a restatement of the felony-murder rule. Section 11.19.070 focuses its thrust on the conduct which creates a substantial risk of death or physical injury. Moran noted that if there was no injury or death it was a misdemeanor.

Careless Use of Firearms. Joel noted that this was enacted last year. Line 23 was under discussion, "punishable by a misdemeanor". It was decided to delete "by" and insert "as". Rose noted a typographical error on Line 27. It should read "whose" instead of "whole".

Section 11.19.090. Moran asked if this was broad enough to cover airplane hijackings. Rose noted that it covered a facility of public transportation. Joel noted that this was also covered under Coercion. Rose asked What "or inconvenience" meant on Line 18. Moran noted that this was qualified by a reckless disregard for another.

Joel said that they would also have to threaten a crime of violence. Rose said it used the word "or". Rose did not think that a person should be charged with a third degree felony for simple inconvenience. Moran noted that the "reckless disregard" was the crime. Rose suggested that between "or" and "inconvenience" we add "serious public". Moran didn't think that this was necessary. Randolph suggested changing "or" to "and". Moran asked Joel what the commentary had to say on this point. There was nothing about this. We will note this section and make amendments the next time through the bill.

Kidnapping. This is similar to what we already have in present law. There is a change relating to reduction of punishment in the case where the victim is released voluntarily. Moran thought that this was also part of the Federal Kidnapping Act. Joel did not know. There is also a provision which attempts to clarify what is actual removal. This has been a problem with present law. Legislative Council has made some changes in this provision. They inserted "prior to payments of ransom and before apprehension." Moran feels that there is merit in providing the incentive for the kidnapper to release the victim. Barber noted that this did not say "before trial" Joel checked the commentary and said that the penal code said "before trial" but the Legislative Council did not put that in here. We will make a notation here. Randolph asked if there had been a comparison with what happens now in case of release. Rose said they have no incentive now. Randolph asked about sentencing. Joel read from his schedule. Joel noted that there was an age provision. This might be arbitrary. The commentary says that it is important to be below the age of adolescence. They felt that persons in this category may have more mental distress. Randolph noted that this was to be "accomplished with the consent of the parent." Wouldn't this be better to say "knowledge" instead of "consent?" Rose felt that this would clear the person. You are talking about kidnapping, and what parent is going to give his consent to a kidnapping. Randolph felt that this would require the parent or guardian to tell the authorities if they knew of such plans. Moran restated that we were talking about the victim, not the one doing the kidnapping. Rose noted that we were discussing the kidnapped person who would be under 14 years of age. He would be the victim. Moran thought that a classic case would be a broken home where one parent has custody and the other tries to take the child away. Barber felt that consent implied knowledge. Rose agreed since in order for a person to give consent, he would have to have knowledge of what was going on.

Felonious Restraint. Joel noted that an example of this would be to hold a person in a condition of involuntary servitude. This is a third degree felony. False imprisonment is a lesser crime and carries a penalty of a misdemeanor.

Section 130 is taken from present law.

Moran asked about Line 16. Joel noted that this was a carry-over of present law.

Custody of Children. Joel said that section 140 is comparable to the present Alaska child stealing law. We added different age classifications. It was set at 12 in present law; in this it is set at 18. Section (b) deals with the treatment of persons committed to institutions. Punishment is reduced to a maximum of five years.

Criminal Coercion. This is similar to present statutes. It adds some categories.

Rape. Several changes were made in this section. These sections (160-200) need to be rewritten.Rose noted that on Page 61 (b) that the same acts that were called deviate in one place are not considered to be so when done between husband and wife. He thinks either they are deviate or they are not deviate. There seems to be a lot of repetition.

Meeting adjourned at 1:55 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, February 15, 1972

Chairman Moran called the meeting to order at 9:55 a.m. in the Masonic Temple. Present were: Hillstrand, Rose, Barber, and Randolph. Mr. Bennett worked with the committee, also.

We began our discussion on Page 57.

Criminal Code — HB 524

Joel noted that he reviewed the provision on sex up to Page 64. If the committee feels that Section 180 is not necessary, then all the rest of that provision is covered under rape. This can be eliminated. Joel noted that Rose wanted to add aggravated assault. Deviate and gross sexual inposition should be considered aggravated assault. Rose would like to have aggravated assault number one and number two or aggravated assault and rape. Randolph asked what we would be deleting. Joel said we would be taking out the things covered under rape with the exception of deviate sexual intercourse. Acts other than normal constitute rape so this would be covered. Rose noted that this could cover sexual assault which is a contact offensive to the other person. Then under rape would be included deviate section referring to penetration of either/or anal and oral penetrations. This would constitute a sexual assault, either aggravated sexual assault or rape. It would be aggravated in the case of use of force as set out in the section on rape. Rose noted that section 200 did not make a distinction between sex. It says a person who has sexual contact with a person other than his spouse. (Banfield arrived at 10:05) This would include homosexuals. Rose notes an age change from "19" to "18" on Line 19, Page 62. Moran noted that we were reducing the number of kinds of offenses because one is broad enough to cover all the others. Randolph thought that we were deleting deviate. Joel noted that this was true except for the animal statute. Randolph asked why the different offenses were put in here in the first place. Joel noted that there was was a difference between deviate conduct--sexual assault, sexual imposition, and sexual intercourse. There was also a difference between fondling, molesting, and penetration. Representative Rose suggests that we just distinguish this by degrees. This would cover both penetration and non-penetration if we use degrees. We can include corruption of minds under sexual assault. We also eliminate the reference to male and female.

There was some discussion of the age--a four year age difference. Joel noted that the penal code lowered the age to 10, but for Alaska it was set at age 14. Rose showed that various states have age ranges of 6 to 16. Placing it at 14, it would be among the higher age range for corruption of minors. Hillstrand asked what would be the case if the kid was under 14, and it did not matter what age the actor was. Rose stated that no consent would be possible in this case and it would constitute statutory rape. When you reach

the age of 19, or 18 if we change it, then consent becomes a factor regardless of the age of the other person. Simple sexual assault does not include penetration. Rose noted that fondling was not permitted. Joel noted that there were general provisions at the end that applied to all of these. We will consider this further after it is rewritten. Rose asked for the committee's reaction to making this a matter of three levels. (1) Sexual Assault without penetration; (2) Aggravated sexual assault with penetration; and (3) threat of bodily injury or violence would be a higher degree. Randolph asked to have this written up first so committee members could look at it before deciding if they wanted to adopt this concept. Joel will prepare this for the committee.

HB 524

Indecent Exposure. Hillstrand asked if this applied to the stage or theatre. Joel said it did not because this was a voluntary act on the part of the moviegoer. It appears that under this act although one party is charged with the act, the other party also can be convicted. Rose felt that in subsection (b) we would have to delete the reference of man and wife in order to be consistent with our previous action. This would be changed to "spouse". Moran noted that we have the word spouse or conduct by a woman. Woman should be excluded when this is rewritten. Joel will check out how this can be written to conform to the revised sections prior to this.

Hillstrand asked about Line 15, "regardless of the legal status of their relationship." The exclusion is to differentiate between people that are friends, those that live together without a matrimonial arrangement, and those that are legally married. Does this mean that those living in common law are treated on an equal basis as those who are legally married? Banfield asked what would be the case if one or the other of these persons was already married to another? Moran noted that it is a felony in this state to live in common law. You would be charged with fornication. Barber thought that this state recognized common law marriages after seven years. Moran noted that this does raise a question. If we don't recognize common law marriages in this state, why should we provide for it in this instance? Hillstrand noted that the whole theory was a matter of public policy. We recognize legal marriages but prohibit cohabitation between members of the opposite sex. He thinks this issue should be considered. Randolph agrees with Mr. Hillstrand. It does not do the standard procedure of matrimony any good to have this included. It lends credence to the other processes; which is not healthy to society. Banfield noted that this did not apply only to single persons. One of the persons could be married to somebody else.

Arson. Joel noted that there were a few innovations in this section. Basically arson is consolidated into one main offense. Present criminal law on arson is divided into four. There is a reduction in the maximum punishment. In the basic definition of arson there is a defense if the

conduct did not place another person in danger of death. Section 030 on failure to report dangerous fire is a new section. Randolph asked what the penalty would be if he burned down his neighbor's woodshed. This would be a felony of the third degree. This is found under section 020. There was some discussion of an exclusion for authorized acts of explosion. Rose said he could not find the exclusion in section 050. Joel turned his attention to the first phrase in (a) "Other than one acting under legal authority". Hillstrand went back to 010 and asked why you have a second degree felony with the defense as outlined and then you recklessly burn something. To my way of thinking the crime is greater because it endangers the other person--maybe death or serious injury. Joel answered him by saying this had been done on purpose. Purposely the individual had burned something on vacant or unoccupied property and it endangered the house next to it. Hillstrand-if we dealt with these in degrees how would this section come out? Joel said arson would be a felony of the first degree. Rose noted that where you cause a death you could be charged with murder or manslaughter. Under 020 you could have a grass fire, wind direction would take it toward your neighbor's house. You could be charged with third degree felony. You did not intend to burn down your neighbor's house. There was no intent. Joel felt that lesser offenses would be covered under 060. Hillstrand went back to 010. If a person is guilty of felony of the second degree, it is an affirmative defense that the actor's conduct did not recklessly endanger a building or occupied structure, does that mean it is no longer second degree. Joel said that his conclusion was correct. Hillstrand wondered why that defense was in there. Joel said that when the fire is not related to an occupied structure then it drops down to a lesser offense. Rose noted that you might not be able to get the person charged under arson but under theft or unlawful taking. This is on Page 70. Hillstrand asked about someone who is interested in burning down buildings to collect insurance. If it is your own building this wouldn't be a problem. Banfield asked what would be the case if her neighbors burned down her woods. Rose thought there probably would be local ordinances that would cover this. If you are not endangering somebody else's property you wouldn't be guilty of arson. Joel noted that intent is the controlling factor. If you recklessly burn or set fire to something in close proximity to another's building. By the placement of the fire you are endangering someone or their property. That's the reason for the differentiation of the penalties. Rose does not see the difference of penalties in Section 020 and 060. Barber noted that the difference in fines were in the next paragraph.

Burglary. This is similar to present law. The Council deleted "in the night time". They do not want to distinguish between burglaries committed in the daytime and those committed at night. Traditionally burglary was committed after dark, but this is no longer true. Present law says "dwelling house" this states "a building or occupied structure."

Moran asked about (d) on Page 67 at the bottom. Under this you would have the possibility of a conviction for burglary and homicide. Joel agreed with this. Rose felt that this broadens existing law quite a bit. Moran noted that traditionally it was considered breaking and entering if it was done after dark. Rose didn't think any person could be convicted of both. Violations will only be a misdemeanor. Randolph asked about the definition of abandoned. Joel said that this meant that you would have no intent to return to the dwelling. Hillstrand felt this could be seen to have differing meanings. He gave an example from Land's End.

Rose was wondering about "commit a crime" on Line 13. Do we want to include petty misdemeanors. Joel noted that this was restricted to the occupied structure and would include vehicles. The penalties have been generally reduced except in situations of extreme danger. Rose feels that this provision is broadening this to a tremendous extent. Moran said that common law says taking anything of value. A man's dwelling place should receive protection. Joel noted that criminal trespass would cover Hillstrand's example. Hillstrand still wanted to know if "occupied" had to mean "physically occupied"? Moran asked about the section on vehicles. Which word is modifying what? This is in the definition. Section 090. Rose noted that the vehicle is by itself. Joel said if that was the case then it was incorrect. The intent is that the vehicle be adapted for overnight occupancy. Joel will check this.

Hillstrand feels that the major difference here is that if it is an occupied structure and the occupant is placed in jeopardy in some way then it is burglary, otherwise it is theft. Joel called their attention to (e) of 080. This is taken from present law. This covers cabins and is a sort of cache allowance.

Robbery. This is the same as present law. Punishment is from 1-15 years in present law. This code reduces it down to 10 as a maximum, except when an attempted killing occurs in the commission of the theft. Hillstrand said the only difference he could see what this if the person causes or actually inflicts bodily injury this makes it first degree, but it is only second degree if he attempts. Banfield asked Joel if this wasn't recommended in the code. Joel said that it was. Moran felt that this was an adequate deterrent for the crime. Joel said that this would be consolidated theft. It is graduated according to the value of the property. Rose noted that theft by deception would cover the example of trying to collect on an insurance policy by burning your dwelling. Joel noted that the definition for property was on Page 83. Randolph asked where he could find the degrees of seriousness on this.

Page 75. Joel noted that there is a distinction between movable and immovable property. Randolph wanted to discuss unauthorized use of automobiles and Mrs. Banfield wanted to know how this applied to boats and airplanes. Randolph asked about recovery time in locating cars that have been used for joyriding. Hillstrand felt that it was a policy matter and that there were penalties involved. Joel noted that this was similar to present law. Mr. Hillstrand has a suggested for change this portion. The suggestion is a consideration of an appropriate measure that would serve as a deterrent to young people for violating these statutes. Randolph asked about making this a felony of the third degree. Moran felt there would be difficulty getting convictions. Joel noted an error in this and showed that only the behaviour is to be categorized. You can read (a) which constitutes this a felony if the amount exceeds $500. This includes airplanes, too. Hillstrand noted that you would have to intend to permanently deprive the owner of his ownership. Randolph told committee members that he had put a bill in on this subject last year. This covered borrowing of cars without authorization. It was listed as a felony with the option that the judge could reduce this to a misdemeanor. Randolph asked Joel to look into this. We do not want to be too lenient but we also do not want to be too harsh.

Hillstrand asked about Page 70, Lines 20-22. We wanted an example of immovable property. Moran mentioned a deed. Secretary lays out a lot of things to be signed by her boss, he signs them and one of them is a deed. Rose noted that a person could be arrested for attempted crime. Moran thinks that we are creating a crime which was unknown in common law.

Banfield had a suggestion for joyriding. We should some how show a difference where the thing taken has been damaged or has damaged other property by additional punishment. Joel will take this into consideration. Rose said that we had civil liability. Moran felt you could probably get a judgment against a young person but they usually do not have a source of income. You can get up to $2,000 from the guardian. Hillstrand asked about applying extended life to such judgments. He would like to see young people realize they cannot have bad conduct and get off free. Rose noted that it used to be a felony across the board but it was difficult to get prosecution or a conviction and the state came to realize that it did not have a deterrent effect. Rose does not feel that making it a felony again will improve the situation. Randolph feels that stiffer penalties will stop it. Whatever we do, we need to deal with this effectively.

Page 75, Line 27. Consideration was given to Section (1). This says, "was unaware that the property or service was that of another". Hillstrand felt that this should be clarified. Rose gave an example of a man cleaning up federal property. This was apparently abandoned property. He picked up all the brass cases. He was convicted although he had tried to

find out who was in charge and where he could receive permission to do this work. Hillstrand asked if we had to take (1) and (2) together. Hillstrand asked if it would be a defense if he said he did not know that the property belonged to another. Moran noted that it did not have to be abandoned property, you just had to think that it was abandoned. HB 524

The secretary will check with Jim Bradley and see if his presentation can be submitted before March 1.

The committee has been awaiting the governor's bill on no-fault insurance. We need to take care of property damage this year. Pipeline hearings have the priority and Donna Sprague has been ill, so there has been a delay in the insurance bill. Randolph requested that the chairman ask Kerttula about HB 444 so we could have both bills before us at the same time.

Meeting was recessed until 1:30 p.m.

Meeting reconvened at 1:55 p.m. in the Masonic Temple. Present were: Hillstrand and Rose, and Bennett.

We do not have a quorum, but this is a work session so we shall proceed. We are on Page 76.

Joel noted that there was one main difference in the forgery statute in that is covers any writing. They had attempted to comprehensively cover any writing since existing law only covers certain documents and this has led to confusion. We have a separation of forgery for the purposes of punishment. Rose brought out that this seems to show different degrees as to kind of paper rather than monetary value involved. Moran felt the reason for this was to reflect the alleged dignity of the documents. Joel agreed with this. Rose commented on page 76, line 26. He feels that the things listed here represent interest in or claims against property. Moran asked if there was a distinction if the documents were negotiable. Rose showed that deeds represented an interest in property. Joel agreed that this was vague. Rose still feels that we should use the same bracketing method for this section. We have degrees according to amount throughout the code. Here you are using kinds of paper and it is hard to distinguish between them. Hillstrand asked where he could find the word "negotiable". Moran noted that it does not appear here. Moran felt that most of these things would be dealt with by federal and our laws would be preempted anyway. Rose thinks it should be done as in 11.21.200. If the papers do not have a money value then it could be made a misdemeanor. Banfield noted that the state issues papers for bonds. There does seem to be an overlapping in terminology. Rose suggests that we add a section similar to 11.21.200 stating that under that section any forgery that has no monetary value attached is a misdemeanor. Banfield did not feel this would solve the problem. What if someone made up a bunch of credit cards? Moran could see the point here. In itself the credit card had no value, but if used that was a different matter.

HB 524

Joel noted that we had a separate provision for credit cards. Rose mentioned that each instrument or each writing is a separate violation. Hillstrand asked if this was a departure from existing law. Joel said that it was quite different.

(Flynn arrived at 2:10 p.m.) Hillstrand thinks that there is more than the amount of money that is involved. He thinks it is the conduct of the person that affects the integrity of what is being charged. Fifty dollars is as important to some people as $500 is to someone else. Joel will come up with something on this and the committee will consider it at that time.

Moran asked if under fraudulent destruction of recordable instruments whether it made any difference if these were cancelled after the recording rather than before? Banfield thought that it must be before. Joel felt there could be an added provision to cover this. Make sure that there is a distinction between security instruments. There would be a difference if it was filed or not.

Bad Checks. 11.21.260. Banfield felt that this could be a serious crime. She did not want it to be a crime if you had an arrangement with the banker to let you know if you had overdrawn your account and then you would reimburse him. Moran noted that this is not an unusual practice with bankers. Rose mentioned an article by the local DA on the subject of bad checks where he was analyzing to some extent the present law and making some suggestions on how it should be. Should all bad checks be a misdemeanor? Rose suggested that we invite the DA. Joel said that would be Joe Balfe. Hillstrand felt this was like "Entrapment" because a drunk could write a check in a bar--this wouldn't allow his wife to make restitution. Flynn said he found that there were very few who did not make their checks good. Moran felt that we should consider graduation of this offense. Moran asked everyone to look at the next page where if you make restitution within 10 days you have committed no offense. Rose felt that this was an improvement over present law. Rose still felt that a bad check was theft by deception. Moran showed that there was a cross-reference to this. This is on page 77, line 26. Moran brought out that there was a presumption stated in (1) and that (2) was a defense. Joel agreed with this. The person receiving the bad check has 30 days and the person writing the check has 10. If this time schedule is followed then there is no offense committed. Hillstrand wants to stop the person who is in the bar from overspending and being forced to write a bad check; he is not able to make it good in ten days' time. He also wants the bartender to keep from encouraging such conduct. He would like to have a provision in there which would cover the situation if a man is under the influence in a bar and the bartender accepted a bad check he would do this at his own risk. Moran felt this would cause a lot of trouble.

HB 524

Criminal Code

Moran asked if the committee wanted to graduate the offense. Rose said this was done in theft by deception so we don't need to do it twice. Moran couldn't see any possibility under theft by deception, showing that you would have to get something of value. Joel noted the definition of property was on page 83. Moran mentioned electric power as being considered as property and Mrs. Banfield noted that is some places water would be so described.

Hillstrand asked if we were going to leave the section on credit cards. He feels that the unsolicited cards are very bad. If a person loses one of these cards, he is still held responsible. Rose felt this was directed at the person who used somebody else's card, or maybe the owner uses his own card after it has been revoked. Moran said to look at the affirmative defense showing that you can still use your credit card after it has been cancelled. If the individual can show that it was his purpose to pay for the goods and services he has committed no offense. Moran asked Joel the theory behind this. This is a little like an involuntary loan. Joel did not have any notes on this. The Council decided to put the penal code in rather than the Alaska Credit Card Crimes Act. Banfield asked why they did this. Joel said it was because our law wasn't very workable. Moran wondered if a person should have that kind of defense. Rose asked how this would apply to members of your own family. Hillstrand asked how this would apply in the use of the credit card when it was for gas only, and you used it to buy food, etc. Banfield asked about the telephone credit cards, and what would be the case if a staff member saw one lying around and used it. Joel asked if this was to be deleted. Moran said he didn't want to do this until he knew what unauthorized use could be. Rose wanted to make allowance for the honest mistake as opposed to unauthorized use. Moran gave an example of how he told one of the airlines personnel that his airline accepted his credit card and if this wasn't true, then it would have been illegal. He just took his word for it. Joel noted that there is no commentary on this. Joel felt that he could add language to say that the person could meet the obligation and there was no intent to deceive anyone.

Deceptive Business Practices. Hillstrand feels that this section reads good. Moran asked if present language will be repealed in regard to the false weight problem. Joel said there was something on adulteration and mislabeling. Moran asked if Commerce had the task of checking scales. Joel said in his comparison in adapting this section there did not seem to be any conflict, but he would like to check this again. In (a) if he possesses a false weight or measure or device for determining weights by quantity is guilty of a misdemeanor. Moran asked Joel to bring the results of his research back to the committee.

Rose asked what "recklessly deceptive" meant, on line 21, page 79. Moran thought this referred to the degree of negligence. A wanton lack of concern. Moran objected to listing lawyers in (3). He noted that they have the Bar Association which has a disciplinary program and a grievance committee.

HB 524

Criminal Code

Moran did not like the reference to a professional adviser or informant. Hillstrand suggested that we change the word to "consultant". This was accepted by the committee. Hillstrand wondered if anyone was left out of this list of people who are supposed to be acting with a degree of trust. Moran felt that (b) was pretty broad. Hillstrand did not see where the police were included. Rose said that we were talking about commerce or business. (Rose left at 3:10)

Meeting adjourned at 3:15 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, February 16, 1972

Chairman Moran called the meeting to order at 10:45 a.m. in the Masonic Temple. Present were: Barber, Hillstrand, Rose, Flynn, Banfield, and Peterson.

Violent Crimes Comp. Board — SB 28 am

The first item of consideration was SB-28am - Violent Crimes Compensation Board. Moran reviewed what had been done last session and noted that we had received some statistical information from Commissioner Chappel. It was estimated from their compilation that this would cost about $370,000 for the first year. Moran noted that this bill calls for a conviction and the statistics were based on arrests which can be quite different. This bill has another referral to the Finance Committee so we can let them prepare the fiscal note. We will give them what information that we have available. Rose mentioned a recent article in the newspaper. This is in the file. Rose suggests that we make a comparison on population figures. Hillstrand moves that we pass this out with a "Do Pass" and asks unanimous consent. A report will be submitted with the bill showing that we didn't have adequate information on costs but that we believe that the principle of compensation is a sound one. (Randolph arrived 11:05) The bill was signed out "Do Pass" by all members.

Cumulative voting by shareholders — HB 681

Mrs. Banfield asked the committee to introduce a bill on cumulative voting by shareholders. This bill deletes the provision which permits a corporation to provide through its by-laws that shareholders can accumulate votes. Committee members were in favor of submitting this as a committee bill and wanted to sign it out now. Randolph so moved. There was unanimous consent. (HB-681) A Committee report was made up and signed out.

WICHE program — HCR 9

HCR-9 - WICHE Program. Moran felt that all committee members were familiar with the contents of this measure since we had signed it out last year. It was held in Rules Committee and had to be reintroduced this year. Rose suggests that we put it out again. Rose moves it out "Do Pass" and asks unanimous consent. Hillstrand objects. He wondered if the state pays the resident tuition for the person. Moran noted that this was cheaper than a law school in this state. Hillstrand withdraws his objection. This was signed out unanimously with a "Do Pass".

Alaska Constit. amending — HJR 92

HJR-92 - Amending the amendments section of the Alaska Constitution. This would permit amending the constitution by initiative. Banfield asked if this was an agreeable thing. Moran felt it was all right since it required a 2/3 vote of each house of the legislature. Rose related how some legislators felt we already had this provision. He had prepared a report on this and it will be used as a committee report to be submitted with the bill. The

Amending Alaska Const. — HJR 92

right to change law through initiative exists at the present time. This is not true for a constitutional amendment. After going through the process of initiative it then goes on the next ballot as a referendum. It does not become a change until voted upon by the people. Moran reviewed requirements--100 signatures on a petition and 10 per cent of the voters at the preceding election. Rose assured committee members that this will have no effect on a capital move. This could be changed through law and this right is already provided. Rose moves to pass this out with a "Do Pass" recommendation and asks unanimous consent. Banfield and Flynn signed this with "No Recommendation".

Constit. Grand Jury — HJR 103

HJR-103 - Constitution/Grand Jury - At the present time a person may not be held unless he is indicted by a grand jury. He also may be held if there is a complaint or information that has been filed showing probable cause that the person has committed a crime. It says that it has to be a judge. Moran didn't think that a magistrate was a judge. Art noted that a magistrate is a judicial officer. Further checking of the statutes showed that a magistrate could hold a preliminary hearing. Banfield doesn't feel that the grand jury should be able to say that a person cannot be charged for the crime. The grand jury is supposed to protect the people. Moran noted that it really was a question as to whether they served the purpose for which intended. Rose noted that defense did not have the chance to be heard with counsel. This is in effect a one-sided story. At a preliminary hearing both sides are heard. Each side may present evidence. The prosecution may withhold information at his own peril because he didn't want to disclose his case prior to trial. Moran asked the committee if they wanted Mr. Havelock to come before the committee to justify this bill. It was so agreed. He will be invited for the meeting this afternoon at 1:30 p.m.

Priv. of Crim. Just. Info. — HB 563

HB-563 - Privacy of Criminal Justice Information. This sets up rules and regulations for exchange of information taking into account proper security. The material would be retrievable through computers. This would make it available throughout Alaska. Rose thinks it has a laudible purpose but requests more time to study this proposal. Mrs. Banfield said she thought that the ACLU was opposed to this. Barber requested that we have Mr. Havelock testify on this measure, too, when he comes over this afternoon.

Removal of Magis. — HB 566

HB-566 - Removal of Magistrates. Moran related that Mr. Peterson had prepared a CS for this bill. This incorporated the suggestions given at our last discussion. Mr. Rose has proposed an additional amendment that he would like to have considered. Consideration was given to Mr. Rose's amendment. Banfield felt that you could take out the first two sentences and use the rest. Rose said the purpose of his amendment was to outline procedures for establishing that the presiding judge has a screening

Removal of Magistrates

HB 566

device. The second thing is to provide that he will make his determination known to the complainant. This will be in writing. Hillstrand was against the provision for screening. Banfield thought that only the last sentence would be all that was needed. Art noted that this included everything except the provision of putting this in writing. Flynn noted that we do not question the presiding judge when he appoints the magistrate. We are providing for the magistrate that he will get a hearing if he does not satisfy the judge any longer. Banfield reminded the committee that he could only be released on good cause. Moran noted that the Chief Justice wanted this to be done. This would be a procedural safeguard for removal of magistrates. Banfield thinks they should have this protection. There may be cases come up that are very emotional and the magistrate would be following the law of the land and because of this particular case he could be fired. Randolph asked if Mr. Rose had asked for unanimous consent to adopt his amendment. Banfield did not want to accept the entire amendment. She would like to amend the amendment rather than accept it as is. Moran noted that all of this would be necessary if both parties are to be notified of the judge's determination. The magistrate is entitled to be informed of the complaint as well as the complainant. That way they will know there has been some action taken. Rose noted that he was following the same format as found in several ombudsman bills. Barber thinks we should adopt the amendment. Barber called for the question. Hillstrand and Banfield voted against it. Rose moved the bill out as amended, to be prepared in the form of a new CS, with a "Do pass" recommendation. This will be presented to committee members after it has been rewritten as a CS, at which time it will be signed out.

Meeting recessed at 12:05 am. We will reconvene at 1:30 p.m.

Moran called the meeting back to order at 1:30 p.m. in the Masonic Temple. Present were: Barber, Rose, Hillstrand, Flynn, and Peterson.

Privacy of Criminal Justice Information

HB 563

Mr. Havelock appeared before the committee on HB-563 - Privacy of Criminal Justice Information. He was asked what was the purpose of this bill. Havelock explained that this was the program which came out of the Governor's Commission on Justice. This developed a program for implementation of the Alaska Justice Information System. This is a plan to put a large variety of information on a computer basis. This would include all citizens of the state of Alaska. More thought on this brought the serious consideration about availability of information and who should be able to have this information. It was decided that a pretty tight rein should be held on the kinds of data that were allowed to be recorded and the kinds of information that would be released. Also there was discussion as to who would have access to this information. That is the reason for putting this bill in for consideration by the legislature. We didn't feel that the types of information should be listed. We might forget one category that would be important. Also, it has not been decided by the agencies themselves what type of information they wish to submit. We do not want the invasion of privacy

Privacy of Criminal Justice Information

of our citizens. The joint purposes are for law enforcement and research.

Moran asked if Mr. Havelock had received any strong opposition to the bill. He said he had not received any protests. Havelock thinks that if the ACLU opposes this bill it is a matter of misunderstanding rather than true opposition. He pointed out that there are no guidelines for dissemination of this information now and this would be a safeguard. The absence of any bill would be an impairment of the civil liberties of the people. If they really opposed the whole concept, then they should oppose the electronic system and introduce legislation to cover that point.

HB 563

Barber asked how this bill compared with similar laws in the lower "48". Mr. Wilson Condon worked on the drafting of this bill so he answered Mr. Barber's question. He said that he had only studied the western states. This was prepared to follow a model law on this subject. This didn't follow it exactly but it provided what we thought was a good scheme. This measure follows fairly closely the same type of bills being considered in the US House and Senate. Barber asked is there was to be reciprocity of information. Havelock answered this by saying that access to this information would have to be guided by the regulations of the commission. He did not think reciprocity would be the problem but the question of who would be allowed access to the information was the more important thing. Havelock noted that they already exchanged rap sheet information. He also noted that this information was available between states. Hillstrand wanted to know if they really could control this information and give adequate protection to these files. Hillstrand gave an example of negligence by the state boiler inspector. Havelock said they were allowing ordinary negligence as a defense against liability. Rose asked what specific information would be labeled as confidential. Havelock stated that this would be public record information. He did not want to have information labeled as confidential unnecessarily. A lot of this would be civil type information that is just plain "nobody's business". Drivers' licenses are an example. Rose asked if this information wasn't available now. Havelock didn't think that it was available to the public. Rose wanted to know what would be classified as criminal justice information. Havelock noted that there had been much discussion on this subject. We found it would be difficult to list what would and what would not be so classified. They would like to use it for tracing criminal histories, research, and identification. Havelock noted that these files were not for general public access. Rose wanted to make sure there was a close check as to what went into the confidential files. Mr. Condon was not sure that the safeguards proposed in this bill were tight enough. At the time this was prepared we did not know what type of information would be considered confidential. The Governor's Commission has to make a written finding that this particular class of information can go into the system. There has to be a review of each classification to see if it will still be

Privacy of Criminal Just. Inform.

listed in the confidential category. This will be done on a yearly basis. Again there will have to be a written finding showing that this classification is still listed as a confidential category. Citizens will know and be made aware of what material is being collected about them and they could complain to the governor if they didn't like this particular material to be filed as confidential. Rose asked if this was to be accomplished under the APA. Mr. Havelock assured him that it would be accomplished in this way.

HB 563

Rose asked about the person who wanted to see his own file because he believes there is inaccurate information in his file. After he identifies himself, would he be able to see his file? Also, how would a person know a file was being maintained in his name? Havelock noted that you wouldn't know any more than you do now. If you have a drivers' license, then you probably have a file under your name. Flynn asked if he understood what had been discussed. If Mr. Rose wanted to see his information and it was classified as confidential then he would be denied, is this right? Mr. Condon said that if you were asking about personal record information you could see that, but if you were asking about confidential information, you would not be allowed to examine that. Rose said he was going to assume that a person's political activity, conduct, etc., will not be placed in these files. Moran could see that this system would eliminate informers as we now know the system. The computer would be able to supply the information. Moran feels that you have to have confidence in your government and public servants. (Randolph and Hillstrand left at 2:05 p.m.)

Rose questioned Mr. Havelock on Page 5, Line 3. The main item of concern was what was a "potential criminal". Moran asked if Rose had an amendment to cover this point. Rose feels this needs more study. Moran doesn't like the word "potential" either. Havelock said that Public Safety was not happy with the new arrangement since they wanted to keep their own information. Rose asks how you could check on what was being put into the files. Havelock said you could provide for an audit. If the audit is by some other agency, Rose feels that this would be a safeguard. Havelock would not object to an amendment that would provide for an audit of the records themselves on a spot-check basis. Barber and Flynn also object to the reference to a "potential" criminal. Mr. Condon showed that it really was a matter of semantics and that the system will have some information on everyone of us. At least those that have drivers' licenses. There has to be some way to refer to people so we have called them "potential criminals". Havelock said if you took this out they could not maintain files from drivers' licenses. Moran suggested that this could be amended to say that personal records that would identify a person, something issued by the state of Alaska could be used for this purpose. Rose noted that that would include tax returns. Barber thinks it should be for the purpose of identifying actual criminal offenders and leave all others out.

Privacy of Crim. Just. Inform.

HB 563

Moran suggests that we review it for a few days. We could have Mr. Condon come back and answer any questions that come up. Art had a question as to how the regulations adopted by the commission related to the same regulations on this subject. Havelock said it would supercede them. Art suggests that the existing statute covering this then be repealed. Mr. Condon doesn't think this should be done because the departments will still be maintaining their own records. It might be desirable to regulate that, too, but I don't see how we can do this. We have to recognize that Public Safety and Parole, as examples, will continue to maintain their own records. Art doesn't see how both sets of regulations can exist. Condon said you might still have agencies exchanging information but not through computerized methods. These would be manual files. The regulations really only control the input. He feels there is no conflict in the regulations for the manual exchange of information. If that is the case, Mr. Peterson brought out that people would still be subject to invasion of privacy and that was what this bill was to overcome. Rose noted that we were told that one benefit of this bill was to put some controls over the present system. Now we are told that the present open-ended system should be allowed. Moran explained that this is a separate agency from the ones sending in information and they want the authority to control the information being put into the computer. This will be done by regulation promulgated under APA. Barber asked if he understood this properly. He asked if Public Safety and the Department of Law had separate files. Havelock said all they had were case files. We will record sentencing recommendations, court processing type data, etc., Moran noted that this program was financed by a federal grant. Havelock said that the majority of this information would be in the basement of the Department of Highways building in Anchorage. This was the most convenient location. The Commission is only setting up the operation but is not going to operate it after completion. Havelock said that the grant would go to Public Safety. Moran scheduled more work on this measure at which time amendments would be presented. Mr. Havelock and his staff would be invited.

Grand Juries

HJR 103

HJR-103 - Grand Juries. Our constitution requires that we proceed with the use of a grand jury indictment. This bill will provide for preliminary hearings where both sides can be heard. The committee asked Mr. Havelock for the justification for this piece of legislation.

Havelock stated that the Department of Law, Criminal Division, and Public Defender felt that grand juries were no longer a device that protects an individuals' rights. The preliminary hearings seems to be the far better device. In actual practice, the grand jury almost always followed the direction of the prosecuting attorney. The main purpose of a grand jury was to weed out doubtful cases. It was felt it was better to have the grand jury recommend not trying the case than to have this done by

motion. This shifted responsibility of requesting dismissal in certain cases. This stopped public grumbling about the disposal of these cases. If the prosecutor asks for dismissal of a case he is closely questioned about why it was dismissed, but with a grand jury there is no such questioning.

Grand Juries

HJR 103

Rose agrees with Mr. Havelock's testimony noting that this still allows for the present system but gives the alternative of a preliminary hearing. Rose felt that we might be able to require a preliminary hearing in every case or have the grand jury system changed to include the defendant and counsel to be present just as you would in a preliminary hearing. Havelock wonders about the grand jury, 12 people, wasting their time in listening to these things. Havelock noted that Rose' suggestion that we require preliminary hearings is going farther than proposed in this legislation. This could probably be done by statute. Rose feels that if we require a preliminary hearing that we do not have to eliminate the grand jury but that it will fall into disuse. Moran noted that at the present time a preliminary hearing is required for felonies. Rose thought that the defendant could be given the opportunity to waive the preliminary hearing. Havelock feels that if you did this by statute, you would only be putting forth responsibility to carry out both the grand jury investigation and the preliminary hearing. This would be a repetitious act.

Moran asked what "judge" meant on line 14. He noted that in the statutes we often use judicial officers. Magistrates have the power to conduct preliminary hearings. He asked Havelock if it would be his desire to have this continue. Art noted that in the constitution they are referred to as judges. Moran noted that in this particular section was the only place that this appears in this material. Havelock felt that we could put this in the definition saying that a magistrate is not a judge. He will give this further thought. This will be scheduled for further consideration.

Archi.,Engin., and Land Surv

SSHB 239

SSHB-239 - Architecture, Engineering and Land Surveying. Moran distributed three different versions of this bill. Mr. Doug Ackley, a practicing architect from Juneau appeared before the committee in favor of this bill. He stated that this bill was drafted by a committee of the various professional organizations and then given to the sponsors at Legislative Affairs to be put in proper style. It was rewritten as a sponsor substitute bill and now it has been rewritten as a CS by the Commerce Committee. He will direct his comments to the SS bill. He apologized for the size of the bill but noted that it was as concise as it could be when you consider that you are covering three different professions. There are three things needed. One of these is recognition of land surveyors, noting that we have been licensing them through the engineers'and architects' board.

Architects/ Engineers

SSHB 239

We really don't have the authority to do this. This bill shows what a land surveyor is--it is spelled out. It has also been updated to include corporate practice. This is increasing in the state at the present time. There are large numbers of corporations practicing engineering and architecture in the other states. Moran asked if this was where the corporation hires the people who are registered and they practice their profession in this way. It was the AG's opinion that a corporation may not practice like this in Alaska unless the names were listed in the corporation name. Rose asked Mr. Ackley about a related profession, in Anchorage it was called designers. Ackley related that there was a national organization that is calle Building Designers. This is actively engaged in in the State of California. This allowed persons who had not passed the architectural examination to practice in designing building that we regulated by a square footage formula. They could design residences and small commercial structures. They were given a deadline to qualify again for architecture registration. If they did not pass this time, they would have to get out of business. He did note that states that did have this provision were trying to get rid of them. One reason is that they are not regulated. Rose felt that since we had some designers in Anchorage that we should think about setting up some criteria. Mr. Ackley noted that this bill did not affect a person designing a single family or duplex dwelling. They could still do this. Rose said he had heard that there was some problem about them continuing in their practice of their business. Mr. Ackley noted that there had been some action from the AG's office in regard to the designers going into more complicated design than was allowed. The AG's office made out an affadavit saying that the Building Designers' Alaska would not do any more designing unless it met the requirements of the Act.

Mr. Ackley referred to Page 8, Line 19. CC recommended changes in the period of time;they want inserted "at least one member shall be a woman". Mr. Ackley did not feel that they would be able to constitute the board if they had to meet this requirement. In Alaska there are only two women registered and residing in Alaska. One of these is a commissioner and the other is working with the borough planning department. There is one other registered woman architect but she has not been registered long enough. Ackley wanted to know what would happen to this Commerce Committee amendment. Moran noted that we would write up a committee substitute and this would have to be handled on the Floor. It might be easier to make amendments to the original bill.

Mr. Ackley referred to Page 8, lines 5 & 6. He suggests amending this to read "five" years instead of "six". This would only change the tenure and he doesn't feel there should be any objection to this. Line 7. Delete the second "2" to be changed to "3" and other appropriate related changes. Deleting the portion showing that "two members having six-year terms".

Architects/ Engineers

Page 6, Line 23, was considered for proposed amendment to include in section (3) employees of the State of Alaska. It now only includes U. S. Government employees. Mr. Ackley had talked to some state employees and they wished to remain licensed. He emphasized to the committee that it might be dangerous to have unlicensed and possibly unqualified personnel doing designing for the state. He feels that it would be a safeguard to the citizens of the state that all persons practicing architecture would be licensed, whether they worked for the state or federal. Moran noted that this was a problem for attorneys, also. He did show that there was a problem getting qualified people for these positions. For attorneys they can work in their capacity if they are otherwise qualified until the examination is offered. They have a 90-day waiting period before they are eligible to take the test in Alaska. Under these circumstances they are hired in the attorney general's office.

SSHB 239

Mr. Ackley noted that there is no residency requirement for licensure by his board. We do have a provision for working directly under a licensed supervisor. Moran wanted to know how direct the supervision was supposed to be. Flynn asked if this would prevent someone from the highway department doing moonlighting in the field of land surveying if we pass this legislation. Ackley said that this applied to firms being licensed.

Rose noted the requirements on Page 16. Does a person have to have special schooling to fulfill these requirements? He has to take the examination and pass that and has to have at least 8 years of experience in this field. Barber asked about the limitation on page 7, where you could design a residence not to be used by more than two families. What about the townhouse concept? Mr. Ackley said that apartment houses were more complex. Moran thought that a provision similar to this was in the plumbers' code. Barber noted that you can wire your own house if you comply with the code. Rose asked if he used plans that you ordered from a newspaper--say a townhouse--would he be able to do this. Mr. Ackley was not sure about this. Moran felt that would be illegally practicing architecture in Alaska. The person selling the plans would probably come under the long-arm statute because he should have known that those plans were being sold in Alaska and he was not licensed for practice in the state. Rose wanted to know if he would be prevented from building on this basis. Mr. Ackley said it would depend upon how you defined a town house. Was it a series of single family dwellings or was it to be considered an apartment house? (Barber has another meeting at 3:15 p.m.) Mr. Ackley feels that it is important that we have strict licensing in Alaska. Architects living here know the conditions for building. They also know what buildings need for proper maintenance.

Architects, Engineers

Moran asked about associations. Mr. Ackley said that it would depend upon who engaged whom. He thinks that we are covered for that now. Page 7, Line 9, contains the information on association with an outside firm. Mr. Ackley noted that this was a common practice. If they become associates with a local firm they will have the expertise of those in the office besides all supporting personnel. Mr. Ackley noted that some firms do not feel that they know an area well enough so they use this means to operate their business. Moran noted that there has not been too much opposition to this sort of thing, except he has heard a few complaints from the engineers in Anchorage. These were big firms that brought in their own engineers. Ackley said they were not trying to cover this problem.

HB 239

Rose asked about Page 16. Can a California firm apply for a license and practice in Alaska? Mr. Ackley related that the majority of registered architects are living outside the state of Alaska. Rose did not see any place where it said how often the examinations would he held. Mr. Ackley said that he does licensing from the basement of his home. Rose asked how long it would take to process the papers for licensing. Mr. Ackley said it would depend upon how completely you had filled out the papers and if you had included all pertinent documents. Applications are considered by the board when they meet. They meet at least four times a year and actually meet oftener than that at times. Art asked if there was a deadline for submitting applications. Mr. Ackley said there was none. There does have to be a majority of the board members in attendance though. Rose asked if these meeting were publicized. Maybe someone of the public would like to sit in on the meeting. Mr. Ackley said that the examinations were published but that the meeting time and place were not. Moran felt that it would not be a bad idea to require a newspaper advertisement. A display ad rather than in the public notices section. Also it should be a newspaper of general circulation. Ackley said appeals on decisions of the board are allowed. We notify the individual that he has the right to review before the board and allow him to come before the board at the next meeting in the applicant's area. Moran asked if they required American citizenship. Mr. Ackley said that they did not. Art just called Legislative Affairs and they did not prepare the bill. No one knows why we are exempting state employees. Art was referring to the CS by Commerce Committee. Legislative Affairs did not prepare that. Art suggests that someone read the bill and pick out the technical points. Ackley suggested that on the last page, page 20, under definitions, that it include that wherever we speak in the singular--he or him--mean she and her. Art told him we already have that provision well stated in the statutes. Moran asked about land surveyors being certified by engineers. This is done by an engineering firm. Engineers are under our present law and they can perform land surveying. Moran noted that most land surveying is done by engineering firms. This is because of the relationship of accomplishment say in

Architects/ Engineers

developing a subdivision. You need someone knowledgeable in regulations and also someone who can go before the platting board. Ackley mentioned that in subdivisions there is the necessity to build roads, too, which would blend with the engineering firm's abilities. Art asked about the comparison list in the committee report on this bill. Mr. Ackley said that this was comparing the CS to the existing statute.

HB 239

Ackley noted that there was no way of specifying what kind of license an engineer would have. There are several categories of engineers licensed at this time. There are more licensed engineers and architects outside the state than there are here. About a 3:1 figure. Ackley said that was because most of our big buildings are done by outside firms. Ackley said that most of the practicing architects in Alaska would like to see people come to them for the big building projects. We know the actual building conditions better than someone from out of state. Art asked about the problem of a professional corporation being limited to one profession. How does that relate to this bill? Mr. Ackley had not investigated this aspect. Moran noted that the Professional Corporation Act prevents the incorporation of more than one skill. Engineers, architects, and landsurveyors would not be permitted in a professional corporation. Ackley asked about different types of engineers incorporating. This should be looked at more closely. Ackley noted that it was patterned after the Washington State act for the corporation of architectural firms. Is there any place in there that it requires the designation of the corporation? Art noted that there may be confusion as to the type of corporation unless there is some designation in the title to show this. We want to avoid confusion so this will be studied further. This will be scheduled for further consideration. Mr. Ackley will be notified as to date and time.

Meeting adjourned 3:55 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, February 17, 1972

Moran called the meeting to order in the Masonic Temple at 10:10 a.m. Present were: Randolph, Rose, and Bennett.

Criminal Code

HB 524

Discussion of HB-524 began on Page 81. Moran distributed suggestions presented to him by Mr. Joe Balfe. These will be discussed separately. Fraud section is a restatement of existing law. Rose asked if Alaska had any insolvency regulations in any other than federal. Moran felt that this was the exclusive concern of the federal government. We have two different degrees of insolvency. One where the income is inadequate to pay the debts and one where the total assets are less than the total obligations. The latter is known as bankruptcy. This was always dealt with under the Federal Banking Act. Joel noted that there was a consent arrangement whereby a person's business may be managed by an attorney. The attorney handles the disposition of the monies for the benefit of the creditors. This is a procedure in lieu of bank proceedings. Joel checked the commentary on this subject. He found information relating to corporations or companies. (Banfield arrived 10:15) Joel will check into this further.

Receiving Deposits. This is another related provision to the one we just read in Alaska law. Rose noted that this comes under Alaska jurisdiction. He also noted that this would apply to every lawyer's trust account. Randolph commented that this would also apply to a realtor's earnest money account. Randolph asked if a misdemeanor was an adequate enough fine for this. Rose suggests that we do the same as we did for theft. This would make it apply to the amount concerned and fix the degree for punishment on that amount. It could be a misdemeanor ora felony.

Execution of Documents by Deception. Rose thought that this was fully covered under theft by deception and forgery. Moran did not think it would have the concept of forgery. Moran also noted that this does not mention any value. It may affect the pecuniary interest of another person. Joel checked the commentary and could not find anything on this point. He found some information showing that this would be related to securing employment, also extending the provision to nonpecuniary matters. This could also apply to extension of time for payment of obligations. Rose thought that for consistency that this section show follow "Forgery". Moran noted that forgery and theft were dealt with under larceny while this is under fraudulent practices.

Offenses Against the Family. Joel noted that this included bigamy, polygamy, and incest. The difference between this and present law is that it reduces the penalty. This is reduced to a 1-7 year maximum. It is now classed as a misdemeanor. There is an exemption included to cover legitimate mistakes.

Criminal Code

HB 524

Joel gave the definition for polygamy showing that these would be simultaneous marriages. Moran noted that there were countries where this is permitted. He mentioned the Moslems. Rose felt that any attempt to abolish this law would bring great repercussion. We maintain that we have freedom of religion and yet we legislate against some of these religions. We are imposing the Christian monogamistic concept and not allowing them freedom of religion. Utah was mentioned and Moran said that this was not a problem there any more. Randolph felt that this was a social problem. Banfield noted that the monogamous marriage was for the protection of the children. Banfield felt that if a consulate was established in Anchorage for some country where polygamy was practiced that maybe this could be worked out and his wives be allowed to live in this country.

Incest. There is a reduction in penalty for this crime. The maximum was 3-15 years and it has been reduced to 1-5 years. Banfield feels there is no sentence tough enough to cover the crime of a father molesting his children. We now have made this a third degree felony. Joel mentioned that this does not prohibit relations with step children and that we could define it to include these children. There was some discussion of the last line with respect to blood relationship and adoption. There was some discussion about conditions developing from adopted children from different parents wanting to get married when they reach this age. Rose didn't see that it would make any difference if an adopted daughter wanted to marry the adoptive father after he had divorced his wife. Banfield objected to this. Banfield felt that Joel should write this up in another way so that it would be more easily understood. Up to the word legitimacy the section read all right. It was from there that it needed some changes. Moran noted that under existing law we only refer to degrees of kinship. This would likewise exclude adoptions. Absent any kinship which adoption doesn't create, these wouldn't be considered incest under existing law. Moran asked if we should permit adoption in the social arrangement and then permit the father-daughter relationship. This in effect would destroy the adoptive arrangement. Moran noted that we have laws prohibiting fornication and adultery. Rose gave his example of the father who has adopted the daughter and then after she has reached the age of majority, and he has divorced his wife, the two would get married. Joel said this was not permitted under present law. Moran asked about the section that had been left out. Joel said that it was the California Child Abuse law and that the Legislative Council didn't want that put in here. (Randolph left 10:45) The experience of other states have found that in cases of child abuse it does not help the person or society to put the person responsible in jail.

Criminal Code

Non-support. This provision to be directed at the person who does this regularly, not just for first-time offenders. Rose feels that this is a good change. He asked if this was a felony. Joel said it was a misdemeanor. There is also a provision of lawful excuse for non-support payment. Moran asked about the definition of a dependent. If the state is supplying welfare are they properly defined as dependent. Who could they go back on for reimbursement for the payments? Moran checked the statutes and found that responsibility goes back quite a way in the family arrangement. This was found in 47.25.230. Rose asked Joel to give a comparison between this and existing law. Joel started with bribery, but taking into account the definitions on page 98. Bribery under present law includes only judicial officers. This law includes anyone. It does not limit it. In present law you distinguish between the offer and the acceptance. In this law both are covered in the same section. Much of this chapter has been revised in an attempt to realistically deal with some of these offenses in the sense that other bills have been introduced, an example is disclosing campaign expenditures, etc. Rose asked when a contribution would be considered as corruption since many legislators get contributions from individuals and from groups. Moran asked about gifts or benefits that had no monetary value. Joel noted that there was a definition for "benefit" and one for "pecuniary benefit". Banfield noted that this also applied to businesses. Rose didn't think this was true. He felt that it applied only to official and political matters.

HB 524

Threats and Other Improper Influence. We have a related provision in present law. (Randolph returns 11:15) Moran asked if this applied only to physical harm. Rose asked if the unlawful act was already covered by some other statute, would the violater get double punishment. Joel said this was for persons who were victims while they were performing their official duty.

Retaliation. Rose felt that this opened up a lot of litigation where this is a retaliatory thing. He asked Joel if there was anything like this in existing law. Joel read from the commentary. Rose noted that we were including all public servants. Joel felt that his objection was valid. It probably is already covered under other offenses. Moran asked about the degrees. Did we want this to be a misdemeanor or just a violation. We want to raise the dignity of public servants. The level of the person's employment may not relate to the injury done. It might be a file clerk. The clerk may have discovered that a person has filed a false statement. This may result in very serious consequences to the person wishing to retaliate. Joel read from the commentary on this matter. He said that this applied to influencing witnesses, judges, or jurors. It also applied to obstructing the administration of justice. Banfield thought that this was a different offense. Rose thought it was new. Joel said he would take his comments back. If the injuries to an

Criminal Code

officer occurred while performing his official duties this statute would apply. Moran felt that we were limiting this to those things related to the administration of justice. He wants to see protection for the average public servant. Rose asked if this was a problem. Moran did not know. We should have a provision which says you may not lightly take any retaliatory action to any person serving the public.

HB 524

Perjury. This is compared with AS 11.30. One difference is that the necessity for a material statement is in the revised provision. Present law requires that just a false statement be made. Rose questioned section (c). Joel said that this was in conformity with the common law view. Moran said it would have to affect the outcome of the matter. He gave the example of a woman applying for a driver's license. She would give the wrong age, but would have qualified for the license any way. It would not have affected the outcome. Joel noted that this had reference to official proceedings, such as juries, grand juries, legal hearings, etc.

Randolph mentioned penalties. Joel noted that he was reading from the analysis. The penalty for a third degree felony was 1-5 years and at the present time it is a maximum of 20 years.

Moran went back to the drivers' license example. What if a person gave the improper or incorrect birth date? This affects things following after. This affects the time for you to renew your license. Banfield noted that someone else may be able to use your license if you do this. Rose asked about line 17 on page 88. What situation would you have in which a person would not be competent to make a statement. Moran didn't think that that meant mental incompetency. Banfield wondered what would happen if you testified on something and gave an opinion that was uneducated. Moran thinks this must mean legal competency. We should probably make this clear. Mention was made of a person signing income tax statement, but had no knowledge of the personal affairs. Joel thought he would insert "legally" incompetent. Moran said that this could be misunderstood. An investigation should be made to find out just what it means. Banfield asked about physical competency. Maybe you had been ill, maybe you aren't sure of what you are saying. We are talking about the person being uninformed about the contents of the thing he signed. Rose didn't think he should be charged with perjury. Banfield asked if this would apply even if the person was trying to change the outcome. Moran said that we had discussed something like this under deception. Rose didn't think that this indicated that the false statement is made with the desire to bring about a different result; just covers false statements.

(e). This is difficult in regard to inconsistent statements. Rose noted that people do this all the time. All you would have to show is that he gave two inconsistent statements. Moran showed where on Line 4, the individual had to believe the statement.

Criminal Code

Rose felt it would be difficult to prove what you believed but if you proved that there is a false statement you would have won your case. Moran said you would have to prove one of the statements was false and also that the defendant knew that it was false. Joel said that the intent was to show that one or the other statement was false. Randolph felt that this was just setting up a definition about how you go about proving this particular type of case. Rose felt it was a lot more serious than that. We were making people felons. This applies particularly if you are not asked which statement was false. Randolph felt that under perjury proceedings it could be cleared up. Rose noted that under those circumstances they used circumstantial evidence. Banfield asked if this meant while you were under trial only or if this wouldn't mean swearing to things under oath. Moran read from the commentary on this subject. Moran felt this would be a pleading question. Joel commented on the driver's license example. He felt that you might be convicted under falsification because if it is true or not is a matter of law. HB 524

Unsworn falsification. Moran noted that this meant to police officers. Banfield asked about persons testifying before committees. Joel noted that they would have the definite purpose to mislead.

Rose asked Joel to compare 110 with 100. Both deal with the same thing. Both are statements of oath. An example would be falsification of official proceedings. Joel noted that there is no state law such as 11.27.120 but that this is based on federal law.

This meeting was recessed at 12:00. We will reconvene at 1:30 p.m.

Meeting was called to order by Chairman Moran at 1:35 p.m. in the Masonic Temple. Present were: Banfield and Bennett.

Judge Monroe was here to testify on this bill. This was at the request of the committee. He wanted members to know that whatever he said on this bill was not definitive as relates to the court system. (Rose and Randolph arrived) The judge started out by saying he did not know what prompted this criminal code and asked the committee if they wanted to risk losing 13 years of experience with present law. There was a question in his mind of the necessity to have a new criminal code. If the committee decides that we need a new code he would give them his comments on the bill. He has noted some drafting problems. The last thing that bothered him was the change of negative language to positive. This is not commonly done and this is a deviation from normal procedure.

Criminal Code

We are all familiar with common law principles. If you enumerate things will you preclude other things that you have not listed? Rose asked Mr. Monroe if he had made a study of other states or countries to see if when these defenses were listed that it would preclude those not listed. He had not made such a study. Moran noted that under present law we did not attempt to describe the things that are obvious. We think that is a problem. Monroe said he could only say that normally common law defenses are not included in substantive law. When you deviate like this you should have a reason. The judge mentioned that he was working on a committee for the Alaska Bar Association and Joe Balfe had worked with him on considering the code. He noted that they did not agree in all parts. Moran announced that Mr. Balfe had brought his comments to the committee this morning and the committee will consider these later when the amendments are to be proposed and acted upon. The judge stated once again that these are his own opinions. HB 524

Page 5, Line 24. Forfeiture of Public Office. He does not like this because there are so many things for which a person could go to jail. An example he gave was for a parking ticket and then the individual would have to give up his office. It was too severe. Rose asked if he would feel differently if we said the crime had to be at least the degree of a misdemeanor or higher. Monroe agreed with this. Joel noted that it would have to be a misdemeanor since minor things would be considered violations under the new code.

Page 18, Line 28. This part is very vague. The part was "or be able to pay the fine". This is in conflict with Title 12 telling which cases may be compromised.

Page 19, at the bottom of the page. This confuses the insanity law. This clouds the law as it is commonly known.

Page 18, Lines 8-12. This was missed. This is a bar to other prosecutions. It is possible for a person to come in and admit all kinds of crimes that he has committed and if these are not rejected by the court it is a bar to all action. This is too much responsibility for magistrates. Rose asked if this would make it necessary to say that this would only apply to the crimes that would be within the jurisdiction of the judge. Moran said that wasn't what he was talking about. He was referring to granting of immunity. Monroe felt that this was a dangerous section of law.

Page 24, Line 10. Ignorance or Mistake. Under common law mistake of fact is a defense. Ignorance of the law is not. This is a change in the common law. There should be a very good reason for changing the common law in this case. I suggest that you leave that as it is. You could substitute estoppel. I don't think that ignorance of the law should be a defense.

Criminal Code

Page 25, Line 22. This opens all kinds of problems. This is especially true of (a) on the next page at line 8. A police officer does this when he goes out to buy narcotics in order to apprehend the sellers. Also (c) would cover the police stake out. Rose felt that the judge was mistaken in this. He noted that this covered accomplices and police officers and district attorneys would not be considered such. Monroe mentioned that up until now you are not considered an accomplice if you have a legal duty to prevent the offense. This section will be acceptable if you exclude police officers.

HB 524

Page 27, Line 15. (Flynn arrived at 2:00) There was a question as to what was meant in (1) where it says "including but not limited to alcohol and drugs". This makes it so a person cannot commit murder if he is under the influence. Monroe felt that under this law Richard Speck would not have been found guilty of murdering those eight nurses. The way you have this written, you could not say that a person who had committed murder had specific intent. There is a difference between alcohol and drugs. Alcohol is legal, drugs are not.

Page 28, Line 11. Duress is a defense with the exception of homicide. There are some cases of serious bodily injury. This law does not exclude homicide and this is not a defense under common law.

Page 53. Felony-Murder. There is an attempt to change our felony-murder statute as a result of the Gray case in Anchorage. I don't think the way you have it written does that. HB-47 is a good bill and does what was intended. Moran noted that we had been considering Wisconsin law on this subject. Rose noted that it does away with the felony murder altogether but increases the punishment for the offense by 15 years. This does not change the definition of murder which requires premeditation. This would still allow the judge to inflict a penalty in line with the kind of thinking that Judge Monroe is talking about.

Page 51. Possession of Instruments of Crime. This portion scares me. There is a presumption on Line 28. I think this would be unconstitutional. The narcotics case would make that unconstitutional presumption.

Page 52, Line 14. "Shall be presumed to be in the possession of the occupant." Discussed possession of weapon in a car. It would be presumed to be in the possession of the occupant. Monroe noted that if the weapon was in an open container in the car the motor vehicle operator would be presumed to be the possessor of the weapon. This needs further research.

Page 98. Disorderly Conduct. This makes disorderly conduct a specific intent crime. Historically this is a breach of the peace, without necessity to show specific intent. Monroe gave an example of a drunk who is noisy and yelling.

Criminal Code

HB 524

The state would have to prove that he intended to cause harm or inconvenience. His defense would be that "You can't convict me because I was drunk." Most people charged under this law are drunk. Judge Monroe did not think that you should make this an intent crime. It is inconsistent with the concept of disorderly conduct.

Joel asked Mr. Monroe to make some comment on the break-down of offenses listed in the beginning. This is a major departure from existing law. There are petty misdemeanors, misdemeanors, and first, second, and third felonies. Monroe feels that this is a fine concept. He commented on Page 15 in regard to terms of sentencing. He didn't approve of a misdemeanor where a man could go to jail for three years. Rose noted that this set up an unfamiliar method of sentencing. This had a bracket for minimum sentences and one for maximum. Joel noted the reason for the maximum of the minimum sentence was for purposes of parole. Rose asked Judge Monroe to comment on this. Monroe asked if this brought our laws relating to parole in conformity. Joel said there is a conflict and this would set up the need for one amendment in the parole law. This relates especially as it applies to a person's eligibility for parole. Moran noted that the minimum sentence would allow for parole after that much of the sentence has been served. Rose commented that otherwise the judge would have to make the sentencing, both as to when the individual could be paroled and when his final sentence would end. There would be no uniformity in this arrangement. This way it is statutorily regulated. Monroe verified that sentencing is in horrible shape right now.

Randolph commented that the code was reducing sentences. The judge had not looked into this aspect of the bill. Joel noted that the maximums are lower under the whole code than under present law. Monroe wanted to know what the expected accomplishment would be. Moran gave the history at the attempts to codify the criminal laws. We had asked the Bar to comment but they had reviewed so many of the proposed criminal codes that they didn't give this one any consideration. They are preparing comments to give to the committee by March 1. Joel has shown us where this law is changed from the ALI provision from which this was drawn. Most of our criminal laws are taken from Oregon and before that we had the laws of Montana. This was in Territorial Days. We all felt that it was time that we developed some laws that would work better for Alaska.

Monroe didn't know about this but said that the DA had told him that this includes over 50 new crimes. Joel said these crimes were listed under new titles but were the same as the old crimes. Moran mentioned perjury and false statement affecting an official matter as being new. We make it an offense to make an untrue statement to any public servant. In the course of his official duties, that goes beyond what we had before. Monroe mentioned conspiracy. Also resisting arrest, we have had a resisting arrest bill in every legislative session but it never

passed. Moran noted that the Peace Officers' Association finds the code to be acceptable with the exception of the conspiracy section. Moran asked what the judge thought about the provision for extended sentences. Monroe told the committee that the court system had studied California law in their use of indeterminate sentences. He did not think that the judges in Alaska had the expertise to use this method of sentencing. It is my own personal view that the court needs standard sentencing. Judges differ in their feelings about seriousness of the crime committed.

Moran asked if the concept of violation would have the affect of dealing with our responsibility to give the right to have trial by juries. Under violations concept they will be fined only money. Monroe feels that there should be a standard sentencing structure developed for dealing with those that contribute to the delinquency of a child. Joel reminded everyone that there was a distinction between ordinary and extended sentences and criteria has been developed. There is also a provision for going below the minimum. Rose noted that if you went below the minimum the judge would have to state the reasons. Monroe noted that if you go to the indeterminite sentencing you would have to have the supporting staff and the proper parole arrangements. We do not have these yet. Rose felt that the parole arrangement should come under the Judiciary. Monroe doesn't approve of minimum mandatory sentences. Joel said that this was only for felonies. Rose mentioned Page 10, Line 23 about a felony having no minimum term prescribed and then turned to Page 12, Lines 25-28 where (1) says in the case of a felony of the first degree, for a term the minimum of which shall be fixed by the court at not less than one year nor more than 10 years, and the maximum of which shall be life imprisonment. This makes a minimum of 1-10 years and the maximum is life. Also the top of Page 13 shows a minimum of 1-3 years and a maximum of 10. Monroe again stated that he was opposed to mandatory minimum sentences. He thinks it takes away from judicial discretion. If you do this you will have to repeal a couple of other laws. Moran said California has mandatory minimum sentencing. Monroe says that under this they have to go to jail and the judge is at the present time free to suspend sentences in Alaska. Rose told the judge that during our first discussions of this code that we had talked about the general purposes. These were related to the concept we wished to convey. We discussed punishment as one phase, rehabilitation as another, and deterrent effect as number three. We wanted to consider what would be for the social good of the people. Moran showed where we had changed the word penalty to sentencing. Monroe said if it was desirable to have him comment that he did not feel that this statement was appropriate, especially in a bill that sets out substantive criminal law. I think you should tell the people the no-no's and let it go at that. Moran asked if it would be a fair statement to say that one of the purposes of the code is to make the law more accessible to the public. An example is the section on ignorance and mistake.

Criminal Code

It struck me that this was to make the law more accessible. In 1949 we had the Alaska Laws annotated. Under the impression that it was a codification. It really wasn't that. It wasn't put into the proper compartments. We needed to be able to go to one section of the title or code and find all about that subject. Monroe agreed with Moran's statement. (Banfield left 3:00) Rose noted that he had put in a bill that would allow for laws that fell into disuse to be taken off the books. Monroe favored such a concept stating that if there is any statute under which a prosecution in the state has not occured in five years' time that it is automatically repealed. Flynn asked if the Peace Officers' Association would be invited to testify. Moran said they would.

HB 524

Meeting adjourned at 3:05 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING

Friday, February 18, 1972

Criminal Code

HB 524

Meeting was called to order by Chairman Moran in the Masonic Temple at 11:00 a.m. Present were: Flynn, Bennett, Banfield, Hillstrand.

Moran introduced Judge Stewart and explained that we had already gone to page 89. We were not making any changes at this time but were noting desired changes.

Moran asked Judge Stewart his views on sentencing. The judge explained that he had not read the bill until the evening before and that he was not giving the court system views on the matter. These were strictly his own opinions. As regards sentencing, he felt that he would have to have some experience with the code before he could express his views one way or the other. The principle of establishing categories of crimes by sentencing, he is more familiar with that. This system was used under the Model Sentencing Act. Moran asked if this was from the American Bar Association. He said it was from the National Council on Delinquency. Judge Stewart worked with the National College of State Judiciaries at Nevada. He thinks that they can be related to this bill in that they have a category of dangerous offenders. Under this arrangement you could only sentence up to five years unless they meet the criteria for serious crimes. He feels this approach would bring some sense into the pattern of sentencing. Banfield asked about the habitual forger. Judge Stewart said he could be sentenced for five years and then after another conviction put in for another five years in order to protect society. (Randolph arrived 11:10) A person that is an offender against property can be rehabilitated. A dangerous offender is a person who shows a form of conduct. They would have the propensity to commit a crime. This would particularly apply to those engaged in organized crime. Banfield asked how long their sentence would be. He said it would be 30 years. This is with the exception of murder in the first degree. Moran noted that this statute provides for both minimum and maximum sentences. There is a range for both categories. There is also a provision for extended sentences to be administered in relation to their prior pattern of crimes committed. There is also a provision where the judge can sentence to a lesser amount than the minimum. It is difficult to follow the reasoning behind bracketing minimum and maximum sentences. Joel has read from the comments on this by the American Bar Association. They made a study of this. We understand that the range has to do with the eligibility to parole. This way if the minimum was 1-3, the judge could sentence a minimum of one year, at which time the individual could be paroled. This would be at the discretion of the judge.

Criminal Code

Joel commented that the Advisory Council had recommended that only maximum sentences be set. He asked Judge Stewart if he felt this was an undue burden on him and did it infringe on his discretion if there are minimums set? Would it be more workable with only maximum sentences? We are operating that way now and the judge is not in agreement that they should not be so fixed. There are too many circumstances so the Act alone is not a measure of the needs of society or the individual and that is what we are trying to do--meet the needs of the people. This can only be determined on an individual basis considering all of the extenuating circumstancesunder which the crime was committed. Some judgements are based on psychiatric opinions, the judge's own experience, etc. There is no sense in wasting him by putting him in jail if he is not going to be harmful. The thing he did may have been very terrible. He gave an example of a 16-year old killing another young man in his 30's. Having discretion in the sentencing he was able to provide a reasonable sentence which got a good result. Moran asked if Judge Stewart had considered other western nations of the world--English speaking--for their methods of sentencing. He said the outstanding thing is that their sentences are much shorter than ours.

HB 524

Moran was familiar with the German system and said that they did not have much recidivism. He told how the boys in the military preferred to be judged by the Germans when they were charged with off-duty conduct rather than to have a court martial. They got much lighter sentences under German laws.

Moran explained to Judge Stewart that Judge Monroe had objected to enumerating defenses thus excluding others that are now recognized as common law defenses. Judge Stewart said that the model act did not appeal to him personally. He felt that the committee could adopt as an alternative the sentencing provisions that he had received while working with the National Council on Delinquency. Moran asked if the committee could have a copy of the provisions. Joel noted that the model penal code deals with sentencing in the same fashion and that it has been considered in a great many other jurisdictions and adopted in some. Banfield asked if they adopted all the wordiness of the code. Joel said they felt this was necessary to provide organization to the criminal law.

Page 89. Perjury is not new to our laws. There is some question on page 88, lines 16-20. This was in regard to an oath or affirmation being taken "in an irregular manner". It makes it clear in this section that it is not perjury unless it affects the outcome of a situation. Just making an untrue statement to a public official would not be perjury.

Moran detailed previous discussion on offenses against the person. In the general area of rape, it was suggested that some of these offenses could all be combined into one. Only make them different degrees. I think that the wordiness

Criminal Code

of this section is probably due to the way that the statutes have been constructed. We also had correspondence from the Peace Officers Association. They turned down the whole code except for six areas. One that would help them was "Conspiracy". There is a difference of opinion on this between prosecuting attorneys, attorneys for defense and police officers. Judge Stewart had no comment on this.

HB 524

Hillstrand asked Judge Stewart if he had examined valid statistics on crime per capita in the light of deterrent concept in operation showing a down-trend. Have you reached any conclusive ideas related to decrease of crime? Stewart thought that there may be some deterrent value in particular sentences. Whether this actually happens, there is no way to know. Hillstrand asked if a person was fully aware of the penalty for a crime did it ever deter a person from committing such a crime? The Judge said in his handling of cases he never found this to be true. The offender always thinks he will not be caught, and when he is he knew what he was doing--knew there was a penalty. They always hope that they won't get caught. I always ask if they knew what they were doing was against the law, and they do. There really is no way of determining results. Hillstrand noted that in the past someone that was violating the law and punished duly was also treated as an outcast in society. This is not true today. Friends and neighbors would not have anything to do with such a person. Now, when this happens the offender becomes a hero and is honored by his friends. Judge Stewart asked to read about deterrents from his Guides to Sentencing book that was published in 1957. He said that the deterrent effect of civil penalty alone has been highly overrated and believes that its value is unrealistic. The most drastic deterrent is the death penalty and he gave some statistics where this had been given a great deal of publicity in one state. Five deaths were highly publicized and there were 91 homicides before this. After the executions there were 113 homicides. No real deterrent effect was shown.

Judge Stewart noted that he had a schedule of factors on his bench that he considered before making a decision. There are 11 factors to be considered and if the judge is not aware of some of the information he asks the individual for the information. He asks their attitude toward authority. He asks if they recognize the necessity for laws.

Hillstrand asked about court proceedings. Judge Stewart said that there rules had to be followed, sometimes at the cost of justice. Something like rules for a ballgame. If you don't follow the rules you lose. In our courts we have the rule that a criminal case has to be brought to court within four months after the first complaint is filed in the district court. The person was allowed to go free although he was probably guilty. Hillstrand thought that the rules were to protect society. Moran noted that we lose the deterrent effect if we don't have a speedy trial.

Hillstrand asked the judge if he felt that this measure was written in such a manner as to provide avenues of, not

Criminal Code

HB 524

escape, but avoidance of the responsibility of their criminal acts any more than under present law. Stewart felt this would be a real concern. I can't say it would, but I haven't gotten used to the language. He suggested that we send staff members to a jurisdiction where this is in operation at this time and observe how it works.

Stewart noted that entrapment was a device for the police to use against the public.

Meeting adjourned at 12:10 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, February 22, 1972

Chairman Moran called the meeting to order at 10:00 a.m. in the Masonic Temple. Present were: Flynn, Rose, Hillstrand, and Bennett.

Criminal Code

Discussion of HB 524 - Criminal Code - began on Page 98. HB 524

False Swearing. We discussed this as a lesser offense than perjury. This makes it necessary for the elements of the matter to be material. That is the main distinction between the perjury charge which is a felony and false swearing which is a misdemeanor. Under (b) it is reduced to a petty misdemeanor when no official function is involved. This is of a breadth not seen in state laws. Rose asked if this had been adopted anywhere else. Joel stated that it was based on the Federal Criminal Code. This was at the time that the commentary was prepared--1963. Maybe other states have adopted it since then. Rose asked if there was much discussion on this in the summer sessions. Joel said there was little discussion and it was put in because of the model code. Rose moved to strike that section. We will make a note of this. Hillstrand asked if this was really not for unsworn statements being false and given to authorities for the purpose to mislead and to make a written false statement "which he did not believe to be true." Moran said this was true. Hillstrand then wanted to know why we should add "which he did not believe to be true?" Is that the same thing as purposely creating a false impression? Rose thinks we have plenty of laws on the books without inventing new ones such as this. Moran noted that on Page 141, Draft 6, of the commentary, it says the section was suggested by USC. He read material from the commentary. This was a lengthy comment on a case of employee loyalty. This section will be marked for further consideration.

False Alarms to Public Agencies. Joel said that this was similar to existing law 11.45.050. Subsection (b) has been taken from our (b) in present law. Subsection (a) would be broader. This covers all dangerous alarms endangering life or property.

In present law it reads "knowing the alarm to be false." They would be guilty of a misdemeanor. Saying "or other emergency" broadens coverage of this provision.

The next section is an extension of the same idea. This is addressed to law enforcement authorities. Where you would give false information knowingly. Moran noted that this is only where the person or the information is only at least under (b) and is with the purpose to implicate another. Is this limited to this concept? Joel said it was. This is new. Rose asked if other states had this provision. Joel said there were only a few statutes that dealt with this offense.

Criminal Code

HB 524

Tampering with Witnesses. This is similar to 11.33.020. Rose said this was a brand new crime. He wanted to discuss what public good would be served by this and whether or not the problems involved would be greater than the benefits. Also, whether the expense could be justified. Moran said it did not bother him to make it an offense to report that another person has committed a crime and the report turns out to be untrue. He gave the example of a reported crime in Anchorage. A man was supposed to have stolen a wallet. He was imprisoned because he could not raise bail. The whole thing was a fabrication. I think that a person doing this should be punished. Hillstrand noted that the civil remedy was not adequate. This seems to be involved with misleading law enforcement officers to investigate a crime that was not committed. The public would be deprived of this officer's services during the time necessary for the investigation. This is a wrong against the individual and against the public. Moran did not think this would cover both written and oral false statements. Joel noted that this was similar to provisions we now have on influencing judges, etc. Our present law includes all of these persons in a broad provision. This deals only with witnesses and informants. In Section 020 we covered the threats and other influencs under public servants. I don't think we are excluding anything that is presently covered. It is a different arrangement of the law. We have degrees listed for these offenses.

Flynn had a question on (c) retaliation. If you shoot a man, is it a misdemeanor? HIllstrand noted that this would be in addition to the other crimes he has committed during the process. Moran thinks it means more than just purely physical harm. This could be any kind of harm. Joel feels that it would cover a broad range of actions, physical as well. Flynn noted that it had to be an unlawful act. Joel thinks that this would be a separate offense above and beyond what he had been charged with. Hillstrand wanted to know if that really meant "in addition to." Moran felt that it would be a two-count complaint. He thinks that the prosecutor is apt to allege the violation of whatever statutes are covered.

Section 150. This covers obstructing administration of justice. We have specific sections on both offering false evidence and preparing same. This is essentially the same. This is patterned after the New York laws. The "conceal" aspect portion was taken from California law.

Tampering with Records. We have similar provisions for preparing deeds, destroying records, impersonating a public servant, etc. This has a broader coverage than under present law. Present law only covers impersonating a police officer. This new law could cover all public servants. Moran asked if this was the only place in the law where this subject will be mentioned. He turned the committee's attention to the last part where is indicates that a person must somehow be prejudiced before this is an offense. This is a departure from the federal impersonation statutes. Moran raised a question about the interest of the public. The action of the person is a subjective thing, and has to be to his prejudice. What about

Criminal Code

the interest of others? Joel noted that a few states limit this to law enforcement officers but that the majority of states are in conformity with this provision. Moran asked if it was on the prejudice of the person being impersonated. Joel suggested revising the language to reflect his concern. Adding "to the prejudice of another or others". Rose said the first part covered everything. It doesn't have to be to his own prejudice at all, as long as the person acts on the pretended official authority. Moran thought it had the connotation that a person has been taken into custody. Rose didn't think that was what was meant. He gave the example of the Legislators being given free passage on the ferry. Joel told them he was with the Legislature so they let him on free also. The ferry employee let him on on his pretended official authority. Moran still felt that it was different if someone impersonated a police officer and took advantage of the person under these circumstances. You would have to submit to them. This would mean that you would place yourself under another man's will or direction. Hillstrand asked about the person who comes to your home posing as a fire department official and wants to inspect your premises. That night they rob your place. We will continue.

HB 524

Obstructing Governmental Operations and Escapes. The article related to bribery is a general article or statement. From 200 on this deals with specific interference of governmental operations. Present law is pretty much suspect. He read from the commentary. This attempt to limit these activities to only violent or physical interference or breaches of official duty. This excludes the latter part of 190. It is an attempt to more closely conform to the principles of violence in overthrowing governmental functions. Hillstrand asked about "for the purpose of" on Line 28. Is that the same thing as "as knowingly preventing"? Joel noted that at the beginning of the whole thing we have purpose defined and it is different from knowingly. Moran asked if there is a distinction between knowingly and contemplating. Rose noted that subsection (4) speaks of warning the other of apprehension. Moran felt that if you didn't warn someone who was closely related to you--this would be easy to be an offender. As an example a mother would say to her son "the police were looking for you", and she could be charged for preventing the arrest. On line 20 "or liable to be charged" caused quite a bit of discussion. Joel noted that in Legislative Affairs there was detailed discussion on this subject. Randolph suggests that we remove those words. Moran noted that we made unintentional homicide a third degree felony and for warning someone with whom you have a close relationship you have the same penalty. That heavy of a penalty does not seem appropriate. Rose noted that under (1) if the person returns to his home, you would be harboring him. Randolph felt that most people would tell their relative to turn himself in. Then there would be no problem. Rose noted that this was not being actively engaged in assisting, this was just allowing him to come home. Randolph felt that this should be a serious crime--not turning them over to the proper authority. Moran said he felt differently if they were strangers, but close relatives was another thing. This would

an outrage to the normal relationship. This would make it an offense if the mother doesn't turn in her son. Randolph said all she would have to do was tell her son to turn himself in. Moran noted that "harboring" is providing a hiding place with the intention of avoiding arrest. Rose thought this part could come under "or conceals". Moran felt that it was unreasonable only in the warning feature. Flynn suggests that we strike (4). Joel will check into this and will consider some of these problems. Moran said that he had talked with Buckalew and he had not completed his review of this. Also Herb Soll will be heard on this when he is available. (Public Defender)

Aiding in the Consummation of Crime. Moran noted a typographical error on line 27. Principal is misspelled.

Compounding. Rose asked if this was a departure from what has been the law. This seems to be limited to pecuniary benefits. Rose feels the existing law is better. Joel noted that this was covering a specific situation. This does not cover the whole law on accessories. That is similar to aiding the consummation of a crime which contemplates only pecuniary proceeds. Rose asked if there was a reason why these were combined. Moran felt there was good reason to combine these. He gave the example of a person who steals something from you and he makes a deal with you that if you don't report it he will return what was taken. This is an affirmative defense. Joel noted that this was limited and was not the only statute in the revised code to cover this. Rose asked if 210-230 could be combined. Joel checked the commentary. Moran felt they were different concepts. Rose still feels that present law is more comprehensive than this. Moran felt that for reasons of accessibility, these should be put in one location in the statutes. You shouldn't have to research the whole code to find the laws that cover this situation. Hillstrand asked for an example that would show where the defense retains the amount which did not exceed an amount which the actor believed to be due as restitution. Joel said this doesn't exclude offenses that don't have pecuniary benefits. Rose asked what would be the case if a person committed a misdemeanor and accepts or agrees to accept a pecuniary benefit. Joel said this is the same as present law.

Escape. As compared with present law it provides different penalties depending upon the type conviction for which the person was charged. There are degrees as to use of force, threats, etc. Otherwise escape in itself is only a misdemeanor. Rose asked about (d) offenses in this section. It is considered a felony under certain circumstances but only a misdemeanor if those circumstances do not exist. Joel noted that there were two related sections that should be read in connection with this. He referred to present AS 11.

Bail Jumping. No further comment on this.

Official Oppression. Half the U.S. jurisdictions have this provision. Most are confined to law enforcement people.

Section 280. Definitions.

Chapter 29. Offenses Against Public Order and Decency. This includes riot. There have been some changes made in the chapter. Randolph asked about line 27, "two or more persons". Does this mean three people? Joel said that it would take at least three people to be charged with starting a riot. Joel noted that we left disorderly conduct in the code. This is a controversial statute and has been used as a catch-all by law enforcement authorities. There are more arrests made under this statute than for public drunkenness. Moran noted that Judge Monroe had objected to specific intent being included in this. Moran said they used this in lieu of the vagrancy laws which had been declared unconstitutional in some places. Now, they use the disorderly conduct statute. Rose noted that they would not be able to use this so broadly if they had to show intent.

Joel noted that "annoyance" was deleted from the model penal code. The Council also did not include subsection (3) in the criminal code. (1) would cover disorderly conduct. (2) was questioned by members of the council. There did not seem to be language clear enough to express or show "unreasonable noise" or "coarse utterances". This brings up the question as to whether to leave intent in the code or take it out and leave it up to the courts. Randolph asked what he could do if they came into his yard at his home. Joel said he could charge them with trespassing. Moran said that we have some standards for these things. It is what is acceptable in a community. These may differ. Joel said this is the meaning of this section.

Hillstrand was concerned about disorderly conduct in the sense of interfering with public convenience by people who don't say anything. Just being passive. Joel said this would be handled under obstructing governmental operations. He gave an example of a large group of people congregating in a public place, like Land's End, and they could interrupt the operation of this place of business. Joel thought this could be covered under 11.29.080. Obstructing Public Passages. Moran didn't think this would be considered a public passage. These people are not noisy but they are violating his standard of conduct and they are not paying guests. (Randolph left 11:25) Joel will research this question.

Moran noted that Harrassment did not fit the problem of passive resistance or Mr. Hillstrand's problem. Joel noted that the one we have now is seriously subject to question. (Randolph returned 11:50) In a private home something that is to "the annoyance of another" would be a petty misdemeanor only if they caused substantial harm or serious harm to another, otherwise it is only a violation.

Criminal Code

You have a more clearly defensible statute than what you have now. Moran noted that it would be difficult to list coarse utterances or describe gestures which would be permitted. HB 524 Randolph felt that we should discuss the person who is going to abuse this law. Rose objected because people who do not intend to abuse the law will be included under the application of the law. Randolph's next question was, "How would you deal with the person who does this over and over again?"

Hillstrand brought out that the purpose of having any law is to pinpoint the areas that are violations of some right. We are discussing a case where a person can harrass, abuse, or interfere with the rights of others. This might be at a public gathering. These people are gathered together in a common purpose and he comes in and says something and they are all shocked. They ask him to leave. He says that this is a public place and it is customary to talk that way in this day and age. Here is where the public interest should be protected. We will go on to the next section.

False Public Alarms. Rose felt that this should be covered under 11.27.030. It seemed to him to be of the same subject. Codification should place these things all together. Maybe the two could be combined in one. Joel agreed (4) and (5) merited some attention.

Public Drunkenness. This was taken from present AS 11. Drug incapacitation has been added. Randolph asked the purpose of (b). Joel said this places emphasis on the rehabilitation aspect. This allows the Department of Health and Social Services to have such a person committed for treatment. Flynn asked if this should be "shall be" or"may be". Joel noted that this was a carryover from present law. This was passed in the 1970 legislature. Randolph didn't think there was any point in having a sentence if you could suspend it under certain circumstances. Joel said that there were individual circumstances that would merit this attention. Hillstrand noted that this would change the force and affect of "shall". Moran noted that there are many places where they do not allow you to arrest a drunk to charge them with a crime. Many times they take them into custody to protect them from themselves. Joel questioned whether it would be possible to prove that a person was "manifestly under the influence of drugs or narcotics" after we heard the testimony the other day. Randolph said he didn't think it made any difference whether you could prove it or not. Rose noted that the burden of proof would be on the defendant rather than the way it is now. Moran felt that "manifestly" meant that it would be obvious to the observer. Randolph cannot see any difference in the way we handle drunks than we would for drugs. Moran said the main thing was the "appearing to be under the influence". We have no standards set for this. Randolph suggests taking "manifestly" out of there. Joel noted that this would bring it into conformity with present law. Joel noted that this excluded therapeutically administered drugs. Hillstrand asked if this meant a doctor. This would be through official distribution. Hillstrand noted that that was not what this said. Randolph suggested that it

be amended to show that this would be administered by the proper medical authorities.

Meeting recessed at 12:00.

Chairman Moran called to meeting to order at 2:00 p.m. Present were: Rose, Randolph, Hillstrand, and Bennett.

Public Drunkenness. Joel wanted committee members to compare loitering and vagrancy. There are a couple of differences here. We have changed the language to correspond with the New York penal law. We felt this was a little more specific and clearer than present law. Moran asked about a specific law made in recent years relative to school offenses--loitering, etc. Was this incorporated into the criminal code or was it kept in Title 14? Joel will check into this and see if it should be placed in this section of the code. Joel said it seemed that this just covered an alarm when the safety of persons or property and not for suspicion.

Loitering. Rose asked about paragraph (b) where it says "if believed by the peace officer at the time, would have dispelled the alarm". Moran felt that this would mean the explanation given to the peace officer would be believed to be true. Rose said maybe the person was not reasonable. Joel said he didn't think this was the intent. Moran asked what the case would be if the person gave the explanation and the officer did not believe it. If he had believed it it would have dispelled the alarm. Rose thought we should change "would" to "should".

Obstructing Highways and Other Public Passages. This provides for warning. Qualifying sentence (a) is to satisfy constitutional objectives for unlawful assembly. This makes it a violation if he disobeys. When a peace officer asks such people to move along, they have to obey.

Disrupting Meetings. Rose asked about Line 24 and 25. This says, "or makes an utterance, gesture or display designed to outrage the sensibilities of the group." I think people should be able to express their disapproval at public gatherings. Joel noted that making a reasonable comment at a public gathering would not be considered as disrupting a public meeting. Randolph asked about a church group on a picnic and a group of rowdies next to them making utterances, gestures, etc. He thinks these should be protected. Hillstrand asked if the public gatherings had to have political purposes before this would apply. Randolph thought we should take out the word "designed". Moran said if we did that we would be taking out the intent. Hillstrand thought that we should have the right to a certain degree of privacy. If the conduct of others outrages the sensibilities of my group and we have a right to be here, I think we should be protected.

Criminal Code

Rose wants to preserve for these people that disagree with him to do this publicly. This seems to limit that right and that is what bothers me. Moran had no objection to striking this. It is probably handled under disorderly conduct anyway. Randolph didn't think that we wanted to take this out all together. If there is a group minding its own business and someone comes along and grossly abuses them, he should be warned and then you will know if he has intent. Joel read from commentary and this said a legislative meeting or an international conference. Joel will examine the commentary further on this point.

HB 524

Desecration of Venerated Objects. This is similar to 11.44.-060. There has been a Supreme Court case on flag desecration. The present offense just speaks to gravestones, tombs, and cemetery structures. This has been expanded. For the flag it has to be defacing, polluting, or physically mistreating it. In the Case before the Supreme Court it was for cursing, shooting at it and this was not directly dealt with in our statute. The implication of that was that they stated that the constitutionality would depend upon the nature of the conduct proscribed. Joel noted that our existing law did not cover desecration of the flag. This is substantially the same as the model penal code. Joel read from the commentary on this subject. Moran asked if the committee would want to apply this to any flag, not just the American flag. They did not think they did. He also wanted to know if we wanted this to apply to the Alaska flag. Hillstrand felt that line 29 would cover this. It says national flag but he thought this would mean the Alaska flag, too. He felt this to be true in the words "or any other object of veneration". Moran still felt that we should say the same thing for other free nations. Hillstrand did not think we should. Moran felt this was more in the line of amenities of international practice. Hillstrand thinks that the flag of our nation should have a better consideration than flags of other nations. If there is a penalty, it should be greater.

Cruelty to Animals. The penalty has been increased. Moran noted that this will be considered a misdemeanor and you can get up to a year. Presently it is not less than 10-30 days or $5-$50 fine. Hillstrand objects to this change. We reduce penalties for crimes against people and then we increase them for cruelty to animals.

Unlawful Eavesdropping and Surveillance. This is similar to provisions in present law. Both make it a misdemeanor. However the language here has been changed to conform to the Supreme Court Case in Katz vs. United States. Basically it defines private places as no place where one may have access to such information, as in your employment. Moran asked if this would include devices that would pick up messages. Rose asked about the party line on the telephone.

Criminal Code

Moran asked Joel why using live birds for targets was not included in the section dealing with cruelty to animals.

HB 524

Public Indecency has been taken out of the draft. Hillstrand felt that lewdness for codification should be under this heading rather than under prostitution.

From this point on Joel said we would be considering existing drug laws. The only thing that has been changed is the penalties. In some instances they have been reduced and in other cases they have been increased. This portion will be superseded by the Uniform Control Substances Act. He believes it hasn't been introduced yet, but is assuming that the committee would want to consider it instead of what is in the criminal code.

Moran asked why indecency was in a different section from prostitution. Joel felt that it was proper under this chapter. This is more of an offense against the public. In 11.19.210, page 62, it has the same language as in this section. Joel felt there was a conflict. It is a petty misdemeanor for open lewdness. Indecent exposure is a misdemeanor. Rose suggests we move indecency to follow the offenses against the person. Moran didn't think this would work. They are different concepts. One is against the person and the other is an offense against the public. Rose suggests that it just follow the other section so they could be found in one place in the statutes. Joel will decide the proper place for this.

Promoting prostitution. The penalty for this type of conduct is a petty misdemeanor. It can be considered a felony if it falls within a certain category. Procuring is a felony. Hillstrand noted that it is a serious crime to subject a child under 16 to prostitution. There was a great deal of discussion on the "under 16" age and whether or not compelling such a person could be considered rape. There is a difference between promotion of prostitution and compelling a person to submit. Hillstrand felt that we should make 2, 3, and 4 carry a more severe penalty. There was a typing error on line 20, page 105, "dependent". Hillstrand asked if it was normal that a person supported or substantially maintained in part by prostitution is considered to be knowingly promoting prostitution. Living from the earnings constitutes prostitution.

Loitering. Moran felt that this was dealing with places where these types of people usually meet--restrooms, etc.--loitering for just this purpose. Randolph noted that the authorities are usually aware of such hangouts. Rose feels that if you want to make it loitering to solicit sex relations it should be so stated. Moran asked how you would define deviate sex relations. Randolph felt this was covered on page 103 at the bottom of the page, line 28. Randolph did not want a deviate to be hanging around a school. If this was to cover consenting persons what is the problem? Moran did not

Criminal Code

HB 524

to promote this type of conduct. Hillstrand noted that there was a provision to allow testimony of the spouse. Moran said this was a statutory exception. Hillstrand wondered if this was good. Moran felt that it was. Rose noted that unless you could have the testimony of the spouse this section would be too difficult to enforce. Moran noted that testimony is not admissible under 180. It seems to be only under 200. Joel noted that Mr. Moran was correct. This is a mistake. Joel read from the commentary. The definition was taken from California law. This will be rewritten to take care of the problems noted.

Weapons. Moran wanted to delete a slingshot. There was also a discussion about carrying knives. Joel noted that convicts have to register any concealed weapons at the present time. Randolph noted that a 2" blade was unreasonable. Hunting knives are bigger than that. Joel noted that this was present law.

Hillstrand commented on the obscenity law. He felt that it was very hard to define just what a true statement would be to cover "obscenity". He felt that instead of going into naming the instruments like slingshots would it be unacceptable to say that a person who has been convicted whether inside the state or outside may not own or have in his possession any instruments by which they could cause injury to be inflicted upon another. Rose objected to this. What about a hammer. Sections 340 and 350 will be combined in the rewrite.

Section 380. Hillstrand questioned this section. He asked if a person was drinking in his home and he had a gun then he would be guilty of a misdemeanor. Is this what we want? Joel noted that this was present law.

Gambling. Gambling is completely prohibited under present law. This allows private gambling for amusement but prohibits public gambling. Hillstrand asked how the chairman would reactto section (a) if we made it read "those legalized undertakings that are in affect gambling be authorized or non-profit shall submit 20% of the proceeds to a well-known charitable organization". Moran noted that the Ice Pool is non-profit. Joel will rewrite this section.

Contributing to the Delinquency of a CHild. This is present law. State Seal. This also is present law. Rose noted that the material on page 143 has been in the Alaska law for a long time but that it is confusing. It seems to permit the old time practice of having a private prosecutor where the public prosecutor doesn't want to take on an action. There is no procedure any where as to how he gets into the act. The only thing we have is this one section. I don't think this belongs in the criminal code but in Title 12. Joel will check into this. The question is how you would appear as a private prosecutor in the name of the state.

The Peace Officers Association will be invited to testify on this bill tomorrow.

Meeting adjourned at 3:55 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, February 23, 1972

Chairman Moran called the meeting to order at 1:35 p.m. in the Masonic Temple. Present were: Flynn, Rose, Barber, Banfield, and Bennett.

Criminal Code

Moran announced to the committee that Mr. Larry Traeger, of the Alaska Peace Officers Association, was here to testify on HB-524 - Criminal Code. HB 524

Mr. Traeger represented the Capital City Chapter and is a civilian employee of the Alaska State Troopers. These are the views of local people in the police force, correctional officers, health and welfare department, probation officers, and social workers. Members of this association also include members of Fish and Game Department, Coast Guard, Army Corps of Engineers, Air Guard and others. They are affiliated with the State Peace Officers Association but have not received any communications from them in regard to this bill.

The Peace Officers Association is not in favor of this bill. They think the statutes on the books need some revision but HB-524 mixes procedural law and substantive law. This is a mistake. He had objection to the portion in the code on stake out. He felt this would hinder his work. As an example, we get information indicating that a business is going to be robbed. We put police officers in the building to apprehend the criminals. The code would obligate us to close the business down so the robbery could not be carried out. Joel noted that this was considered on Page 26. Under accomplices' liability. He did not think that police would come under this section. Randolph noted that under sale of drugs an officer would become an accomplice. Rose noted that the state does the prosecution and they wouldn't make such a charge. Banfield felt that they should if we adopted this legislation. Joel said that his notes indicate that (c) is questionable and no other jurisdiction has adopted it. Joel will check which states have adopted this.

There are many sections that would benefit the police officer in law enforcement, such as, attempts, soliciting, conspiracy, to name a few. These are not on the books at the present time.

There are many sections that need to be worked over and we will assist in every way to help bring about a good law for all the citizens.

The first 45 pages apply to defenses. A police officer would have to be obtaining evidence for the prosecution and be aware of the defenses in the bill itself. Moran did not know why police officers take the attitude they do in the outcome of cases. They always want to see a conviction.

Criminal Code

HB 524

Mr. Traeger did not know why we did not leave the Narcotics or Drug section in Title 17. He did not think that it should go in the criminal code. There was some consideration of Page 122 on disposition of narcotics that have been seized. Mr. Traeger did not think that it should be necessary to deliver the confiscated drugs to the U. S. Commissioner of Narcotics.

On Page 124, Line 28. Mr. Traeger said that we need to be realistic and it would take a great deal more than $3,000 to substantiate a case against any big operators. Moran asked if it would be more agreeable not to set any dollar limit. Traeger thought this would be more enjoyable but did not feel the legislature would go for this. Moran felt that maybe we could use other terminology which would allow so much for informants. It is useful to reimburse people who give our police agencies help in apprehending criminals. Barber wondered what figure would be adequate to cover this. Mr. Traeger said it might be $50 for a name and address with no other proof. For information relating to sale of drugs, he just couldn't say. Barber suggested $36,000 and Mr. Traeger said that would give them something to work with. Barber asked if there was any record which showed how much has been spent for this purpose in the past. Traeger said that it was not listed in this manner and was lumped in under other expenses. Banfield suggests taking out the amount and letting the Police Department get the money from the Finance Department.

There was further discussion of the first 45 pages. Mrs. Banfield asked Mr. Traeger if he couldn't think of these defenses in the same manner as he thinks of present law which is written as "thou shalt not". Rose noted that it is merely a stating of what really exists now. This allows everybody to see this in writing. Every citizen should be informed on these provisions. It really doesn't change the law. Traeger said he was not saying that it wasn't a good thing but that he didn't feel it belonged in the penal code. Barber asked if these were stated in a different way with which he had previously been accustomed. Mr. Traeger turned the committees attention to Page 24 - Ignorance and Mistake. As a police officer I only ask that the laws we work under be workable. I think this will be difficult to apply. Traeger objected to the lengthy definitions, noting that as police officers they have to know what "force" "fear" and "robbery" cover. He gave the example of stealing a car. Either stealing a car is right or wrong. Is it right if someone left his keys in the car? That is the question. Moran noted that we were attempting to make the law more accessible to the citizen.

Rose requested that Mr. Traeger go to specific sections in the bill and comment on them. Page 5, Line 22. Voting provisions.Mr. Traeger asked if after a person was released from prison would he be allowed to have his voting rights restored. Joel said this would be the case.

Criminal Code

Page 5, Line 24. Forfeiture of Public Office. He didn't think this was a good provision. What if a person got a traffic citation and is fined or placed on probation? Will he forfeit his office then? This may have been a conviction but he was not jailed. Does that make a difference? HB 524

Page 7, Line 1. Proof Beyond a Reasonable Doubt. Mr. Traeger suggested that you add "material" before the word "element" on line 2 in this section.

Page 15, Line 12. It would be hard to prove that a person "knowingly devoted himself to criminal activity as a major source of livelihood." Mr. Traeger suggested that the committee drop this. This is too hard to prove. Rose noted that this was talking about extended sentences. For the first time offender we have lighter penalties, but for the habitual criminal we have allowed for extended terms. This is what this is referring to here.

Page 15, Line 24. The wording in this section is confusing. Mr. Traeger didn't see the need for "of which shall be fixed by the court." Mrs. Banfield explained that there was a bracket for minimum sentences and one for maximum sentences.

Page 17, Line 9. Mr. Traeger questioned section (A). He did not think that magistrates in the bush would be able to apply this properly and it may offer a defense to the person who has committed a serious crime.

Page 18, Line 9. This covers when the defendent asks the court to take into account other crimes that he has committed. This would bar the prosecution for the admitted crimes.

Page 18, Line 26 mentioned the fine. It says, "is or will be able to pay the fine". It does not say when the fine would be paid. Mr. Traeger asked if this was going to be left up to the judge.

Page 19, Line 20. Voluntary Act. This is not necessary in the penal code.

Page 20, Line 17. Mr. Traeger questioned the word "purposely".

Page 20, Line 26. We can't disprove what someone "believes or hopes that they exist."

Page 24. Ignorance and Mistake. We already discussed this.

Page 27, Line 15. Intoxication. Section (d) of this section is a defense unless it negatives an element of the offense. It would be very hard to prove intent.

Page 27, Line 29. The definition of "intoxication" is very vague and poorly written. Traeger asked if this was voluntary or involuntary intoxication. Joel noted that this was present law.

Criminal Code

Page 26, Line 22 (e). Would this hold a guardian liable for a crime committed by his ward?

Page 28, Line 11. Duress. Is duress a defense to murder? HB 524

Page 31. Justification in General. This portion is hazy when is says, "Conduct which the actor reasonably believes to be necessary to avoid harm to himself or to another". This would have as many interpretations as there are people.

Page 35-38 cover protection of property. Mr. Traeger objected to the lengthy wording of this section. Moran noted that this section has been scheduled for a rewrite for clarification.

Page 64-65. Arson and related offenses. Page 65, Line 1, uses the word "building". Mr. Traeger feels this word should be defined. Page 65, Line 26, "ship" should be defined to mean vessels or boats, but not limited to large vessels.

Page 69. Robbery. In this section the wording is such that if the defendant commits a petty theft and escapes and recklessly inflicts bodily injury to another, he could be charged with robbery instead of petty theft. Mr. Traeger did not think this was fair. Under present law you could be charged with assault and battery but not robbery. Mr. Traeger doesn't see where the victim of the robbery has to be injured, it could be anyone else on his escape route. Rose felt this was a good point because on page 70, line 1, it does not specify whether the injured party is the victim or a bystander or if it is done after the theft or during the commission of the theft.

Page 72, line 27. Receiving stolen property. Mr. Traeger feels the word "presumed" should be clarified.

Page 73, Linell. There is need for clarification of "from two or more persons on separate occasions". Does this negate a person from being in possession of stolen property from one person? Lines 5 and 6. This gives the appearance that a dealer would be prevented from paying below market-value for stolen goods. Line 19. The word "presumption" should be clarified (Barber and Banfield left 3:10).

Page 76. Forgery and Fraudulent Practices. There needs to be clarification where it says, "other instruments issued by the government". Does this include drivers' licenses?

There was further discussion of Title 17 - Uniform Narcotic Drug Act. Other than the $3,000 disbursement figure this appears to be adequate and workable. Mr. Traeger still feels that this should be continued as Title 17 and not put in the criminal code.

Meeting adjourned at 3:20 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, February 24, 1972

Moran called the meeting to order at 1:50 p.m. This meeting was held in the Masonic Temple. Present were: Randolph, Barber, Banfield, Rose, and Peterson.

The chairman did not have a prepared agenda. Members were given the opportunity to have bills placed on future agendas.

Two bills were acted upon, after which Rep. Flynn requested that we only discuss legislation and not complete action until witnesses have the opportunity to be notified. This was agreed upon unanimously.

Notary Pub. Seals

SB 346

SB-346 - Notary Public Seals - Randolph moves to sign this out with a "Do Pass" and asks unanimous consent. Banfield objects in order to have time to consider this measure. Banfield removes objection. Art noted that he had seen where the seals did not come through on reproductions and felt that this legislation was necessary. Barber asked if there was a seal that would emboss that would also be reproducible photographically. Randolph noted that it said "a seal press or stamp that will print or emboss". They would have a choice. Art said that if they had a gold seal that it would show up. This was signed out "Do Pass" unanimously.

Emerg. Regs.

HB 108

HB-108 - Notice of Emergency Regulations. Rose stated that he had checked this out with the AG and the Governor's office. They both supported this. When this was in State Affairs, the regulations attorney testified in favor of this measure. This bill requires that an agency give notice within five days after the promulgating of a regulation. Now they don't have to give notice. Art said the Department of Highways was the biggest offender. Other agencies have done this, too. Legislation would strengthen this provision. It does not take away the power of the agency to make regulations. It only requires that notice be given to the public. (Flynn arrived at 2:10) Art noted a typographical error on Line 21. This should be changed by amendment. Rose moves to adopt the amendment and asks unanimous consent. There was no objection. Rose moves and asks unanimous consent to pass HB-108 with amendment. There was no objection. It was signed out unanimously "Do Pass".

Crim. Law Rev. Comm.

HB 650

HB-650 - Criminal Law Revision Commission - This bill is to cover such things as we have been doing with the criminal code. This sets up a commission or board that would review the law regularly and submit their recommendations. This requires that they meet twice a year. It also requires an annual report. This will give adequate amount of time for review in comparison to our review of the criminal code. Banfield questioned whether those on the board would be that concerned. Barber doesn't think that this will do what is intended.

Crim. Law Review Comm.

HB 650

I think this concept is admirable but just to create another commission or board--I don't think it will work. (Hillstrand arrived 2:20) There appears to be an inconsistency where board members have a two-year term and this says that there would be terms of 1-7 years, respectively. Art felt that this must have been an oversight. Banfield suggests having three-year terms. Rose thought this was a good suggestion. The initial terms would be two one-year terms; two two-year terms; and three three-year terms. Rose moves to adopt this amendment and asks unanimous consent. There were no objections. This will be placed on the agenda for Tuesday, February 29.

Ass't. and Dist. Attys.

HB 590

HB-590 - Assistant and District Attorneys. Banfield said that this would have to be amended. Randolph noted that the DA would be appointed like the public defender and then he would have to stand for election two years after his appointment. His term after election would be for two years. Banfield suggests that Randolph study this for a week and then a week from then we could hold hearings on it. Art asked Randolph why they wanted the age to be "26". He suggested leaving the age out. This will be scheduled for our meeting of March 2, Thursday.

Banfield suggested that we schedule HB-588 - Correctional Officers in the Retirement System - for next week. This will be scheduled for Wednesday, March 1.

No-fault insur.

HB 25

Hillstrand requested HB-25 - No-Fault Insurance - be placed on the agenda for week after next. Wednesday, March 8 was the date set. He wanted to set a date certain so that witnesses from out of town could be here. Hillstrand requested the chairman to direct him to write a memo to the Attorney General and request the prepared materials and drafts on the governor's plan be sent to the committee. If any members are not able to attend on this day, they will be given an opportunity to be heard on this measure.

Arch. and Engin.

HB 239

Banfield asked if anyone had asked about HB-239 - Architects and Engineers. They had called. This will be scheduled for Tuesday, February 29. Hillstrand would like to see the difference between existing law and the proposed law, reflecting the thought that this is a consensus of the professional attitude toward the law. Hillstrand noted that there was a report by the Commerce Committee showing a comparison. Art noted that there was an error in this comparison where they had missed a supplement. Art felt that there were some language problems that needed to be corrected and that the language should conform to legislative drafting style. Reps. Harris, Randolph and Hillstrand had prepared this legislation. There were some of the substantive problems that should be reviewed. Hillstrand would like to have this review completed before we consider this again.

Dis. of Bodies

HB 551

HB-551 - Disposition of Certain Bodies. Banfield noted that there was a problem in disposing of still-borns, etc. We should invite someone from Health and Welfare.

Flynn asked what the committee was going to do with HB-517 - Court budget. This will be placed on the agenda for Tuesday, February 29.

HB-176 - Comparative Negligence and HB-638 - Arbitration on Small Claims will be scheduled for Thursday, March 2.

Meeting adjourned at 3:05 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, February 25, 1972

Chairman Moran called the meeting to order at 2:05 p.m. in the Masonic Temple. Present were: Hillstrand, Rose, Flynn.

Appro. to Pub. Def.

HB 626

Helen Fischer appeared to testify in favor of her HB-626- Appropriating to Public Defender Agency. She explained that this bill is an appropriation of $25,000 from the General Fund in the Governor's office for the Public Defender's Office to hire law students whose homes are in Alaska, but they have to go to law schools outside. These students could work for three months during the summer. Mrs. Fischer feels this would be a good thing for these young law students, especially as it relates to the type of people that use the Public Defenders office. They would develop more "heart" and knowledge of the problems of Alaskans. (Hillstrand arrived at 2:05) Rose asked why this was limited to the Public Defender's Office. He suggested including the Department of Law. Mrs. Fischer said she would not object to the Department of Law but definitely preferred to limit it to the Public Defender's Office because the student would get more of a knowledge of the whole state in that particular office. (Randolph arrived 2:10) Moran noted that this really amounted to having funds for clerkships, only that we were showing a preference for the Public Defender's Office. Flynn asked how the figure of $25,000 was obtained. She noted that Mr. Manning had worked this out. There are not very many students of law from Alaska. Probably no more than seven or eight. This figure would cover all of Alaska's law students. Randolph asked if there was a need for this additional personnel in the PD Office. Mrs. Fischer felt there was this need, but that it also offered experience to the law students. Barber thinks that we should put her bill out and moves to do so. Hillstrand objects. Rose called the question.

Hillstrand was not in favor of the bill. It is true that the law student would get some practical experience. He really doesn't think there will be much benefit gained. The student would probably get acquainted with the personnel and the work of the office by the time the three months were up. He didn't think there would be much value to the employer either. Also, a one-year law student wouldn't have much of a background in law. Maybe only have had four subjects. He did not feel that they would be qualified to do research in the library at the end of only one year. Hillstrand did not feel that the clerkship would benefit the State. In fact, it would be a burden. He doesn't feel that this bill will do what the sponsor intended. Hillstrand does not oppose the idea.

Mrs. Fischer answered Mr. HIllstrand and said that she would not object to saying the student had to have two years of law school.

Approp. to Pub. Def.

HB 626

Rose disagreed with Mr. Hillstrand. He said his experience was that in the first year of law school, in the first semester, you studied criminal law. This is what you would practice in the Public Defender's Office. Also by the end of the first year the student has learned to use the library to do research. He also felt that most law schools, if not all, have a course in 'evidence' during the first year. This, too, would be useful in the Public Defender's Office. In Anchorage the lawyers are vying with each other for first- and second-year law students. They want them to work for the summer. Rose thinks this is a good bill. Criminal lawyers are in short supply in Alaska and this would be a good way to train young students. We could encourage interest in this field of law. Barber noted that we are willing to educate in matters of government, associate governors, associate managers of boroughs, etc., why not educate young law students to practice law. Hillstrand felt if we passed this bill, then the nurses would come in for assistance of this sort, to be headquartered in the Department of Health. Everyone wants to get in on the act. Fischer reminded committee members that this was not permanent positions, only temporary, for the summer.

Rose again called the question. Randolph and Hillstrand voted "Do Not Pass". Moran, Flynn, Rose and Barber voted for a "Do Pass" on this measure.

Driver's Licensing

HB 45

Rep. Colletta had asked the chairman to consider HB-45 - Drivers Licensing - Rose noted the amendment that had been submitted in State Affairs Committee. The amendment gave the Department of Safety sufficient time to gear up for the changes. The discussion centered around the idea of having classifications of drivers licenses with no specific classes set out by legislation. This was to be set by the Department of Public Safety under regulations promulgated through provisions of the APA. Rose said that the Division of Public Safety thought that this was a better bill than the one he had introduced because it gave the department the authority to develop the different classes. At the present time we have only one license. It covers cars, motorcycles, trucks, etc. Barber noted that this would allow the department to test the ability of the individual to handle the equipment for which they are being licensed. Hillstrand asked if we could dispense with this if it was to be covered by the new Safety Code. Barber noted that this was to set up the code. Hillstrand questioned limiting licenses in this manner. He gave the example of desiring to help his neighbor, at the same time making a little money, by hiring a truck and doing some hauling. He did not want to be violating the law.

Barber gave the example of an elderly person he knew that did not want to come all the way to Anchorage to get his license. He wants the troopers to test him when they are in the Cantwell area. He feels there should be some provision to accommodate people who are in the remote regions of Alaska. Moran noted that what you were going to have to do is be licensed for each type of equipment which you operate.

HB 45

Driver's Licensing

Hillstrand suggested describing the categories or classes. Rose explained that this is what his bill did, and the Department of Public Safety did not like this. This allows Public Safety to make the regulations and when they have to make a change, they just issue new regulations. Also the standards for tests will be developed by the Department of Public Safety. Randolph understood the need for this, but mentioned that we also have a chauffeurs license. Rose noted that this was only under ICC and not the State.

Randolph asked about problems of a person having a driver's license for an automobile and then once or twice a year driving a camper. They would have to have a license for driving a camper. Flynn brought out an interesting point. He mentioned getting a license for driving a VW and having that same license qualify him for driving a Cadillac. Rose noted that there was a great deal of difference between a motorcycle and an automobile and that both carried the same kind of license now. He said motorcyclists had requested something like this. He gave the example of a young boy who uses only a motorcycle. He had to get a driver's license. The family insurance went up $2-300. He doesn't even want to drive the family car. The family has to pay anyway. Hillstrand asked if the insurance policy didn't have a rider and cover the boy while he rode his motorcycle. If we passed no-fault this would be the case.

What kind of a problem do we have from a lack of a provision of this sort. Rose noted that the motorcycle groups were asking for this. There are a lot of accidents with motorcycles and if people had to prove they could ride one before they were issued a license this would be a preventive measure. Randolph brought out that a driver's license examination and passing the test does not say you are a good driver. It is your attitude that counts. With motorcycles it is easier to get into trouble. Hillstrand suggests that we wait until Mr. Colletta can be with us to explain his bill. We will take a short recess until Mr. Colletta gets here.

Moran asked Mr. Colletta to testify on his bill. He explained that the committee was discussing whether this is necessary or beneficial.

Mr. Colletta put this bill in after discussions with the Department of Public Safety noting that they issue only one license. There are numerous accidents caused because anyone can drive anything with this one license. He mentioned the availability of rental equipment. Along with this bill there was similar legislation introduced that would license motorcycles and snowmobiles. Under HB-45 this would all be taken care of and the Department would have the authority to classify for the type of license. Randolph said that this was his question. How were the regulations to be drawn? A lot depended on this. He gave the example of not owning a motorcycle but riding one occasionally. How would a person qualify? Would you have to rent a cycle in order to take the test? He does not feel that it is the ability of the person to drive as much as it is the attitude of the person who is driving.

Driver's Licensing

He also noted that the biggest problem on the road is the drunk driver. These regulations could be very cumbersome. Colletta disagrees with this. He noted that there were no specific stipulations in the bill. This would be left to people who are knowledgeable in the field. They will probably issue a general driving permit. They will set classifications for things that the average driver would not be able to handle. He has confidence they will turn out some good regulations. We have to have confidence in our authorities. Your license would probably be coded. Rose noted that he was due at another meeting so he moved the bill out with individual recommendations. Flynn objects. Rose, Barber, Randolph and Moran voted to report the bill out with individual recommendations. Hillstrand requested to ask a question of Mr. Colletta in regard to rentals. Mr. Colletta said the rental agencies had no objection to this bill. The one he had talked to had preferred this as to how it is now. Randolph restated his opinion that passing a test doesn't show a person's ability in a given circumstance. Hillstrand wanted to make sure that this bill cannot be used to exclude drivers except by one authority, say a union--limited to members of that union. You would be serving the ends of people you did not want to serve. Every day it seems that we are boxing people in more and more. I am interested in the safety of the public on the highways.

This was signed out with individual recommendations. Barber and Rose signed it "Do Pass". Hillstrand, Flynn, and Randolph signed "Do Not Pass" and Moran signed "No recommendation".

Randolph asked the chairman if we could schedule Mr. Fink's four bills. These will be scheduled for March 7. HB-631 is similar in subject to SB-310. This is on change of venue and we prepared a CS which is identical to SB-310.

Meeting adjourned at 3:15 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, February 29, 1972

Chairman Moran called the meeting to order at 1:35 p.m. in the Masonic Temple. Present were: Rose, Hillstrand, and Peterson.

Mass Transpor. HB 335

HB-335 - Powers of City or Borough/Mass Transportation. This was referred to Judiciary from Rules for the purpose of determining in a city/borough arrangement who has the right to operate the transit system, receiving assistance from the state. This was referred to Mr. Peterson and it was determined that the borough can preempt the field if it so chooses. It was not sent to this committee to consider its merits. Rose moves this bill out with a "do pass" and asks unanimous consent. The report prepared by Mr. Peterson was attached.

Disp. Bodies HB 551

HB-551 - Disposing of Certain Bodies. Mr. Tillion was here to testify on his bill. Mr. Ned Kester was also here. He represented the Vital Statistics section of the Department of Health and Social Services. It was decided to listen to Ned first. Mr. Kester did not know why Mr. Tillion would put in a bill like this. He does not think that a funeral director is required now for disposing of the type of bodies this bill is considering. At least it does not under the Vital Statistics Act. There are some regulations on the local level that pertain to public health and also municipal ordinances in cases of communicable disease. This bill does not cover these circumstances. He would be against this from the last sentence on section 4. This would eliminate the burial permit required for transit. The borough still does not get 100 per cent of the vital statistics. They miss some of these. We need to have these for legal purposes and for public health information we need to improve registration. The permits are a great help in assuring that the death certificate is filed. This has to be obtained from a magistrate or district judge. We do not require fetal certificate for stillborn where the gestation is less than 20 weeks. Rose asked if "stillbirth" wasn't a more accurate term than fetal death. Mr. Kester noted that this was new terminology and is accepted as the official term now. Moran asked how this compared with federal. He noted that the federal government required certain information from Vital Statistics and felt federal would require uniformity. Mr. Kester said they were only required to have a system of vital statistics. Rose asked if once a child has been born alive is there any difference as to the disposition of the body. Mr. Kester said there wasn't. Mr. Tillion added that this was true as far as vital statistics were concerned. He was referring to the way you handle the body in his bill. This would only cover under 24 hours.

Disposition Bodies

The requirement for a formal funeral and the added expenses that add to the parents' sorrow is what Mr. Tillion objection is based on. He wanted the hospitals to be able to do the same thing they do with amputated limbs, etc. They would still file the death certificate but would be able to dispose of the body in the same manner as with amputated limbs. Mr. Kester felt they could do that now. Tillion noted that it had been stopped in Anchorage. If this happens on a three-day holiday weekend or on a holiday it may be four or five days before this can be taken care of properly. He gave an example of a death after 5:00 p.m. on a Friday and Monday being a holiday. This bill would allow the hospital to dispose of the body immediately and on the next work day they would file the death certificate. This change was requested by the hospitals. Dr. Rodman Wilson requested it. Tillion noted that Catholic groups couldn't abide by this, but it wouldn't be mandatory. It would be up to the parents. Moran gave a personal experience in handling of bodies. He did not see why the ordinary citizens could not transport bodies the same as the armed forces. They use very inexpensive bags for the purpose. Tillion noted that it was the morticians that made the regulations. Tillion noted that there is a loophole that allows you to take the body if it is within 24 hours. After that it has to be handled by a mortician. Tillion cannot see the necessity of holding the body until a death certificate and all paper work is done. Ned feels that the hospitals can do this now. Tillion said they won't do it until they have it spelled out in the law. Moran understood Mr. Kester's concern to be in regard to any criminal activity. Tillion didn't think this would happen in a hospital. Moran noted that this did not say it had to take place in a hospital. Also physician's offices could be used. They asked Art to check the regulations and see what the problem was. A compromise will be worked out to overcome objections of the bill. Mr. Kester will work with Mr. Peterson. Rose noted that this is a matter of Senatorial investigation in the United States. There are rackets concerning burial and burial plots. HB 551

Arch., Engin., and Land Surv.

HB-239 - Architects, Engineers, and Land Surveyors. Mr. Toner and Mr. Ackley met with the committee on this bill. Moran noted that he had received correspondence giving a lot of suggested amendments. It mentions the concern about state employees being exempt from registration. We also have a document from Legislative Affairs that was prepared to cover the more serious drafting problems discussed last time. Hillstrand gave the reason for not having this sent to Legislative Affairs for drafting in the original bill. This was to keep the public from being used in the name of public welfare. We thought they wanted an exclusive franchise to make money. We didn't want this. We wanted to make sure that the three professions were qualified and worthy of the name given them. To that end we worked with the conglomerate committee in Anchorage. The consensus was that this wasn't all they wanted. We came out with a compromise to the end that the bill would be prepared that would pass the legislature. Randolph, Colletta, Harris and Hillstrand worked on this. HB 239

Architects
Engineers

Changes that the committee of 11-13 representing approximately 200 of the professions that had appeared earlier in the day is in effect the committee substitute. When this was considered in Commerce we had a committee report prepared by one of the local profession to spell out specifically what the present law is and what the CS proposed to change. Moran said the reason the question came up was because of the drafting problems that were evident. They just didn't conform to legislative style patterns. Hillstrand asked if suggestions from Legislative Affairs contained substantive changes. Moran did not know. They wanted to strike "state of Alaska employees" and the rest seems to be a matter of form. Moran suggested that we go through this on the basis of dealing with comments from Legislative Affairs Agency first. HB 239

Legislative Affairs suggested amendments were considered. #9. Page 8, Line 2 was discussed in detail. Rose didn't fully understand this amendment. Art felt that entitlement is not stated in mandatory terminology. He feels that that is all that is involved in this amendment. Rose felt this change made it ambiguous. Ackley asked Art to refer to present statutes and see what it says. Rose asked about "shall be provided". Art said it could be either way. Banfield asked if they handed out certificates of appointment. Rose said they did. Art thinks it should say "shall receive" if this is to be a mandatory provision. Art will rewrite amendment #9 to reflect the desires of the committee.

#11. Ackley asked if there were any boards or commissions where the members get any remuneration for services. Art said it usually is per diem and transportation. Banfield wanted to go back to #10. She wanted to strike the rest of the sentence on line 22 after the word "commissions". Rose felt that this was common for all boards. Mr. Toner felt this should be considered. Sometimes these people are working for the state in other capacities. He wanted to specify that it was meant for services on the board only. Moran noted that we have some full time commissions and he didnot know how this would affect them. Art suggested having the state employee arrangements apply. Moran decided to place a period after "commissions." This was the consensus of the committee. The interpretation is that this applies only to board members while acting in that capacity. Moran gave examples of some of the governor's committees or boards. Investment Advisory Board was one example. Banfield moved that it read "entitled" to.

#15. Ackley did not think this amendment should be adopted. He felt that one of these is filing with the board and the other is the board giving the certificate. Rose noted that it said this on Line 13. Ackley would like to suggest that this be deleted from Page 3 and left in at this point. He felt it would be consistent with the sections noted. Moran noted that there would have to be a change to show the conditions in (b). Ackley decided it would be better to take it out here.

Architects
Engineers

Sec. 08.48.271. was to be rewritten by Art to reflect the necessary drafting problems with this section. It seemed to say that a person who had passed the examination still had to have 8 years of experience before he could be registered. Ackley said this was not the intent. Toner said what was intended was to give a person credit for education. Toner thought that you could say graduation from an accredited school plus 4 years of experience. Rose felt that this gave authority to a national council that would not recognize Alaska's differing problems. Ackley explained that this was worded in this way because our existing statutes say that a person must have 8 years of experience or 4 years of college and 4 years of experience. At the present time there are students that take five years to complete their college and we want to give them credit for that fifth year. We can't do that now, they still have to have four years of experience. Rose suggested that the board shall by regulation establish standards for qualification. It could be the national council standards at this time if they are appropriate and when they change, you would be able to control your own board in this manner. Moran asked about reciprocity. Ackley said this was a problem. Moran felt that this could be spelled out in our law. Ackley said that there was a national council of engineering examiners, and architectural registration boards, but nothing for land surveyors. They are forming these but are not in existence at this time. Moran said we could handle this by saying "or any national council that is formed affecting the examination of land surveyors." Moran didn't think that the amendment said what they wanted it to say. The board only provides for rules of procedure. You can also state standards. Art will work on rewriting this section. Moran suggested that the basic standard shall likewise include not less than 8 years of satisfactory experience or include the professional education. Maybe "acceptable" would be a better word than "satisfactory". Rose still felt they should adopt regulations. This is a problem with the Bar Association. Rules are in conflict with the statutes. If you leave it up to the board then you wouldn't have the problem. Moran was pleased that they had left registration open to people who have no formal education. HB 239

Moran suggests that on Page 17 that "A person"is better than persons. Art agreed with this. Page 18, Line 16 should show a deletion of "dealing with" and insert "in". This was suggested by Moran. Rose didn't think this was right. Art noted that this was commented on in the cover memo. The memo compares the three bills. Art felt if we would insert the word "includes" that that would solve the problem. Ackley felt that this "may include" was inserted because there was some objection to the teaching profession having to be licensed. If it doesn't say may include we are including that as a description of the practice of architecture which must be licensed to do whatever you are doing in the state in the field of architecture. Moran noted that what we are really doing is setting out a whole series of definitions. Art still felt there was a question

Architects Engineers

on this. After listening to the explanation of intent, I wonder why you want to mention this here. Ackley answered by saying that there were two schools of thought on this. The staff teaching at the University of Alaska want to be able to teach under one licensed teacher, others teaching under him would be allowed to teach without being licensed. Rose said if you said "may include" you would be permissive. Art asked if there was any objection to prohibiting teaching of engineering and architecture unless the teacher was registered. Banfield suggests that we list them a, b, and c. Art thinks this will be hard to do. At Line 23 this would be difficult. Moran doesn't see why this has to be part of the definition. Hillstrand asked to explain. This has a two-fold purpose. This is to distinguish the practice of architecture from that of engineering and that of land surveying. The second part is to prohibit or state penalties for setting up yourself to the public as being a professional architect, engineer, or land surveyor. Moran suggested making these distinctions on Page 20. Banfield so moves. Ackley thought they should be listed separately because we have the statute that says architects and engineers may practice architecture and engineering only if we keep the definitions separate. Moran thinks we should add a new section to cover this. Art felt this would be acceptable. He also suggested that the grandfather's clause should be made a part of the temporary law rather than to be codified law. Rose has to go to State Affairs now and has one more question. He said he did not see any exception for the designers that we had talked about last time. Moran noted that we needed to look at Maynard's letter and there were some other questions. Art will prepare a rough draft to reflect the changes.

HB 239

There was some discussion on designers. An individual can build up to a duplex without any concern on the part of the architects. Ackley noted that they had to cut it off some place and this seemed to be the spot. He said they hated to put a dollar value on what could be done. It was considered not to be too callous if one or two families burned out but when more were concerned it was a matter of public health and safety. You could raise this to a fourplex. Moran asked about the building official in Anchorage. A man brings in his plans and they are approved, they meet code requirements, and they build a fine home. I have also seen buildings planned by architects that could not get approval from the building officials. Moran also asked about plan books. Would this be illegal practice of architecture in Alaska? Ackely said it wouldn't be if it was for one or two family dwelling. Hillstrand said this came before the committee while it was in commerce, too. Where does the professional interest start and where does the public interest begin?

Moran made mention of the part about exempting state of Alaska employees. He felt this was put in because of recruiting problems. Banfield feels that if the state was going to be building schools they should have licensed

Architects Engineers

HB 239

architects and engineers. She felt that the taxpayers should be entitled to their dollars worth. Hillstrand gave some information from the meeting on this in Anchorage. The association of engineers and architects and land surveyors, about 700 in Alaska, wanted federal employees to be included. A goodly number of these people are already in federal employment and are licensed. They agreed that this profession would require professional standards. They wanted to assure the legislators present that they could handle this. Moran didn't think there was any way that we could apply this against the federal employees. Ackley wanted to know if this would have to be done by statute. Moran stated that in the absence of this you would have to force them into registration. Most of the federal employees would probably come under the same situation as the University. They would have a registered architect or engineer as supervisor.

Hillstrand wanted to address himself to State of Alaska employees be exempted. This is on Page 6, Line 23. He asked Mr. Ackley and Mr. Toner to express themselves on this subject.

Mr. Ackley does not think the state employees should be exempt. Do I understand that persons practicing architecture, engineering, or land surveying for the state would not be affected? Toner said this was correct. There has been a shift in opinion in this since that meeting. Moran did not know whether or not they were included in the bill as written. Hillstrand said that they are excluded. Moran asked if there was any problem with the petroleum industry. Toner said there was a variation of opinion. They are working on their own property so they don't have to be registered. That is Mr. Toner's personal opinion. Moran is waiting to hear from the industry as one representative expressed a concern. He wondered what effect it would have on the company.

Meeting adjourned at 3:40 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, March 2, 1972

Vice-Chairman Rose called the meeting to order at 1:30 p.m. in the Masonic Temple. Present were Barber and Banfield.

Court System Budget

HB 517

HB-517 - Court System Budget - was the first item of consideration. There was a brief discussion on this subject. Banfield moved the bill out with "Do Pass" recommendation and asked unanimous consent. There were no objections. (Randolph arrived 1:35)

Retire Correc. Officers

HB 588

HB-588 - Retirement System/Correctional Officers. Rose noted that this had been discussed with various people and they have agreed to this. It puts these people under the same retirement as other state employees. This allows a younger retirement age and most people with whom this has been discussed says it is hard to work in this field after age 55. Barber had talked to some of these people and he felt this was a good bill. Randolph asked what the retirement age was at this time. Banfield said it was age 60. Randolph thought that we should consider the cost. Banfield said they would pay in for this themselves. Randolph moves this bill out with a "Do Pass" and asks unanimous consent.

Firearms-State Parks

CSHB 124

CSHB-124 - Use of Firearms in State Parks. Jack Hession representing the Sierra Club was here in favor of this measure. He said it gives the Division of Parks in the Department of Natural Resources a greater control over firearms especially for hunting in the state parks. This is not an attempt to stop hunting in the parks. Randolph asked if the park people could extend indefinitely a closed period. Mr. Hession thought they could. Randolph asked who would make this decision. Mr. Hession said it would be the director of the Division of Parks. Randolph asked if they couldn't do this now. Jack said the Division of Parks need legal authority to make interagency consultations have any meaning. Now they can be overridden by the Department of Fish and Game. Randolph asked if the Department of Fish and Game can be overridden by the Division of Parks with this legislation. His answer was Yes. Barber noted that you can't hunt within a certain distance of roads now, so this wouldn't affect camp grounds. Jack said that the one mile buffer zone is unenforceable. By the time the park personnel get to where the shooting has occurred they can't tell if the party was one mile from the road or not. (Randolph leaves 2:05)

Since we do not have a quorum, we will not be able to complete action on this today. Jack will get in touch with Mr. Smith of the Division of Parks and ask him to send a letter to the chairman. This will be rescheduled for March 9, Thursday, and we will ask the Department of Resources to send someone to be with us. We will also invite someone from the Department of Fish and Game.

Banfield is afraid that they will not allow any hunting in the parks.

Meeting adjourned at 2:15 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, March 3, 1972

Rose called the meeting to order at 1:30 p.m. in the Masonic Temple. Present were: Flynn, Banfield, Peterson, and Randolph.

Arbit. small claims

HB-638 - Arbitration of Small Claims. This does not have anything to do with no-fault. This is for all small claims and not just for automobiles. All this covers is money judgments. The amount has to be less than $3,000. Banfield asked why the court system did not enter this legislation. Rose has discussed this with members of the judiciary and bar associations and they favor this bill. Rose noted that he had introduced a bill last year on this same subject and that Mr. Banfield had requested some changes which were incorporated into this bill. Randolph asked how this would affect automobiles. Rose said that if we went to no-fault this would not apply. In automobiles the great amount of claims are under $3,000. They could be brought under arbitration. This would be a great deal less expensive than the normal court proceeding. Randolph feels it would be good to have the courts, bars, and independent insurance agents testify on this measure. We will schedule this for Tuesday, March 21. Jack Langdon, Mr. Banfield, Mr. Eastaugh, the courts, Mr. Lauber, Red Drake, Director of Insurance, and some people in the insurance industry. These people will be notified. HB 638

Comp. Negl.

HB-176 - Comparative Negligence will also be scheduled at this time as some of these people are also interested in this measure. HB 176

Ass't and Dist. Attys.

There was brief discussion of HB-590 - Relating to Assistant and District Attorneys. Randolph requested that this be put off until next week as he was expecting some correspondence on this bill. Scheduled for March 14, Tuesday. HB 590

Retir. Judges and Justices

HB-670 - Retirement/Judges and Justices. The committee has already put a bill out that is the same as this, only it has fewer benefits. The other one CSHB-448 covers widows and children and lowers the age for retirement. This one just lowers the age for retirement. Banfield felt that we should hold this one because the other one had more benefits. Rose suggested that they have both and if they decided to reject one, they could act on the other. Banfield feels if we do this they will naturally take the smaller package. Rose noted that Miller wants it to go out. Randolph moves it out "Do Pass" and asks unanimous consent. A request was made that it be referred to the Finance Committee. A short committee report will accompany the bill. Mrs. Banfield signed it "No Recommendation". HB 670

Crim. Code

Mr. Bruce Bookman, Public Defender's Office, appeared before the committee with his comments on HB-524 - Criminal Code. HB 524

Rose asked Mr. Bookman to get the feelings of his office

Crim. Law Rev. Comm.

on the criminal law revision commission. (HB-650) He felt that they would have a favorable reaction to this type of legislation. HB 650

Criminal Code

Mr. Bookman has read the bill and cannot see any need for it. He asked what the social costs were for throwing out the entire criminal code for a new one. He is against a total replacement of the criminal law. Every new word will have to be litigated. There are some problems in the criminal law at present, but why not act on these instead of putting in an entirely new code. Teaching the code to persons who will have to work with it is another challenge. Rose noted that this has come up before the legislature every session for about seven years and that was why this became a project of the Legislative Council. Banfield asked his suggestions as to considering individual sections to be rewritten. He suggested that if we did this that we start with insanity. This is something that is going to be changed. Mr. Bookman will file some papers on this with the committee. Rose noted that this section was modeled after the penal code. Bookman said that a lot of provisions were left out. Art noted that we have a problem here because our constitution gives jurisdiction of procedure to the supreme court system. Mr. Bookman was amazed that the Supreme Court had so much power. He still did not feel that bills should not be enacted with procedural provisions included in them. HB 524

Another objection of Mr. Bookman's was in regard to the penal code being a nationwide project. Alaska is entirely different. This state does not need laws to stop crime syndicates. We don't have these as yet.

Rose noted a problem with the breakdown of crimes. Felonies, Misdemeanors, Petty Misdemeanors, and Violations. These would be very difficult to place in our present law without a major overhaul. Art asked Mr. Bookman if he thought that the idea in the model penal code wouldn't make sentencing more uniform. He didn't think it would. He doesn't think it is necessary to set any minimum sentences, only maximums. (Randolph leaves at 2:15)

Mr. Bookman noted minimum sentences under the narcotic law. Rose noted that this was present law verbatim. Bookman knew that and wondered why the difference in sentencing was not changed in the sale of drugs. For heroin you get 10 years and for sale of marijuana you get life.

Joel asked why he had had no response to his requests for suggestions during the preparatory stages. Bookman said this was a big piece of legislation and it took a lot of time to consider it fully.

Mr. Bookman will have copies made of his presentation to give to committee members and to Joel.

On extended sentences, Mr. Bookman did not like the court to be able to extend the sentence. He felt that the DA

would be more knowledgeable in the individual cases.

Criminal Code

Bookman feels that if you sentenced a person who keeps doing these things with the maximum there would be no further problem. This way you don't need an extended sentence. This new code leaves it up to the court and not to the DA. Banfield asked why he preferred the DA's. He said because they were more informed on the cases. Also he noted that ex-policemen are hired as probation officers. You have to make sure that they are still not cops at heart. There is also a question of what a "professional criminal" is known as by definition. The commentary doesn't explain this very well. He thinks there are problems in this in the age requirement. It has been changed to 19 in the code. He thinks this is a great mistake. He does not want to see a young man labeled as a professional criminal and only be 19 years. He said there is a recognizable scale that ends around age 24. He would like to see age 30 or something like that. If a person after 30 is still committing crimes, then he probably is a habitual criminal. Under this provision Mr. Bookman thinks you will be having drunks serving extended sentences. Rose thought that the judges would deal with them as persons having a disease and send them for treatment. Mrs. Banfield asked about joyriders. He thought they too would be a problem. He also felt this would be true of careless drivers, drunk drivers, etc. Mr. Bookman felt this problem--joyriding--could be handled under juvenile jurisdiction except that it has been transferred to district court. The offenders are usually young--from 13 on up--and they are a special problem. He felt it may be advantageous to have a law in Alaska prohibiting leaving keys in cars. Very few stolen cars or ones used for joyriding have been hotwired.

HB 524

11.11.040(b), Page 21. There was a comparison with the murder section 11.19.020. It states if it has been committed recklessly. It also says "under circumstances manifesting extreme indifference to the value of human life." According to this then drunkenness is not a defense. Rose felt that intent was still a specific part of murder. Joel felt this to be true, also. Rose turned their attention to 11.11.090(a) on Page 27, Lines 15-17. "Unless it negatives an element of the defense" is what is reads. Bookman said that is why it is not a defense. Rose said this means that if the actor due to self-induced intoxication is unaware of a risk that he would have had he not been intoxicated--this would be a defense. Bookman felt that this would make it worse. Joel noted that other states have adopted and followed the model code pretty substantially. Joel noted that Illinois has adopted this as their code. Bookman asks why we don't stick with the ideas in the model code and say that it is substantive. There are other things that are covered by court rule that are substantive.

You need a evidence code. It is important that you have the procedural things in the code. Otherwise you only have half of the whole idea. Art noted that the Legislature has

Criminal Code

one idea on this and the court has another. If it is procedural it can be enacted by the Legislature by a 2/3 majority vote. Art noted that this has been a problem and asked if Mr. Bookman had talked with any of the justices on this subject.

HB 524

Banfield asked about separating the insanity part and putting this in as a separate bill. She doesn't feel that this bill will receive favorable consideration this year. (Flynn left) It was decided to reschedule this hearing as the members of the committee had to attend other meetings. Joel wanted Mr. Bookman to work with him in his office. Colin is working on the insanity provision;has offered to appear before the committee. This will be continued on Tuesday, March 7, 1972. It could be that we could meet after adjournment since we don't have a calendar. We will notify Mr. Bookman of the time for the meeting.

Meeting adjourned at 3:40 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, March 8, 1972

Chairman Moran called the meeting to order at 1:45 p.m. in the Masonic Temple. Present were: Hillstrand, Flynn, and Banfield.

No-fault insur.

Moran began the hearing on HB 25 (no-fault insurance) by discussing a seminar he attended last week in San Francisco on this subject. HB 25

Hillstrand spoke for the proponents of HB 25. He felt the public was disillusioned with the present system for several reasons. Rates keep going up. More and more companies are cancelling policies for small reasons. Certain risks are not covered. More and more drivers are without insurance. The proponents of this bill feel we need a system that is reasonable, adequate, speedy, and equitable. And that we need to do this before we are preempted by the federal government. We can do it better than they can do it in Washington D. C. Hillstrand noted that more and more people are turning to government rather than private enterprise. They do not blame the insurance industry for this, they blame the way the system is set up. If we don't do something, the federal government will. The tort system is found wanting in three areas. He listed these as being lack of compensation for loss, compensation inequitibly, and not enough premium amounts being paid in recoveries. Hillstrand requested that Mr. Fred Eastaugh be allowed to outline specifics of HB 25.

Mr. Eastaugh said there were two ways to discuss this, one was to discuss it generally and the other was to take it paragraph by paragraph and set forth what it proposes. As this has been done many times, he decided to just answer the question of whether or not this bill provides a system of reparations providing immediate payment to injured parties. He stated that payment starts immediately. If not within thirty days, there will be a late interest charge of six percent.

Mr. Eastaugh then went into a background in no-fault insurance, and compared no-fault with the tort system.

Moran asked if a six percent penalty was enough of an incentive. He wondered if perhaps triple indemnity wouldn't be better.

Mr. Eastaugh didn't feel that that would be necessary. He felt that the legislature could raise the percentage if they felt that it would be necessary. Mr. Carl Porter felt that under the first-party systems, the companies pay promptly and he agreed with Mr. Eastaugh that triple indemnity was unnecessary under a modified or pure no-fault system.

Moran asked if commercial vehicles were covered.

Eastaugh said yes. He also stated that the sixth draft of the Uniform Act by the National Conference recognizes that a large part of our accidents are connected with heavy commercial vehicles. They put the onus on commercial vehicles according to weight of vehicle. Hillstrand mentioned that HB 25 made commercial vehicles that transported goods and merchandise liable for economic and personal damages up to one million dollars regardless of fault. Eastaugh brought out the fact that the Governor's bill, SB 356, placed a $50,000 limit per person for this. He didn't feel that that was actually limiting anything, and gave an example of a bus accident.

No-fault Insurance

SB 356

Don Koch noted that with no-fault insurance there seemed to be a different psychological aspect with regard to payment. He felt they did not want to dodge as much as under the old compensation system.

Eastaugh continued his testimony by saying that according to the minutes of a meeting in Texas, Professor Keaton was asked to recommend a preference and he thought the AIA plan was the best for going to the heart of the matter. The only thing wrong was it did not preserve some element of the tort system to cover serious cases.

HB 25

Eastaugh also said that he felt that subrogation was incompatible with no-fault, and that HB 25 was a very carefully prepared bill.

Moran asked if Eastaugh felt it could be passed.

Eastaugh said he was not qualified to speak on that, but that he hoped it would.

The next person to testify was Carl Porter representing the AAIIA. He disagreed with the statement on Professor Keaton saying the AIA plan was the best. He read from the minutes of that meeting a quote to the effect that Professor Keaton said the most extreme programs were by three groups, including the AIA, but that he could not support a bill that did not have any provisions for pain and suffering. Porter said that his association was on record opposing HB 25. He agreed with Hillstrand down the line on the problems, but disagreed on the solution, and felt that HB 25 did not have enough benefits.

Porter questioned whether HB 25 repays full economic losses. He felt that the word "reasonable" which appears many times through out the bill could be interpreted to mean different things to different people.

From observation of what has happened in other states, Porter felt that compulsory insurance is going to be a part of no-fault, but they do not recommend it. Costs have sky-rocketed.

Porter challanged the fact that sponsors of HB 25 still support

No-Fault Insur.

it. He also noted that the Uniform Act has a lot to help us, and that Governor Egan's bill was generally good. He felt that it was not too far from the NAII plan. Porter closed by saying they felt a strong modified no-fault insurance plan was best. *HB 25*

Moran discussed compulsory insurance and wondered if we have the right to deprive people of the right to drive.

James Hornaday of the Kenai Bar hoped the legislature would study this subject more and wished to be advised of what is happening as this goes along.

Moran announced that the hearing would be continued at 1:30 p.m. tomorrow.

Meeting adjourned at 3:10 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, March 9, 1972

Chairman Moran called the meeting to order at 1:40 p.m. in the Masonic Temple. Present were: Flynn, Hillstrand, and Randolph.

No-fault insurance

HB 25

The chairman offered the floor to Mr. Carl Porter since he was testifying on HB-25 - No-Fault Insurance- at the close of the meeting yesterday. Mr. Porter thanked the chairman but relinquished the floor to Mr. Banfield.

Norman Banfield, representing the American Mutual Insurance Alliance, testified in favor of the no-fault system of insurance. He recommended that committee members read Time Magazine's article on no-fault entitled,"No-Fault Catches Fire". This article brings out how the public is demanding some form of no-fault insurance. We need a system where there will be a minimum amount of money paid automatically for services and benefits. The hospitals need to know they will be paid for treating people who are injured in automobile accidents. He mentioned two pilot programs, New York and Illinois, showed inconclusive results, but they still were in favor of this bill.

Mr. Banfield gave a comparison between his plan and the one Mr. Eastaugh talked about yesterday. We recommend that there be limitation on what can be collected in general damages. This would not apply in cases of dismemberment, severe disfigurement, death, etc. We have set a limit of $1,000 for medical before you can sue for additional monies. Moran asked if this did not pose a problem where hospital and medical costs differ so greatly. Banfield said this was true. Moran suggested that we should specify that the medical be shown to have "reasonable value" for services. There was some discussion of the Illinois plan and Mr. Banfield read some of the variations in hospital and medical costs for that state. Illinois does not have a compulsory system. Moran talked with a representative from the Division of Insurance of Illinois while at the meeting in San Francisco last week. He told of a case but thought the lower court would be reversed. This was in relation to the constitutionality of no-fault.

Mr. Banfield feels that you will have to have a compulsory law. He also feels that commercial vehicles should be included. He did not want it to include motorcycles. If the vehicle was operated while not insured the registration would be revoked for 60 days. This does not revoke the drivers' license. You would not be allowed to transfer registration by selling it. You would have to surrender your registration. There is a provision that does not allow any insurance policy to be cancelled without a 15-day notice. You could endorse your present policy without getting a new one. Federal and State vehicles would be excluded. He emphasized that medical expenses are not the big thing in insurance, it is car repair. Approximately 80-85% goes

No-Fault Insur.

for car repair or replacement. Neither my plan nor Mr. Eastaugh's has included reparation for damages.

HB 25

In regard to payment of benefits to cover loss of wages, Mr. Banfield noted that they would limit the payment of benefits to 85% of the weekly income of the person, limit it to 52 weeks, and not more than $500 per month or $6,000 per year. This is similar to the Workmen's Compensation Law. They would allow $12 a day for the services that the individual would not be able to perform around the home. One problem with this system is the rating. There is no one experienced in this field. You would not be rated according to age bracket as is now the case. It would be somewhat determined by performance, driving history, etc. Mandatory arbitration would be required on all claims of $3,000 or less. Magistrates would be able to do this. We would eliminate contributory negligence and have comparative negligence. The Senate Commerce Committee want comparative negligence but have changed their bill in some respects. These changes are fine.

Mr. Banfield offered to supply the committee members with copies of the contingency fee schedule. He suggested that we have a statute on fraudulent claims. This is becoming a problem in other areas. It has not hit Alaska yet, but we should be prepared. We are also recommending the requirement that automobiles be built with bumpers that would take a certain amount of shock. This is our most often damaged part of an automobile.

General Damages. Banfield asked if the committee would place a $50,000 or a $30,000 limit. The committee will have to decide, but must take into consideration that the people are going to have to pay for what they get.

No-fault insur.

Randolph asked which bill was the closest to Mr. Banfield's plan. He said HB-464 with the principal difference being that it is not a compulsory system.

HB 464

No-fault insur.

Randolph asked about SB-356 on Page 6, Line 18. Banfield felt that the limits here were too low. Randolph asked if this would reduce or increase insurance rates. Banfield noted that there would be a saving in the elimination of small claims litigation, but in wage loss benefits, the rates would have to go up.

SB 356

Randolph noted that the committee would have to decide which bill to work with and asked Mr. Banfield his suggestions. He recommended that the National Conference of Commissioners would be coming out with a bill which would be reviewed by the American Bar Association and maybe we should wait for it. This will be ready in May or June and will be reviewed by the Bar in August. You will then have the stateside feeling on the plan. He offered his services in working with the committee on this. Moran felt that we had the ability to deal with this and next year it could be reviewed. Mr. Banfield noted that most of the states would be adopting the conference bill.

No-Fault Insur.

Moran noted that he was interested in obtaining a copy of Maryland's bill. It is in their legislature now and the representative at the California meeting said he would send a copy to him.

Hillstrand commented on claims under $1,000 not being a problem. They are usually compensated well or even over-compensated. It is the claims above $1,000 that are the problem. When we transfer to a threshhold arrangement we gather in more problems but we also get additional costs. Hillstrand feels that if we allow the companies to fight between themselves it is actually a return to the old system. You would have expensive lawyers, arbitration, etc., and policy premiums would have to go up. The idea of pure no-fault is that we are taking care of the people in the material side of things, like medical.

Hillstrand asked about the attorneys' fees in the Anchorage case. The amount in this case would have been very small in comparison to the amount paid out for car repairs, etc., according to Mr. Banfield. For injuries and hospitalization, we are only talking about 20% of the premium dollar. Hillstrand stated that we are considering a policy matter as to whether or not we will adopt pure no-fault or a compromise. It is understood that if we go ahead with a compromise we might get a bill through this year.

Moran asked what was the reason for the differing opinions between insurance companies that have stockholders and the mutual companies. Banfield answered this by saying that the mutual companies sell policies and if it makes more money than it needs then it reduces its premiums. Stockholding insurance companies must pay dividends and they are having difficulty keeping ahead of costs. He gave the example of Chugach Electric system as opposed to Alaska Electric Power & Light. One of the things that is causing a problem is the writers that are giving out policies without the use of agents. They have their own employees write policies and thereby cut out the agents' costs.

Hillstrand asked Mr. Banfield if the amount of medical was over $1,000 the party could sue, but the most he could get was $50,000, how soon would the party get their money. Mr. Banfield said they would have to wait for the outcome of the trial. Hillstrand asked if Mr. Banfield felt there should be a limitation on attorneys fees. He said he had introduced a schedule at the hearings in Anchorage. There was no objection to it there.

Hillstrand felt that if the insurance could offer lower premiums by having good bumpers on your car, why they waited this long to speak out about this. He said it was because the repair costs are going up and it is hurting the insurance companies more and more.

No-Fault Insur.

Robert M. Schlanger, Assistant District Attorney, was invited to testify before the committee. He did not want to discuss SB-356 but came prepared to talk about HB-25. HB 25

He said he did not attend the hearings in Anchorage but he could see serious problems with a no-fault sustem. He felt that a modified or partial no-fault system would be more workable for Alaska. He did not feel that a pure no-fault system could be brought into the state at a cost low enough that you could require everyone to subscribe. One thing that bothered him was the cost versus equity problem. He cited Medicare and Medicaid as examples of the problems that can be encountered. These programs cost much more than anticipated. He felt that the aims of no-fault were commendable, but did not want the state to adopt something that was not going to work. HB 25

Mr. Schlanger did not see the point of eliminating pain and suffering. These are a very real part of nearly every automobile accident. This bill abolishes tort completely. In the governor's bill they have put in an optional no-fault coverage. This would give the necessary statistics to know how far the state could go on no-fault coverage. This would also prohibit duplication of benefits. Under HB-25 you deny benefits to the owner who does not maintain security. We thought this person should be allowed benefits because he would undergo suffering and pain also. It seemed that the overriding policy of no-fault insurance was the compensation--benefits and wage loss. He felt we were shifting the burden to the non-driving public rather than having the automobile drivers pay their own way. We felt there should be some type of compensation available to the person who needed it. He did not think it was fair to place such a burden on commercial vehicles since their rates would reflect a supposed added danger. This seems to be rather unfair. SB 356 HB 25

Hillstrand thanked Mr. Schlanger for his views. Randolph asked him to go over the governor's bill.

Mr. Schlanger noted that the governor's bill is a modified no-fault approach. It covers basic losses, work losses, funeral expenses, and burial up to $10,000. Compensation would be paid periodically and monthly work loss would be limited to $750. Above $10,000 we go into a tort situation. The Massachusetts bill was for $2,000 no-fault coverage and tort liability above that. According to Newsweek they reduced their premiums by 25 per cent. You have to check these things out because you can save money one place and lose it in other places. Randolph asked about using the statistics from Massachusetts. Mr. Schlanger said this would be hard to do since Massachusetts has a greater volume of accidents and bigger population. If we increased the amount of no-fault coverage by five times, we should be getting some reduction in premiums. SB 356

No-Fault Insur.

HB 25

Randolph noted that Massachusetts has a mandatory program. It still does not solve the social problem of accidents. They also have a greater percentage of uninsured motorists. Mr. Randolph feels that financial responsibility laws do as much or more than no-fault will do.

Mr. Don Koch, Division of Insurance, asked to comment on this point. Under the governor's bill there is an assigned claims plan. If it is on a compulsory basis a person can collect. You would have an incentive not to buy insurance. Mr. Koch is familiar with New York's plan. In New York state when you cancel your automobile insurance the state does not have to be notified until 30 days later. In this state the law requires that you give a 10-days' notice of cancellation on insurance and in some cases it is 20 days. The company must at the same time notify the state they are cancelling the insurance. If the person cancels it himself he will have to have a 20-day waiting period before it can go into effect. The state would know when a policy has been cancelled. Hillstrand asked what affect this would have on a person's attitude who has been buying insurance for 30 years under the tort system. Mr. Koch felt this would show a change of attitude because the person would be buying insurance to protect himself instead of somebody else. Mr. Eastaugh commented that there was a difference between mandatory and compulsory insurance. Mr. Randolph had already pointed out that under Massachusetts' experience that states using financial responsibility laws had more participation. The agencies that would enforce the provisions of SB-356 as outlined by Mr. Schlanger, would be the Department of Revenue, Public Safety, and the Division of Insurance. The Department of Revenue would handle registration.

Meeting adjourned at 3:35 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, March 14, 1972

Vice-Chairman Rose called the meeting to order at 1:40 p.m. in the Masonic Temple. Present were: Banfield, Randolph, Flynn, and Peterson.

Emergency Regs

HB-108 - Emergency Regulations went out of this committee with a unanimous "Do Pass" but was returned to this committee because Gene Miller thought it might affect emergency orders of the Fish and Game Department. Fish and Game was contacted and they are in favor of this bill. Randolph moves to pass this out with a "Do Pass" and asks unanimous. Mrs. Banfield checked with Mr. Miller before she signed the bill. It was signed out unanimously "Do Pass". HB 108

Ass't and Dist. Attys

HB-590 - Relating to Assistant and District Attorneys. Randolph moves and asks unanimous consent to pass this bill out with a "Do Pass". Banfield objects. Randolph explained that he had received a letter from DeLisio and has had telephone conversations with some and letters from two judges on this measure. He feels that the present system breeds a very short duration of tenure. He feels that this is because of the political interference that these people leave these positions. He thinks we need to come up with some other system of selecting district attorneys. This bill sets up a procedure for the governor to appoint people for a two-year term after which these people would stand for election. These people are much more visible to the people they serve than are judges. The only meeting with a judge is usually in the courtroom. Randolph feels this will make the district attorneys accountable to the people they serve. Assistant district attorneys would come under the classified service the same as other state employees. Section (1) removes assistant district attorneys from the partially exempt category and (2) makes DA's totally exempt which leaves the assistant DA's classified. If they are placed in the classified service, the recruitment will have to follow established procedures--testing, full procedures for dismissal, follow all personnel rules. Art asked why they wanted the assistants in the classified. The AG, deputy AG's, and the assistant AG's in the partially exempt service; the DA in the totally exempt service; and the assistant DA's in the classified. Why not put the Assistant DA's in the partially exempt service with other members of the Department of Law? Randolph said he did not have any strong feelings about this. Art suggested amending this section (1) by dropping the assistant DA's. Art brought out that it was not clear whether the assistants would be under the AG or the DA. As written the Assistants would be hired by the AG but have to comply with full personnel rules. Randolph felt the only thing you could do to change this was to put the assistants directly under the DA. Art noted that you could add a provision relating to staffing. Rose noted that HB 590

Asst DAs & DAs

if the assistant DA's are removed from the AG's office the DA would have to make his own recruiting trips. Banfield said that it was difficult to obtain good lawyers without making recruiting trips outside. Randolph felt that the good lawyers were going into government service. Banfield didn't think this was the case and showed that a lot are hired in the AG's office until they can pass the bar exam. Then they go into private practice. In law firms, they usually pay the salaries of these people until they pass the bar exam. They can only do limited work, research, etc. Randolph didn't think there would be any added cost if the DA's had to do the recruiting. THey wouldn't be making that many trips. Banfield feels that we should have some comments from the AG on this and so moves. This will be scheduled for March 28. Letters will be sent to the Bar Associations, Judges, DA, DeLisio, and the AG's office. The Judicial Council will also be invited. A copy of the bill will be sent to each.

HB 590

Workman's Comp.

HB-620 - Workmen's Compensation. All state and political subdivisions of the state must require the bidder to submit proof that he is covered by Workmen's Compensation Insurance. If the state fails to do this it becomes liable for the Workmen's Compensation to the employee, if unable to get the employer to pay. Banfield noted that this came about as the result of a plane crash in which the subcontractor was not covered.

HB 620

Rose noted that there was a problem raised with this bill on the Floor and it was requested to be sent to Judiciary. Mr. Fink raised the question of what would happen if the state got notice that the company carried compensation insurance and then the contractor starts on the job and the insurance coverage is either cancelled or it expires.

Randolph felt that if the state had complied with the initial requirements that they should not be liable. Rose felt that the insurance carrier should be required to provide written notice of termination or a cancellation within a stated number of days, and if they did not provide that notice then the insurance coverage would remain in effect. This is done in many state contracts now. It would follow that upon notification that cancellation or termination has been received, the contractor could not continue to work. Randolph objected to this. It would cost the state a great deal of money to resubmit the bids to complete the job. Banfield asked what would be the case if the contractor's business venture failed. In the process he let his insurance lapse. There would be no way the state could get anything and neither could the injured party. Rose thought that the state at its election could provide the insurance which has been cancelled and backcharge the contractor for the value of the premium. Randolph did not want the state to furnish the insurance themselves.

Workmen's Comp.

If they want to pay the premium that would be all right. Randolph felt that a good solution would be for the state to pay the premiums on the workmen's compensation and thereby be assured that it would be in force during the period of the contract. Art will write this up and we will take another look at it as a CS. Art felt these limitations should not only apply to the contractor but also to the insurance company. This will be rewritten so that the state will not be underwriting the liability but paying the premium and subtracting this from the contract. Randolph restated that the insurance company has to notify the state that this insurance has lapsed and the state has the option of stopping the work or paying the premium giving a time schedule of from 10-15 or 20 days before cancellation. If the state doesn't act in this time frame then they are negligent. HB 620

Comp. Neg.

HB-176 - Comparative Negligence. There has been a question raised with this bill. It is whether the principle of comparative negligence would be applied to cases now pending or not. The Fairbanks Bar Association has recommended that it be made applicable to cases filed after this becomes an act. We now have contributory negligence and the U.S. is the only place left where comparative negligence is not practiced. The way this is written, you only get paid if your contributory negligence was less than that of the person who was at fault. In a 50-50 case you would get nothing. Under the pure comparative approach you just take the percentages and each side is allowed to recover from the other according to his percentage of negligence. Randolph gave an example of someone hitting him with a 60-40 negligence rate. He could collect 60 per cent of his damages and the other person could not collect anything from him. Randolph mentioned a pure comparative negligence bill in the Senate and feels this would be too costly. Rose noted that the Senate has changed to the concept of HB-176. He has discussed this with the Board of Governors, defense lawyers, and plaintiff lawyers and they all favor this bill. HB 176

Randolph moves this bill out with the amendment to show that it will not affect cases that are pending. He requested a "Do Pass" and asks unanimous consent. The amendment would be section 2 and say: "This Act applies only to cases filed after the effective date of the Act." Art felt there was need for an additional section: Section 3: "This act takes effect after passage and approval or on the date it becomes law without approval." This was brought about to eliminate the 90-day time lag that is usual before instituting a law. After a brief discussion of this, it was decided by the committee to adopt Art's suggested amendment which would eliminate the 90-day time period. Removing the 90-day time lag would not affect anyone adversely. This was signed out as amended.

Dist. Judges-Salary Increases

Rose told committee members that he had been approached by the district judges to put in a Judiciary Committee bill for a salary increase. They want it increased to $33,000. They now get $25,000. He asked for the feeling of committee members on this matter and it will be brought up at a later meeting.

Adjourned at 3:00 p.m. -131-

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, March 17, 1972

Chairman Moran called the meeting to order in the Masonic Temple at 1:40 p.m. Present were: Randolph, Rose, Barber, HIllstrand, and Flynn. Mr. Peterson, staff counsel, was also present.

Arch., Engin, & Surv.

The chairman introduced Mr. Paul Crews, a consulting engineer, and Mr. Harold Wirum, an architect, to the committee. They were appearing before the committee on House Bill 239 - relating to Architects, Engineers, and Land Surveyors. HB 239

Chairman Moran reviewed what had happened previously with this bill noting that it had been in House Commerce Committee where they had proposed two amendments. We have heard testimony previously from Mr. Doug Ackley, a local architect. It was necessary from previous discussions to make a number of changes in this bill to cover drafting errors. This bill did not go through the standard channels while being drafted so these changes were necessary to conform it to the certain drafting policies of the Legislative Affairs Agency.

Art mentioned that there were two cases of repetition and he corrected these. He also noted that on Page 16, line 5, he had rewritten this but did not feel it reflected the original intent. This referred to the education and experience requirements. Mr. Peterson referred to Page 13, line 13, where it refers to an applicant being of good character and reputation. He felt this was an ambiguous statement and should more specifically say "accredited school" or something similar. He also raised the question of a situation where an individual had 8 years' experience in land surveying, would he be allowed to become a registered architect. He asked the witnesses present if they wanted to specify this in the bill. He felt this was important because there is nothing in existing law nor in the proposed bill that covers this possibility. If this is to be done Art will need more information from those concerned to write this properly. Moran asked if only a civil engineer would automatically be qualified as a land surveyor. Mr. Crews said this was true. Moran felt that we should specify that a person would have a degree in engineering and that his experience would also have to be in that field. Mr. Crews called attention to the fact that if we went back to the basic draft and accepted the standards as set up by recognized examining councils, our problem in this regard would be solved. Mr. Wirum felt that the architects should meet national standards. If national standards are used when the standards are upgraded then our board can recommend like changes for Alaska. The portion under discussion is Section 08.48.271. There was a great deal of discussion on how to write this section. Members of the profession desire the national standards in order to permit reciprocity. Moran felt that eight years of association with the particular activity would qualify one to be allowed to take the test and become registered. This would include any combination of education or experience. Art

Architects Engineers

HB 239

brought up the point that this amendment does not in itself adopt the national standards. It still requires the board to make regulations that meet national standards. Mr. Bumhof felt that it should simply be that the board set standards that are accepted nationally to assure reciprocity. Moran asked about the person who continued his academic education getting a master's or doctorate. Would his academic qualifications only allow for four years' of education. Mr. Wirum said that that was what he was trying to say. If we adopted national standards they may allow you to take the examination after only seven years of experience and academic accomplishment. Moran asked if there was a formal way of determining this. Mr. Wirum said they were going through a period of changes. They will probably take into consideration the 6-year courses offered now. Rose suggested leaving the matter up to the board and have them adopt regulations through the APA procedures. This would give the needed flexibility. Moran felt that if we have substantially objective standards then the profession is cleared of any charge of running a closed shop. This would not be too difficult for engineers and architects, but for land surveyors there are no accredited schools. They also are not organized nationally at this time. Hillstrand asked Mr. Bumhof if he had attended the meetings held among the professions and legislators. At that meeting it was the consensus that they would not include state employees. He felt it would be a violation of their trust if those at this hearing were presenting something different. He excused himself and called Jess Harris to check into this. Rose noted that he had received a letter from Loren George, Chief of the Engineering Division of the Corps of Engineers. He expressed his concern about whether or not state and federal employees would be exempted. His concern was for those people who would be practicing in state or federal positions and would not be able to apply for certification in Alaska and he did not want them locked out. Rose had not studied this thoroughly so as to know how it would affect these people. Rose said his main concern was to see that these people should have the opportunity to qualify and be certified in Alaska if they leave the state or federal service. Rose then asked about "designers".

There was a great deal of discussion with regard to the cutting off point for designers of buildings where the services of an architect would not be required. In this bill it is set as a duplex. This will be put out as a Judiciary Committee bill so we will have to answer questions that will be asked about this subject. The committee needs to reply to such inquiries. Rose asked if a person met the code what difference it made who designed the building. He asked about small utility-type buildings--hamburger stands, etc. Mr. Wirum said it would be according to the code definition of public building. Moran noted that we are exempting small communities from these laws and yet these are the very places where they are needed. Mr. Ackley agreed with Mr. Rose stating that there are not enough registered architects in the state to handle every structure by giving their seal of approval. The same is true for engineers.

Architects Engineers

Mr. Wirum noted that in effect the building official was becoming the engineer and architect when he gave approval of a set of plans that did not have an architectural seal. Moran noted that in Anchorage they send their plans out to California for checking them out for approval or disapproval. He also noted that there were a lot of plans with the AIA stamp which were rejected by the building officials. Barber thought there could be some wording that would cover this situation. It could say "the building shall not be any more involved than that of a residence of not more than two families." (Banfield arrived 2:30) Paul Crews mentioned that there are two ways to express this. One would be by square footage and the other a monetary stipulation. The square footage would include the stipulation that it could not be more than two stories in height. Mr. Flynn noted that the electrical contractors law is similar to this. Anything for sale has to meet a certain code. These other codes would be in effect at the time of building a new structure.

HB 239

Hillstrand felt that the purpose of this bill was to establish professional standards from which flows benefits to the public in safe and reasonable and proper construction and design. Along with that there is the built-in understanding that if you are not admitted to practice these professions you cannot advertise publicly for a fee. This sets up practicing these professions as a privilege. We are going to go one step further and say that it will be a certain threshhold. This includes the field of engineering and architecture which will be related to strictly an arbitrary thing. This will receive a great deal of scrutiny on the Floor. It will be hard to convince someone in Hoonah or in Klawock that this should be the law. The theory has been if you save the fee of an architect you can build a better building--by being able to use better materials with the money saved.

Mr. Ackley felt that it was necessary to have safeguards for motels or hotels should they be built in Bethel or Barrow. The people staying should be assured of their safety. Mr. Flynn noted that the Department of Labor requires submission of electrical plans for their approval. This has been in effect for the last two years. Randolph noted that you can send away and get detailed plans. Under this bill you could not do that and build the building, even in the villages or Anchorage or Fairbanks. Moran noted that there were a lot of architects that make a lot of money selling their plans, and they are in the AIA. We need to use logic in considering these things. We will try to come up with some language to cover this problem.

In discussing further the connotation of "public building", Mr. Randolph asked if a duplex wasn't a public building. The occupants of the building should be assured of safety in construction. Art noted that there was some discussion of this in the law on fire protection.

Architects Engineers

HB 239

Flynn noted that electrical contractors would have to wire the building in order to meet regulations. He didn't feel there would be any danger. Rose said that this was one of his concerns, too. He mentioned the person who has a mobile home sales agency and wants a little office for his salesmen. These people deal with the public. Would we need an architect for this? He gave other examples--real estate broker, bedroom used as an office, etc. When you are dealing with these kinds of uses, will there be the same limitation or requirements? Flynn thinks that if we are dealing with the public we should set a limit on the number. The exact number would have to be decided by the committee. Moran suggests that we put something together on this and clear it with Mr. Ackley rather than trying to reach a decision today. This was agreeable with the committee members.

Art had a question. If the main concern is public use, this does not meet the other concerns that Mike expressed and the bush area situation. Bush area buildings may have public use but not have the availability of architects services. So we have more to consider than public use. This could be done by numbers of people or commercial use designation. For the bush areas this is more difficult. Moran asked if there would be merit in having someone in local authority to certify that these services are unavailable. Randolph is not interested in a deviation between bush and urban areas.

Exemption for state and federal employees was the next major point of concern. Mr. Crews felt that since the industry had no control over the federal employees, and since they maintained high levels of competency, he felt that state employees should be included in the registration requirement. Mrs. Banfield mentioned that school designs have to be approved by the Department of Public Works. She fails to see where anyone that can't pass the test could pass judgment of whether the designs were good or bad. Hillstrand said that the problem was that at the meeting they had agreed to exclude state employees, although some disagreed, this was the consensus. He did not want to break his trust. Ackley said they had an amendment to offer on this subject. Mr. Wirum said he had just talked with Art Jacobs; he said they would like to have state employees included. He said there had been a misunderstanding. Moran said he had talked with George Easley, Commissioner of Public Works, but he had not talked with Bruce Campbell, Commissioner of Highways. Mr. Easley seemed to have good and persuasive reasons why he did not want to include state employees in this proposed law. Mr. Wirum said his main objection to this was his problem in getting qualified licensed people within their budget. Ackley said this was a problem with the profession, also.

Mr. Peterson asked what type of examination was offered? He asked if it was mainly subjective or did it refer to application of principles? Mr. Ackley said the first part that was administered immediately after graduation and was subjective. The second part was given after four years of experience and was about subarctic building conditions.

Architects Engineers — HB 239

Moran suggested that the state be entitled to a waiver similar to the practice in the legal profession. This states that they may work in the ag's office until they are able to meet eligibility requirements to take the examination. This is at least 90 days. They are required to take the next scheduled examination. Could we do this for architects, engineers, and land surveyors, too? Paul mentioned that 30-40% do not pass the examination the first time around. Mrs. Banfield said that persons in the law profession had three chances to pass the bar exam. After that you have to have the approval of the Board of Governors. Moran felt that we could ask Easley and Campbell to set up criteria in their recruitment bulletins that specify registration as a requirement. Then we would have solved both of their problems. Mr. Ted Smith, Division of Lands, agreed with this stating that they could require registration or equivalent experience and also require that plans for signigicant projects should be certificated and stamped. Art will draw something up along this line to be submitted to the committee.

In the section on corporations Paul noted that you could mix professions in a business corporation. At the present time you can mix only in the professional corporations.

Banfield asked why you had to have four years' experience after going through school. Paul said it was necessary in order to get a knowledge of what goes on in industry. Burt Bomhoff felt it was similar to an internship. Banfield felt that two years would be long enough to qualify one for registration. Paul said he would be able to work, just not go into business for himself. Burt noted that the number of years was an arbitrary figure, but that he felt four years' experience were necessary before you could turn a person loose on his own to make independent decisions.

Layman on Prof. Boards — HB 629

Paul mentioned a bill that would add a lay member to the board. He did not really want that. This will come up for discussion at a forthcoming meeting.

Use of Firearm in Parks — HB 124

Mr. Ted Smith is here on HB-124 - Use of Firearms in State Parks. He noted that there was no problem with Fish and Game since they would set rules for management of game. Parks would set rules for the protection of the public. This would regulate discharge of firearms in congested areas of three major parks in Alaska. It would include others, too, but Kachemak Bay State Park and Chugach State Parks were specifically mentioned. There was some concern that this would switch authority from Fish and Game to the Parks Department to prohibit hunting. Mr. Smith said this was not the intent. Randolph asks unanimous consent to move this bill out with a "Do Pass" recommendation.

Workmen's Comp. — HB 620

Moran told the committee that Art had noted some problems while trying to rewrite HB-620 - Workmen's Compensation. He suggested that the committee ask for additional time

Workmen's Comp.

to consider this measure. This was agreeable to the committee. The rewrite that Art has prepared will be distributed among committee members. HB 620

Mrs. Banfield asked for consideration of HB-563-Criminal Justice Information; HJR-103 - Grand Juries and HB-557 - Relating to Juvenile Records. She said these were requested by the ACLU. Art suggested getting some of the data-gathering people to testify before the committee on HB-563.

Meeting adjourned at 4:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, March 21, 1972

Chairman Moran called the meeting to order at 1:35 p.m. in the Masonic Temple. Present were: Flynn, Hillstrand, Barber, and Banfield.

Architects Engineers

The chairman announced that he had called Mr. Easley, Commissioner of Public Works, and Bruce Campbell, Commissioner of Highways to meet with the committee and discuss HB239 - Architects, Engineers, and Land Surveyors. Mr. Easley was unable to meet with us and sent his apologies with his deputy commissioner, Bob Dwyer. HB 239

The purpose of having these people meet with us was to determine if there would be a problem if we included state employees in the requirement of having persons practicing in these three professions registered. Would there be any undue hardship on the state in recruiting registered personnel?

Rep. Moran gave a resume of what had transpired on this bill in previous consideration, also noted that we had received much correspondence on this issue. He said that the Board of Examiners did not want to exempt state employees. (Art arrived 1:37) It appears to be that if a registered person has supervision over other employees that is all that is required to meet the requirements of this bill.

Mr. Campbell said he had testified before the Commerce Committee and he did not feel that it would make any difference if state employees were exempted or not. He has 200 positions in the highway department that in his estimation should be registered, and only 58 are registered. He said if the work needed to be done he would see that it was done some way. He did not want to go outside the law but felt the provisions could be waived in emergencies. He said what he would do was sign and seal plans, etc., if that became necessary, since he is a registered engineer. The only thing that bothered him was, "At what point do you practice these professions and at what point are you a subordinate?" (Randolph and Rose arrived 1:40) There is also a shortage of registered persons in these professions available in the state. There are 500 engineering positions in the highway department alone. He felt that we should hire Alaskans for Alaskan work whenever possible. The concept of registration in some degree works against this.

Moran asked what Bruce felt about the idea of stating particular qualifications in the job bulletins that they must be registered and if you could find none available a waiver would be given. The waiver would then be filed with the Department of Personnel in order to support the action of waiving registration. Also a notice should be sent to the Board of Examiners so they would know about this. Bruce noted that they worked quite

Architects

Engineers

HB 239

independently of the personnel department. At the present time in the Highway Department we have pay grade 19 that requires registration. There are exceptions to that. We have project engineers, design engineers, squad leaders that have to be registered. If we can't fill these positions, we give a waiver. Bruce asked what you would do if you hired a person on the condition that he would take the examination as soon as possible. What would you do if he failed? Mr. Campbell is in favor of this bill and it does not make any difference to him whether state employees are included or exempt.

Mr. Campbell felt that the education and experience qualifications were too high. He felt if the person could pass the examination that it should not make any difference if they had the additional 3 or 4 years of experience.

Mr. Dwyer said that his department approved of the bill. He felt this was a good stepping stone to improving the state by having people filling the professional capacities. He had one suggestion on Page 6, Line 22. He felt that the word "employee" should be changed to read "officer". This is on the February 14, 1972, copy of the bill. There are two licensed architects and two licensed engineers employed by the Department of Public Works. Mrs. Banfield said that that was now, but what would happen if these people were replaced by nonregistered persons. Mr. Dwyer said that was why they had inserted "officer" instead of employee. There was some discussion as to what "officer" could mean. Moran suggested that we say: "An employee of the U. S. Government or an employee of the State of Alaska not required to be licensed under the job title." Mr. Dwyer agreed with this. Moran would like to include that any time there is a waiver granted that it be filed with the Personnel Department. This would show justification for the action. All committee members agreed with this point of view. Public Works has hired some registered personnel from outside recently. They advertised in Alaska first. He said that it has been agreed in his department that when waivers are granted there is a stipulation that they take the qualifying examination as soon as possible. The individuals may be allowed more than one waiver, but it will be an individual decision. Barber asked about people not being able to qualify because they did not have the 4 years of experience. Mr. Dwyer said Alaska had to keep this in order to enjoy reciprocity with other states.

Hillstrand felt that the main area of concern was where you have to hire an architect, engineer, or land surveyors. Art is working on this aspect. Mr. Ackley brought in some material to be considered, too. Randolph asked that the residence and nonresidences be separated. Art agreed with this. Hillstrand also mentioned that we should include "where the public interest required it".

Unicameral

Mr. Speaker appeared before the committee in favor of HJR-7 - Unicameral. Mr. Rose distributed a packet of material dealing with this subject. This is a matter which has been before the Legislature on other occasions. It is a concept of government which prevails only in one other state, Nebraska. HJR 7

Rep. Guess said he had not read any of the material that Mike was distributing. He said that he used to be a strong supporter of the bicameral system, at least for Alaska. Now his feelings have changed. He thought bicameral was good because it allowed representation of both land masses as well as people. Since the Baker case, one-man one-vote concept, he can't see the necessity of a bicameral system. He further thinks that the two-house system is really a FCC system. He has found that since statehood, having served under every governor since that time, that the biggest corrupter is the executive branch of the government. He thinks the unicameral would strengthen the Legislative Branch of government. This would be offered as a referendum to the public. It would be more efficient, open, and more powerful. Hillstrand said that he remembered reading about the unicameral system and one weakness was that they would pass a bill one session and a year later would have to modify or repeal what they had done previously. Mr. Speaker said he did not know about this. Rose said in the packet of material he had provided there was a history of the Nebraska plan. Moran noted that we are traditionally bound to certain concepts. A two-house legislature is one of these. People do not like to accept change. Rose also stated that they never have the last week rush of business as we do. Also, you are not using material for trading stock. Guess said there were two methods for amending the constitution: Constitutional Convention and referendum. Barber felt that the committees under unicameral would be fighting over issues instead of Senate and House as it is now. Guess noted that there was not equal power among committees now. Rose asked Mr. Speaker to address himself to efficiency and economy in government. Mr. Guess felt that there would be a greater amount of efficiency. One particular point dealt with filing of bills on the same subject--one filed in the House; the other filed in the Senate. We have had a lot of this the past two years. He noted that you would still need supporting staff for the legislature. There would also be a saving to the witnesses because they would only have to appear before one committee. Barber asked about Section 3 on Page 3. It says no more than 5 legislators may be selected from an election district. What does that do to Anchorage which has two senators and 4 representatives? Guess said this bill was prepared before the reapportionment issue. Randolph felt that you would lose the differences in philosophy that exists under the present arrangement. If one house's philosophy predominates, you would lose the differences that are displayed now. Guess agreed with his statement. He felt that the public would be more informed as to what was going on. It would be hard to tell whether or not it would be liberal or conservative.

Unicameral

HJR 7

Randolph said we would have to decide if we were willing to revoke a system that will let it go one way or the other. Rose feels the unicameral system will make the legislators be accountable to the people who elect them. Moran asked if each term would be four years? (Barber left 3:20) Moran asked if anyone cared to move this bill. Rose made a motion to pass HJR-7 out of committee with a do pass recommentation and asked unanimous consent. Banfield and Randolph objected. Rose withdraws his motion. This will be taken up again on Thursday, March 24. Rose felt committee members should be given time to familiarize themselves with the material he presented today.

Arbitration Small Claims

HB 638

HB-638 - Arbitration of Small Claims - This bill calls for compulsory arbitration on claims that do not exceed $3,000. It is not limited to automobile cases. The purpose is to take these small claims out of the realm of court procedure. Banfield asked why the court system had not asked for this bill. Rose said he had talked with judges, some members of the superior court, and a couple of district judges and they all agreed that this was a good thing. This arose out of the hearings on no-fault insurance. This would give the courts the opportunity to clear their dockets if they don't have to consider these small claims. Rose excused himself from Judiciary in order to attend State Affairs on the Ombudsman bill. Moran felt if this really would simplify matters it would be a good bill. He didn't know how the arbitration would go, but was very familiar with the court procedures. Banfield asked the chairman what the difference was between compulsory arbitration and going before a judge. Moran felt it was an informal procedure, whereas when you go before a judge it is more formal. Attorneys could be used as arbitrators and thereby free the judges for weightier matters. There was some discussion of the words "arbiter" and"arbitrator". This will be rescheduled for consideration.

Discretionary Suspension of Driver's Lic.

HB 751

Chairman Moran asked the committee if they would like to submit two bills as Judiciary Committee sponsored. They were suggested by John Spencer, City Attorney for Anchorage. They were prompted by the Baker vs. Fairbanks and the Alexander case in Anchorage. It appears that the supreme court has ruled that people are entitled to counsel and also a trial by jury where there the possibility of incarceration or loss of a valuable license. This has proved too costly to the city. This will be put in as a committee bill. It is entitled; "An Act relating to the discretionary suspension, revocation or limitation of motor vehicle operators' licenses."

Pub. Def. Expenses

HB 752

He also desired the committee to sponsor a bill in regard to the Public Defender Agency. It was entitled: An Act relating to expenses of the Public Defender Agency." This was entered as a committee bill.

Pub. DEf. Expenses

Art asked a question about the first proposed bill. He felt HB 752 that some of the people in city government should be asked if they want to give up the privilege of revoking a license of a reckless driver, because they are taking away this penalty. Moran noted that traditionally we have charged people if they are arrested in the city with whatever violation it happens under city ordinance. For a violation in the city a man may be charged with 30 days in jail or a $300 fine. For the same violation under state law he would get one year in jail or $1,000 fine. He feels cities should be obliged to enforce state laws as well as city ordinances.

Banfield asked about what bills would be taken up in the future meetings. Moran said he had a list and would update it and provide copies to committee members.

No-Fault Insur.

Hillstrand said he would like to have a meeting set up HB 25 for consideration of HB-25. He felt the governor's office should be represented, Banfield, Eastaugh, Randolph and Rose. Maybe they could work out a compromise. Randolph mentioned that he would like to consider HB-464 at the same time as HB-25. Moran felt we should use the governor's HB 464 bill and work from that point. Randolph did not think it was as good as HB-464.

Meeting adjourned at 3:50 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, March 22, 1972

Chairman Moran called the meeting to order at 1:40 p.m. in the Masonic Temple. Present were: Banfield, Rose, Flynn, Peterson, and Bennett.

Criminal Code

Moran announced that he would have Joel outline how he had prepared his amendments to the Criminal Code - HB-524. (Randolph arrived 1:41)(Hillstrand arrived 1:45) Joel said that he had prepared the amendments according to comments made by committee members and other persons who appeared as witnesses before the committee. When the amendment was suggested by a witness they have been identified. If there is no designation of authorship, then this was prepared at the request of the committee. They have been numbered to facilitate voting whether or not to adopt them. Banfield did not think the code would be passed by the Senate so she suggested incorporating Joel's amendments and passing this out as a CS. Moran said Senator Ziegler indicated passage of the probate code and the criminal code this session. Rose said Senator Ziegler felt the probate code was 95% ready and the criminal code 80%. We could put in the additional 15-20% and it would be ready. The criminal code will be scheduled for early consideration. HB 524

Moran noted that we have quite an extensive list of bills in this committee. He has to check this over and when this is completed Mrs. Mason will prepare and duplicate this list for all committee members.

Workmen's Comp.

HB-620 - Workmen's Compensation. Art had prepared a draft CS for this bill. He explained that it was difficult to write it so that the state would not be liable for damage. Art felt that the insurance should have some central agency to notify in case of termination. (Banfield left 2:00) Rose said that this should be in the invitation to bid. This requires the carrier to furnish notice. Moran noted that the insurance companies have forms for this information. Periodically they will send out a notice asking what percentage of the contract has been completed. Art said if it was true that when the state awards a contract that they will not accept the contractor's statement that he has insurance, but in fact does require a notice from the carrier there would be no problem. Art suggested adding "furnished by the insurance carrier" on line 4 of Page 1. Moran wanted to be sure there would be a minimum number of days' notice before cancellation. Specifying that the insurance carrier would furnish the notice. Art said the rest of Section 3 was rewritten to remove liability from the state. Rose said it was his understanding that the state would be liable if they did not check out the provisions for insurance. The state is to be responsible if it is negligent. ARt did not understand it this way when preparing his rewrite. He will make another rewrite to show this and bring it back to the committee. Hillstrand felt HB 620

Workmen's Comp.

that the individual workman should decide if he wants to work for a firm that does not carry workmen's compensation. Moran noted that the individual has no way of knowing such insurance is cancelled. The state is in a position to require the contractor to meet certain requirements before he is awarded the contract. Individuals are not necessarily as informed as the state would be on such matters. The state has a contract office who can monitor these things. Art thinks the only problem now is whether to insert the language from lines 15-23 of the original CS. Rose felt that the words "or cancellation" should be added after "termination". This was added. Moran felt that the words "or otherwise recover" should be added on Page 2, Line 21, of the work draft. Rose said that each contract should have a clause such as the following: "All contracts awarded by the State shall contain a clause setting out the rights of the agency in respect to workmen's compensation." Art will have this prepared for our consideration at our meeting tomorrow. HB 620

Meeting adjourned at 2:45 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, March 23, 1972

Chairman called the meeting to order at 11:35 a.m. in the Masonic Temple. Present were: Flynn, Randolph, Rose, Banfield, Barber, and Peterson.

Applications for Employ.

HB 648

The first item for consideration was HB-648 - Application for Employment. The problem that this bill deals with is arrest records of people although they never were convicted. After a person has been convicted and served his punishment, the question is "Should this fact plague him the rest of his life?" Genie Chance met with the committee and agreed with what the chairman said about this bill. She felt there had been many injustices and since we were going to emphasize rehabilitation she did not feel that you should have to record something on your employment application that would prevent you from such employment. Mrs. Banfield felt that employers should know if the person they are hiring has a criminal record, such as a bookkeeper who has been convicted of embezzlement. The employer also needs to be protected. It was mentioned that arrest records would be on record in the computer system. Moran said that there was no way to determine that a person without a past record wouldn't do the same thing. We need to be balanced. Genie said that was why she had put in a time limit in the bill. After five years your record would be wiped clean for employment purposes. Rose didn't think that employers should have the right to ask about arrest records, but felt they could ask about convictions. Genie also mentioned the case which involved the person who has been arrested and is under indictment but the case has not yet been heard. The employer needs to be protected from that type of situation. Art said this wasn't very fair, and was in fact a type of harassment, since the party would not know the outcome for at least three months. Genie showed another example of where a person is arrested mistakenly and the case has not been completed. This person would have to say he had been arrested. This is unfair. Moran noted that he had received some correspondence on this piece of legislation. Rose had received a letter from Betty Evans. Rose felt that the proper questions would be: "Are you presently under trial or indictment, and Have you ever been convicted?" Banfield asked about recidivism. Rose didn't think this would be a problem because the individual would have had to have a clean record for five years. Randolph agrees with the first part of the bill but felt that there should be some revision of the second part. Chance said that we wanted to furnish protection to the employer as well as the individual seeking employment. This will be rewritten to reflect the changes requested. You would only be asked if you are under present charge or indictment. The record of arrest should not be a matter of concern to anyone.

Meeting recessed for lunch at 12:05 p.m.

Meeting reconvened at 1:50 p.m. Chairman Moran called the meeting to order in the Masonic Temple. Present were: Rose, Hillstrand, Barber, Randolph, Flynn, and Peterson.

Workmen's Comp. — HB 620

HB-620 - Workmen's Compensation. There was some discussion of the events that prompted this bill. Art read from the Oversight Report. It was not known definitely whether the pilot owned his own plane or whether he was an employee of the owner of the plane. Moran said it pointed up the fact that we either treat the state the same as any other employer or we don't. Rose had a suggestion for Page 2, Line 9. He felt that after the word "terminate" we should add "or cancel". He felt this was necessary because it was common terminology on insurance policies. This was adopted by the committee. Rose also suggested that on Page 2, Line 12, "terminated" be changed to "cancelled". Line 16 was also amended as follows: "shall be reimbursed by the contractor by offset or by any other legal means. The remedies provided herein to the (Name of Agency) are without prejudice to any other existing legal rights or remedies." On line 17 it will read: "This clause shall be considered incorporated into applicable contracts regardless of the physical presence of the clause in the contract." Moran felt that Line 3, Page 1, should be rewritten. Art will do this. He will take the section out of parenthesis and insert it with commas in the appropriate places. Rose moves and asks unanimous to pass out the CS to be rewritten by Art with a "Do Pass" It was signed out with a unanimous "Do Pass".

Unicameral — HJR 7

The Chairman asked if the committee was prepared to act on HJR-7 - Unicameral. Flynn asked for more time to study the material that Mike gave him.

Disposition Bodies — HB 551

Moran reported to the committee that he had received a rewrite of Tillion's bill - HB-551 - Certain Bodies/Disposal of - from Ted Kester, Vital Statistics. He wanted to make sure that a death certificate was filed. This is a useful tool with respect to law enforcement.

Uninsured Motorists Coverage — HB 369

HB-369 - Uninsured Motorists' Coverage. Randolph moved and asked unanimous consent to pass this bill out with a "Do Pass". There was no objection.

Nat'l Guard — HB 379

HB-379 - National Guard. Rose asked how we could make the U.S. Code applicable to Alaska. Moran noted that we would be adopting a section from the U.S. Code as Alaska state law. No one had a copy of the U.S. Code with them. It was felt we should know what it said before adopting this. Rose said we would have to define that it was the U.S. Code as of such and such a date, so they couldn't be changed. Moran said when you adopt laws like that, you adopt them like they are at the time they are adopted. That is, unless you provide that they be changed if the national code is changed.

Qualifications of Legis.

SJR 51 am

SJR 44 am

SJR-51am and SJR-44am - were compared. They both dealt with qualifications of legislators. Rose said that 51 required you to be a resident of your district while 44 did not. This makes it possible for anyone a resident of Alaska for three years to file from any district. Rose thinks this is a good idea. It was felt that under 44 the people would have a greater choice of candidates for election. Moran noted that traditionally we have required a person to represent people from the area in which he resides. Barber felt that it promoted professional politics. Hillstrand was in favor of this measure. He felt it was a protest against reapportionment. Rose moved and asked unanimous consent to report out SJR-44am with a favorable recommendation. Flynn objected. Rose said he didn't think that 51 was properly drafted at this time. Randolph asked to make one statement before voting. He didn't feel that the referendum would have any chance of passing. He felt this would be a futile effort on our part. This is untimely and he is not in favor of passing it out. Rose asked the chairman to divide the question. The first question was whether or not we would report this bill (44) out. Three were for it and three against such action. The next question was whether or not to pass out 51. Flynn, Moran, and Barber voted Yes; Rose, HIllstrand and Randolph voted No. (Barber left 2:55) (Flynn left 3:00) SJR-44am was passed out.

Salary Increase Dis. Jud.

Rose reported to the committee that he had correspondence from the district judges requesting the Judiciary Committee to put out a bill calling for a salary increase for them. It was the committee feeling at the last discussion that they did not want to close the gap entirely, but felt they would increase them to $27,000 or $28,000.

Board of Parole

CSSB 285

CSSB-285 - Board of Parole. This bill allows for an executive director for the Board of Parole. The Chairman of the Board is obligated to oversee the administration. There would have to be some clerical help, too. This would be the Commissioner of Health and Social Services. They have been having trouble getting the work done. Rose moves that we report this bill out with a "Do Pass" and asks unanimous consent. Hillstrand objected. There were three Yes votes; Hillstrand voted No.

Meeting adjourned at 3:15 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, March 24, 1972

Chairman Moran called the meeting to order at 1:45 p.m. in the Masonic Temple. Present were: Rose, Hillstrand, Barber, Randolph, and Peterson.

The entire meeting was devoted to consideration of HB-239.

Architects Engineers

Mr. Don Dent and Art Jacobs met with the committee. Moran filled them in on what had transpired on this bill at previous meetings. He asked them about one of the main concerns of this measure. Should State employees be excluded or included in this measure? They felt it would be all right to include state employees if the commissioner had the privilege of waiving the requirement when he deemed it to be necessary. The board of examiners would have the right to inquire as to why waivers were granted. Mr. Dent said that the basis of registration was for the purpose of showing a level of responsibility, background, and experience in any of the three fields mentioned in this bill. It would also imply competence in the field. Mr. Dent urges the passage of this bill.

HB 239

Moran noted that there was also a great deal of discussion about plans being sold on the market by professional architects of national renown. Any buildings larger than a duplex would not be permitted in Alaska. Mr. Dent said you would have to get an architect's seal or stamp. Moran noted that under this provision you would have to have an architect's seal on a small roadside shed used for selling produce. Mr. Jacobs agreed with this. Hillstrand asked for Mr. Dent's and Mr. Jacobs' opinion of whether or not state employees should be excluded. They did not want state employees excluded. Mr. Dent feels that the plan put forth by Rep. Moran would suit their purposes. This would allow a waiver when necessary or expedient. Jacobs asked if the commissioner would justify the waiver to the registration board. Barber said No. Moran said he would justify to whomever asked him about it. They file this with the Division of Personnel--just a statement as to why they are waiving the requirement of registration. Barber does not think it should be called a "justification". He thinks that would imply meeting a certain criteria , whereas a statement just tells why you have waived registration. Moran gave an example of an outstanding student who did not have enough experience to take the examination with the board. He had finished his schooling, highly rated, but only had three years' experience. Jacobs said a waiver in this case would be all right, but felt that there should be a requirement that when he had completed the fourth year of experience that he should be entering his application for registration.

Hillstrand asked about the threshhold of building without the services of architects, engineers, etc. He feels that when this is discussed on the Floor it will be hard to keep this provision in the bill.

Architects Engineers

HB 239

Hillstrand asked if Mr. Dent or Mr. Jacobs would use figures denoting capacity or would they use a monetary value covering construction cost. Mr. Jacobs said that it is very difficult to draw a specific line on this. A small building could be constructed in such a way that it is so complex that only an experienced engineer could design it. Rose asked about offices which are constructed in the same manner as houses, yet these require the services of an architect. Rose thought that since in cities there are building officials to check these matters, that maybe the state should have an official in the same capacity. Mr. Jacobs said the reason they needed this bill was to cover people who were building their own homes--some duplexes--and they are now illegally doing this. Rose noted that we had received answers on our questions on duplexes, but not on small commercial structures. Rose asked how we could differentiate between small commercial buildings that need the services of a professional and those that do not. Moran felt we could amend this by saying that it did not apply to temporary use--say for construction purposes. Mr. Dent said he did not want commercial building larger than a duplex to be exempt. Mr. Jacobs said that the City of Anchorage has a clause which says it exempts from the requirement of an architect or engineer seal a building which is not more than 2000 square feet; not more than 20 feet wide; and not more than one story in height. Moran said that the committee would have to come out with a CS in a few days. He will send a copy to Mr. Dent and Mr. Jacobs and Moran will ask Mr. Bradner to hold this up until you have had time to comment. Mr. Dent didn't think that would be necessary. He felt the committee could handle the rewriting of the CS to their satisfaction. They want to see the bill passed and hope there will be no delays. Moran said if they had objection to any of the changes, we could have it referred back to this committee. Hillstrand felt that the real problem would be section 08.

Meeting adjourned at 3:10 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, March 28, 1972

Vice-Chairman Rose called the meeting to order in the Masonic Temple at 1:35 p.m. Present were: Banfield, Barber, Hillstrand, Randolph, and Flynn.

HB 590

Asst. DAs and DAs

The first item for discussion was HB-590 - Assistant District Attorneys and District Attorneys. Judge Stewart appeared before the committee by request and said that he was prepared to give his own personal opinion and not the views of the court system. The judge said that in his experience on the bench he had had no problem with the operation of the DA's office. There have been at least four DA's in office in that time. He said some left because of change of administration and others because of personal reasons. Each had been a qualified person and he had heard no complaints from the citizens of the area as to hiding some cases or over-prosecuting cases. He saw no need for this legislation and was opposed to it for that reason. Rose noted that the reason for this legislation was to create a longer tenure in office. There is a high turnover rate. The judge recognized this fact, but felt this would not greatly change the way things have been in the past. He felt that the main reason they left this office was the way of life of persons in this profession. They usually perform a public service for a while, then they like to go into private practice.

Judge Stewart said that the federal DA's also have a high turnover rate--at almost the same rate as turnover for the state. The judge noted a few points in regard to this bill. He said if you put somebody in this office who is a power unto himself and not under supervision, you are much more likely to get sensationalism in this office. For instance, someone trying to be the next governor. This has been avoided under the present system. This system will increase the need for grand juries. This will be needed to protect the people from over-zealous DA's. There would be a greater disparity in handling cases between districts. Judge Stewart said he did not know how far the DA dictates policy throughout the state. Under present law direction is given from the AG's office and the AG is able to control its employees with more uniformity, especially as it relates to the various districts. You would lose this if you changed the system. Judge Stewart objects to splintering the executive branch of government. The check and balance system operates in both state and federal government between branches. By splintering the authority of the executive branch, the DA would not have the power to carry out his responsibilities. Whenever you put a subordinate official in an autonomous position then they are less responsive rather than more responsive to the needs of the people. Judge Stewart thinks this would encourage public disagreement in the handling of the prosecutor's function. There would also be disagreement between the officials. This would cause a waste of energy of these officials. Energy they could be using in performing the duties of their job. Rose asked if his remarks

HB 590

were addressed solely to the handling of criminal matters. He said they were--at least most cases were related to criminal matters. Rose asked why the influence of the executive branch should affect the decision of whether to prosecute a case or not. Judge Stewart said that the prosecution is only one element of the executive function. They

Asst DAs and DAs

have to be responsive to the public, and this should come from the news media, etc. The way you find out if the DA's office is not doing its job properly, you will get criticism from the Governor and the AG because if they don't do this they are criticized for not policing the activities of the DA by the public. Under this bill you want to put the DA in a position where you cannot touch him for four years. Judge Stewart has not seen anything in the operation of the office to give rise to this change. The system we now have has always paralleled the federal system and this is the way they serve. This has been quite successful. Randolph asked about tenure of DA's under our present plan. Judge Stewart said there were four or five in the State compared to three changes in federal during the same period. Randolph felt the short term in office was a significant weakness in our present system. The judge felt this only reflected ways of the people in our society. They don't stay in any office long. This bill will not cure the situation. This is true, especially when you consider that there will be some undesirable difficulties which will accompany the change. Randolph noted that a couple of years ago the salary of the DA was increased hopefully to encourage tenure. He knew of two cases where they left because of lack of independence of action. He asked Judge Stewart how we could solve these problems. He said he felt that it was not so much a question of whether Smith or Jones handled the case, but are the cases being adequately prosecuted. There has been no public criticism in this regard. Criticism should come from the newspapers, members of the Legislature, and the governor's office if there is any reason for complaint. Judge Stewart said that his comments also applied to assistant district attorneys and the main reason that any of them have left office is because of their own choice. Banfield asked the judge if he felt an elected DA would be a better servant. He said he did not think so, in fact, may be a less reliable person.

Rose noted that in Anchorage there had been criticism from the Bench, Bar, and the newspapers on the high turnover rate among DA's. The complaint there was that the DA's were young, inexperienced, and therefore losing cases for the state. Judge Stewart had heard of these complaints and said he would more likely ascribe those problems to our condition of being a small state and not having the larger selection of people as older states do. Also he felt part of the problem was lack of sufficient funds to do the job. Banfield said she could support what Judge Stewart said about the age of members of the bar. Five per cent of the Bar is over 45 years of age, so that leaves a great many young bar members. The judge said this was true of the court system, also. Randolph felt that the present system was only training people to go into private practice.

HB 590

Asst DAs and DAs

Judge Stewart agreed with Randolph that if you gave DA's tenure you would get people to stay longer. He also felt that this would create worse problems. Banfield felt that unless we raised the salary drastically you could not keep these people in the DA's office. In private practice they would be earning 50-100 per cent more than they would in the DA's office. There are two exceptions to this: The person has political ambitions; (2) the person is highly incompetent and has found a niche where he is secure for at least six years.

Mr. Havelock was the next witness and he said he agreed with the Judge on many points. He gave clarifications on why some of the individuals left the DA's office. He said it is not the practice to make changes because of change in administration. Gail Fraties left because of economics as Mrs.Banfield pointed out. Mr. Havelock nor Governor Egan have made any changes on political consideration. Our main concern is performance of professional services. He feels that it is useful to have the AG do the hiring. You probably would get better professional judgment than you would get from popular political pressures. Large areas of the U.S. have corruption and scandal using the election process. Our system has worked well. Mr. Havelock opposes the bill. Another reason you cannot afford to play politics with these offices is that we are in a scarcity market where attorneys are not available to fill these positions. Havelock asked about assistant DA's and asked who they would be working under. Randolph said he would be appointed by the DA. Havelock said this would have a tendency to set up independent fiefdoms. He said that under present arrangement the morale in the office is kept high by having everyone in the partially exempt service. Havelock asked what you would do when a person wore two hats.

Havelock said when he first took office he was faced with a crisis. There was an increase in the number of judges and no money for increasing the DA's staff. Then the court put into effect the four-month rule. Suddenly the office of the AG in Anchorage was deluged with a vastly increased work load. Since that time, these positions have been filled. We have not had any complaints.

Rose asked if the tenure of the DA's and Assistant DA's was about the same. Havelock said it varied. Many times this was true because of the location. He gave Nome as an example. Who would want to stay there for very long. The usual stay in Nome is for a year, mainly because they are assigned there for that period of time. In the third district it is about two years. Randolph asked about the normal length of time to complete a case. Havelock said that only 10 per cent of the cases go to trial and since we are working under the four-month rule all but the difficult cases would be handled in that time. Rose said that complex cases could take a long time. Havelock said these were the cases that the public noticed, but that they were a very small portion of cases handled. Randolph asked how we could increase the tenure. Havelock felt that higher wages would help, but felt we would have to wait for the Bar to mature. Rose

Asst DAs and DAs

asked how the AG arrived at starting salary for his employees. He said that he competed with the top law firm in Anchorage. Havelock does not think that money will keep them in the position. Individually they want the money and independence of private practice. As they go along getting their experience they like to have some public practice. There are very few professional prosecutors. Banfield asked about the increase in OEO lawyers, Public Defender, and other legal services. Havelock said there was not a problem of exchange in these positions and that it was like he commented earlier, they wanted to work in public practice for a while and then go into private practice. Banfield moved to table this bill after Rose asked if the committee wanted to act on this measure. She asked unanimous consent. Randolph objected. Banfield, Barber and Rose voted to table the bill. Randolph and Flynn were against tabling. Motion carried. HB 590

Architects/ Engineers

The committee next listened to testimony from Mr. Ron Houle, Owner of Allied Engineering Technicians on HB-239 - Architects, Engineers, and Land Surveyors. Mr. Houle is self-employed and said that this bill would put him out of business. People that come to me are well aware of the fact that they must get an architect's seal or stamp on the things that I prepare for them. Mr. Houle has two years of college and 17 years of work experience. Mr. Houle has been hired by architects to do this type of work and does not feel that he should be prohibited from doing this without registration. He feels this is a necessary piece of legislation for the architects, engineers, and land surveyors. He will try and come up with suggested language to allow him to draw his designs. He gave an example of drawing a proposed shopping center showing landscaping and parking lot. A type of artist's conception is what he had in mind. He did not think drawings like this should be included under the bill. Mr. Houle advertises himself as the owner of Allied Engineering Technicians. He does custom drafting and detailing in several fields. He does not advertise as a registered engineer or architect. Mr. Houle felt that the different kinds of engineers should be identified and not all put in the category of engineers. If Mr. Houle has any suggestions he will communicate with the committee. HB 239

Laymen/on Prof. Bds.

A lobbyist of the Alaska Nurses Association was here and asked when we would consider HB-629 - Laymen on Professional Boards. Rose said we were not taking that bill up today. We will notify his law firm when we take up this bill. (Tom Blanton) HB 629

Point System Motor Veh.

CSSB-296-am - Point System/Motor Vehicle Violations. Committee members wanted to know how this would affect the Department of Public Safety. Barber also requested that we have all other bills before us on this subject so we could look at them too. Public Safety, Public Defender, and the AG's office will be notified that we are considering this measure. Mrs. Mason will get the other appropriate bills for committee members. This will be rescheduled for April 4. SB 296

Inher. Rights Adopted Children

HB 722

HB-722 - Inheritance Rights of Adopted Children. Flynn felt this involved the native land claims. Banfield said that Barry Jackson wanted to be heard on this bill and he would be here Friday. Rose noted that the process of adoption cuts off the child from the natural parents and the rights of inheritance from the natural parents. Barber felt this would take some study. Rose noted that there was a problem with a bill like this. It would eliminate the way things are handled presently where you try to keep the adopted child from knowing who its natural parents were. Rose did not think he would support this measure. This will be scheduled for Friday, March 31.

Meeting adjourned at 3:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, March 30, 1972

Chairman Moran called the meeting to order at 11:10 a.m. in the Masonic Temple. Present were: Randolph, Banfield, and Barber.

Nat'l Guard

HB 379

HB-379 - National Guard - was the first item of discussion. Moran read the committee report by Dick McVeigh. His report requested the Judiciary Committee to study Sections 501-590 of Title 50 to determine the exact legal implications. Randolph asked if the Act was still in force for the Army and Navy. Moran said that it was. He also noted that we have a number of rights and privileges that go to a soldier when on active duty. One of these is that you cannot enter a default judgment against them without first seeing that he has the opportunity to respond. It has been the experience of Mr. Moran that judges do not press charges against servicemen unless they know that the papers will be served on them personally and that they have reasonable opportunity to have counsel. Moran asked the committee if they would prefer to go over this in greater detail. Banfield asked what would be considered "active duty". Moran said it would only be in emergency situations only as the Guard would be called in by the Governor. He gave examples of the Alaska Airlines crash, Anchorage earthquake, Fairbanks Flood, etc. Moran said the National Guard wanted the same rights and privileges that regular Armed Forces have during emergencies. Randolph questioned the situation where this was only of a short term emergency. He wanted to know if they would be entitled to insurance and then have this carry over after the emergency had ended. Moran didn't think that this would include national life insurance. Moran said he would like Art to analyze this and report back to the committee. Art will be asked to (1) find out what are the rights and privileges, etc., that accrue to the members of the Armed Forces because of the Act. (2) Are all of these pertinent definite circumstances under which the Alaska National Guard might be called in for very limited service? Randolph asked what would be the affect of any carryover in rights or benefits?

High Volt. Elec. Lines

HB 625

HB-625 - High Voltage Electric Lines. Moran said when you have dangerous conditions. The object of this bill is to prohibit people from operating construction equipment in the near vicinity of high power lines. You could not park such equipment underneath the lines or stack supplies under them. (Hillstrand arrived 11:25) It requires that you post a notice and limits the storing materials under the lines. It provides that you must contact the facility concerned in the interest of the safety of your workers or others. If an outage results from your activity you would pay for this. Moran is satisfied that from his knowledge of the industry this would be a useful law. Randolph moves and asks unanimous consent to pass this bill out with

a "Do Pass" recommendation. There was no objection. All present signed this "Do Pass".

No-fault Ins. — HB 25

Hillstrand asked the chairman about scheduling HB-25 - No-Fault Insurance. Moran said he would call Fred Eastaugh, Norman Banfield, and Bob Schlanger and see if they could work out a compromise. Mr. Randolph wanted to work with them on this, also.

Crim. Code / Prob. Code — HB 524 / SB 248

There was some discussion of both the criminal code and probate code. Randolph wanted Mr. Moran to find out if the Senate would pass the criminal code if we sent it over to them. Moran thinks we should put out a CS of the criminal code. He understands what Mr. Ziegler said about the code, but feels if we get a good CS out, this will be what they will work on between sessions. The Probate Code has been scheduled for April 11.

Architects/ Engineers — HB 239

Randolph asked about HB-239 - Architects and Engineers. Moran said he was hoping to go over and work with Art in preparing a CS. He wanted to help write the provision about state employees and the privilege of the commissioner to waive registration requirements. Randolph said he would like to have the section which says "duplex" changed to apply to a "4-plex". Also he would like to allow construction of small commercial buildings. Hillstrand suggested taking Burt Bomhoff's suggestion in this regard. Moran said he would check in the minutes and consider this. Hillstrand also suggested setting a limit on the number of people that would be using a public building--say 10--or use the monetary figure of a building of $100,000 as the floor or threshhold. Randolph wanted to separate commercial from home residences. Moran will have a draft prepared and then it will be brought before the committee.

Bush Justice

Meeting recessed at 12:00 noon. The committee will meet in the corner conference room in the Capitol Building at 1:30 p.m. to view a film on bush justice. Mr. Jim Martin of the court system will show the film.

The committee viewed the film after which they held a discussion on bush justice. Meeting adjourned at 3:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, March 30, 1972

Bush Justice

The committee viewed a film on bush justice. Mr. Jim Martin and Mr. Bob Reeves answered questions of the committee after the film showing. (The film was shown in the House Committee Room in the Capitol Building.)

(Secretary was not aware that the committee was meeting in the Capitol Building.) Moran suggested to Mr. Reeves that there be two forms of maintaining order in the villages. Stay with the traditional methods for minor offenses and go to State law on major infractions of the law. Martin Moore said that traditionally the natives in the villages would hold a potlatch and sing out a man's good points and his bad acts. After the missionaries arrived these practices were stopped. He said this worked very well for the natives up until the time of the missionaries.

Meeting adjourned at 3:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, March 31, 1972

The House Judiciary Committee met with the Judicial Council in the Governor's Conference Room today. Meeting came to order at 1:00 p.m. and was chaired by Chief Justice Boney.

Judicial Council Presentation

A series of resolutions was presented to the Legislature. There was objection to a resolution relating to legalization of marijuana. Most legislators felt this was a legislative matter and not in the jurisdiction of the judicial branch of government. The Judicial Council asked for a more improved information system in order to control or set standards for allowing criminals to be out on parole or free on probation.

There was some discussion about the court facilities planned for Juneau. Mr. Fink asked for guidance from the Judicial Council on this matter. There was a great discrepancy in the figures discussed by the Judicial Council and those as presented to the Finance Committee.

There was consideration of obtaining the four remaining lots in the Anchorage Court facility area. All legislators wanted them to obtain the lots as soon as possible because the price would keep going up. The appraised value, if remembered correctly, was $525,000.

Moran asked for guidance from the Council for the Judiciary Committee on the organization of several judicial districts in Alaska. This committee has a bill creating a fifth judicial district. Moran mentioned a letter he had sent to Chief Justice Boney relating to this subject. The secretary will provide the Chief Justice with 10 copies of this letter. Moran requested some information on this question before the session ends, since this is a matter needing immediate attention. Moran said he was asking for recommendations as to how we should reallocate the districts. Venue was also considered. Reapportionment has caused a problem in this respect. Boney said comments would be submitted to the committee.

Meeting adjourned at 3:00 p.m.

RESOLUTIONS OF THE ALASKA JUDICIAL COUNCIL

PRESENTED TO THE

SEVENTH ALASKA LEGISLATURE - SECOND SESSION

March 31, 1972

RESOLVED, that the Alaska Judicial Council is concerned that persons frequently commit crimes while at liberty pending trial on earlier charges and that too often persons who pose a threat to society are being released contrary to the intent of the Alaska Bail Act. [A.S. 12.30.020, as Amended, Chapter 112 of the Session Laws of 1967.]

The Alaska Judicial Council urgently recommends that the Department of Law and the Judiciary of the State of Alaska take immediate steps to insure that adequate investigation be made of cases where the accused may be a serious threat to the community to the end that such persons not be released on bail or that more restrictive bail be imposed.

RESOLVED, that the habitual criminal statutes should be invoked by district attorneys insofar as the incurable rescidivist is concerned. [A.S. 12.55.050, A.S. 12.55.060, Habitual Crim. Statutes]

RESOLVED, that the Alaska Judicial Council strongly opposes the legalization of marijuana.

RESOLUTIONS OF THE ALASKA JUDICIAL COUNCIL

PRESENTED TO THE

SEVENTH ALASKA LEGISLATURE - SECOND SESSION

March 31, 1972

RESOLVED, that persons on probation and parole should have adequate supervision, and probation and parole services should be streamlined to obtain maximum utilization of personnel in the field who deal directly with persons on probation or parole.

RESOLVED, that members of the parole board should be appointed for staggered fixed terms of six years. They should be chosen for their qualifications without regard to their political affiliations.

RESOLVED, that the Parole Board should be provided with adequate professional staffing to investigate applicants for parole so that prisoners who are a menace to society are not prematurely released.

RESOLVED, that an expungency law should be enacted which would provide a procedure for a convicted person who has been rehabilitated to have his record cleared.

RESOLVED, that courts sentencing convicted persons in felony cases and in misdemeanor cases reduced from felonies should have available to them adequate pre-sentence reports.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, April 3, 1972

Vice-Chairman Rose called the meeting to order at 10:15 a.m. in the Masonic Temple. Present were: Barber, Banfield, and Hillstrand.

HJR 7

Unicameral

Rep. Rose reported that Moran was called out of town on an emergency but he would stop by and sign out HJR-7 - Unicameral - before leaving. Rose asked how many were in favor of passing this bill out of committee. The vote was 3-1. Banfield voted against putting this bill out. Rose next moved and asked unanimous consent to pass this bill out with individual recommendations. HJR-7 was signed out. Rose and Moran signed a "Do Pass"; Barber - "No recommendation"; and Hillstrand and Banfield signed "Do Not Pass".

HB 25

No-fault Ins.

Rose suggested that we consider the list of bills we have and set up definite dates for consideration. Hillstrand asked to have HB-25 - No-Fault Automobile Insurance - scheduled. After a brief discussion it was decided to hold a early morning meeting on April 6 and to invite Mr. Banfield, Mr. Eastaugh, Mr. Randolph, Mr. Schlanger, and Mr. Koch. The secretary is to write letters to these individuals. This is scheduled for 8:00 a.m. At the same meeting they are to consider SCR-20 - Study of No-Fault Insurance.

HB 722
HB 731

Banfield feels that we should hear Barry Jackson on HB-722 - Inheritance/Adopted Child, and HB-731 - Native Land Claims Settlement Act. This will be scheduled for Thursday at 1:30 p.m.

Mrs. Banfield requested that we scheduled HB-563 - Criminal Justice Information System; HJR-103 - Grand Juries; and HB-557 - Juvenile Records on the same date. Rose set the date for April 12, Wednesday.

Meeting adjourned at 10:40 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, April 4, 1972

Vice-Chairman Rose called the meeting to order in the Masonic Temple at 2:10 p.m. Present were: Barber, Banfield, Randolph, and Bennett.

The first item of discussion was CSSB-296am - Point System/ Motor Vehicle Violations. Rep. Rose asked the secretary to provide copies of the material in the file for all committee members. This material was sent over by the Senate. SB 296

Point System
Motor Veh.

Rose announced to the committee that Commissioner Chappel had called to say that Captain Sydnam was ill and would like to be heard at another time. The Public Defender also sent comments on this measure to the committee.

Mr. Jerry Rachetto, from the AG's office, appeared to testify on this bill. He said they had had a discussion on this bill this morning and would like to ask some questions. They would like to know what the intent is in respect to administrative hearings as outlined by this bill? Their review also showed that this measure left all hearings under APA regulations. They feel this is a problem if no licenses can be revoked until after a hearing under APA. Public Safety requests to be deleted from the listing in the statutes at 44.63.030. This would be cumbersome on the department to go through this type of hearing procedure prior to revoking or suspending every license. He felt that the department could provide for a simplified hearing procedure.

Rose said that he would ask Art to check the application of the APA to refusal to submit to a breathalizer test for comparison with this. Mr. Rachetto said that the Supreme Court says you still owe the licensee some type of due process. This is borne out in Reese v. Kassab. Copies of this case were made available to all committee members.

Mr. Rachetto also noted that this bill does not call for any repealer of statutory language. It would be inconsistent with existing statutes unless this would be true. He asked whether the courts would be allowed to revoke and suspend the licenses, or the department, or shall they have concurrent operations. This may create administrative problems. It was noted that the bill did not state how long a license would be suspended or revoked. There did not seem to be a limit. Randolph asked if there would be a place where your record would be wiped clean and you could start over again. Barber asked if this was in force in other states. Rachetto said it was followed in 19 states and that he was familiar with the arrangement in Colorado. Randolph said there was a bill on Colorado point system and he would like to have that before the committee for comparison purposes. This was HB-275. Mr. Rachetto said that the Colorado law was effective. The court does not have the right to suspend or revoke licenses, they only determine innocence or guilt in a matter.

Point System Motor Vehicle

SB 296

Rachetto said that he felt this could properly be administered under the APA. The department would probably feel otherwise. They felt it would be cumbersome. It would give the individual whose license was connected with making a living an opportunity to show cause why his license should not be revoked. The department should be allowed to revoke licenses for a minor period of time for punishment.

Rose noted that the bill showed you could have a total of 12 points for a 12-month period or 18 points for a 24-month period. Mr. Rachetto said it did not say how long the license could be revoked. He felt there should be some maximum set. (Banfield left 2:30) Barber feels this bill needs quite a bit of work done on it. This will be rescheduled for April 13, Thursday.

Criminal Code

HB 524

Joel Bennett met with the committee to consider the changes he had prepared. Everyone had a list of the changes. Joel noted that these changes were the product of judges, witnesses, and committee suggestions.

Changes 1-8 were accepted by the committee. Barber noted an additional change where "punishment" was to be changed to "sentence." Randolph suggested on change number 2 that we say: "convicted of a crime forfeits his office." Joel noted that the insertion of the word "material" was probably an oversight since it was listed this way in two other references.

Amendment #5 was a deletion of a section that was actually superfluous. There was some discussion of Amendment #7 which was changing "misdemeanor" to "petty misdemeanor". Amendment #8 changed the amount listed for fine. This changed "$500" to $1,000". We have received a letter from an attorney from Fairbanks. This called for a much higher level for the fine, up to $5,000. It was decided by the committee that each offense could be charged out at $1,000 and that would cover all situations.

For Amendment #9 there is a basic policy decision. Committee members felt this would be a good place to start our next discussion.

Meeting adjourned at 3:05 p.m.

No meeting today, Wednesday, April 5, 1972.

No quorum.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, April 6, 1972

Chariman Moran called the meeting to order at 1:47 p.m. in the Masonic Temple. Present were: Banfield, Rose, Flynn and Art Peterson.

Native Claims Settle. Act Under discussion today will be HB 731 (Native land claims) and HB 722 (Inheritance - Adopted Children). Mr. Barry Jackson was present to talk on these bills. *HB 731* *HB 722*

Inheritance Adopted Children

Mr. Jackson started out by thanking the committee for having him. He apologized for the lateness of the bills.

Mr. Jackson then started to discuss the proposed CS for HB 731, prepared by Mr. Peterson and Mr. Jackson. This proposed CS adds some clauses to the Governor's bill, some of which the administration is opposed to. Mrs. Banfield requested that the clauses that the administration is opposed to be named as they go along.

Mr. Jackson passed around an analysis which was prepared to accompany the CS. He noted some problems which the CS clears up, among them probate, guardianships and subsistence resource protection. He read from Section 1 of the commentary.

Mr. Jackson read Section 2. He felt this was necessary because under the federal bill the stock would be counted as part of the estate, although it could not be sold, and with 7% of the estate going off in attorney fees, executor's fees, and court fees, all the monies in the estate could be drained away.

He said that by will, the stock can be passed to anyone. It can also be by court decree in the event of a divorce. No one can sell the stock for 20 years from the effective date of the Act otherwise.

Mr. Jackson read Subsection (b). He felt that even though many natives are not familiar with wills, they would at least fill in the back of their stock certificates.

Moran asked about a program of education on stock. Mr. Jackson said hopefully the regional corporations would do something about that.

Mrs. Banfield asked if the causer of death by misadventure could inherit. Mr. Jackson said no.

On page Two of commentary, subsection (b), the last word should be "certificate" instead of "will".

Mr. Jackson read Subsection (c) and (d). He feels the federal bill only *applies to village* and regional corporations,

Native Claims Settlement Act

it does not take into account the small group, a village of less than 25, or the Juneau Sitka class, if they incorporate.

Mr. Jackson read Subsection (e), and read commentary for same.

Mr. Jackson read Subsection (f). He corrected Line 29 to add "and inchoate rights in court." He also read commentary.

He read the commentary to Section 3. The Secretary has power of preventing entry and Mr. Jackson personally would like to see the State Board handle this. This has been examined by Fish and Game and they feel it is politically difficult to carry out. Mr. Jackson has no strong feelings on this, but feels the state should exercise some kind of jurisdiction. He read Section 3 from the CS. An important question is whether this will fall under the equal protection clause of the Constitution, and he feels this will meet those standards and not be unconstitutional.

Section 4 concerns the part of the federal Act that could make it possible for stock to be sold by court order. The AFN feels stock should not be turned into cash. AFN would like to have this clause but it is not a critical one. He read Section 4.

Mr. Jackson read the first part of Section 5, entitled "Contracts between Department of Natural Resources and P. L. 92-203 Corporations." He didn't think there would be any trouble with this clause.

The next part is more controversial. The state and native corporations are granted rights to exchange land under equal value with the federal govennment, but nothing is said in the federal Act about direct exchanges between native corporations and the State. This is to clear that up. Mention was made of a problem with mineral rights.

He read Section 6. Mrs. Banfield asked what sections the AG's office was not opposed to. Mr. Jackson said they were not opposed to Exchange of Land for one.

Section (b) extends the federal tax shelter to direct exchanges between state and and native corporations. The federal law will have to be amended.

Mr. Jackson read Subsection (c). This tracks federal law, except that on line 21, after "taxes", they have added "and local assessments until December 18, 1991. He read commentary to Subsection (c).

Mr. Jackson read Subsection (d). This was to clear up a problem in language, because the guy who wrote the bill didn't understand what he was writing. These are not really corporate funds and not really dividends. This section

HB 731

Native Claims Settlement Act

makes it clear for purposes of state law.

Subsection (e) tracks and clarifies federal law. Mr. Jackson read (e).

Section 7 is in the Governor's bill. He read Section 7.

Section 8 is an inconsistency clause. There is one in federal Act, but not so broad and related to regional corporations not village corporations.

Section 9 is in Governor's bill, he read commentary.

Section 10 refers to the Probate Code.

Section 11 makes it retroactive and Section 12 provides for an effective date.

Mr. Jackson then mentioned a bill they have drafted, to cover minor native children who will own stock and must have guardians. Uniform Gift to Minors was used as a guideline. He would have liked to see it come out this session but others wanted to wait. Moran asked why. Jackson said they would rather not push special interest legislation now. He personally would like to see it now. Are there any further questions on this bill?

Rose wanted to know how they could issue stock before they know how many people qualified to receive stock. Mr. Jackson said that the federal Act said to issue 100 shares to each person. There was not a specified total amount of stock. Within a year we will know 80% of potential shareholders.

Moran wondered why there was a disparity in value. Some corporations have more assets than others.

There is a potential 13th regional corporation, the people Outside Alaska who will receive only stock, no land. Groups like the Tyoneks will be given option of taking either the Act or keeping their land and receiving neither money nor shares. If the reservation choses to keep their land, they get sub-surface rights. The other way sub-surface rights go to the regional corporation. Banfield *asked if* reservation lands are included and counted under the Act. Mr. Jackson said any allotments after December 13 are counted against the 40 million. If the reservation elects to keep its land, it is not counted. If they choose to go with the Act, the land will be counted.

Mr. Jackson mentioned two other bills he wrote.

Mr. Jackson felt HB 722 (Inheritance-child) was an example of incidental problems. The AG wouldn't introduce.it. Under Alaska law, if a child dies his property passes to his parents and vice-versa. What happens when the natural parents die. General rule is that child remains an heir.

Native Claims Settlement Act

Rose felt that adoption cancels certain rights and obligations, support and inheritance. He felt that the exact opposite approach should be taken, it would be better to cut them off unless specifically stated in the decree. Mr. Jackson said fine. Continue inheritence rights as an option. Rose moved to draft to take an opposite approach and to put that out as a CS. Unless the decree specifically states otherwise, there are no inheritence rights. Banfield felt more children would lose that way. Rose doesn't like the records being opened. He discussed emotional disturbances. Moran thought Superior Court would only do that with specific reasons. They won't do it for fishing expeditions. The idea is not to do an injustice to anyone. But Mike's idea has many places for injustice.

HB 731

Mr. Jackson said he would be happy to talk on other bills.

The meeting adjourned at 3:28 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, April 7, 1972

Moran called the meeting to order at 8:15 a.m. in the Masonic Temple. Present were: Banfield, Barber, Flynn, and Peterson.

HB 731

Native Claim s Settle. Act

HB-731 - Alaska Native Claims Settlement Act. There has been previous discussion on this measure. Mr. Barry Jackson and Dick Bradley met with the committee.

Moran said he feels that an adopted child knows he is adopted and if he wants to know who his natural parents are he should be able to do this. It would be a serious matter to cut off inheritance rights, at least to do it automatically because you happen to be adopted.

Mr. Jackson took up with the discussion where they had left off last time.

Mr. Bradley was going to go over the points that conflicted with the Governor's bill. Section 1. No problem. Section 2 - This is from the earlier bill and it is all right.

Section 3. Mr. Bradley had reservations on this section, but not because it might not be a good idea. The problem arises in the concept of subsistence and residents as shown in the committee report. Mr. Bradley thinks this will involve the Fish and Game Board in horrible political problems. He doesn't think that the benefit to the state will offset the morass of problems. This law would only apply to state lands so the aspect of whether the Secretary of Interior could control Fish and Game would have to be answered. They can control access to the land but we don't know if this applies to hunting and fishing. Moran noted that just making this trespass would not be an adequate protection. Barry said that his main concern was that the Secretary would have the right to control entry to the federal land and he feels this type of jurisdiction belongs to the state. Barry had no language ready to cover this objection now. Mr. Bradley said that the last sentence of this section is covered in Fish and Game code. This could be excluded since it is already in existing law. Barber asked if the newly formed North Slope Borough would be ab to keep all hunting and fishing except subsistence hunting and fishing in their area. Dick said this would be up to the Board. Barber then asked about the possibility of the borough petitioning for a management reserve of six million acres. Banfield said she was concerned about this. She had heard the suggestion of a time limitation on these rights and that sounded good to her. Barry said he would be happy to put in a time limit, like five or ten years. At that time it could be reviewed again by the legislature. Moran felt that if this would make it difficult for the Board, he was not overly impressed.

Native Claims Settlement Act

Mr. Bradley thinks we should delete section 4 from the proposal. Our reservation on this section is that is isn't the function of the State Legislature to clarify the ambiguities in the Settlement Act. He feels that there will be a supremacy problem where the Department of Interior may interpret the language to mean one thing and it may not be what the State Legislature has said. He thinks that Congress has to clarify this. That's why he doesn't think we should put this type of clarifying section in this bill. Moran asked how this problem would be handled. Dick said it would be taken care of on the federal level. Barber felt if this was the case, the supremacy problem would develop in every section of this bill. Banfield noted that there was no problem in Section 2 and asked Mr. Bradley if there was one in Section 3. He said there isn't because there is no language in the federal act dealing with this problem. Mr. Bradley does not think that the state should be filling in the holes on the federal act. The intent of Congress is clear on the inalienable stock--this is clear from the Act. Moran asked how we would deal with these problems if we did not interpret the problems listed in Section 4. He said it would have to be decided by looking at the intent of Congress. Barry said that the purpose of having this language in the bill was to guide the courts when dealing with this problem. Barber thought that this would be presumptive for the state courts to interpret the federal thinking on the subject. Mr. Bradley said this is done all the time. Barber felt this would strengthen the position of the native land claims when they take these same things up in Washington. Moran said he would probably use this argument, but didn't know how persuasive it would be.

Sec. 060. Mr. Bradley suggested an amendment to this section. He would delete the language "any other individual native or corporation referred to in (a) of this section or". This is found on lines 22 and 23 of page 4. He did not think it was necessary to authorize a native or a corporation to exchange land with the state and this is what this does. Art asked if there would be any tax shelter due to land exchange. Dick said this didn't deal with taxation. Art asked him to look at Page 5, lines 10 and 17. He said he would be asking to have this deleted. Barry said that the chief reason for putting this in the bill was to make sure that the native corporations would be allowed to exchange land with the state and with the state only. Moran said that at the previous discussion Barry had noted that consolidation of the land was for economic reasons and this should be encouraged. One way to do that is to make sure that they don't incur tax liability. Barry thinks this would be important for the state so they could have big chunks of land for their future developments. He doesn't think the administration should delete this part. Moran noted that you will never find two pieces of land of equal value even if they are of equal acreage. Barry emphasized that any time you have an exchange it is considered a sale. You are taxed because it is considered to have a monetary value and you have to pay a capital gains tax. Barry said that it should be remembered that this was for land consolidation or land development.

Anything else would come under taxation.

Native Claims Settle. ACt

Sec. 43.80.015. This is at the top of Page 5. This raises the question as to whether the state should give any tax benefits at this time. It is the view of the administration that whatever is tax free is under the federal act and the benefits that come with it are fine. We think it is undesirable to allow tax exemption by state law. There does seem to be a desirability to the first sentence but we would like to see the second sentence deleted. Banfield asked Dick to explain the reason for the deletion. Dick stated that Barry had pointed out that it isn't clear if shares of stock are free from taxation. Dick thinks it is clear that the intention was that they not be taxable and certainly doesn't think that a local governing body could levy a tax and sell it because it is inalienable. Under (b) Dick would delete "under the federal Act" on lines 8 and 9 of page 5. On line 10 he asked to delete "sec. 22(f) of that Act or". This is so that the state is giving only what it can give and not conforming to what has been given by somebody else. Banfield asked if the fair value of the land would be determined at time of receipt, and, if so, would this land be evaluated now. Dick didn't know about this, but felt that it would be logical to do so now. Under section (c) Dick would like to delete "federal Act or" on line 16 of page 5. Barry said if we did that he would have no objection to the deletions in (b). In (c) there are several problems. Under the federal Act land exchanged with the federal government is not tax exempt. He did not think that this was Congressional intent. He said the state can grant exemption. If the state does this, he feels that the exemption would be granted under either Act. This would be a clear inhibition against exchanging land. Dick thought Barry was correct on this point. He withdrew his objection on (c).

It was time for adjournment of the House. Dick said he had only two more suggestions. That was to delete sections (d) and (e) on Page 6. Barry said he wouldn't object to deleting (e) but felt that (d) should be left in. Moran felt this section was to clarify terms that have not been used correctly. This would determine when you could pay dividends and what things are taxable.

Meeting adjourned at 9:00 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, April 11, 1972

Chairman Moran called the meeting to order at 1:45 p.m. in the Masonic Temple. Present were: Rose, Randolph, Banfield, and Russ Mulder.

Prob. Code

Moran noted that it was the objective of the Judiciary Committee to get the probate code out this session. He asked committee members if they had any areas of concern with this bill. Mrs. Mason will provide members with copies of correspondence on Senate Bill 248. Russ also has some suggested changes that will be discussed. Each member received a copy of these changes. Russ explained that some of these changes came in after this was prepared by the Council. They are from judges, attorneys, etc. Some of the suggestions were received in the summer and some in the fall. All have been incorporated into the suggestion that Russ brought to the committee. SB 248

There was some discussion on nonintervention wills. This is suggestion #9, on Page 2, and the answer to that seems to be found in Section 13.16.555, Page 102. Russ noted that the code provision says that if there is reasonable cause to intervene then such a provision is not binding. The court will make that determination. The committee will have to decide which concept they wish to have in the bill. Moran feels that we need to maintain the integrity of the will. Any attack on the will is that the burden of proof lies with the one who attacks it. Rose noted that the code provided for self-proved wills. Russ said that a self-proved will was one that was signed before witnesses and notarized.

Russ felt that the biggest decision that the committee would have to make was whether or not you wanted to incorporate his suggestions into the bill. He felt that the committee needed to understand the concept in the code in contrast to present law. Further discussion of this will be held on Thursday, April 1 . (Randolph left 2:00 p.m.)

There was a discussion about line of survivorship brought up by Mrs. Banfield. This will be discussed and considered more fully when we have a quorum.

Russ mentioned that he felt committee members should read the comments of Mr. Wellman. This give the history, problems, and why it was drafted, and what it does in general concepts. This would simplify and to a great extent lower the cost of the majority of probates.

Banfield asked if we were going to support a series of amendments to the Body rather than coming out with a CS. Moran didn't think that we should have this bill retyped and that amendments would be the best way to handle this.

Prob. Code

SB 248

Moran felt that there were two things that were necessary in the consideration of this bill. One was to get the estate of the deceased in the hands of the proper people; and, two, don't do in those who were his creditors. Russ feels that the code will allow settlement within four months. That is one of the main objectives of this bill: To get these things settled more quickly. Payments, etc., will be handled by a personal representative. In small estates this can probably be handled by affidavit. Moran asked if there was a provision for people who thought they had been wronged. He wanted to restrict this. Russ said there was a big advantage to this bill in that until somebody comes in and objects, the court does not have to intervene in everything. Moran asked about the procedure to get discharged. He has had problems with this in the past. Russ said that for purposes of settling an estate if an attorney is the personal representative that he can do all appraising necessary unless there is objection by someone, at which time the court will investigate. Moran asked about a certificate of hardship. Russ said that after you receive this certificate, the property passes to the heirs. Moran asked whether real property would be treated the same as personal property. Russ said there is no distinction because there are no large landed estates as there were in the past. He noted that securities are considered personal property, or at least are treated the same. You have to make sure the creditors get paid. Rose asked about the differences of handling as to state of residence. Rose said that now real property is handled according to the location of the same. There is no way for Alaska to decide whether the law of other states would be applied. Russ noted that hopefully the code will become uniform around the nation and the code will say that it recognizes the law of the other state. The code says that all creditors should get an equal share of the estate. Moran said he would like to consider the concept of how to handle cases where the person dies in a foreign or has relatives that die in a foreign country. We need to take care of the international arrangements of foreign creditors or beneficiaries.

Rose called the attention of the committee to Section 13.11.045 relating to what Barry Jackson had talked about the other day. This clarifies what he was discussing. Rose thinks you should cut off all rights of inheritance of an adopted child from their natural parents. Moran objects to this approach. Any time this is done, he thinks it should be done thoughtfully and shown in the decree of adoption. Banfield said when you come right down to it, there is a bond between the child and natural parent that will win out in the end. It is only human.

Meeting adjourned at 3:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, April 12, 1972

Vice-Chairman Rose called the meeting to order at 2:40 p.m. in the Masonic Temple. Present were: Flynn, Randolph, and Banfield. Mr. Peterson, staff counsel was also present.

Grand Juries

Banfield asked unanimous consent of the quorum present to take up HJR-103 - Grand Juries. Shari Gross, representing the ACLU, appeared before the committee in favor of this measure. She feels this bill would eliminate one step before trial. If someone is accused of a crime, they have a preliminary hearing. They can then be taken before the grand jury and after probable cause is shown the grand jury will come back with an indictment. Rose noted that the DA can go to the grand jury without any hearing. The person doesn't even know about it and has not been arrested. It is to the advantage of the person concerned to have a preliminary hearing since he can take his attorney, and be heard in his own defense. Art noted that the language that allowed for the waiver of the grand jury had been removed from this bill. Shari asked if the purpose would be to do away with the grand jury altogether. Art felt this would be good. Other than that, he felt that the benefits of the preliminary hearing should be extended to the grand jury so the individual would have adequate protection. Shari could support this concept but felt this would require going through the same motions twice. Shari felt it was necessary to delete grand juries in order to expedite matters through the courts. (Moran arrived 2:50) Rose again told how the DA can present evidence against you and the grand jury can return with an indictment. They come in and arrest you. Then you go to trial with no preliminary hearing. You haven't seen any of the people involved. That is what this bill is trying to get away from. Rose asked Shari if she would like to amend this to provide for a preliminary hearing in all instances. She said she would. Mrs. Banfield wondered what this would do to people who still wanted to keep the grand jury. Moran noted that this causes problems. He felt that any matters that dealt with the constitution should be considered at the same time. He was referring to SJR - 1.

HJR 103

Rose proposed an amendment which would change the title of the bill. He suggested the deletion of "unless on a presentment or indictment of a grand jury, or" on line 12. This would leave only the last two sentences that would be pertaining to grandjuries. Perhaps this should be in two sections: One in felonies and the other on grand juries. Rose felt if we had preliminary hearings in all cases except where they were concerned with the public welfare, safety they would go before the grand jury then this would solve the problem. Banfield asked if the public would go for giving up the grand jury system.

Grand Juries

HJR 103

Art felt that the approach that he mentioned would be more acceptable. Leave the grand jury in but provide for cross examination as in preliminary hearings.

Moran noted that the hearing was to be before a "judge". He felt this should be "judicial officer" since sometimes this is done before a magistrate. There was no objection to adopting this amendment.

Art suggested some amendments to cover the approach he mentioned earlier. This is on Line 13--"indictment of a grand jury following a hearing" or "confrontation and cross examination" or "upon full hearing". Some wording like this would make a grand jury similar to a preliminary hearing. (Randolph left 3:05) Rose said there was no motion one way or the other on which concept to adopt. Moran mentioned that he felt we should consider SJR-1 at the same time we work on this bill. This will be rescheduled for Friday, April 14. The secretary will invite the AG; DA; and Public Defender.

Rep. Moran assumed the chair.

Juvenile Records

HB 557

HB-557 - Juvenile Records. Shari Gross testified in favor of this measure. She did not think that something that a young person did should follow him all through life. This bill provides for these records to be sealed. This allows the court to authorize their use in making out a pre-sentencing report. Flynn moves to pass this out with a "Do Pass" and asks unanimous consent. No objection. (Shari was representing ACLU on this bill, too.)

Sex Discrim.

HB 774

HB-774 - Sex Discrimination. Moran noted that everybody should be in favor of moving out this bill with a "Do Pass" recommendation. Rose so moved and asked unanimous consent. There was no objection.

Taxation of Retirement Income

HB 558

HB-558 - Taxation of Retirement Income. Rose asked if there was a fiscal note attached to the bill. Moran suggests a motion that we have a recommendation that Finance provide us with a fiscal note. There was no objection. Rose had one question on this. Many people retire from one job and then go into a new career. He didn't think they should get this tax break. He didn't feel there was any necessity for this exemption for such persons. Moran noted that only the retirement income would be tax exempt. Art had a question on this bill. He wondered if the new language had anything to do with United States Civil Service. He checked this out and it seemed all right. This bill was signed out with four signatures asking for a fiscal note from Finance.

Penalties Alaska Net Income Tax

HB 781

HB-781 - Penalties/Alaska Net Income Tax Act. This bill makes it a felony to violate the income tax law. This allows for extradition of persons who leave the state. Flynn moves that we pass this out with a "Do Pass" recommendation. Banfield felt that the penalty was pretty stiff for only a $100 non-payment. Flynn said that this was aimed at the outside fishermen who are required to pay these state taxes. Now you can't

extradite them because it is only a misdemeanor. Under this bill you could extradite them and prosecute for non-payment of these taxes that are due the state. Rose felt that this was quite severe to make a minor matter a felony. Moran said we need this in order to regain whatever revenue the state is losing. Rose noted that we are also affecting the people in the state. He did not want to encourage tax evasion but by the same token did not want to make people felons so easily. Moran showed where the bill said it had to be willfully. Moran noted that Flynn had moved to pass this bill out. Banfield and Rose will sign this "No recommendation".

Penalties Alaska Net Income Tax — HB 781

Admin. Adjud. — HB 480

Rose asked about scheduling of HB-480 - Establishing Office of Administrative Adjudication. This was set for April 13, Thursday. Also scheduled for that day are: CSSB-296am; HB-648; HB-731; and CSHB-239.

For Friday, April 14, the following are scheduled: HB-664; HB-611; HB-590; HB-529; HB-25; and SB-383. Mrs. Banfield will decide the order in which to consider these bills.

The chairman asked all committee members to look at HB-790 and tell him if they want it referred to this committee.

Meeting adjourned at 3:45 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, April 13, 1972

Vice-Chairman Rose called the meeting to order at 1:45 p.m. in the Masonic Temple. Present were: Randolph, Rose, Banfield, and Peterson.

SB 296 am

Point System Motor Veh.

Although there was not a quorum present, Rose said we were prepared to hear testimony from the Department of Public Safety on SB-296am - point system. Captain Sydnam was accompanied by Dan Hickey from the Department of Law. Captain Sydnam prefaced his remarks by saying that he would like to include all three bills in his comments. The main problem with all three bills is the recent court decision in Pennsylvania which allows for a hearing before the suspension of drivers' licenses. The next problem that he mentioned is whether or not to legislate the points to be given as penalties or to do this by regulation through the department. What he would really like to see is an opportunity to rewrite these bills to tie in with the recent court decision. He would like to work with Mr. Hickey on this. They felt they could come up with something within a week. Rose felt that the department could provide that when you have reached the limit in points that the individual by statute could be required to appear on a certain date to show cause why his license should not be suspended. This would be similar to the way the Transportation Commission handles their proceedings. Mr. Hickey felt that was just setting up a procedure for a hearing. Rose said that he meant this to put the burden on the licensee to appear and show cause rather than having the department show cause why the license should be suspended. Captain Sydnam also said that they were having difficulty in administering the financial responsibility license suspension since they felt they would have to do this under the APA. Dan said suspension of licenses under this bill would be very cumbersome since they would fall under the APA. Also this is going to cover a lot more licenses than would the Transportation Commission. Art felt that APA requirements for a hearing would go beyond what would be necessary according to the federal case. Rose suggested using a form type of show cause order similar to traffic tickets showing that you are ordered to appear on a certain date. A great many will not appear. (Moran arrived 2:00 p.m.)

Captain Sydnam said he felt that the points would be more appropriately regulated by the department so they would reassign values if they needed to do this. (Moran assumed the chair.) The captain noted that there is a conflict between the courts and his department on limiting licenses. Sometimes the court will allow you to drive to and from work--a limited license. At the same time, under the

Point System Motor Vehicle

SB 296 am

point system, the individual may have passed the limit. Who has jurisdiction at this point? There is also the question of equal protection of persons in similar circumstances that are given different limitations by the court. Mr. Hickey said that Mr. Rose had raised one of the problems with the point system. In states where this is in effect, the department is the only one that can suspend licenses. There would have to be some arrangements made with the courts about limited licenses. HB-275 is good on this point because it says that the court decision will take precedence over the administrative action.

Randolph asked about the accumulation of points. How would a person keep track of the points? Captain Sydnam said he would like to see in the bill a provision for the department that they "may" advise of each point assignment. Also a provision would be mandatory to let the individuals know when they had reached the 50% point. Randolph asked if there was some way that we could write the law to show that the judge will take the license. Dan said in the federal case they had a system that had constitutional validity. He thought this could be done fairly. Rose was against this concept.

Captain Sydnam said he would like to opportunity to work these bills over. The point system can't be automated until January 1 of next year so we would be only six months later than the implementation of this bill. Randolph will work with Mr. Hickey and Captain Sydnam.

Randolph moves and asks unanimous consent to take this up in one week. This was scheduled for Thursday, April 20. There was no objection.

Architects Engineers

HB 239

The next item for discussion was HB-239 - Architects and Engineers. Chairman Moran presented his amendment to cover state employees. He felt there should be some relief for state employees. This would require the Commissioner to state in writing the circumstances under which he felt the employee was qualified but did not require a license. This would be a matter of record with the Division of Personnel and the Board. In this way, we have shown a concern for the public welfare. Randolph moves and asks unanimous consent to adopt this amendment. No objection was heard. The committee rejected the Commerce Committee amendments. Rose moved to delete lines 18 and 19 and also to take out "being a citizen of the United States." These were adopted. (Banfield left at 3:05 p.m.) Art went over the list of amendments he had prepared. He also distributed the ones submitted by the architects and Rose's amendments. Art will prepare a CS for the committee. It will then be presented to the committee for approval. Randolph gave one parting desire. He wanted to see the smallest unit be a four-plex and small building for public use of 500 square feet to be exempt from these regulations.

Meeting adjourned at 3:30 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, April 14, 1972

Vice-Chairman Rose called the meeting to order at 2:10 p.m. in the Masonic Temple. Present were: Randolph, Banfield, Rose, and Hillstrand. Mr. Peterson, staff counsel, was also present.

Grand Juries — HJR 103

The committee was prepared to take testimony from the Attorney General on HJR-103 - Grand Juries. Rose noted that we were discussing the possibility of the grand jury having all the benefits of a preliminary hearing. We have also talked about complete elimination of the grand jury system. (Moran arrived 2:12 p.m.) Havelock noted that the purpose of the amendment was to breathe new life into the grand jury system. This would allow for both preliminary hearings and grand juries. There are kinds of cases where the grand jury is desirable. He said they had avoided amending the provision of the grand jury to investigate things that were in the public safety and welfare of the people. He doesn't feel that we should take grand juries out of the indictment business. Havelock felt that the secret indictment was still an appropriate tool and should not be impaired. Banfield asked about SJR-1 and the new material in it. Havelock said the word "original" bothered him. He didn't know exactly what they meant by this. Banfield noted that SJR-1 says "committed a felony" and HJR-103 says "committed a crime". Havelock said it should be the latter. This was probably an oversight of the drafters of SJR-1. Art felt that the resolution as introduced by the Governor simply allows the DA to take one course or the other and the abuses of the grand jury would still be there. Havelock agreed with Art that his main concern was with the streamlining of operations. He felt there was a possibility that a preliminary hearing should be a matter of right. He though this could be done by statute or an addition to the Constitution.

Rose asked about the secret indictment. There is no need to keep this secret after the person has been arrested is there? Havelock said No. Sometimes you want to test the probable cause before you arrest the man. Rose said this was his concern. This is a one-sided presentation of evidence. He then asked if the grand jury wouldn't be likely to go along with what the prosecution is asking. Havelock said this was true. Banfield asked if Havelock was urging passage of this resolution. He said he was. He meant HJR-103. Art asked if the administration would be opposed to including the right to cross examination and confrontation of witnesses before the grand jury. Havelock said he hadn't given this any thought. He did not have a position on this at this time.

Banfield had an amendment for Page 1, line 17. Add "Preliminary hearing or" at the beginning of the sentence. She moved and asked unanimous consent for adoption. No objection.

Grand Juries

HJR 103

Joe Balfe, District Attorney, assisted the committee in considering secret indictments. Mr. BAlfe said that they usually dispense with the preliminary hearing if the grand jury is operating. Rose said that was why he wanted to abolish the grand jury. They do not use the procedures that the preliminary hearing does. Rose would keep the grand jury in operation for the person that we want to come back to the state. This should be secret. Rose wanted to abolish the grand jury except where the defendant was absent. Banfield reminded that this was going to go to a vote of the people. Many feel it is their inalienable right to have the grand jury. Balfe said if you have the same privileges in the grand jury that you do in a preliminary hearing, you just don't have a grand jury. Banfield moved to adopt the two amendments to HJR-103 and asked unanimous for a "Do Pass" recommendation.

Balfe brought up another problem of having the grand jury allow for confrontation and cross examination. These people are lay people. They would just get in a big shouting match. It might be hard to convince these lay people that there was probable cause. Some of these cases are very emotional.

Hillstrand objected to Mrs. Banfield's motion and asked that this be held over until Monday, April 19. Rose requested the chairman to ask Mr. Peterson to draw an amendment to allow confrontation and cross examination. This was granted.

Teachers Grievance

HB 664

There are several people here on HB-664 - Teachers/Grievance. Robert Van Houte will testify on this. He is in favor of this measure. He thanked the committee for allowing him to testify. He noted that this bill deals only with grievance procedures that relate of personnel policies and policy of school districts and written. In some instances this would include policies that have been the practice for a long time. At the present time there is no way to deal with problems of this sort, without resorting to the courts. He proposed an amendment to show this by redefining the term "grievance". This is on line 12. Add: "personnel policy, rule, regulation, or negotiated agreement." This limits grievances to personnel policies, rules, or regulations or interpretation of a negotiated agreement. Rose moved to adopt the amendment as proposed by Mr. Van Houte. Hillstrand objected in order to ask some questions. Banfield said she had several she had promised who would be notified when we considered this bill.

Banfield asked if this would include salary. Mr.Van Houte said that it could. Banfield thought that this would be used at the time the salary agreement was being negotiated. This might be used as a lever. Mr. Van Houte said he envisioned this as taking place after the agreement had been completed and not prior to the agreement.

Teachers Grievance

HB 664

Randolph asked what other subjects wouldn't be covered in this bill. Mr. Van Houte said curriculum, building facilities, furniture, and maybe staffing. Hillstrand asked if wages, matters of transfer, or promotion would be arbitrated. He said Yes because these would be covered in school policy. Hillstrand asked how far this reached into the staffing. He asked if this could involve the hiring of an assistant superintendent. He said it would not. He said he couldn't answer conclusively on these points. The only things that would be covered is the personnel policies of the district and each of these are different. In two or three districts the teachers are part of the screening committee for hiring principals and superintendents. Other districts make their superintendents responsible to the school board. Hillstrand then asked if this would include time off for teachers. He said he had heard of some places where they were given an additional 30 days off during the year, and not in the summer. Van Houte said this might be true where they have a 12-month school year. Hillstrand said his purpose was to see that there was a boss and that his hands were not tied in accomplishing his duties. Hillstrand asked if the teachers were given a set of rules and regulations upon employment. Van Houte said rarely. They usually have to ask for them. Barber asked about the bill on this in the last session. He wanted to know the difference between that bill and the one we are considering. Since the bill in the last session was defeated, what assurance do the teachers have that this one will pass. Van Houte said that last year the vote was 20-20. A number of people indicated that they were concerned about the fact that they thought this was too broad. This was the fault of the drafting of this bill and this has been changed by changing the definition as considered earlier.

Hillstrand asked if there was any method or procedure set up to select an arbitrator. Van Houte said there was nothing in writing. In all instances so far there has been no problem in the selection of an arbitrator. He gave examples of Fairbanks and Nome. He feels there should be some form of qualifications for the arbiter. Van Houte suggested letting the Commissioner of Education select them. Banfield objected. Banfield said that she has given this a great deal of consideration and has talked to people from other states. There are no other states that have this provision. At least she did not talk to any of them. She didn't want to have Alaska be the guinea pig. Mr. Van Houte said that Pennyslvania and Hawaii have this provision. Other states made provisions with agreements between themselves. We already have this in some districts in Alaska. Sitka and in Matsu Borough. Rose asked if there would be any objection to amending this to provide that arbitrators be under the Uniform Arbitration Act. AS 09.43.030. Mr. Van Houte said he had not considered this.

Teachers Grievance

HB 664

Mr. Van Houte estimated that you would have 10 teachers out of 100 in a school district who might have problems. Hillstrand asked if the number of pupils per teacher could be a part of the grievance. Mr. Van Houte said that it could if the contract stated they would only have a certain number of students in their classes. Hillstrand asked if books could be the subject of a grievance. Mr. Van Houte said that it could if the contract said they would have the most current books. Moran asked how you could resolve something like this if there were no funds available.

Mr. Hank Harrison, representative from Alaska to the NEA, Alaska's Teacher of the Year, testified in favor of this bill. He said that he understood this bill did not address itself to what is put in personnel policies or what is put in negotiated agreements. The purpose of this bill is to assure equal application of both of these features. At the present time the school board makes the policy, administers the same, and adjudicates the policies. He feels that something must be done or the schools will be in real trouble. As it is now, the school board feels it must back the administration and the only place the teacher can go is to the courts. Randolph asked about school policy which is not written down. Hank said this would be considered, too. If it had been practiced for a number of years, it should be considered. Hillstrand asked Hank to give an illustration of where the school administration would be using this against the teachers. He said he didn't know of any cases like this but felt that the school boards should be protected, also. If the bill needs to be changed to insure that, he would have no objection and would favor the change. Hank told the committee it was his "clients" that he was worried about. This is true because the public schools are in great danger. Hank said in some places they were closing for lack of funds. In another area, the schools are not teaching the students. We need to concentrate on how we are aiding the students and not be bothered with these other problems, which this bill seeks to alleviate. There is also the problem of curriculum.

Banfield asked Hank if he had ever had need of an arbitration system in his teaching career. He said he had solved his problems through the board, but that other teachers he knew personally had needed some help. A case in point would be a teacher being transferred without being consulted. This creates a morale problem. This kind of thing will carry over into the class room. Randolph didn't think that the vast majority of things we had talked about would improve the quality of education. Hank said it would be unbelievalle what some of the superintendents and boards do in this state.

Saunna Greene wanted to make some statements in favor of this measure. She commented on Mr. Hillstrand's statement that if the teacher had a problem they could go to war. She said some people will do this, others will just quit there job. You may be losing some of your best teachers this way. She also commented on Mrs. Banfield's reference to her school teaching days. She noted that students are as different today

Teachers Grievance

HB 664

as facilities were then. The statements about curriculum are very true. Many times you find it is the parents that are very vocal about this and they won't accept change. She noted that many times the teachers are not even listened to, so how can they negotiate on curriculum changes. She feels there should be a place to go when you have a grievance. A third party sometimes can see what is fair. These situations many times become very emotional. Banfield noted that the problem confronting the legislators was that they have to look after the welfare of the students, the tax payers, and the teachers. This is very difficult. We don't like to take power away from elected officials. Banfield will notify other people on this bill before final action. Moran noted that we have other people here to be heard so cut off this hearing.

Pub. DEf. Expenses

HB 752

John Spencer, City Attorney from Anchorage, appeared before the committee in favor of HB-752 - Relieving City of Expenses of Public Defender Agency. This bill would relieve municipalities of the expenses of the Public Defender Agency with respect to violating municipal ordinances. Mr. Spencer has talked to city attorneys throughout the state and they have supported this bill. Also the City Council of Ketchikan supported it. This was brought about by the Alexander vs. City of Anchorage case which gave everybody right to council. He said they just had another case where the court said this is not the law and they will pay only the personal services of the judge. Rather than going through another law suit they want to continue with this bill. This will make it more definitive that the municipalities don't have to pay for the services. He feels this is a matter of equity. Other cities throughout the state do not have to pay for these services. Ketchikan is also assessed these costs. He feels that clarification of the statute will solve most problems arising in this area of concern. Mr. Spencer will be back in Juneau on Monday. Moran asked why they didn't handle those things that fell into the classification of misdemeanors as offenses against state laws and prosecute as such. Mr. Spencer said he had asked about this and had put 2,500 cases in the DA's office. This overloaded their office and caused other problems. He said what they had done was to hire their own public defender, this was less expensive. It cost about $2,000 per month. Moran asked if the theory was that the state had put in this requirement then it should be a state expense. He said this was the case. Barber asked if these cases resulted in a net income to the city or were they a loss. Mr. Spencer said it was a loss. He gave some supporting figures.

Moran read a communication from the Finance Committee Chairman requesting contribution from this committee on budgets.

Meeting adjourned at 5:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, April 17, 1972

Chairman Moran called the meeting to order at 10:07 a.m. in the Masonic Temple. Present were: Barber, Banfield, Rose, Flynn, Randolph, and Peterson.

Native Claims Set. Act

HB 731

HB-731 - Native Claims Settlement Act. Mr. Bradley met with the committee on this measure. Moran noted that there were some questions of the problems that could develop with ownership or possession and management of shares in the corporation when the owner was a minor. Mr. Bradley's comment provide some additional information on this. Dick said he was familiar with customary guardianship and adoption and he feels they are the same thing. Mr. Jackson was concerned about whether it was necessary for the child to remain with the family with which they are born. In the White society we are concerned about the integrity of blood lines. Among the natives this is not true. The reason we are so concerned about this is probably because we want to pass on property to persons in our own blood line. In the native community the guardian and adoption procedures are not formalized. At least, not the way we do. Barry attempted to deal with that problem indirectly by having the term "customary guardianship or adoption." Dick didn't know if this was a real problem, but felt this was not the place to do it. He did feel that one of the individuals who will qualify under the Act may be a member of the family with whom the minor has customarily lived. Moran noted that it was Barry's approach to legislatively recognize customs of the native people. Dick said the committee would have to decide if this was a problem, and if it was, then it should be dealt with separately. Barber didn't think this would work, It would develop into having two classes of individuals under the law. He felt there should be one law that applied to all persons equally. Art said this would apply to laws that are written for a certain segment of the population, such as bankers, insurance industry, plumbers, etc. The amendment was to try to meet the circumstances of this part of the population. Banfield felt this would make two classifications of people according to race. Art said this would apply the same in the White population under similar circumstances. It is true that this would mainly apply to the Native population. Rose said this was true but that the White society has access to a rather sophisticated approach through the legal services corporations, like OEO, etc. They can normalize all of their situations. Art thought the discussion should be brought back to the exact terms of the amendment. This amendment was to determine who is to be custodian of the child's stock. He read from the AFN proposal. This merely says that a customary guardian should be a person to be recognized. Dick said his amendment to cover this was covered in Section 3, only that he did not use the phrases "customary guardian or customary adoption." Moran said there might be some problem in filing to be a customary guardian. In Alaska now we have a procedure to

follow when changing your name. At this time you fix a time when the change will occur. He thinks that customary guardians should have their status formalized in some manner and this should be on record. Dick felt there would be problems with this. He said he knew some adults who told me they were using one name, they found out this was not their real name so they started using the real name. He doesn't think this is a problem with the natives. OEO attorneys do not think this is a problem.

Moran noted that it becomes a problem when you get into the question of who is going to handle the stock for the minors. Rose said that a customary guardian has to be pinned down as a legal guardian to make sure the responsibilities are carried out properly. Otherwise changes could be made with no one having any knowledge of it. Moran said that was why he felt this should be recorded. Banfield asked about the child who is a ward of the court and welfare children. Rose said he had talked with McGinnis about this and he said he has custody of hundreds of children in this way. The question arises as to whether this is considered legal custody. Dick said he understood the typical BIA foster child arrangement was a very informal situation. There actually is no guardian. Art felt there should be some general provision to allow for such appointments outside of the legal custody. Dick felt there would be problems if this was done. It would result in one horrible paper headache. He would rather see the stock withheld than do this. He feels the committee should deal this more seriously, because they are not recognizing all of the problems that the condition causes. Moran feels that if this stock has some value, then the legislators have some obligation to see that it is correctly managed. Art noted that both bills have something on this. If a problem arises the court has the express authority to deal with this in subsection (c) in both versions. Rose objected to this because he said no court would start action on its own. They really don't care what happens to the child in the village. Unless we show that somebody is required to apply to the court it wouldn't be done. Moran felt that it was unclear as to what type of relationship to the one who will be managing the child's affairs, and what are the responsibilities. He asked if this would be a fiduciary relationship. Dick felt that we had created someone who has no responsibility but is technically a legal owner. Moran asked what the alternative would be in issuing stocks at all. Dick said we had a 20-year period and you reach the age of majority before that, these are the ones who will have a problem. They will reach this age before the stock can be alienated. Rose suggested we use the approach that is used now in automobile cases. Maybe you could use the Lieutenant Governor as the agent for process of service. You could pick someone like the Commissioner of Health and Social Services as custodian of the stock on behalf of the child who doesn't have a legal custodian of record. As soon as there is a legal custodian of record then this would be turned over to them.

Native Claims Set. Act

HB 731

Dick said he would like to delete the second phrase in Section 3, lines 4 and 5, and add the Commissioner of Health and Social Services as number 4. Art didn't think it was necessary to delete the language from 3. He suggested leaving that and then adding 4.

Moran noted a change in (c) on line 6. It says "in the Superior Court" This will be changed. In (d) it says that the custodian would be subject to the Uniform Gifts to Minors Act. Barber asked if the stock had anything but paper value for the first 20 years. Dick said that all you need is a record of enrollments. It has no value. You can get disbursement from the corporations for certain specified things, though. Rose mentioned that there would be need to know the legal custodian in cases of divorce, for inheritance purposes, and child support now. Rose felt that if there was no legally appointed custodian on record, then there should be some person who becomes such automatically. Barber asked why this couldn't be the treasurer of the corporation. Then all you would need is a stock record and the treasurer could maintain the changes as necessary. Moran said this affords opportunity to vote in corporate matters. Dick said he wasn't clear on this, but felt the custodian would exercise the right of voting. Banfield asked about incompetence. Dick felt we should defer action on this problem until the next legislature. Art asked if he meant the whole problem. He said he meant the legal competence. Moran asked if there would be any problems if we did not act of this. Dick said he had asked about this and found that they would be issuing stock schedules. Banfield said they could hold it in escrow. Rose didn't think it would be a complex problem to have a revision to provide that minors and other under legal incompetence be treated in this manner. If there is no legal custodian or guardian established or in the alternative have the president or treasurer of the regional corporation do this for the purpose of taking the responsibility for the stock until there is a legal custodian of record. Dick said if the committee wished we should probably deal with the problem of incompetence this session. The other alternative is to defer action and introduce a bill at the beginning of the next session.

Dick said Mike's suggestion would work, but that he didn't have any reservations about that as far as minors were concerned. What he was saying was that there is nothing in this bill that deals with incompetence over the age of majority. He did not think this bill would adapt to this. Moran agreed commenting that this was under the Uniform Gifts to Minors Act. Mike moved that his suggestion be adopted as an amendment. Moran said he didn't think we were dealing with the whole problem. It is apparent that there will have to be substantial revision. Art noted that there will be more minors affected than other person who have legal impediments.

Native Claims Set. Act

HB 731

Barber asked what the difference was between the Alaska Native Claims stock and other stock. Art said if a person wants to give stock to a minor it is covered under theAct. Other corporations are not mandated to issue stock to every minor existing at such and such a date in the state of Alaska. Barber then asked what would be the case if the minor had six guardians applying for the stock. Rose said that was why he felt there should be a custodian of record. Art thought an additional paragraph should be added. Rose thought we should delete paragraph 3. Art asked what affect this would have when it comes to voting. Rose felt we should take out number 1 or the procedure he mentioned and both 2 and 3. Moran said he thought 1 and 2 were in there to show that absent a divesting of parental authority that the parent would be the legal guardian. Dick said the parent is not the guardian of the child's estate, only of the person of the child. Banfield identified a point when she mentioned that after enrollment that the child has a right to disbursements from the corporation. You will have to identify the child to make sure that it is he that is getting the money and not just the custodian. Dick doesn't think it is desirable to defer payment until the minor reaches the age of majority. Rose said the money should be channeled to the child. It should be a simple application to the court that the person should become the legal guardian. Dick reminded the committee that we are talking about more than bear stock.

Art asked if it was the custodian that was to be appointed under the Act. Dick said he thought all the person was doing was holding stock until he reached the age of majority. Art felt they should pay to the child as the child needs it. In reality a fiduciary relationship. Dick said it would allow this. Banfield asked if Art could get together with Mr. Bradley and work this out. SHe also noted that we had another witness who would like to be heard on this bill. Moran asked Art to work with Dick to resolve some of these points. Also he wanted them to consider if this needs to be done this session.

Joe Blum, Department of Fish and Game, appeared before the committee on this bill. He had a draft copy of a letter that had been sent to House and Senate Judiciary Committees. He read this testimony. All members had copies of same. A copy of this will be placed in the file. Tom said that any problems would come before the board, but this would not include closed sections. He thought we could amend the first section. Rose noted that the principle that subsistence rights should be provided to all persons who need it was included in this. Barber feels this is important because of the large acreage concerned. Joe mentioned that Hoonah came under three governing bodies. Further consideration will be given to this measure on April 18 at 1:30 p.m.

Admin. Adjud.

HB 480

HB - 480 - Administrative Adjudication - was the next item for discussion. This is geared to provide a more formalized method of handling these administrative hearings. There would be personnel assigned to this office. The appointment would proceed on the same basis as we appoint all judicial officers. The chief presiding officer would do this. I think that the office would be established in the court system. The head officer would submit an annual budget for the running of the office. This would be incorporated into the court system's budget for submission to the executive and legislative branches. The purpose of the whole thing is to make sure that the people have a chance to have an impartial hearing before someone trained with adequate background and because of his independence he can afford to be impartial. It also serves another purpose. This is to make sure you don't get the long delay in the administrative hearing and for a decision to be made. Some hearings concluded three years ago but still no decision has been made. People are more affected in our everyday lives by actions of administrative agencies than by the courts. There is hardly anyone that doesn't have to be submitting reports to some agency in applying for licenses, etc. All are under the APA except for the Transportation Commission and PUC which have been exempted. Now the agency makes the regulation, interprets the regulation, then acts as judge against the person. This bill provides an independent decision for each person. Rose said he had talked with the Chief Justice and also Bob Reeves. They said it would not create a problem. There was a question about putting this under the court system and including this in their budget. Since the budgetary request would have to be made separately this would not cause any problem. Also it was felt this might be a conflict of interest since appeals would wind up in the courts. There is no conflict there any different from when you have an appeal from the district to the superior court. This is the result of six years of research of the ALC. This included people both in government and in private practice. This has been working very well in California.

Flynn asked what it would cost. Rose said there would be little additional cost because now they hire hearing officers on a one-time basis and this is very costly at times. In the bill there is no place where it gives the salary for the chief hearing officer. Transportation Commission must have one or two full-time hearing officers and the PUC needs 1/2 to a full-time person. Those appointed on a one-time basis are paid by the hour. In one PUC case this cost $18,000. Moran noted that the letter from ALC said they were anxious to make this hearing procedure applicable to the PUC and the Transportation Commission. Moran said his only concern was that a lot of things that we are handling informally now will have to be handled formally. This takes away something. Banfield felt that this was setting up another big agency when she thought of the great amount of activity generated in the Environment Division, for instance. Rose noted that we would be hiring the hearing officers individually at an hourly rate for these cases anyway. At this time Rose thinks it will take about three full-time people. If the load increases there would be a need for more.

Admin. Adjud.

Rose said there had been a lack in contract appeals. He had talked to Commissioner Easley and he reviewed this bill. He wanted to make sure that it included contract appeals. Moran asked if the Presiding Officer and the hearing officer would be full-time positions. Rose said this was true. Randolph said he could see the development of a very large agency. He asked if Rose had any information on the federal arrangement. Rose said he did not. He said when he was in Washington that he stopped at the Civil Service Commission. They handle hearing officers for the federal government. The person who developed the plan has retired. Rose said he had been a hearing officer in Alaska for 2 1/2 years with the ATC. He said he had problems when he worked with them. He didn't feel he could make an independent decision. Moran said he felt the only concern the committee had was in the area of cost. Rose moved to report the bill out with a favorable decision and asks unanimous consent. Moran said he had asked for the AG's office to be heard before we pass this out. Rose said that he had discussed this with the AG and he said he didn't want to get involved in this either way. HB 480

Art distributed a cover letter for SB-383 - Revisor's Bill.

Meeting adjourned at 12:00 noon.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, April 18, 1972

Moran called the meeting to order at 8:10 a.m. in the Masonic Temple. Present were: Rose, Banfield, and Barber.

Admin. Adjud.

HB 480

The chairman said that Rose had made a motion yesterday to pass out HB 480 - Administrative Adjudication. Moran had talked to the AG and he said there was no need for him to come before the committee. Rose repeated his motion on HB 480. This was signed out with individual recommendations.

HB 648

Applications Employment

HB 648 - Employment Applications. Moran asked the consensus on this bill. (Randolph arrived 8:15) Banfield said that this seems to be a real nice concept but that there were some areas that are sensitive areas. She has reservations about these. She did not want a person convicted of rape to be teaching school, for instance. She did not want someone who was peddling drugs to be working in a pharmacy either. Randolph agreed with her. Barber asked if the amount amount of time was reasonable. Randolph said he wanted to amend it to five years. Barber suggested five years for a misdemeanor and ten years for a felony. Rose mentioned that the Judicial Council had come out with a recommendation for an expungency law. The person who committed the crime doesn't forever bear the burden for his past mistakes. Rose said we had talked about ameding this to say if you had any record of arrest or a case which has not been disposed of that the employer should know this. Moran reminded committee members that this was to be granted for employment purposes only. Banfield felt this would be all right for state and local government but not for the private employers. Moran said he felt just the opposite. Randolph said there was a great difference between the person who has made one mistake and the one who has made many. He felt that after ten years of good conduct a man should have his record wiped clean for employment purposes. Banfield said she was worried about the habitual criminal. Rose mentioned that when we had testimony the other day we were informed that Alaska doesnot have the hardened criminal. The Public Defender from Anchorage testified that after a man is 25 and continues to live a life of crime, he has probably established his life pattern. Banfield thinks we should protect in the sensitive areas.

Moran said we should look at this an another way. He asked if a man should have to say he has been arrested or indicted even if he never was convicted. This is what happens now. He gave an example of his own way of doing hiring. If he found out that there was prior indication that the person had some dispute with his supervisor, he would not hire that individual over one that has not had such a dispute. The same holds true of arrest records. The FBI rap sheets are never completed to show disposition of the cases. Barber noted that great numbers of the Mafia have never been convicted. There was no objection to (a).

Rose said the employer should know of your arrest if it has not been disposed of before employment. Rose does not have specific words for his amendment.

Applications Employ. Moran suggests we say after the word "indictment" on line 13 "has fully been disposed of and does not result in a conviction for the offense." Rose thought you could add "not then pending." Randolph said he wanted it to say: "A misdemeanor if it is a first offense and if two years have elapsed; if a subsequest offense then it would be a different thing. Banfield asked about traffic violations. Randolph wanted to make it more lenient on the first offense but stiffer on subsequent offenses. Moran said if you made it long enough the person would be old enough to retire before he could be an employed, useful citizen. Barber suggested for a felony for a first offense it should be five years that should have elapsed. Randolph said for the second offense that we could add more time. Barber said to forget the second offense. Moran said if there was a second time there would not be expunging of the record at all. Banfield asked to know how this would work. Moran asked if we were leaving in two years for a misdemeanor. Art will consider these two amendments and check this out. Rose said this bill did not say anything about the person whose sentence was suspended. This bill does take care of expunging records for employment purposes, so Rose asked if we should consider a bill at this time to cover expunging records. Moran felt that we should just prepare amendments to this bill at this time. *HB 648*

Banfield still feels that we should limit this to state and local governments. Moran disagreed. He said we had always accorded the representatives of the public information that others could not get. Rose said all federal employees have to have an FBI check. Banfield didn't think we were being responsible to the private sector. Moran said that in state and local government employees sign statements saying the facts on their applications are true. You can tell private employers anything you want. There is no law that requires an individual to give information about his past--at least not to the private employer. Moran thinks the social consequences of this bill have merit. Why do we want to deprive a person of employment? An amendment will be prepared for HB 648.

Architects Engineers HB 239 - Architects and Engineers. Art said he didn't have the CS ready. He doesn't think the committee has given it the analysis it needs. Rose said we had never resolved the matter of "store fronts". Three different definitions were given for a store front. Art called Mr. Ackley and he said it meant the facade to an architect. Moran wanted to know who would decide on the public welfare and public safety. Barber had the correct meaning. *HB 239*

Rose asked if the chairman was open to additional comments on this. Under 8(a) and (b) he felt there should be someone specified to make the decision on public health, welfare, and safety. The court will have to decide if this is in the interest of the public after the Board has charged you. Rose thinks we sould amend this to say "substantial" public welfare, safety, and health. This should be inserted in both (a) and (b). On (c) why should it say wood frame construction only? Rose commented that 9 seemed to exempt anything that you would hire

Architects Engineers a contractor for. Art agreed with this. There is a certain building that needs to be done by the architects and engineers and then you say any licensed contractor can design anything he wants. (Banfield left at 9:25) Rose and Art will get together and work out agreeable wording on this point. Rose suggested that we say "specialty" contractor. This would probably limit it to the contractor with a license for a specialty. For the last part put in for general contractor for shop drawings and field drawings. Art felt this would be all right. *HB 239*

Venue There are several bills that the committee has to get out. HB 631 and SB 310 - Venue bills. Fink's bill simply repeals the law we passed last year. 310 keeps the good parts of that concept but gives relief in venue cases. *HB 631* *SB 310*

Proposed Court Facilities We also have HCR 49 - Proposed Court Facilities. This is a program covering three years--not to exceed $32,000,000. Moran is concerned about ASHA bonding. If it is GO Bonds the people have a chance to vote on each proposal. Rose asked if Art could prepare a bill to knock out the ability of going the ASHA route for bonding of government capital improvements. Barber objected to this. He said things were built two or three times sooner with ASHA bonding than GO Bonds. Rose said this wasn't his main concern. He was concerned about what the constitution said about capital improvements and this should go to the people via the referendum route. ASHA began to be used when someone discovered that the constitution says that public corporations are not subject to these restrictions. Since then, it has snowballed. Moran said he had checked the back-up material and found funding for one town that did not even exist. *HCR 49*

Applications Employ. Art said that on the amendment for HB 648 he thought it would be better to add a new sentence. *HB 648*

Meeting adjourned at 9:45 a.m.

Meeting reconvened at 11:00 a.m. Present were Flynn and Barber.

Incorp. under Native Claims Settlement Act The committee was provided with copies of two bills. They were not numbered yet. One was designated as "A" and the other "B". Mr. Bradley read his comments. This was in a letter he sent to the Governor. This was in reference to the Alaska Business Corporations Act. He said he did not prepare this to update everything in the 1969 Act, but it covers the necessary matters relevant to the Native Claims Settlement Act. Moran asked if there were any problems with accumulative voting. Dick said this was in the proposal Barry had but they thought this might cause problems in the Legislature. He felt this was not critical in the settlement because the Secretary can provide for this. (Randolph arrived 11:05) Dick said there were other provisions that dealt with merger. They did not think this was necessary at this time. Art asked if he meant even if the merger concept is in formation. Dick said this would be only villages in regions. Art said the regions would be merged before the corporations would be formed. Art noted that there were two letters from the Department that Barry *HB 804* *HB 805*

Amending the Alaska Bus. Corp. Act

Amending the Alaska Bus. Corp. Act HB 805

left with the committee that should be distributed. Moran noted that Dick had outlined that he had prepared this just as it might bear on the native corporations and have it limited to that.

Barber asked what was the importance of this. Dick said it was thought that all that was involved was rights to lands but we are dealing with shares, too. The second problem is that corporations must have $1,000 paid in capital before it commences business. None of these native corporations will pay $1,000 before they start operating. The third problem is noted in his letter to the Governor. The fourth concerned itself with the possibility that the settlement Act which obliges the corporations to distribute so much stock each year to the members could be considered a distribution of capital. Under Alaska saw this cannot be distributed except by a vote of the shareholders. They might not be voting on this before the distribution starts. The supremacy clause has amended state law and our way is neater. This allows these corporations to do business. Very seldom do you have a corporation with its assets as a gift. Moran asked if we were opening up areas of corporate law which causes mischief among corporations organized for other purposes. Rose asked if it might be better to put all the corporations related statutes should be all located in one place even if some of the sections had to be repeated again. Moran said he had raised a question about this. Art said they were trying to avoid setting up two categories. Except for their unique problems the native corporations would be under the regular nonprofit corporations laws. That is why this was placed in Section 3. Moran said he didn't realize this and thought that it would require a substantial change. Dick said this would be all right. He noted that the Settlement has to have five incorporators and state law says three but does not preclude more. Moran asked Dick if this was amended so that the main requirements of the state have not been affected. He said this was true. Dick said he had not changed any of the language but had deleted the Alaska Airlines section. Art said he could supply the committee with copies plus commentary on the bill as Barry had prepared it for comparison purposes.

Incorp. under Native Claims Set. Act HB 804

Dick said the committee should be alerted to section 4 of "B". This authorizes a corporation to assume the organizational expenses that have been incurred up to 1/4 million dollars, $25,000 for village corporations, $5,000 for the smaller groups. This is a substantial departure from state law. The AFN, villages and regions want this very much. He was not very enthusiastic about this section. We understand their problem so we put this in the bill. The differences between (a) and (c) are different from (b) which is a loan provision. This is discretionary from the regional corporation to the villages of less than 25 population. It was asked how many this would include. Dick said BLM identified fifty groups as worthy of looking at, but that doesn't mean that fifty will qualify. There would be some 200 villages and 12 regional corporations. Moran asked if Art had drafts of these things. He said he did not have them with him. Moran thinks we should compare

the two drafts together, Dick's and Barry's. *HB 804* *HB 805*

Rose said he wondered how the organizational expenses could reach $250,000. Moran said he didn't know. He felt that the regional corporations would contract with BIA for enrolling, *Incorp. under Native Claims Set. Act* purposes. Dick said this would not be included. Art said that (d) lists the types of expenses that would be included as organizational expenses. The problem now is that regional associations are incurring these expenses so there is no *Amending the Alaska Bus. Corp. Act* entity with which to contract. One statutory provision should be to reimburse these regional associations. The regional associations that now exist will be a regional corporation. Moran gave an example of the Cook Inlet Native Association which will cease to exist and it will be replaced by Cook Inlet Regional Corporation. Art said that an association is uaually considered a club, while a corporation is a business. Dick said he thought the bankers were a little bit nervous about this. We should consider that we are using the organizational expenses that a corporation would normally use. They are using the funds to do other things which are indicated in the bill. Part of the problem is that the corporations needed to be set up to do a lot of things that are useful and necessary to the corporation but the funding has not come through. This would be interim funding. Barber thought that this was what we were providing. Art said that this is not a state payment. This is to the association from the corporation. Moran asked Art to have copies of Barry's draft for this afternoon's meeting so we could compare them. Moran noted that normally this would have gone to the House Commerce Committee. He will suggest that we would be happy to make any material that we collect on this subject available to them. Moran feels that orderly government requires that we take steps to assist the Alaska Claims Settlement Act. We will meet again at 1:30 p.m.

Meeting adjourned at 11:50 a.m.

Meeting reconvened at 1:45 P.m. Present were: Rose, Barber, Hillstrand, Banfield, Flynn, and Peterson.

Hillstrand reported that his subcommittee on HB 25 - No-Fault *HB 25* *No-Fault Insur.* Insurance - were awaiting the number to be assigned to the substitute. He thinks we should use HB 464 but it is still in *HB 464* Commerce Committee. Moran said we should ask Jay to put this out so we could continue with our work.

Art, on HB 804, said he couldn't provide the analysis on this *Incorp. under Native Claims Set. Act* because it has a large analysis of an earlier version of the *HB 804* bill. He hasn't broken this down into the things that the committee used in the fourth version of the bill. Banfield asked if this was Barry's. Art said that it was and this is what the state used to prepare HB 804.

Art noted that on HB 805 - unincorporated municipalities *Amend. Alaska Bus. Corp. Act* referred to third or fourth class cities. Dick said they had *HB 805* deleted Section 2 (1). This referred to there having to be five incorporators of a regional corporation. This isn't necessary because the state law says three and that doesn't mean

Amending Alaska Bus. Corp. Act HB 805

that you can't have five. Art agreed with that. Dick said the requirement for the Secretary to approve the regional corporation articles was unnecessary. This is only for federal law and doesn't need to be done in state law. Art asked if there wasn't some problem with filing of bylaws. This section would have taked care of that. Dick said they could be filed with the state but were not required to file them. Art then asked how this would apply to Juneau and other small groups. Dick said this has to be under state law. Art asked if, when they incorporate, should the other two categories file bylaws. Dick said the federal law was silent on this and he did not feel that we should fill in all the gaps. This is true, since we do not know what the Secretary of Interior will say. Art asked if he didn't think that where the federal Act assumes certain provisions or ignores them that it would be helpful to clarify this. Dick said this was not undesirable, but you wouldn't know if you had answered the questions raised under the Supremacy Act.

Rose asked about how the Department of Commerce would handle the bylaws. Dick said they would merely file them since it is not mandatory. This is required under the federal law and we don't want to clutter up state law.

Dick recommends that state law be amended to provide that a corporation may file articles of incorporation. It is clear that after the five year period they don't need to file the bylaws. Moran asked Mike to make a note of this point.

Dick also deleted paragraph three for the same reason. The Settlement Act doesn't identify the age of the directors. Art said that it did for voting on the 13 corporations or for something. He did not have his copy of the federal Act with him. This was inserted to make this consistent with the federal Act. Dick said they viewed it as another fill in of federal law.

Paragraph 4 should be left in. It has been reworded. Each corporation shall issue without further question such number of shares as may be necessary to comply with the requirement of the ALNC. All stock so issued is considered fully paid and nonassignable when issued. Art asked about classes of shares. Dick said they had decided there would only be one class of stock issued. The Settlement Act talks about these but the federal Act never established more than one class.

Paragraph 5. There are problems with the word "dividend" and "distribution" in this. It is a misuse of terms in the Act. We don't suggest that the legislature clarify this. He recommends deletion of this section. Rose said he was not familiar with this but felt the enforcement of those rights would have to be in federal court. If they are made part of state law then enforcement could be sought under state courts. Dick said that the Settlement Act is a federal Act but that corporations have to be formed under state law. Rose still felt if the state law has certain requirements, such as for inheritance, divorce, and child support that this would be governed by the federal Act, only there is no way to seek redress in the state

Amending Alaska Bus. Corp. Act court under the federal Act. If it is made state law then you have an available vehicle for this purpose. Dick said if that was his view then we would have to adopt the entire 1969 code and not just adopt a minimum code to comply with the Settlement Act. If you did this you would have to be very careful not to leave anything out. We thought it would be simpler to deal with the necessary items. (Randolph and Flynn left at 2:10) Moran said he thought Barry had looked at the legislative history of this enactment. Where ever he saw there had been some consideration of a problem or a matter and not legislative action taken on that matter he had considered the question. He thought the state should fill this in. Bradley disagreed with this concept. Dick said they had been told from Interior the things that were necessary and these are the things included in his bill. Moran noted that Barry is an experienced legislator and he knows that you should get everything you need while you can. *HB 805*

Mr. Bradley's comments were the same - calling for deletion - on all the rest of the paragraphs. Page 5, number 15 is necessary. Interior wants this provision. His next suggestion was on Page 7, Line 19. Delete (:), then go to Page 8 and that all becomes one section. If village corporations are organized under the unincorporated corporation they cannot adopt a name which would suggest that they are a municipality. Art didn't think this was clearly defined. Dick said we could put this back in there.

Section 4 is in the administration proposal. It is changed. Line 8 becomes $250,000. This was the request in Barry's draft. It is probably the AFN proposal. Moran asked about subsection (d) on Page 3. We covered this this morning. What would organizational expenses include.

Moran felt the objective is that under the auspices of the regional association a great deal of the work that would be eventually the responsibility of the corporation is being undertaken to expedite matters. We have agreed that when organizing a business corporation this is different. You don't have business to attend to until you are a corporation. They are operating now under the auspices of the regional association and they have done a lot of these things that will have to be done for which they are being fiscally responsible. Dick said this was proper. Banfield thought that the $250,000 was from the state. Art explained this is from the association to the corporation. Moran said this is what is causing the anxiety among bankers. Dick said the problem was that there was no board or anybody to ratify the loan--not in an unorganized group. Moran noted that this would be in violation of the banking laws. This would be true of inchoate assets. This request is for the state to advance the money because they can't get it from other lending institutions. Dick didn't think this bill dealt with that. Moran went on to explain that their present amount of indebtedness that they may incur in the course of the organization suggests it can do the things listed in the bill. Banfield thought it said they could borrow $250,000. Dick said this is not a borrowing process. Moran did not see any place

Amending Alaska Bus. Corp. Act *HB 805*

where they could borrow. Dick said we were only authorizing the corporation to assume that debt--the debt incurred by the association during the organization of the corporation. Moran noted several associations that are acquiring funds and proceeding with their organization of the corporation. Dick felt it might be better to study this proposal from the first bill introduced. We discussed this with the Interior Department. They may assume these debts only if the Interior Department O.K.'s it. Moran said the associations would be put on notice that unless they followed the guidelines from the Interior Department the debts would not be assumed by the corporation. Art noted that it is the association that is incurring the expenses at this time. It will be the corporation that will receive the money. Banfield said that is what she was fearing. This was a program to set up an organization to receive funds from the state with no obligation to pay it back. Moran said that the authorization from the state comtemplates that there will be funds advanced to the regional association to perform the kinds of services that the regional corporations will be required to perform. This is for purpose of speedier progress. For example, retaining land consultants at this time. They wnat to get this work started. They want to get the organizing of groups and villages completed. They will need some help in instituting the Act. There will be attorney's fees, travel and per diem and establishing offices. It will be several months before these corporations are in business and this is a means of saving time by allowing the regional associations to get started now. Banfield said the bill said the regional corporation "may" assume these organizational expenses. Dick said he thought it said "shall" in his draft. This was in Section 4. He was correct. Dick said he wanted the bill to say "may". He said they took "shall" out and added that the articles of incorporation of the Department of Interior so provided. Rose felt that the reason for "shall" made sense. Otherwise the problems of the bankers being nervous would be increased. Another thing that bothered him was that the articles of incorporation must so provide.

Sorry friends, it seems that part of the minutes of April 19, 1972, were lost in transferring things from the Masonic Temple to the Capitol Building.

Amending Alaska Bus. Corp. Act

HB 805

Rose said the problem of the bankers would probably make them more nervous, but more importantly the "Articles of Incorporation must provide"--what will this do? Page 2, Lines 21 and 21, Section 4 is referred to--Rose asked if this would be an appropriate thing to put in the by-laws but not in the articles of incorporation. This might be done by resolution at the Board of Directors meeting. Moran felt the reason for departure from the business way of doing things was that they wanted to to be in the foundation document of the corporation. Dick said that he hadn't given this the same interpretation and it would probably be all right to put this in the by-laws. They only want the approval of the Secretary. Moran noted that most corporations have this written in the charter. Rose asked why the Secretary had to approve this. Dick said that the corporations are going to need funds prior to incorporation. You will cripple them substantially on what they are doing regarding land claims and organization. The AFN asked for this. Rose said there was no disagreement on this point and felt that they should be able to get started as soon as possible. Rose could still not understand the Secretary's concern. Dick said they did not wish to be approving articles of incorporation or monitor early stages of these organizations. There is no doubt that the Secretary has already rejected one proposal. Rose would like to restate his question. You have already agreed that the requirements for repayment does not need to be in the articles of incorporation. You would have the Secretary approve this requirement for repayment. If they operate at all they need money to get started and if that is so, what need is there for the Secretary of Interior to approve this requirement that they repay the monies they have advanced? Dick said he was unhappy about the way it would be policed. He thought it would be an adequate answer to have the Secretary monitor this. Rose said his opinion was the exact opposite. Rose thinks we should get rid of federal interference. The Natives should be able to act as soon as they can on their own. Moran noted that the Secretary has to approve the articles and by-laws for the first five years and any amendments. Banfield said if this is the case, then we don't want this in the articles. Dick said that the state wanted it in here. They had objected to the first concept. Dick said if the committee wished to put it in the text how what the money would be spent this would be agreeable.

Moran said that boroughs get substantial sums of money from the state and there are no guidelines as to how they spend it. Dick said that the shareholders are not identified at this time--they might be respresentative but there is no text at this point. Moran said that if you "shall" do it there is some element of judgment of what the money will be spent for. Rose said that as long as we didn't create a requirement for reimbursement there was very good reason for lenders to be nervous. Moran disagreed and said if you use "shall" you remove any kind of thoughtfulness of spending of funds. Start them off with a big debt and not for their benefit. Put these safeguards in the original associations will be more careful because they will have to pay the money back.

Amending Alaska Bus. Corp. Act

Rose said if there was no requirement for repayment then he would say, if he were a lender, that he wouldn't loan the money. Moran said that he would feel easier about all this if he felt the Department of Interior would O.K. these expenditures. Flynn asked about the bill on advancing of money--doesn't that stipulate that money advanced will be deducted from what the state will pay them. Moran said that was the way he understood it. Art said that this was in the Finance Committee substitute. (Banfield left 3:00 p.m.) HB 805

Art noted that if this bill went through there would be provision for repayment. HB-499 is different. It is a loan fund bill. Moran asked if he meant the CS for HB-499. Art wasn't sure, but there is one that has been enacted. Hillstrand asked how you protect the individual from wasting. Dick said that each one would have the same rights as any shareholder. Hillstrand then asked if we were writing about those that apply only to the Native Settlement Act. Dick said this was true. Hillstrand had another question. What prevents them from taking trips to Miami for settlement? Maybe we should have a provision to say that no monies will be used for political purposes. Dick said this is already taken care of in the Federal Act. Hillstrand felt it would be wise to explore the provisions of the Federal Act. He said in the event of violation of this will cost you $1,000. Art said that it is Chapter 11 of this year's session laws.

Hillstrand asked about HB 805. As he understands it it has to do with amending the business corporations act with respect to certain changes recommended by the commission on uniform laws. The American Bar Association recommended changes in 69. HB 805 only adds to our existing law those changes which deal with the problems raised by the Native corporations matter. (Rose left 3:10 p.m.)

Hillstrand said that he followed the evolution of this bill and one of them read said $25,000 for the regional corporations and now we have one reading $250,000. Dick said it had been penciled in on his draft copy and was proposed by the AFN. Hillstrand asked if it cost the same for regional corporation and village corporations. Dick explained that this covers organization costs, too.

Grand Juries

The committee turned its attention to HJR-103 - Grand Juries. We also have SJR-1 and there are some differences in these resolutions. This proposes an amendment to the constitution of the state of Alaska. Randolph said we had already changed "judge" to "judicial officer". Art said that on Line 17 we left the word "indictment" out and inserted "preliminary hearings". Randolph thought that we had left "or indictment" in the text. Art said this hadn't been decided. Moran said if we had the preliminary hearing then indictment was superfluous. Art said you couldn't waive a secret indictment. Sheri Gross had a question on this. Under this bill you could have a hearing and probable cause was not found, could you still take this before the grand jury? If this is true, then you do not eliminate one step. Reeves said that he though from previous discussions HJR 103 SJR 1

that you could waive the grand jury step because you would get a preliminary hearing. Art said this was the original thrust of the bill. Reeves said there are many times when you would want a grand jury. You need to investigate general areas of crime. Art said there seemed to be two basic things being dealt with--administrative investigations and the other was the protection of individual rights. The ACLU is supporting the resolution on the basis that the grand jury is subject to certain abuses. (Randolph left 3:15 p.m.) Moran noted that Balfe indicated they had an additional interest in the grand jury. This was for the purpose of the "washout". We have lost our quorum now. Moran noted that there were two things that needed to be decided. Rose wanted to have confrontation before the grand jury as well as before the committing magistrate. Others said if you have a secret indictment you still should have an opportunity for preliminary hearing. Reeves asked if this was after the secret indictment was returned. Moran understood it that way. Moran noted that this is a different approach to our historical concept of what the grand jury is supposed to be.

Sheri Gross said that if you have a grand jury that doesn't show probable cause why should you have the next step. Reeves said if you have a strong DA he can take the heat, but if you have a weak one, he goes to the grand jury and lets them take the public abuse. It is very expensive.

Moran said that he knew prosecutors did not try to make a strong case at the preliminary hearing, but just enough to hold the person to answer. Reeves said that the new Supreme Court rule says that grand jury proceedings have to be recorded and this has stopped a lot of this. It has to be a strong case to get an indictment. Hillstrand thought that we took the word "or" out on Line 13. He felt that the tendency would be not to use the grand jury but to use a judge except for making investigations, etc. Moran said this doesn't abolish the grand jury. Hillstrand said it might not abolish it but it would make it obsolete. Art said that was what Havelock had said, too. In most cases they go to the judge for a preliminary hearing. It would leave the grand jury with investigatory functions but would leave them with its secret indictments and other somewhat questionable conduct.

Hillstrand gave an example. The judge is asked by the prosecutor to provide a paper to get started. There is claimed to be a bad game going on. They bring everything back--evidence, etc. On probable cause they are held over for a grand jury. Instead of that, after the preliminary hearing a complaint can be filed against the accused person for the commission of a crime. This would not include going through the process of a presentment of a grand jury. Flynn thought that was the way it is now. Hillstrand thought it did and it didn't. Art felt that was what the present amendment does. It really gives the prosecutor two shots--one in open preliminary hearing and the other in the secret grand jury. If he loses in the preliminary hearing, he should be allowed to again go before the grand jury.

Grand Juries

Reeves said that he objected to this. That was because of the human philosophy of some of our judges. The Judge won't find probable cause. He could still convene a grand jury and this information is recorded now. The defendant is afforded a copy of the proceedings and he knows what they based his case on. Moran asked about the transcription of the proceedings. Reeves said the only thing not transcribed is the deliberations of the grand jury. Sheri said this would help the defense attorney to prepare his case. It doesn't help in his case before the grand jury. Reeves said he had been before a grand jury and presented witnesses in the defense of the prosecuted. He asked to be heard but that was a federal grand jury. Moran said if they are willing to hear you that would be all right. The foreman makes the decision. He said that the Public Defender wanted to be heard on this resolution. Moran asked Art to bring the proposed wording back to the committee. This will be rescheduled for Thursday, April 20. HJR 103

Probate code

Crim. Code

Moran noted that we had the probate code and criminal code to work on. On the criminal code we want to make a CS and send Ziegler a letter and tell him we have a bill. Request that this be a continuing matter for the Legislative Council for next year. We will submit the results of our proposed amendments. We will send all these things over to them. Hillstrand suggested that we send this to the Legislative Council through Senator Ziegler. Moran said that he was going to send it as from the Judiciary Committee of the House. That is, if he will except it that way--with a letter telling what we have done. We will consider it as a Judiciary Committee bill without final action. Hillstrand felt this would preserve our work. Moran also wanted to look at the no-fault plan. Art asked if Moran wanted to set a definite date for the probate code. These things will be scheduled. Moran noted that we also should check into the mental incompetency bill, only as a defense. SB 248 HB 524

Meeting adjourned at 3:45 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, April 19, 1972

Moran called the meeting to order at 1:30 p.m. in the Masonic Temple. Present were: Randolph and Banfield.

State Chart. Credit Un.

HB 611

Moran said we had people here to testify on HB-611 - State Chartered Credit Unions - and will proceed with a discussion of this bill.

Moran said he was not as concerned about the provisions of the bill but whether it was a necessity. We have a lot of responsibilities in state government and that the addition of another such responsibility--that will be our main decision. (Barber arrived 1:32)

The first witness was Mr. Ed Hansen, National Bank of Alaska. There are 44 states in the union that have state credit union acts. There is about a 50-50 split in comparison to federal credit unions. The prime logic is that we feel that the federal government really doesnot have the concern for the small areas of Alaska. We feel that the state by adopting this act can give the people of Alaska the opportunity to control their own investments. The federal government is a callous group of people. They believe in statistics. The credit union is based on people helping people. All of the directors are volunteers. (Peterson arrived 1:35) They have a special interest in their members. The federal government just comes in and examines us. We feel that the people in our state by having their own law which is a codification of the Credit Union Act would be useful. Other states have been doing this. It is more permissive legislation and gives the control to the people in the credit union. They do not cost the federal government one cent. They pay the charges that the credit union incurs. It is one of the self-supporting arms of the federal government. There should be no cost, or only a minimum cost to the state of Alaska.

Len Larson asked to comment. He is manager of the Elmendorf Credit Union. This is the largest credit union in Alaska. He said they feel that a credit union for the state of Alaska would be good. All but six states have credit union acts. Most states have similar provisions but they can be tailored to fit the state. Nearly all of these, 35 or 36, are all chartered by the federal government. We serve mostly federal employees at Elmendorf. If this was chartered by the state it would be more responsive to the needs of the members. HB-611 will amendments as proposed by the Commerce Committee would make this an excellent bill. I don't know whether we would convert our charter, but certainly some would. There are certain permissive items in the bill not contained in the federal act. This would allow us to do somethings that we can't do under the federal act now.

State Chart. Credit Unions

Moran asked if there was a specific provision for conversion. Ed said that normally they have to go to the administration from the federal government to convert. He didn't know of any credit union being denied that right. Moran said that he just wanted to know how they did this federalwise. You said something about fees. One of the reasons that this is of some consequence to us, this bill had two committee referrals. If there are any financial implications it has to go to the finance committee--at least that provision would be made for this bill. Ed said that the Commissioner would determine the charges. Moran asked which page this was on? Ethel Harris said that it was on Page 10., Line 13. Hillstrand asked for a comment on the amount of interest charged to a borrower throughout the lower "48" which was one per cent. Under HB-611 you have continued the authorization of an interest rate of 1/2 per cent per month. Mr. Larson said that some states allow more than that. With the change in times and the cost of operation today and also services, when the bill was drafted it was felt that it should be permissible to charge 1-1/2 per cent per month or 18 per cent per year. The credit unions all operate under 12 per cent now. There are some that if they charged more than 12 per cent they would cover their expenses. The federal law doesn't limit this. Many unions that charge 12 per cent, they find it difficult to pay a competitive dividend. We pay a 6 per cent dividend. As he said before they are the largest credit union in the state. This was written in as a permissive rate. We expect that the majority would continue to charge 12 per cent. Hillstrand objected because he felt they operated and hand the powers to operate just as a bank. On top of that they have tax advantages. What he was trying to determine was if they can go beyond the scope of a credit union concept where they become actively engaged in banking practices. Why aren't they treated as a bank? The charges at banks is not 2 per cent but six per cent. What is the theory that we can treat you differently from a bank? Larson asked if Hillstrand wanted a response to the taxation question. He said he did on the rate of interest and the power and the tax limitation, also.

Mr. Larson said that he could argue for the 1 1/2 per cent. Some credit unions find it difficult to operate at 12 per cent and pay dividends and cover their expenses, too. That's why our proposal has the rate exceeding 12 per cent. The taxation portion is one you were interested in. The credit unions in most states are exempt from taxation. They are different from banks and do not deal with the general public. It is a group of individuals who have the common bond of operation and they volunteer for this purpose. They have no paid officials. They have few, if any, employees. If you would tax them you would be taxing volunteer work and cooperative work which would affect the nature of the program. The dividends it pays are fully taxable by both federal and state. But they do have a low-cost operation. If they were paying taxes they couldn't loan at 12 per cent. There would be a high expense ratio because of the small loan amounts. This makes the overhead too high. In Alaska you banks have made an effort to convert their small loan to the Bank Americard.

State Chart. Credit Unions

Mr. Larson said they could charge more interest that way. Credit unions support the government through paying their own way. He meant that they payed for their own audits, examinations, etc. They also pay local real estate taxes and lend support the local governments. HB 611

Mr. Hanson said that there was one thing he would like to mention. Once the credit union establishes its profit after operating expenses are taken out, there is a certain amount that goes into reserve which is held for delinquent accounts. This keeps the credit union financially solvent. Then the members benefit because it goes back to them as dividends. This money is 100% taxable. You might compare this to private stock certificates. The state is getting a 100% taxation on the profits of the credit unions with the exception of the amount that goes into the reserve. He wanted committee members to remember that this was a nonprofit and volunteer organization.

Hillstrand said that all these things that were said were true. They are doing these things now, so why the bill? Hillstrand feels that with this new power they can operate like a bank. Moran said he felt this question had already been asked and answered. This is the same reason we have a dual-banking system. This makes it nearer to the source of authority than federal gives. This bill is almost a rewrite of the federal act.

Moran asked about the interest rate. Is this on the unpaid balance? This is a simplified access to laws. I think the interest thing takes care of itself because these people elect their own manager. Mr. Hanson said that they really determine their own rates of interest, too. But it doesn't mean that they would have to charge 18 per cent.

Barber had a question about office quarters. He wanted to know if they furnished their own. Mr. Larson said that they didn't right now. He said they had been asked to vacate their space by the end of this year. They plan on building a building before then. Barber asked if most credit unions did not use donated space. Mr. Larson said that most got free space.

Rose didn't think we had to worry about interest rate if the members set their own. If their rates weren't attractive in comparison with commercial competition, whatever rate they establish, they will get a greater return on their deposits. They are charging themselves for the rate they get. Mr. Hanson said the maximum was set at one per cent. Hillstrand said the argument is to basically make this uniform and the uniform figure is one per cent. Coupled with that is the idea that the testimony shows they can make reasonable dividends available to their depositors. Moran said this was true and the members did make the determination. But that one per cent is the maximum. One per cent is not required, though. Moran said he could see two problems. You have to have enough

State Chart. Credit Unions

HB 611

of a dividend to pay the depositors; and if the person doesn't make the deposit you don't have any money to lend. Then the credit union would be of no purpose--because the fund has to be adequate. Rose said they couldn't operate like a bank but more like a savings and loan company.

Hillstrand said that the mutual savings and loan and NBA will take in money costing six per cent and can loan it out with a reasonable profit at 7-3/4 per cent. That is a two per cent spread. A credit union can operate from 6 to 12 per cent which is a six per cent gap. This is for an outfit operating with a minimum of cost through the labor of love--meaning volunteers. Hillstrand did not think there was an imposition on anyone when all they do is provide for dividends on money costing 12% and being deposited for 6%. At banks there are certain charges like closing costs and other hidden charges taken off the top. None of this happens in a credit union loan. The actual cost of the money is what that interest is.

Moran noted that credit unions have been a great success nationwide. If they aren't competitive they won't be in business. Rose said that was why he didn't think we needed to set any limits on interest rate. It would seek its own level.

Mr. Hanson said he hoped the committee would not lose sight of the fact that there are credit unions in Alaska. They are operating now under federal but they want them to be controlled by the state. Moran asked if there was any provision for insurance on loans from credit unions. Mr. Hanson said that there was life insurance and loan protection free for the members.

Meeting adjourned at 2:05 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, April 19, 1972

Moran called the meeting to order at 3:50 p.m. in the Masonic Temple. Present were: Hillstrand, Randolph, Barber, and Rose.

State Chart. Credit Unions

Randolph asked for consideration of HB-611 - Credit Unions. Randolph moved and asked unanimous consent to pass HB-611 with Commerce Committee amendments with a "Do Pass" recommendation. There was no objection. This bill was signed out. HB 611

Discharge of Firearms

HB-806 - Discharge of Firearms across highways. Moran asked if there were any members that would like to prohibit the discharge of firearms across highways. Randolph moved and asked unanimous consent to pass this bill out of committee with a "Do Pass" Recommendation. Flynn thought this was to prohibit by regulation. Moran said there was no mention of this but this would cover highway signs being shot up. Barber thinks you would have difficulty with the word "trail". There was a brief discussion of this word. Hillstrand thought it said "public trails". Moran suggested that we either amend it to say public trail or to strike "trail". Rose said he was in favor of striking "trail". He so moved and asked unanimous consent. There was no objection. Action was taken on Randolph's motion. It was signed out unanimously "Do Pass" as amended. HB 806

Amend. Alaska Bus. Corp. Act

HB-805 - Amending the Alaska Business Corporation Act. This came in with land claims, etc. Dick Bradley told us that in 1969 the model Business Corporation Act was revised. We adopted the one for Alaska several years ago. Mr. Bradley has taken the revision of 1969 and incorporated it into our present law only to the extent that the provisions of the revised Business Corporations Act is necessary to deal with the problem created by the native land claim settlement. He has not attempted to adopt the entire 1969 revision. These things would apply to all businesses. Moran said that his reading shows that the amendments would stand on their own merits as to whether we have this problem or not. Hillstrand said that this was true since Mr. Bradley had said he couldn't have said it better himself in previous testimony. This is in his comments to the Governor. Barber noted that there were no great changes in HB-805. Rose moves this bill out with a unanimous "Do Pass" and Randolph seconds his motion. This was signed out as such unanimously. HB 805

Incorp. under Native Claims Set. Act

HB-804 - Relating to Incorporation under the Alaska Native Claims Settlement Act. Barber asked if there was anything in this bill as drafted by the AG that we take exception to. He recognized that it was different from Barry Jackson's bill. Mr. Barber was concerned about the game reserves. HB 804

Incorp. under Native Claims Set. Act

HB 804

Moran said that what we had planned to do with subsistence fishing was refer to the comments made by the Fish and Game people. We have a copy of that material. Rose said that he had a problem with HB-804 - when he compared the AG's option with Barry Jackson's proposal with respect to the repayment requirement. This is the difference between "may" and "shall". Rose agrees with Barry on this point. There should be a requirement that the expenses be reimbursed and not make it discretionary. The fear was expressed about discretionary power being made more flexible. This would permit review, etc. When money is advanced for stated purposes there should be a reimbursement. Hillstrand said that in all walks of society you have people who do take advantage of a situation. Rose didn't think that native groups would be any different. Moran asked where this was in the bill. Rose said it was in Section 4.

Moran noted that there was an amendment to the bill that was being held over. It would eliminate the words "or association". When we discussed this we recognized that what they were talking about is that the monies would have been spent to accomplish the nine purposes mentioned. Also, that a regional corporation could assume those debts. They would do this by repaying whoever the association had got the money from to begin with. The bank, state, or whatever. The only question about that was about "or association". He had said that all associations are currently incorporated. With respect to those that hadn't, why shouldn't they? There were some Finance Committee members who were thinking that there might not be any money lent until the regional corporations were organized.

Rose said that although the money may be lent for the benefit of the corporation of the body to be formed, the requirement should be placed on the corporation. The bill that we have in Sec. 4(a), Page 2, Lines 19-22 says--in Barry's draft it "shall" pay. It seems to Mr. Rose that if we have qualms about what may be covered under this maybe we need to define (d) further. Hillstrand thought that maybe the word "may" was included because of the fact that if they provide and assume and pay for the organizational expenses as the Secretary may approve in the Articles of Incorporation the regional corportion is ruling on the reasonableness of the organizational expenses. They may not choose to reimburse for monies they claim are organizational expenses. This might include attorneys fees, for example. Moran said we did have a concern that if there wasn't someone sitting in judgment of the expenditures so that they would show a degree of prudence that we really need someone to audit these expenses.

Moran suggested that we take 4 and say a regional corporation "shall" and then strike to "provide" on Line 21. What does this do to the original corporations? Is that putting them in a situation where they are going to have to come up with payments for items that may not benefit them? (Flynn arrived at 4:30)

Incorp. under Native Claims Set. Act

Orbeck said he did not see anything wrong with what Moran said. He did say he would be more comfortable with the language in HB 804 HB-499 - creating the Alaska Regional Corporation Organizational Loan Fund - and would like to have that put in here. The purpose of this program is to make it possible to get on with the job of incorporating now. There is a lot of education that has to take place in the villages. We don't have the money to do that right now. Rep. Naughton gave an illustration of how the education worked. He went to the village of Port Lions. He talked with the people in the community hall. One woman asked, "What does the land claims act say?" He started telling her and asked her what was the matter. Then she asked what does "corporations" mean? This is the kind of education we have to undertake. We have to give them the background. The important thing is to do this now. It will make everything a lot easier after we get the regional corporations formed and the village corporations formed.

Mr. Naughton said we should remove the danger of sitting on the table while you should be trying to train these people in the corporation system. This is going to cost money. Without some way to get the money to the associations we have to have some way of obligating the regional corporations so they can get money. We refer to the ones that are operating now as associations and after being set up they will be known as corporations.

Rose felt there were some problems with this. One point is that the associations will not be receiving money under the Act. It is the association that will incur debts now. You can only do this on the credits of the corporation that will be formed. Moran said that the AFN had already borrowed money from the banks. Ed said that the Tanana Chiefs got $250,000 from a Seattle bank. Moran asked if we hadn't resolved the problem when Ed has already said that he would prefer to strike "may" and insert "shall". Rose suggested that we could make one more change and add "reasonable" before the word "expense". This is on Line 20, Page 2, Section 4. Ed agreed with both of these suggested amendments. Hillstrand said that he objected to this. They will spend the money for purposes of organization. We are talking about establishing a legal entity to do business. There are a lot of things in Items 1-9 -- something like buying insurance before the corporation is operating. THis is an operational expense and not an organizational one. When he suggests that it is important to talk to the people in the village, especially, this is not a matter of organization. It may be selling the people on the native claim arrangement is good but it is not an organizational expense. Nothing to do with organizing the corporations. Art suggested that "organizational" may be an incorrect term. Hillstrand objected to the large sum of money necessary to organize. It will take $250,000. Art said that this was a maximum figure. Moran noted that the word "organizational" in the corporation act means what we say it means in the definitions. These nine items are desirable because if you don't do them as a preliminary to the organization of the regional corporation you will have to

Incorp. under Native Claims Set. Act

HB 804

do it afterwards. You really are complicating the problems of letting the people in the villages make a meaningful contribution to their own business corporation. Hillstrand thought it was fine to let them do this. What we are doing is getting into the application of whatever the claims settlement act was to do. This is to get the land to the recipient and also get the money to them. Hillstrand's complaint is that they will never see any of the money. It will be used for things such as organization. That's why he wants to limit the expenses. One thing you could do by keeping "may" in there by having a regional incorporator keep the money intact. Not let the money dissipate.

Moran asked what period of time that they anticipated in organizing the regional corporation. Ed said we weren't looking the whole picture. You also have to organize village corporations. Regional corporations would come first. Moran said that this provides that the regional corporation may assume and pay expenses of the village corporation when they are approved up to $25,000. This is $250,000 for the regional and $25,000 for the village. Randolph didn't think we would spend more money with "may" than "shall". Moran said that Ed felt that HB-499 was more acceptable by making it mandatory. He says that these regional associations are going to be spending money and then the regional corporations won't have the obligation to reimburse.

On Page 3, Line 17 the text was checked and the proper word in that line is "of". This will be changed. Hillstrand said we were also going to delete "if the articles of incorporation approved by the secretary of the interior so provide." We will change "may" to "shall". Now we have made this mandatory.

On Line 21 we want to add "reasonable" before the word "organizational". Line 27 at the end of the line insert "reasonable".

Art said that in the AFN draft in regard to payment it was "may" for the regionals, for the small groups, and for the Juneau group. Art noted that the scheme was that the regional was "shall" and special categories and small groups was to be "may". He thought this was because of the less certain nature of the organizations or groups that are forming these. They don't have either a village council or a regular association. This is under (b).

(c)--village corporation. That is the requirement but for the regional to assume those was not felt mandatory. For the villages and the reservation villages you have the requirement under (c). Moran noted that (a) regulated by the associations and regional corporations. (c) shows the relationship between village corporations and the reservation corporation, if any. And, also, the regional corporation.

Incorp. under Native Claims Set. Act

HB 804

Rose said there is one difference. They may pay up to $25,000 as approved by the regional. Once it is approved, why shouldn't it be mandatory for reimbursement. Art said he was looking at the AFN draft and not HB-804. Rose felt that the regional to the local should be permissive. Art said that in HB-804 it is permissive but in the AFN draft it was mandatory. Moran reminded everyone that their articles have to be approved. There is control over it at that time. Art said that he didn't see any need for approval there. Ed said that we not only have regional corporation but we also have native associations. They will be the nucleus for the village corporation. Port Lions will assume the debts incurred after the 18th.

Art said that we have talked about a basic principle. Do we want to rely on the individuals at whatever level? We can go to the AFN without requiring articles of incorporation or whatever if they are reasonable or do you want this additional approval? We had decided in favor of the former.

Moran noted that (b) talks about the regional corporation paying these expenses. The state's version would require articles of incorporation. We had to provide for this if this is to be done. Randolph asked if Ed had any figures on how much it would cost for incorporation. He said that in Kodiak they wouldn't need as much as other areas. Travel expense will be one item of consideration. It will cost Ed $65 to fly to the farthest village. Each region will have a different set of problems. Randolph asked who would be doing this. Ed said that the existing officers or whoever they appoint and probably their attorneys. Randolph asked how much of the $8 million will be spent. Ed said that Kodiak would spend about $100,000. It all depends on how soon the enrollment is completed. The length of time it takes will have a bearing on the money that is needed.

Flynn moved that we pass HB-804 with amendments with a "Do Pass" recommendation and asked unanimous consent.

Art noted that the definition section was dropped from the bill prepared by Mr. Bradley. Moran said that they didn't think the state should attempt to amend the public law by filling in all the gaps. He had a letter from the Assistant Secretary and didn't think we should be adding something that we don't need. Rose noted that probate is strictly a state law and that paragraph 6 deals with the disposition of property on probate. He also sees a need for paragraph 5. Moran said this just fills in things in the claims act. Rose said that our probate doesn't say anything would escheat to the heirs.

Art said he appreciated the chairman's desire to get this out of committee. It is better to put the bill out rather than let the bill die. Rose said that he just wanted those two areas included. No one else seemed concerned about this. Art asked if they wanted Barry Jackson to come back and talk with them. They decided to act on Flynn's motion and signed this out.

Meeting adjourned at 5:20 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, April 20, 1972

Chairman Moran called the meeting to order at 8:15 a.m. in the Masonic Temple. Present were: Randolph, Banfield, and Rose.

Incorporation Alaska Native Claims — HB 804

Moran noted that we had talked about HB-804 - Incorporation under Alaska Native Claims Settlement Act. Rose wants some additional amendments for this bill. They aren't prepared as yet and Moran said he felt he should hold the bill until the amendments were prepared. Rose noted that the two portions dealt with divorce and probate. Moran noted it was a restatement of federal law. There also was discussion of escheatment to the corporation rather than to the state. Banfield felt this was a very reasonable amendment. Moran said that he had already let the people sign the report and since it was not a majority feeling about these portions, Moran recommended to Rose that he prepare his amendments and present them on the Floor. Rose said that if it was true that the material in (5) is in the federal act, there is no problem. It was his understanding that Barry was filling in the holes in the federal act. Rose will present his amendments from the Floor.

Leasing space court fac. ASHA — HCR 49

HCR-49 - Leasing space for state court facilities/ASHA. This amounts to $32,000,000 in three years to be used for leasing space from ASHA. Banfield did not want to let this out of committee and neither did Randolph. Banfield asked about the bill relating to a fifth district. Moran said that this was a request of Hohman. Moran said that he was disappointed that he had never received any response from the Judicial Council about our request on this matter.

Place of trial — SB 310

Moran said that SB-310 - Place of Trial - should be scheduled for early action. (Art arrived 8:35 a.m.)

Revisor's Bill — SB 383

SB-383 - Revisor's bill. Art explained this bill by using the prepared memo. I. was correction of citations as listed. II. was clean-up due to court decisions. Included in this was reference to a person wanting admission to the bar. Mr. Stevenson was barred because of this. Section 1 explains this. This also makes it consistent with the court rules. III. was clean-up for consistency and other odds and ends. Moran said that on Page 1, Line 15, there appears the word "certified" employees and he was sure that it should be "certificated". Art said that was the way it was in the original statues and it should be changed.

Art said that the next several sections probably should be deleted because there was a House Bill that was passed in the Senate which makes identical amendments. It you don't think that will get out of free conference committee then we had better leave it in. Art will check this out. This involves Sections 6, 7, 8, and 9.

Revisor's Bill

Section 10 is language clean up. The notion that one appoints someone by election seems to be a contradiction. Section 11 deletes the archaic terminology. Section 9 is different from this since it is in respect to the constitutional amendment but Art thinks this is taken care of in the House Bill. SB 383

Section 12 refers to gear limitations. This is the Bozanich case. This went to the U. S. Supreme Court and came back to the state court. It has not been appealed. Section 13 deletes another date reference that is no longer pertinent. Section 14 deletes language irrelevant to the gear limitation.

Section 15. The basic change is on Lines 21 and 22. This deals with criminal information regulations of the Department of Public Safety. Reference was of a concurrent resolution. This isn't the way they are handled. This is made to conform to the rules.

Section 16. The change here is to include relocation assistance when acquiring land. Sections 17-19. These are amendments that were overlooked when the jurisdiction for small claims was changed a couple of years ago.

Sections 20 and 21. This clarifies the duties of the Commissioner of Public Safety with respect to the Supreme Court. The portion deleted refers to 1959 or 1960 when this was first enacted. There does not seem to be any further need for this language. The committee agreed with this change.

Section 22. In the Commission on Judicial Qualifications and in the same session there was a bill and the composition of the commission was different. That statute now conforms with the constitution. The court system said they had been using the language of the constitution rather than the statutes on this.

Section 23. He read from Page 5 of his prepared memo to explain this section. The context suggests that the statute intended to include all three section. After Art's communication with the Department of Labor he got a reply from Washington to prepare this change.

Section 24. This makes the statute consistent with uniform rules. We don't have "memorials". We only have bill and resolutions so we don't need that term.

Section 25. This is a name change of the budget and audit committee. This section was overlooked last year.

Section 26. This involved the outcome of a case in Sitka in the District Court which was interpreted in the same way that Art has here. This adds (b)(3)--a paragraph is added to the bill on the floor of the Senate. This was written improperly and this is a logical correction.

Revisor's Statute

Section 27. This deals with archaic terminology. Reference is made to Public Utility Districts and School Districts. We do not use these designations. SB 383

Section 28. This reference is incorrect. The Oregon statutes parallel these. This citation corresponds to that. Adding the comma in paragraph one makes this consistent with paragraph two.

Section 29. Department of Public Works is a "department" and not a "division".

Section 30. There is an insert--a reference to the noncompetitive geothermal lease. This is an incredibly long sentence, running 16 lines. This was an oversight during drafting last year.

Section 31. This picks up a reference to the new Department of Environmental Conservation and corrects the citation of the water quality chapter.

Sections 32-33 are citation corrections. Section 34 also corrects a citation. The schedule was changed so there was no Step F. It is no longer broken down that way.

Sections 35-38. This recognizes the 1966 change in the name of the Department of Economic Development.

Section 39. This is being amended in some bills presently pending. Art doesn't know if they will pass. Banfield said that it was a Senate bill and wouldn't get out of HWE. This will be left in then.

Section 40. This corrects a word. The director of Local Affairs was not changed to the Commissioner of Environment.

Section 41. This may have been a typographical error.

Section 42. This notes that the name of the department is changed. Section 43. This is an express amendment.

Section 44. There was an error in this and it said the opposite of what was intended. This corrects that mistake.

Section 45. This recognizes that the Field Committee for Planning in Alaska has now been abolished. Section 46. This recognizes the new Department of Environment. (47 and 48 also)

Section 49. The amendment for this section makes it consistent--a minor will be treated the same as an adult in a traffic violation. Presently, in the statutes, the wording of AS 47.10.010(b) exempts felony prosecutions from the requirement that a minor's traffic offenses not be handled in accordance with the children's procedures, and this is in conflict with AS 28,35.010. Neither statute presently makes clear whether "joyriding" is a violation of a "traffic statute". The proposed deals with "joyriding" as

Revisor's Bill

a traffic offense. Rose objected to this and Art explained that it really is a loose term. Banfield felt that we should straighten this out. Rose did not believe that joyriding should be considered a traffic offense. Art noted that this also provided for adult treatment. This means that no matter whether it is a traffic offense or not, it will be treated as you would treat an adult. Rose felt that this should be clarified by an amendment. Moran said that it was obvious that we have to do something about this and suggests that we draw up a separate bill. Section 49 will be deleted and Art will draw up a separate bill to cover this situation.

SB 383

Section 50. This is in response to a court decision. The court could have been clearer in what it did. This was discussed in the Legislative Oversight Report. At the bottom of Page 2 there is a suggestion that the Legislature should not mess with the section at all. The court's comments at that point are not really clear. This statute was in existence before the court was in existence. This says that a child may not be denied the right to trial by jury. This would be consistent with holdings in that case. Art said that the real question here is whether or not the Legislature can deal with this. They can make this consistent. Anything that the committee does to make provision for the right to jury trial would be good. This says that the hearing can be held before a young adult advisory panel, but we don't want to deny the right to trial by jury. There is additional information on this in the Oversight Report. Moran said that he thought we should make it clear that the hearings were no substitute for the constitutional rights of the child. Banfield felt that this was changing the rules. Art disagreed since this was a provision to make it consistent with the rules. The Court seems to suggest that the original statute also dealt with a procedural matter that required 2/3 vote. It didn't because it was in existence before the court was. Moran said that we didn't have to enter in where they haven't promulgated any rules.

Section 51. This is a name change for Budget and Audit Committee. Section 52. There is no applicable definition for **"department"**. This fills that need. Section 53. This makes express what was implied before.

Section 54. This makes the language consistent with the state operated schools system terminology. Section 55. Corrects a citation.

Section 56. This deletes archaic terminology.

Art will prepare a CS relocating the two sections that are out of order. Art said that he had three or four further proposed amendments he would like to add to these. He will prepare them for this afternoon's meeting. Banfield moved and asked unanimous consent that we accept the CS that has been completed. Moran said that the committee has agreed with the draft, less the deletions. Art will bring the other proposals and they will be added to these. Art will also draft

a bill to cover the joyriding problem. SB 383

Art noted that he had the amendment for HJR-103 - Grand Juries. Banfield felt this was an improvement. Rose said that it still left the question of whether you could present and confront and question before a grand jury. Art said this point had not been decided upon fully. Rose said it would be like a preliminary hearing instead of going before a judge in a preliminary hearing. At this time, they record the proceedings. If we are to grant the right of confrontation and examination before the grand jury at a preliminary type hearing, that would do away with the process of using the grand jury except when the person was out of the state. Rose makes a motion that we amend this CS to that effect. Randolph objected. He felt that would be setting up a new trial process. This could be more cumbersome. Rose agreed that this was true, and felt that the prosecution wouldn't be doing it so often then. Randolph said that what Rose was proposing was to do away with the grand jury. Rose said he wanted to keep the grand jury where the defendant is out of the state. Also, we should keep the grand jury to investigate and make recommendations in general. Banfield and Randolph said they would not vote for Rose's amendment.

Grand Juries HJR 103

Randolph moves to substitute the material prepared by Art for the original proposal and pass this out as a CS for the resolution.

Art raised a question. He referred to the comments made by Joe Balfe when he was here. This was on the waiver situation. Art feels that both sentences should be left in. Rose asked why indictment would be left in because you couldn't waive a secret indictment. Banfield said you could waive the preliminary hearing but not the indictment. Moran gave an example. A man is in jail. In less than 24 hours be comes before the judge. The charges against him are read and he either can be indicted by a grand jury or have a preliminary hearing. The option rests with the prosecution not the jailed man. Art asked what would happen if the man waived the preliminary hearing. He would have to have either--so he would have to have indictment by grand jury. Moran noted that we have a provision for indictment or preliminary hearing but not for both. You may waive both. If you waive indictment you stil have a preliminary hearing. Rose felt that if you said you would waive the preliminary hearing that this meant you wanted to get on with the trial. Moran said he understood that there could be a conflict. Banfield asked if we were going to act on Randolph's motion. Moran said he wanted to let the rest of the committee participate in this discussion and asked him to hold his motion. Randolph withdrew his motion.

Meeting adjourned at 9:40 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, April 20, 1972

Chairman Moran called the meeting to order at 10:45 a.m. in the Masonic Temple. Present were: Banfield, Flynn, Rose, Barber, and Peterson.

Grand Juries

Moran stated that earlier we had discussed HJR-103 - Grand Juries - but we wanted to wait until the whole committee was present. The Chairman asked Sheri Gross if she had any comments on this measure. He felt that this new resolution took care of the objections that she had on the accused having proper representation. This gives the prosecution the choice. Sheri said if that was the case, then she would object because now the defendant has the choice.

HJR 103

Moran noted that if charged with a felony, as soon as you are arrested you are entitled to a preliminary hearing. The hearing, however, is not the final step in the pre-trial arrangement. If no probable cause has been found by the magistrate then it can still go to the grand jury. The purpose of the hearing is to show probable cause. Because the grand jury is not constantly in session, during the period from the time he is charged and the time that a grand jury may meet can be a long time. The man is not held in custody for finding of probable cause. After going to the preliminary hearing the order of the magistrate, if he finds probable cause, has to go before the grand jury. That makes it a repetition. If they find no probable cause they still can take him before the grand jury. Art said that we still have the court rule that provides for our preliminary examination. This amendment would not invalidate that court rule. That would be the automatic elimination of being brought before the judge.

Rose noted that when Joe Balfe was here he said that he has never lost a preliminary hearing. The obvious thing here is that he could only take those that he knew he could win. As amended this would still permit this approach. The difference being that they would not seek the arrest first. Now they go to the grand jury and present their evidence, get the indictment, and then arrest the person. What Rose was seeking to accomplish was that we restrict this to preliminary hearings in all cases where the person was not physically out of the state or that we make the grand jury proceedings one of confrontation and cross examination was available. Sheri agreed with this approach.

Moran asked Mr. Reeves his opinion on this matter. We have run at cross purposes with respect to indictment. We have provided that you could waive both. This was due to the fact that the accused would have the choice. It appeared

Grand Juries

HJR 103

to Mr. Moran that in both instances the accused was in a happier position. If there was a chance for him to be indicted, he could waive it. Once you have been indicted the desirability of having somebody there to defend you before the grand jury is an advantage. It puts the accused closer to conviction if there is no one there to defend him. The same is true with the preliminary hearing and they are often waived. Usually they hold these because you think you have a persuasive defense or the offense is very weak or you want to be informed of what kind of case they have. It seems that waiving both of them prevents them that initial judgment having been made.

Mr. Reeves said that his sole concern with this legislation is the monetary consideration. There was a lot of money spent on convening grand juries. Costs for grand juries are lumped in with juries fees in all the districts but Mr. Reeves has seen some of the bills coming in for space to hold grand juries in the Anchorage area. There is also per diem, travel, etc. This makes it difficult to include in the budget accurately. It seemed to him that this was an either/or situation and the DA could call for a preliminary hearing and then he doesn't make his case for probable cause, then he thought you should be able to stop him from going to the grand jury because these 12 men may view this case differently or in a different light. That is his personal feeling.

Rose asked how the committee would feel about another approach. This would require that the opportunity for preliminary hearing would be mandatory and be offered to all accused who are physically present within the state. Moran thought that the Bar would probably abolish the grand jury or at least support the confrontation. Reeves said that in his travels throughout the state he had discussions of this come up. He felt this would be a real hornet's nest if you abolished the grand jury.

Moran noted that if probable cause has been found, then you shouldn't have to go to the grand jury. The question that then arises is whether you should find no probable cause--should you then go before the grand jury? Rose said that would be like a two-fold harassment. You had a preliminary hearing and there was no probable cause shown; next thing you know, you are sent to the grand jury.

Moran noted that the provision of the grand jury is in the Bill of Rights. It is a cornerstone of our way of life. Moran doesn't think that we can abolish the grand jury because of what the U. S. Constitution says. Reeves agreed and said that there was a certain distrust that the Judiciary and the legal profession somehow are in consert against everyone that doesn't hold a law license. The grand jury is the only place that a layman serves. Here, the layman can tell the judge what to do. This is the philosophy that will be hard to take away in this state.

Grand Juries

Art noted that at this morning's meeting the committee adopted the CS. The only question left to decide was the point raised to include cross examination and confrontation. Art wanted to know if the committee was going to amend the CS. HJR 103

Rose moved to pass HJR-103 - Grand Juries - out with a "Do Pass" recommendation and asked unanimous consent. There was no objection to passing CS HJR-103.

Alaska Native Land Claims

HB-731 - Alaska Claims Settlement Act. This is tied in with the Native Claims Settlement. This refers to custodians. Art noted that the committee has to decide whether to include the custodian section. There were some problems raised in this regard. Art had conferred with Mr. Bradley on this, too. There was a problem about other legal imcompetency. There are very few of these but the minors need to have their problems solved because there are so many more of them involved. This doesn't solve every problem. The Act does not cover this because this situation is not considered a gift. They have a right to the stock. This section would put them under the Act for this purpose. Moran asked if we were dealing with Uniform Gift to Minors Act and using it for matters of convenience with respect to this section of laws. Art said this was correct. HB 731

Art said that this covered accountability of the custodian and duties of the custodian. Mr. Bradley mentioned that he had talked with several native people about our concern with the children. He said that it was very rare for a child to be passed from one family to another. The residency is pretty permanent. Banfield asked if he had talked with the local welfare people. Art said he didn't know about that. The changes seem to be all right.

There was one change in paragraph 3. This talks about members of the family with whom the minor's custodian lives. That would be a compromise, but it seems to be all right. Roses asked about officers of the corporations and the supremacy provision. Art felt these things were dealt with adequately. Moran noted that our chief concern was to be certain that the custodian was competent and qualified. Rose feels that Mr. Bradley's comments should be submitted to the native people for comment. ARt said that it was nearly the same as Barry's. Flynn noted that the committee has decided to take the subsistence provision out of here. Moran said that that would be covered in the committee report and put in the journal.

Section 2 appears in both bills. This will be left in--without objection. Section 3 is the subsistence one with the comment in the committee report based on the Fish and Game memo. This was left open in the Federal Act. Section 4 will be left in.

Alaska Native Land Claims

HB 731

Section 5 has two AS sections in it. There was no objection to the first one, and we talked about the second one. Banfield felt we should let Mr. Bradley see this before we take action. Art noted that in the taxation provision on Page 5, Mr. Bradley was recommending deletion of the reference to the Federal Act. Barry objected to deleting (d) and this will be left in; (e) will be deleted. Section 7 was in the original bill and Section 8 is in the Governor's bill. This latter section seems to be useful. Section 9 and all the rest are also in the Governor's bill.

Art noted that it doesnot say that this inheritance cannot be sold on the open market. Under the Federal Act it makes an exception for inalienability for three things. Rose said that he could probably withdraw both of his amendments because Section 5 seems to cover his point. Art will draft a committee report.

Alaska Tax Laws

HB 781

HB-781 - Enforcement of Alaska Tax Laws. The problem on this bill is a misunderstanding. This was taken off the calendar and will be placed on the calendar for tomorrow.

Meeting adjourned at 12:05 p.m.

Chairman Moran called the meeting to order at 1:30 p.m. in the Masonic Temple. Present were: Banfield, Flynn, and Barber.

Point sys. SB 296

Moran noted that we had scheduled action on SB-296 - Point System. There are representatives from the Department of Law and Public Safety with us.

Mr. Hickey, Department of Law said that last week Captain Sydnam and Mr. Rochetto appeared before the committee. In the interval between then and the original draft and this CS came out, a recent decision struck down their law because they don't have a pre-suspension hearing. Moran asked if this was the court ruling from Nebraska on administrative hearings. Mr. Hickey said that where it has been struck down was where the statute was vague. Moran said that he had something on this sent here by Mr. Banfield.

Mr. Hickey said that the Department of Public Safety would set up the standards by which to operate the point system, but that there were no standards as yet. There are quite a few guidelines in the bill, but this gives the authority to get the system in operation. There would be no federal constitutional problems. The discussion considered the March 27, 1972, case from Nebraska, and the November 1971 case from Pennsylvania. Moran asked that in the case of a motorist--should he get notice of points allocated to him and have a chance to be heard if they were counted against his record when in fact he did not commit the violation. Dan said there probably would be cases of where this would happen. Moran asked if they would provide an appeal for a revocation. Dan said he felt this was well covered in the bill.

Art noted that in AS 44.62.330(23) that suspensions were not included. Dan said this was because under implied consent it has always been revocations rather than suspensions. Art suggests that the word "suspension" be added. This is an exception to the APA and should read "revocations and suspensions". Sydnam said that was what they practiced. Art asked for an explanation. Dan said the reason might be that there are certain things the department can do after a revocation that they don't do after suspension. Banfield moves to adopt adding "suspension" as an amendment and asked unanimous consent. There was no objection. The amendment was adopted. (Randolph arrived at 1:50 p.m.)

Art noted that on Page 1, Lines 15 and 16 we included suspensions, but on Page 7 they are exempted from the APA. He felt there was a conflict between the two. Dan said that one authorizes them to administer the system and the other authorizes them to suspend. Art asked Dan if he interpreted

Point System

SB 296

the word not to include revocation and suspension. Dan thought this was susceptible to interpretation. Art suggested that we rewrite this to make it clear. Dan said that there were administrative tasks connected with this besides the APA considerations. Art felt this would be a very real problem when you took someone's license away. Dan said they would be willing to delete "administer". Moran said if it was the intent to enforce the regulations, he would go further than using the word administer. Dan said that the intent is to remove suspension from the APA. The word "administer" will be deleted on Page 1, Line 15.

Promulgation of regulations is subject to APA and suspension is not under APA. What is the reason? Dan said they had used the implied consent provision and modeled it after that. Art felt that a person should always have the right to appeal. Dan said it was not the intent to cut off further appeals.

Banfield questions the information at the top of Page 5. She noted particularly the part which dealt with convictions "not" those of the licensee. Moran asked Dan if this could be deleted. Dan said he wouldn't know how to rework 284(c) on Page 6. Numbers 2-6 are phrased in the negative. Moran said it didn't bother him that this was stated in the negative. Number (1) was in the affirmative. Art noted that Mr. Hickey was using a double negative. In this case "not" will be left in. Moran thought that the word "whether" already suggested the elimination of the word "not". Art thought we could use "if". Banfield asked if this was going to make it easier to enforce the law. Captain Sydnam felt that it would be more readily available for the scoring system. Dan noted that it makes habitual negligence a matter of separate offense. Art will draw this up as a CS. Randolph asked if they would have a better accounting of a person's driving record. Art asked if it would be a more equitable distribution of the list. Randolph said that he meant insurance. Some people can't get insurance at any price and then you have the companies that take only good risks. This might give a clear driving record and the companies couldn't tell about the risks they would have to take.

Barber asked if the point against an individual were accumulative. They are accumulative. Randolph said that the insurance companies can go back five years now. Moran noted that it was 12 points in a 12-month period or 18 points in a 24-month period. Rose asked what happened after you reached the total. Do you start from zero or do you keep on accumulating points? Moran said that every two years the last portion or oldest portion would be lopped off. Dan agreed with that.

Rose asked what you did after you reached 12 points? Do you erase the points or do you keep counting? Dan said that this is usually dealt with by regulation. Captain Sydnam said there would be complete removal and they would not be counted again. Rose asked if that was stated in the bill. It could be, but Dan felt this was strictly a question of policy.

Point System

Rose commented on Paragraph (i) on Page 3. He did not see why a person could have points deducted. If you get the 12-points, you should have your license revoked. He also felt that we should say that after you get your license back you start all over again.

SB 296

Randolph asked why the credits were listed. Moran said that the thing of main concern was what happens to the points and Captain Sydnam said they will be wiped away. Randolph moved that we leave this as it is and Rose objected. Rose felt that we should set down the policies. Banfield said that if we can't trust the department to make the regulations then we couldn't trust them to enforce them either. Barber didn't feel that his question had been answered. Is the record wiped out completely or does the 12 continue to count?

Moran said that he didn't think the purpose was to wipe out or adjust a person's arrest history. It is in here for the purpose of determining whether you will retain any points after a suspension to be applied to a subsequent suspension. Barber said if that was the case, how would you be able to determine a man's traffic danger potentiality. Dan said that these records are always available to the court and this would be no different. Then Barber asked about the insurance brokers being provided with a list showing person to be accident prone. Moran said that now insurance carriers have access to driving violation statistics. Banfield asked if these were the same violations that we already are maintaining on records.

There was some concern about wiping out the records that the judges when deciding cases would not have information available. Moran noted that we were wiping out the credits and not the offenses. Rose asked if one of the witnesses would make a statement as to what their position was on this point. Captain Sydnam said there was no intention of using the same points twice. Flynn felt there should be some arrangement where if you don't get any points that you should get some credits to be used for the time when you might get in an accident.

Rose asked about the hearing officers. He said if his memory served him correctly the APA appointment of hearing officers may have been referred to the AG as a matter of practice. Doesn't the APA provide for the hearing officer to be appointed by the Governor? Dan said that wouldn't apply under this bill. It is an impossible situation when you suspend licenses like drivers' licenses--there are so many of them. Rose was referring to Page 4, paragraph (d). A hearing is provided for in this case. (c) provides for a hearing on request and (d)says the hearing officer will be appointed by the AG. This is not good. You have the AG's representing the plaintiff's side and then they hire the hearing officer. Moran said that the regulations will be adopted pursuant to APA.

Banfield moved to pass the bill out as amended with a "Do Pass" recommendation and asked unanimous consent. Rose objected. The bill passed out of committee 5-1. Art will prepare this

as a CS and add the amendments. SB 296

Architects etc.

Mrs. Banfield asked if we were going to take up HB-239. Moran said that we were having the draft drawn up on this and it is not ready. Mr. Davidson was here on that bill. Moran said that when it comes out of our committee it will facilitate its enactment on the floor. We would be better able to explain the measure. HB 239

Native Land Claims

HB-731 - Native Claims Settlement Act. Art reported on the proposed CS, Page 4. When Dick Bradley was testifying he recommended deletion of lines 22 and 23. Art talked with him at noon and he thinks that it should be left in in view of the tax situation. On Page 5, lines 8 and 9 - this should be left in to cover the taxation question. Mr. Bradley agreed with subsection (c). Art asked about the date and it seems the original language is the most appropriate. If you are talking about the two special categories of corporations--there is no reference about 1991 in them. HB 731

One thing not mentioned this morning was on Line 19. This is on page 1 under Corporations Organized Under Public Law 92-203. Art wanted to review these because of Mr. Bradley's testimony. If we take this approach this language should remain in with the two changes noted on lines 6 and 7 and on line 19.

Ch. of Venue

SB-310 - Venue - Change of. Mr. Reeves and Mr. Morrison were here to testify on this measure. SB 310

Mr. Reeves noted that a hand-out sheet had been distributed to aid the committee in this discussion. There was a conference held which recommended that people in the less populated areas of Alaska should not have to come to the large population centers for trial. The Supreme Court came out with a ruling that you can't take these people out in the bush and make them come to Anchorage, Fairbanks, etc. Most states have said that you would be tried in your own county. This was passed last year and is not good for Alaska. It is good in theory but not in practice. Mr. Reeves gave an example of the difficulties of a case that was held in Cold Bay. The costs in Alaska bush areas is completely out of line. The Supreme Court soon noted that there were problems. We came back this year and found that we had two problems.

Mr. Fink wanted to repeal the statute--that would have solved the problem. Then we found that the people from rural Alaska didn't want it totally appealed. They wanted to have their trials in nearer areas. This bill is trying to solve that problem. The purpose is to have the trial where the person lives and relieve the state of the tremendous costs. This will give the administrative director of courts the power of determining that there is no reasonable place in the Senatorial district to hold a trial, then he may move it to the nearest Senatorial district. Mr. Reeves said that he was in favor of CSSB-310 and he does not want this law repealed.

Venue

Rose said that the only problem that he saw with the Senatorial districts was that under the one-man one-rule districts that they would be subject to change. Rose felt the same thing could be accomplished by using recording districts and you could have more than one for a venue district. If you did this you wouldn't have to change them.

Reeves said they were studying on this and that it takes more than just a few months to complete this work. We want to realign the state of Alaska into judicial districts. We are asking for this bill to solve our monetary problem. The ultimate problem of new recording district, using microfilm, fire proof storage have yet to be solved. Rose asked if this was a temporary measure until the other things could be worked out. Reeves said this was correct. Reeves said that they probably will be back asking for the new district bills. Also that venue shall be tied to districts that do not change. Moran noted that recording districts suggested themselves because they are determined by law but election districts are determined otherwise. From the standpoint of flexibility in maintaining venue, if you get into the position where the recording districts become the base, you could still change the boundary and this would change the venue.

Art said that this venue bill was worded in terms of Senatorial districts where the crime occurred. Recording districts--you wouldn't want to say that. Rose dropped his objection. Reeves said that Justice Dimond is working on this. Banfield asked if this was constitutional. Reeves said that it was. Moran said that the courts generally are holding that reasonable access to trial by a person's peers of the same or similar ethnic group be encouraged. (Banfield left at 3:00 p.m.) (Randolph left at 3:00 p.m.) Rose moves that we pass this out and asks unanimous consent. CSSB-310 was signed out.

Meeting adjourned at 3:02 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, April 24, 1972

Moran called the meeting to order at 1:45 p.m. in the Masonic Temple. Present were: Hillstrand, Randolph, Rose, Banfield, Barber, and Peterson.

SB 383

Revisor's Bill

Art has the three additional amendments he wanted to add to the revisors bill, SB-383.

He asked for deletion of secs. 6, 8, and 49. This gives the appropriate references relating to the state operated school system.

The second change was changing "west" to "east" in Sec. 16. 20.160.

The next change was in reference to court employees being exempt from the Little Hatch Act. Art thought this amendment should go on lines 28 and 29 rather than on lines 11 and 12. Banfield felt this was changing policy. Art said that if you put it on lines 28 and 29 it wouldn't be changing policy. On lines 11 and 12, it could be considered a policy change. As the law stands now, you have a reference to a nonexistent provision. This is the same application that was in the law before. Court employees would not be permitted to participate in politics. Rose said if it was put on lines 11 and 12 it would allow persons in exempt positions to participate. This would mean court and judicial council employees. Rose said he felt that comments made from the Floor indicated the idea was to reduce the coverage of the Little Hatch Act. This is shown in the Employees Association policy. Art said he felt that for administrative purposes these judicial employees should be treated as the legislative employees who are in the exempt service. Barber said that no matter what we did here we would have to keep the Federal Act. Art said this applied to those in the classified service. Moran said that if we were going to remove any class of employees out from under the Hatch Act, starting with the court system employees would be the last place we should start. We stress non-political selection of employees for this department. Art said that the paragraph which put court employees under the Little Hatch Act was repealed and that was why this was done. Banfield moved to substitute lines 28 and 29 for the material on lines 11 and 12. Art said if the committee felt uncertain about this it could be proposed in a separate bill. Rose said if a separate bill were prepared then the Legislature could say one way or the other if they wanted to exempt court employees from being under the Hatch Act. Art said he would be happy to draw a separate bill, if the committee was agreeable. Moran said that he proposed to explain to fellow legislators that if they want to vote for it on that basis. He understands the theory of the Hatch Act and

Revisor's Bill

said he could understand the difficulties that the Governor would have if a lot of his people were promoting opposing points of view. Hillstrand said he did not want to see it abolished. Banfield's motion was adopted which would put the material on lines 28 and 29 in place of that of lines 11 and 12. This bill was signed out with these added amendments.

CSHB-239 - Architects and Engineers. There were a number of problems with this bill. One was the exemption of state employees. Look at Sec. 08.48.261. Banfield thought that it was wrong to waive registration with a good reason. Art showed that they would have to state the reason for making the exception. Banfield felt the reasons for waiving should be spelled out in the statute. Hillstrand felt this was about as good as you could get it.

The language was expanded in 08.48.331. This removes conflicts with our Central Licensing Chapter. This bill as drawn gave a different date for renewal than the provision in the Central Licensing Chapter. This was changed to conform.

The next amendments included the technical amendments of Ken Maynard. Art did not include #5. He changed this to Page 5, Line 26, which was the proper location. #12 amendment was not changed exactly as Maynard suggested.

Rose had a question with respect to hearings before suspension or revocation of registry. Art felt that 121 was sufficient to cover board disciplinary authority. Rose said that it gave them the power to suspend, etc., but did not provide for a hearing. In 131 there is the opportunity for a hearing under the APA. The only thing that seems to be left open is how some member of the public would bring in a complaint. Rose said he was talking about the board. Art said this was covered on Page 1, Line 18.

Rose had another question on Section 151, Page 6. He felt that they should use the AG's office for necessary legal counsel unless there was a conflict of interest. He did not see where this was provided for in this bill. Banfield didn't think it was necessary to restrict their hiring their own counsel since they would have to pay for it. Art mentioned that their budget would control this. Moran also felt that the amount of appropriations would limit unnecessary expenses for attorneys. Rose felt there should be an amendment adding "where a conflict exists." Moran said often that you can't get work done through the AG's office because they are understaffed. This would give the board the option to hire their own counsel. Rose was afraid that we would be setting up a precedent and other agencies would ask for the same privilege. You are also getting

Revisor's Bill

SB 383

away from centralized authority if all agencies don't use the AG's office as their counsel. Banfield asked about the Medical and Dental Boards. Art said he couldn't find anything about counsel. Hillstrand said that he agreed with Rose. Banfield suggested deleting the section, 151. Art said he thought we could delete it. Banfield felt we could make a Floor amendment. Moran suggested we amend it. Art said we could add language on Line 12 saying, "in case of conflict of interest." Art said he felt the AG's services to the board would be covered by the statute stating that he would be required to bring all civil actions for violation of the law. All state offices are covered as the Governor directs. Art thinks they still would be able to hire counsel from appropriated money for the functions specified in the chapter. He thinks they could do this without this particular provision. Rose disagreed. It was decided to amend by adding on Page 6, Line 20, the words "or if his interests conflict". Rose thought this would be surplus. He thought we should put a "." after "chapter." Art noted on Page 2, under Finances, that this would be acceptable. This amendment was adopted. Banfield moves the bill out. Hillstrand had another question. In real estate and insurance there is a requirement that each adminstrator/broker or agent will provide a surety bond in the event he is guilty of malpractice. He did not see anything in the bill to cover such an eventuality. There doesn't seem to be any redress for the public if they have been wronged by having their license suspended or revoked wrongly. They probably could seek relief from the courts. There is the possibility of errors or omissions. Rose thought the individual might not have this kind of money. Hillstrand said that a ditchdigger has to have a bond. Hillstrand said that maybe we could look at this next year. Barber asked if he meant something similar to a contractor's bond. Moran didn't think that a bond for this would need to be more than $5,000. Rose said that most were employees and that the firm should be responsible and not the individual employee. Hillstrand said that this is done in State Government. The employees are not held responsible personally.

Moran noted that Millie had moved the bill out and asked that Art provide him with a cross reference to cover the way it has been reorganized. Art said there was a memo in the file already that explained the bill.

CSSB-296 - Point System Bill. There was one thing that the committee did not take up. In earlier versions of the bill there was a provision that not more than six points shall be assessed for any single offense. This bill was amended to say that no more than six points were to be assessed. Then there was a list of exceptions. Art checked the statutes. Sec. 210 on Page 2, Line 6, on assessment of points was considered. The list shows four different types of offenses. Manslaughter or negligent homicide--those would be all right. Felony in the commission in which a motor vehicle is used--this doesn't seem relevant. Failure to give aid in an accident or perjury on making the statement on the accident

Revisor's Bill

could accrue more than six points. Art read another list from 290. This included seven things. He also read from the statutes on 300 and 305. 320 covers unauthorized person driving your vehicle and 330 relates to false statements. Art said he had talked to Dan about this and this was a compromise between the administration and what was in the bill. They had wanted 12 points for a number of offenses. This bill limits the number but the committee should consider whether these offenses are so heinous as to result in this many points. Rose said he felt many of these offenses had nothing to do with your driving safely. The hit-and-run person will end up in court and the court could order his license suspended. Felony? What has that to do with your driving record? Perjury? Why should you be charged under that statute? Rose moves to strike all of the references. Randolph felt that this would be giving the department additional latitude. Randolph felt that the reckless driver should get additional points. Moran said that the court would take care of those people. Banfield felt this was like double jeopardy. Art said there was the danger of harassment. They would have to deal with the courts and also the department on these violations. Moran asked for a second to Rose's amendment to strike all listed items. SB 383

Moran said there is something that we don't always remember when talking about these things. That is the consequences of someone losing their license. Maybe the person would be fired from their job. When a man is required to use his automobile to make a living, this is a very crippling thing. Art will strike that language. (Peterson left 3:15)

Rose asked if there was anything in the bill that said that points may be assessed only for driving violations. Art said that point had been taken care of. This is in the definition of traffic laws and there are some inconsistencies. Art said that he had changed the double negative.

HB-685- Cruelty to Animals. (Russ arrived 3:15)

Probate Code

SB-248 - Probate Code. Russ has taken our comments and others that he has received and prepared amendments. SB 248

Russ did not think that the section relating to liens would be confusing. This was prepared as outlined in the uniform code and he would like to leave it as close to that as he can. The first thing discussed was about homesteads. Moran asked if he had any trouble changing exempt property to personal property allowance. Rose felt this was good for clarity. He felt we should retain the homestead allowance but for the second it should be personal property allowance. Banfield mentioned the family allowance. Rose moves to adopt his amendment. Hillstrand objected to have this explained more fully. He asked if the person who has the homestead exemption can be equalled by the person who does not--to be included in the personal allowance. Rose said this was not true. After a death the family needs immediate relief. This is the family allowance and it comes before

Probate Code

creditors and everyone else. There is a homestead allowance and a personal property allowance which is exempt for the benefit of the heirs. Hillstrand removed his objection. Motion carried. SB 248

Russ said there was some confusion and misunderstanding on this point. They thought that because the present 90-day provision that creditors have to have their claims in would lead to a quicker settlement than what the code will allow for in four months. If the creditors have not filed by this time, 90 days, he is cut off forever. Russ said the letter from Wellman in Appendix A explained this.

Rose had a question about the public notice that would be published in the press. He asked if there was any requirement of actual notice to known creditors. Russ said that the personal representative would send out this notice. This suggestion was not adopted.

(3). This suggestion leads to a philosophical question. People are afraid to let assets from this state be taken out into another state and there handling the probate. Bottom of page 3 of the suggestions shows the reason for this. This is a traditional concept for handling multi-state estates. They are afraid even under UPC that the whole purpose is to take all assets a person may have and bring them into the state of domicile and have that one state administer them. This arrangement would eliminate going through this three or four times--once in each state. This would also increase the cost of administration. Russ tried to show the way to get away from the extra costs. He also tried to protect the property in this state. All creditors are to be considered the same. There would be no right for in-state creditors to be paid first--all would be distributed evenly. Practicing attorneys disagree with this because not all states have adopted the UPC. Russ hopes that they will adopt this approach and not block settlement of estates.

Moran thought that it might be possible to have a reciprocal arrangements with states that are not under the UPC. Russ felt this would be all right if the state would agree.

Rose felt if they had to publish one time and wait 30 days giving proof to the state comptroller before they could release the assets would provide a safeguard. For the protection of the creditor, how are we going to inform him that the assets are being removed. Russ said that within four months he should hav e made himself known so that he would be getting a personal notice from the personal representative. Russ thinks we should adopt #3 suggestion. This would provide for notice. Hillstrand felt that creditors in Alaska should be protected up to 100% if possible. Russ said this could work both ways. Maybe Alaskans have assets in other states and they do the same. There would be no protection to Alaskan creditors. Rose went back to the notice provision. Who would be getting this notice?

Probate Code

SB 248

There is no one to file with after you show proof of publishing. Russ said this would be filed with the court because you are already in court to start probating to get the assets into the estate. Moran objected because of the expensive methods of dealing with this would probably exceed the value of the property in many instances. Rose said you could set a limit of $3,000. Rose suggested having the Lieutenant Governor appointed by statute as a person to provide the office to which to show proof. You would proceed with publishing notice here and then provide proof at the end of the period that no claims have been submitted or that the claims have been satisfied.

Russ said he thought that we were talking about two different things. At this point we have already started the probate in another state. In order to get the assets into the hands of the personal representative, he will send notice to people in other states that have assets saying that he has been appointed as personal representative and will file an affidavit to that effect. He asks them to send in their claims. Then he will administer the estate from another state or from this state. He will give all creditors the same amount per dollar value if there is not enough to cover everything.

Rose said he was talking about a foreign estate with assets in Alaska. He wants the foreign executor to be required to publish notice in Alaska, and if there are no claims within 30 days, the assets will be removed from the state. This would protect the Alaskan creditor. Rose accepts the Bar recommendation to protect the person living in Alaska. In addition to that, there should be some official person to whom proof is furnished showing that you have complied with these steps. Rose moves that we prepare an amendment to show that there be a period of notice plus the designation of the Lieutenant Governor to be furnished this proof. Moran did not think this would work. This doesn't have anything to do with removing the property from the State of Alaska. Barber said it would be an office where we could record that notice has been published. Moran thought that you could say that it could be done in the Recorder's Office. That also raises the question as to whether the recorder is the proper person to do this. Rose disagreed with this because he felt we should have one place in the state where this should be done. Roses' suggestion was adopted. This Monetary limit was set at $2,000 and$60-90 for publication.

(4). The Bar suggests that this be (1) reduced to Superior Court because of the expense and the burden it would be on the bush courts and (2) to forget about it altogether. Russ feels that this is a good suggestion. This would require changing "any" to "superior" on Page 11. The committee adopted this.

Probate Code

(5). Russ did not see any need for this change. This was not adopted. The UPC uses 14 days and we will keep that time period in this bill. SB 248

(6). This deals with the question of adoption. Is there a right to adopt from the natural parents or from the adopted parents or from both? Unless the statutes provide that an adopted child cannot, he can adopt from both.

Appendix D gives some cases on this. Our statute as it now reads doesn't specifically state that a child may not inherit from his natural parents. Banfield asked how this relates to HB-722 - Land Claims Settlement Act. Russ said this was listed in Appendix C. Appendix showed our statute as it is now. Moran said that the right to inherit should not be taken away unless clearly required by statute. Banfield wanted this so written that there would be no doubt about this. Russ will prepare this section in conformity with HB-722. Russ said if you left it as written the child's right would not be cut off and he would inherit from both his adoptive parents and his natural parents. Russ said we might want to say: "unless the decree of adoption says otherwise." Moran asked if this conflicted with HB 722. Rose thinks you would have to interpret the word "child". Russ agreed with this. Banfield thinks it should be clarified and if we pass 722 we shouldn't be saying different things in this bill. Moran felt that we were creating a conflict. The objective was to make the word "child" unless otherwise provided means "children as born of the body of the testator as well as by adoption." (HB 722)

(Land Claims Set. Act)

Barber asked about the rights of illegitimate children. Russ thought it would be better not to worry about this problem since he thought (a) and (b) took care of it. Russ will prepare this amendment along the lines of HB-722.

(7). This increases the homestead allowance to a minimum of $6,000. Moran asked why this shouldn't be $12,000 as shown in HB-321-Homestead exemption. Russ said they would still have $500 living allowance per month for a year. Rose didn't think this was high enough for a family residence in Alaska. The family surely needs a roof over their head. Randolph had no objection to raising this to $12,000. Rose then asked how we would deal with those who live in mobile homes. He felt they should be allowed to have their mobile home treated as their homestead exemption up to $8,000. Barber felt that the trailer would be in the personal allowance. Russ thought this would be the same as for the homestead. Rose explained that this is personal property.

Meeting adjourned at 5:05 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
April 25, 1972, Tuesday

Chairman Moran called the meeting to order in the Masonic Temple at 8:15 a.m. Present were: Rose, Banfield, Hillstrand, and Randolph.

No-Fault Insur. HB 464

Robert Schlanger was here to explain the CS that has been prepared for House Bill 464. This is a modified no-fault measure providing a means of prompt and equitable compensation for losses of accidental bodily injury due to use of an automobile. This differs from HB-25 since it is a total no-fault proposal. HB-464 abolishes the tort system only up to a threshhold amount. Textually it is about the same as SB-356. In SB-356 there is no recovery for pain and suffering and in CSHB-464 there isn't until you reach the $5,000 in medical expenses. In the governor's bill there was a percentage system for pain and suffering. Due to actuarial studies which showed this would eliminate any savings of premium, this was left out. You can also go to tort action after you have reached a $50,000 limit on allowable expenses and $36,000 on work loss.

Randolph thought this was supposed to have been $5,000 for every purpose. Bob said this was only for pain and suffering. There was a detailed discussion of this point.

Bob said there was another distinction between CSHB-464 and SB356 in the amount of compulsory liability required. He said he had $50,000 for personal injury and $10,000 for property damage. Because of the added first party benefits the amount of liability has been reduced. The feeling was that $15,000 for personal injury and $10,000 for property damage would be enough. Having $50,000 for allowable expenses and $36,000 for wage loss, it would be the extremely unusual case that will go to tort.

Another area of major difference between SB-356 and HB-464 is the section covering commercial vehicles. In the discussion two weeks ago it was decided that commercial vehicles would have to share the burden of no-fault insurance. This was because they are bigger and can cause more damage. Under SB-346 they allowed passengers in commercial vehicles to recover against the insurer of the commercial vehicle regardless if the passenger has first party insurance. We also wanted to handle the commercial vehicles who are not in the business of carrying passengers. This will be done by using the weight of the vehicle. The heavier vehicles will have to pay a bigger percentage. Rose asked if this was to be regardless of fault. Bob said that in a no-fault system when you are trying to rate a vehicle what you are rating is the amount of benefits that could be lost if the vehicle gets in an accident. In a private auto you may have the husband, wife, and kids and all of them would lose some benefits. In a commercial vehicle you usually have one driver and a lot

HB 464

No-Fault Insur.

of damage that can be caused only because the commercial vehicle is bigger in size. The rates will be considered as those that can be lost for the single driver. Banfield asked if this would raise the premiums for school buses. School buses are always rated separately. Drake said that they do have a big size but have lots of passenger exposure. Don said it would even out and they would have reduced liability. Bob said there won't be any necessity for the determination of fault. The savings will come under the savings for everybody. They won't have to carry as heavy a liability insurance. Randolph said that if they don't have over $5,000 in injuries they can't sue in tort. Bob agreed with this statement and said the savings involved there would pay for this. Randolph asked about Workmen's Compensation coverage. Bob said this would be primary coverage. Randolph felt that if you didn't have an increased rate on the commercial vehicle everything except passenger vehicles will get off scott free. Bob said in a situation like this, if you are an insurer and are rating a commercial vehicle, under the no-fault system you will be rating it as to the benefits that can be lost. If the driver is covered by workmen's compensation, any amount he received out of the no-fault will be deducted. In rating the vehicle the rating would be extremely low but because of the size of the vehicles we didn't think that would be fair. Don said that a pick-up for instance would be considered the same as a private passenger vehicle. Don showed that the size of the commercial vehicle was merely for the purpose of assessing the percentage that that vehicle will bear in an accident. This will take into account passenger exposure, too.

Bob felt that he had outlined the major differences of this bill. He had received a cost analysis from Vic Slevin of the American Insurance Association. This showed a saving under the bill to be 12.5%. This is supposed to be a conservative estimate. The savings will probably be wiped out in other areas. The amount of coverage and the people who can recover has been extended enormously. Everyone will have his medical and work loss taken care of up to the amount mentioned. If a pedestrian gets hit by an uninsured motorist, the pedestrian will be taken care of now. The savings in money might be negligible but the benefits available to the people have been expanded. Bob said that Mr. Banfield was also preparing an actuarial study on this. Randolph said he was not concerned about saving money, but was concerned that this would cost more money. If that is the case, there will be a lot of unhappy people. We must remember that this is a compulsory insurance bill.

Rose said that as he recalled earlier discussions on this bill that the attorney was to get something started with a fairly low threshhold so that everybody gets their bent fender fixed and the more serious cases could be disposed of in another manner. We are not talking about the fender benders and that is the concept that he favored. This means that a man that earns $12,000 per year would have to have three years of work loss.

No-Fault Insur.

HB 464

Moran did not think that any no-fault system would be much good unless it would save money. He was worried about the man that was losing some time from work--did not have the opportunity to earn money--and then he would have medical expenses and at the same time we are going to put every other person in Alaska to paying for his circumstances even if he was at fault. This study only projects a 12.5% savings in premiums. Randolph did not agree that it was necessary to have a savingsin premiums. He said the biggest argument for no-fault is that the people involved will be paid faster. If this can be done without costing the people additional money this would be fine. Moran agreed with Randolph on the benefit of early settlement. In order to make this of any affect you need to make it mandatory. If you do this old cars will have to carry insurance and this will be a traumatic experience for some people. Particularly if they have never had insurance before. It is the public's expectation to have a great savings in premiums. We are told this has been a good thing in Massachusetts, at least that is what the governor says.

Rose felt that the total threshhold should be $5,000. He meant for work loss, too. This would allow you to proceed without handling nuisance cases and small cases. After the $5,000 you could go into tort. Rose felt there would be a very serious problem for the man or person whose medical expenses are very small. What has happened to them could have a great affect on the person and on his life. This has to have a threshhold of $5,000 before you can sue for pain and suffering. This means for pain and suffering only. Don said that if we were arguing for the retention of the tort system under compulsory insurance you would only be asking for trouble. He had had experience with underwriting in the Massachusetts area and in New York. It is a different psychological attitude. The person is not buying insurance for himself but for the other fellow. Compulsory insurance with a high threshhold would give you a better attitude among the people buying the insurance because they would be buying it for themselves. It still does not bar you from a lawsuit if you go over the limits. Bob said the bill allowed $1,000 per month for wage loss immediately and that is when you need it most. You would also be building up your medical expenses at the same time. Rose feels that the $5,000 threshhold will cover about 70% of the cases. When you raise this to $36,000 and $50,000 these are major cases. Randolph said we weren't talking about the fender benders. We are talking about bodily injury and not property damage. Don said you could buy increased income coverage. This would be optional but the insurance companies would have to offer this to you.

Randolph asked to have Bob go through the bill page by page. Questions will not be answered until the presentation is finished.

No-Fault Insur.

Section 020. The security required for the operation of a motor vehicle makes it necessary for the nonresident after residing here 45 days to purchase the required insurance. A person cannot register his car until he has the benefits required by this chapter. HB 464

Sec. 030. Termination of Security. Since the Supreme Court decision with respect to granting hearings before revoking a license, the Motor Vehicle Responsibility Act has become unworkable for the State. This security and termination of security will stand in lieu of the Motor Vehicle Responsibility Act. There is an interesting provision in here that relates to termination. If security is terminated the insurer is under obligation to notify the Division of Insurance and the insured is also under the same obligation. It cannot expire in less than 20 days from notice of termination. This gives the department time to pick up this person's plates.

Sec. 040. Basic Loss Insurance. This is the definition of what we are talking about. Payments without there having to be fault. (Sec. 050)

Sec. 060. Basic Loss Benefits. These are payable for allowable expenses, work loss, funeral and burial expenses, replacement services, and survivor's benefits. Work loss consists of income loss, services that the person would provide for his family or himself, cost of replacement services, and loss of pension and social security benefit entitlements. Allowable expenses consist of reasonable charges incurred for reasonably needed products, services, and accommodations for an injured person's diagnosis, cure, recovery or rehabilitation. This does not include charges of hospital room above customary charge for a semi-private room unless the person requires special or intensive care. Replacement services would include housework if the wife was injured and could not perform her work. Funeral and Burial expenses include all expenses related to such and not to exceed $1,500. Survivor's benefits consist of expenses after date deceased died, contribution of tangible things of economic value, included would be wages or salary as provided in (c) of this section.

Sec. 080. Subtractable Benefits. This is trying to eliminate as much as possible a duplication of benefits. Frequently when they receive a judgment under first-party coverage they get benefits again. We have tried to eliminate that by eliminating social security and workmen's compensation. These are therefore subtractable. We have also included a provision that health insurers shall offer their coverage at a reduced premium for those who have basic loss automobile insurance.

Sec. 090. Property Exclusion. This is excluded.

No-Fault Insur.

HB 464

Property was excluded because of the cost factor. Property damage to other than automobile will be taken care of under the tort system. Property damage to your automobile will be covered if you want it. This will be optional collision coverage to be offered by the insurers. This is where any savings will balance out. What you save in premiums for physical injury you will be paying the same amount or about the same for collision insurance.

Sec. 100. Partial Abolition of Tort Liability. This is where we eliminate tort liability. This is where you will get your savings. Then it can come in at a price low enough to justify the fact that everyone has to purchase it. Under this you will recover anything in excess of $5,000 for medical but only for pain and suffering. $50,000 for allowable expenses and $36,000 for work loss. Work loss includes funeral and burial expenses of $1,500. This will be your first party benefits regardless of fault. (Sec. 110)

Sec. 120. Limitation of Basic Loss Benefits. There will be $15,000 for bodily injury or death to a person in any one accident and $30,000 because of bodily injury to or death of two or more persons in any one accident. There is also $10,000 liability insurance for property damage to other than automobiles. This raises the amount currently required by $5,000 as far as property damage is concerned.

Sec. 130. Minimum Coverage. This is a typical boiler plate clause. Any insurance policy sold in this state will have the liability limits as set out in Sec. 120.

Sec. 135. Insurer's Certification Regarding Out-of-State Policies. This section came from House Bill 25. This is for liability coverage while our people are in other states. This section is very interesting. An insurer who does business in Alaska or files a certification to do business in Alaska would guarantee that any policy that an out-of-state driver has when he comes into Alaska would provide the coverages that the State of Alaska requires. This would remedy a lot of the problems with out-of-state drivers since states are going for no-fault on a piecemeal fashion, this would move for uniformity as far as Alaska goes.

Sec. 137. Persons Not Entitled To Basic Loss Benefits. If you didn't maintain security or vehicle was not registered in the state or covered by an insurer that has filed a certification with the state you are not eligible for benefits.

Sec. 140. Territorial Coverage. This states that basic loss benefits follows occupants no matter where they are or to out-of-state situation where you have somebody not an occupant who is injured, he can recover basic loss benefits.

Sec. 150. Converted Vehicles. One that has been stolen. The person who steals cannot recover basic loss benefits.

No-Fault Insur.

HB 464

Sec. 160. Intentional Injuries. A person who injures himself intentionally is not entitled to benefits.

Sec. 170. Added Reparation Coverage. This provides for optional type coverage. A man who is earning $3,000 per month would probably want additional first party coverage and this provides that he can purchase same. This provides for collision insurance whereby the person who purchased some type of insurance to cover his own car could buy more for pain and suffering on a first party basis.

Sec. 180. Approval of Terms and Forms. Nothing more than under current law. Insurers in the state must meet the standards as set out by the Division of Insurance, Department of Commerce.

Sec. 190. Priority of Applicability of Basic Reparation Insurance Policies. This is what we are trying to determine the priority of who you can recover against in an accident situation. This would be primarily from your own company. If the injured person is not a basic loss insured, an occupant of a vehicle, or doesn't own a car, he recovers against the insurer of the vehicle. If the person is an operator or an occupant in a commercial vehicle not in the business of transporting persons or property, it will be against the insurer of the vehicle. In a situation where we have a pedestrian pinned between two cars, he can recover from either vehicle under first party coverage but the insurer of one vehicle can be reimbursed by the insurer for the pro rata share of the accident.

Sec. 195. Equitable Allocation of Burdens Among Insurers. This is the commercial vehicle situation where the commercial vehicle because of its size would be assessed a certain percentage of the loss of any accident based on its weight.

Sec. 200. Insurers' Rights of Reimbursement and Subrogation. In a situation where the insured has a tort action, the insurance company has the right of being reimbursed by the insured or subrogated to his right. Work loss would have to exceed $36,000, allowable expenses would have to exceed $50,000. The insured sues in tort and wins. The insurance company can get back the $50,000or $36,000 which they have already paid.

Sec. 220. Assigned Claims. The plan is basically a device by which a pedestrian who is hit by a hit-and-run or uninsured vehicle would have recourse to an assigned claims plan. He would receive first party benefits even though there was no insurance coverage in the accident. This places the burden on the driving public rather than the public at large. We have taken care of the innocent victim who has no recourse today.

Sec. 230. Payment of Benefits. Benefits are payable as loss accrues. To be paid immediately is the theory and the main purpose is to make sure that the individual recieves prompt and equitable compensation. Now, I think it is two years frequently before you can get anything, and this can result in a great hardship to the individual.

He would be able to meet his obligations now.

No-Fault Insur.

HB 464

Sec. 240. Fees of Claimant's Attorney. These provisions are to prohibit fraudulent or excessive claims. The attorney would be able to recover his fee. (Sec. 250)

Sec. 260. Lump Sum and Installment Settlements. This is for the smaller claim. The insurance company should be able to come in and settle it once and for all for an amount of money. $1,000 is specified. The reasoning behind this is that we don't want a guy injured in an accident to have an insurance company settle for $5,000 and that man may have made a mistake about how badly he was injured and therefore underestimated his real loss. If he did this he would be out of any more benefits, so we have not allowed this. You cannot get a lump sum payment for medical expenses at all. This bill will not allow a lump sum settlement. This will be paid periodically as the loss accrues. You can settle work loss in lump sum but not medical.

Sec. 270. Judgment for Future Benefits. This allows a situation where a person who is in the position where the insurance company has neglected its payments, he has sued for the amount he has lost up until the present time. He can also sue for future benefits. These future benefits are those that are predictable but not something related to medical treatment.

Sec. 280. Rights of Action. This is a boiler plate provision. This does not obligate any actions not specifically mentioned.

Sec. 290. Limitation of Actions. This is expanding present statutes on limitation to meet the unusual situations that might develop in no-fault insurance.

Sec. 300. Assignment of Benefits. We permit an assignment for alimony and child support but not for other purposes.

Sec. 310. Exemption of Benefits. This provides benefits for the individual by protecting these benefits and keeping them free from garnishment to make sure that the person is taken care of.

Sec. 320. Mental or Physical Examination of Injured Person. This allowed the insurance company to have the person examined.

Sec. 330. Discovery of Facts About an Injured Person. The company has the right to investigate work record and earnings of an employee. The insurance company is also entitled to medical records of the injured person. These provisions are to protect the insurance company.

Sec. 340. Rehabilitation Treatment and Occupational Training. One of the primary goals of no-fault is to provide rehabilitative treatment and more particularly at the time it is needed.

No-Fault Insur.

HB 464

Under present law a man cannot undergo rehabilitative treatment until he gets his recovery. This results in a situation where a man could have been helped at the time of the accident but must wait until he gets the money to do this. Thereby many times he is permanently injured. This bill provides for a system of rehabilitative treatment from the time of the accident onward and this would be part of the accident expense. If it exceeds $1,000 he has to notify the insurer.

Sec. 350. Assigned Claims Plan. This has pretty well been explained. He thinks the adoption of rules will have to be worked over in regard to language, but this says that the Division of Insurance, Department of Commerce, can come up with a plan that will work.

Sec. 360. Time for Making Assigned Claims. This will be worked out by the Division of Insurance, Department of Commerce, so that claims will be made timely. In the event the insurer because of financial inability is unable to fulfill its obligations, a claim through the assigned claims plan may be made within a reasonable time after discovery of the financial inability. An action may not be started later than 60 days after receipt of notice of the assignment.

Sec. 370. Disposition of Assigned Claims. This assures prompt assignation of claims.

Sec. 380. Availability of Insurance. Insurance is compulsory. The fact that it be made available at a rate that will be reasonable and providing the various coverages that the chapter requires will be the job of the Division of Insurance, Department of Commerce. There would be a high risk category and individuals who are bad risks could be insured by pooling.

Secs. 390, 400 and 420. These sections need no explanation.

Sec. 410. Penalties. If a person does not have security for his vehicle as required, he is guilty of a misdemeanor and will be punishable by a fine of $500 or imprisonment of not more than 90 days, or both.

Randolph asked if there would be only uninsured pedestrians and minors who would fall in the assigned claims plan. Bob said this would also include occupants of an uninsured car. Randolph asked how you would handle the case of where a husband and father does not obtain insurance for his car and his child gets hurt. Bob said that an action can be maintained against him. The assigned claims plan becomes the insurer in that situation. The individual would have the right to sue the driver of the car under the typical tort situation. Since he recovers against the assigned claims plan and the man has not maintained security this would be subrogated to that right. He would be able to sue that individual and tort is not abolished as to him. Randolph asked if an uninsured driver injured him and he was

No-Fault Insur.

HB 464

the uninsured passenger, the assigned claims plan can sue the uninsured driver with whom he was riding. Is this correct? Bob said this was true. Randolph next asked if this bill had the governor's approval. Bob said he had not submitted it to him because he was awaiting another actuarial analysis. Randolph next questioned the result of the 20 days before termination. At this time people come in and he terminates them as of that date. The people will have to pay for an additional 20 days of insurance. Don suggested that the individual turn in his plates to the insurance agent and then it could be terminated. Mr. Randolph was against this idea. He would be agreeable to accepting a receipt from some authority showing that the plates had been turned in. Randolph felt this requirement would increase costs. Moran thought that the Division of Insurance could handle this by regulation, using the Department of Public Safety or Revenue to collect the plates. Rose said that Randolph's example was very much in line, especially the person with the camper who puts it up for the winter.

On page 4, how does (f) handle the situation where a child is killed and 15 years later it could be shown that the child could be contributing to the support of his parents. Bob said this refers to what a child would contribute to them at a future date. If they could prove that they would have received something from the child they could recover. Hillstrand said that Mr. Banfield had answered that in our earlier discussion. The only amount you could consider would be what the child would have actually given to his parents and not his own earning power and living expenses.

Randolph asked if property damage was the same as it is now. Bob said this is property damage other than automobiles. You are a self-insurer for your automobile. Randolph said that this would be a major consideration on the Floor. This is especially true if you have to carry your own collision insurance. Don explained that under the present system you had to carry property damage. Under this you wouldn't have to do this. You could buy collision if you wanted. Don has seen studies that show a savings on property damage but this savings will be added on to make up for the additional collision insurance the people will buy. The main difference is that that portion is no longer compulsory. Banfield wanted to know if she understood this point. If your car runs into my house what will happen? Bob said that she could sue in tort. Randolph asked why Bob had decided to go this route since there was no savings. He said it was done to copy the system in Massachusetts. Another reason was to allow you to purchase collision insurance if you desire. This is optional. If we had put this in our bill we would have had to make it compulsory. By eliminating suits as far as automobiles go, you save in administrative costs.

No-Fault Insur.

HB 464

Randolph said that very few property damages cases go into suits. He feels this will be a very big point when it comes on the Floor. Don asked if Randolph understood that if the vehicle was parked and is hit by a moving vehicle then the parked vehicle owner could get his property damages paid. This covers the biggest area of complaint. Randolph still maintained that there would have to be an increase in premium to cover collision insurance. Bob said he thought most people would choose to buy this type of insurance. If they have a nice car they will want to protect it. Bob noted that the premium for liability would be decreased. Moran felt this was pure speculation and time would tell. The committee members were due in the House. They will continue with questions on this at another meeting to be scheduled for 8:00 a.m. Wednesday, April 26.

Meeting adjourned at 10:00 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, April 25, 1972

Moran called the meeting to order at 11:00 a.m. in the Masonic Temple. Present were: Randolph, Rose, Banfield, Barber, HIllstrand, and Russ Mulder.

Criminal Jus. Infor. Sys.

HB 563

Moran announced to the committee that he had received some information from the AG on House Bill 563 - Criminal Justice Information/Privacy - with a proposed substitute. Rose thinks that this would make an excellent subject for study in between sessions.

Probate Code

SB 248

Senate Bill 248 - Probate Code. We were discussing Item 7, Page 6, of Russ's recommendations. Keifer Gray felt that the homestead allowance should be a minimum of $6,000, Legislative Council thought it should be $8,000 to correspond with present day needs in Alaska, and the Committee felt it should be raised to $12,000 to correspond to the bill we put out on homestead exemptions. Trailers should also be included in this. (HB-321)

Banfield moved to adopt Item 8 but to change the location from Page 28 to Page 30 under 13.11.170(c). No objection.

Item 9 was not felt necessary and was not adopted.
Item 10 changed the age to 19 from 21.

Item 11, Page 82. This has already been accomplished since the suggestion was submitted. Therefore this change is not necessary.

Item 12, Page 118. Same comment as for Item 7.

Item 13, Page 120. We are talking about the collection of personal property by affidavit. This is adding a paragraph (d) to allow the court to dispose of such personal property that has not been claimed within six months. This relates to things of little monetary value. This will be adopted.

Item 14, Page 120, is a reasonable suggestion. This is a new section to be added but Russ suggests that we delete everything after the word "chapter". This was done. Moran asked whether we should clarify the word "judge" in this new section. Russ said it was specified in the definitions so there was no need to change this.

Item 15 was an age change from 18 to 19 years. This was adopted.

Item 15, Page 126. This is a provision about guardians of minors. Russ thinks this is a valid request. The thing was, you could authorize someone else to have temporary

SB 248

Probate Code

guardianship over your ward. The point being that when sending a child to Seattle for medical attention and maybe the parents are out of the country, you want to have somebody to have temporary guardianship over the minor. It is so costly to get medical attention and to put this additional limitation would be unreasonable. It was felt this was a reasonable time period. This was adopted.

Item 17, Page 129, was adopted. The suggestion here is that you can be removed if you fail to exercise your duties as a guardian. Russ thinks this is already taken care of in Sec. 13.26.085. On Page 130 it gives the procedure for removal of a guardian. Russ thinks this would only be a duplication. Rose had a question. A guardian appointed by will which has been prevented or nullified has priority over any guardian appointed by the court. What follows? How can the court get around that in the event he hasn't accepted testamentary appointment? This is suggesting a second method. Would the removal section be adequate? Banfield went on from there and asked about the guardian who failed to accept the testamentary appointment within 30 days after notice. It was decided that this section needed the amendment in Item 17.

Item 18, Page 127. This is a different concept. A guardian is a guardian for a person. A conservator is a guardian of the property. When we speak of a bond, we are talking about the time that a conservator would be acting in behalf of the ward.

Item 19, Page 129. Russ could see no harm in this suggestion. Banfield moved to adopt it. No objection. We are only talking about money for the child's care, what they would have in their savings account for school, etc. When the estate is given to the ward, this is handled by a conservator or trustee.

Item 20 is another age change from 18 to 19. Item 21, Page 2. This is important. The Council originally had this changed. What happened was that it was thought that this provision was left in. This was a part of the code as originally drafted. If this was left in then the presumptive death provision would no longer be necessary. In Alaska, it was felt that we had better retain the presumptive death provision. We took this portion out and then Russ realized this left a vacuum when a person disappears for five or 6 years. The question is what happens when a person leaves and nobody hears from them. Russ wrote to Professor Wellman, and he agreed that an additional paragraph should be added to put this provision back in the code. Rose moves to adopt this suggestion. No objection. Moran said that at the present time if you haven't been heard from for a long time they make diligent inquiry, and make quite a substantial case on the matter. Russ said one reason for this is that in present statutes there is

Probate Code

no such provision. It is under infants and incompetents. This is in Title 2, as a subsection to a totally unrelated statute. That's why they didn't see it in AS 13 where it should have existed. This is adopted.

Item 22. We would be eliminating wrongful death and survival of actions. Russ did not realize this at the time he was preparing the bill. He does not think it should be in Title 13 but more properly placed in Title 9. Rose felt that since we have this at this time in the probate code that we would be deleting it if we did not include this provision. We would have to have a separate bill. We should amend this bill to place it in Title 9. Rose so moved and asked unanimous consent.

Item 23 will substitute age 19 wherever appropriate in all other places in this bill. This was adopted.

Russ will write up these as amendments and give them to the chairman. It was felt that the House would only pay attention to those sections that are being amended when this is discussed. Randolph moves that we pass SB-248 with amendments with a "Do Pass" recommendation. He asked unanimous consent. Banfield wanted to notify Ziegler that we had taken care of the 5%. There was no objection.

Rose asked what we had done with the right of inheritance for adopted children. Russ said it was patterned after HB-722.

Hillstrand said he had a question on the homestead allowance. He can't see why you get a certain homestead allowance for homesteads and another for trailers. He didn't see why personal property other than trailers shouldn't be treated equally. He said that wealth takes various forms. He wanted to know if people were being treated fairly. Moran said that there were some basic assumptions. As far as the exemptions were concerned, they were to bear a reasonable relationship to the property involved. We assumed that in most cases in Alaska, trailers would be sitting in trailer parks. We assumed that the value of a mobile home would come closer to the $8,000 in value and the other property would be substantially higher. In probate, real property is different from personal property. We have never, heretofore, ever considered that real property situated in Alaska could be disposed of by proceedings in some other state. This is not true of personal property. Here we are trying to make arrangements to permit real property to be disposed of by proceedings elsewhere. Hillstrand said he understood that but wanted to know about the allowances. What or why or how do we justify in a policy the difference between the one who owns the one kind of property and the other. Hillstrand said he was assuming there is an

Probate Code

SB 248

advantage under this law to own real property as distinguished from personal property including a trailer. What type of allowance does a person get who does not own a trailer? Moran said you get the family allowance and the personal allowance which would amount to $3,500 and $8,000. The next question is does this apply to the estate as well as to the survivors? Rose said it only applied to the survivors and you take it out of the estate straight off. Moran said absent survivors, there would be no family allowance, even if the decedent had a brother. Hillstrand said that these new figures were to be more realistic than the old figures and that was to be the justification. Is this correct? Moran said Yes. Moran said we were trying to avoid forcing the sale of the survivor's place of residence. Under existing probate laws, if it is necessary to liquidate any part to meet the cost of administration then the personal property is liquidated first. Then you go to the real property. Under a family allowance arrangement, the personal property would be liquidated for family maintenance prior to the real property. Rose said in answer to Earl's question, the primary purpose here seems to be to look after the deceased's family that he left behind. They need two things immediately. Money and a roof over their head. The idea is to save the family home where there is one. Up until last year no one looked at a mobile home as a family home. We need to save their homes, too. That's what we have done with this. There is also some encouragement for ownership.

Hillstrand objected to people being encouraged to own their own homes. He was thinking of the apartment dweller. He has lived in his apartment for 20 years and then he dies. His contemporary bought his home and he rented for that time. All this person would get would be the family allowance. His contemporary has the advantage. Moran noted that ownership is considered to be a socially desirable consequence. We have developed the FHA concept so more people could own their homes. Rose noted that we also have low-cost housing. Russ noted that in 13.11.125 it doesnot say anything about real property. Surviving spouse has to be domiciled in the state to qualify for the $12,000. He did not think there was a definition of "homestead". Moran felt that there was a common law definition. Our problem has become confused when the public land laws talked about homesteading. Hillstrand said he wished to leave some mark in the record to indicate there is a disparity as to treatment of the estates based on the type of property that is left. One of our purposes is to treat all the same and none different. Moran said this happens all the time. He purchases a home. He has a deduction from his taxable income for interest payments. He would not get any reduction from his rent that he was paying for an apartment.

Barber suggests that we make our afternoon meeting for 2:00 p.m. and run until 5:00 p.m. Moran will develop a calendar for this afternoon. Banfield requests that we consider HB-700 - Practice Medicine/Licensure.

Probate Code

Hillstrand had another question on the Uniform Probate Code. In an estate is everything consolidated in the varying states and everybody shares equally? My thought was that a person extending credit to an Alaskan would do so on what he sees and is acquainted with here in Alaska. The person dies. The proceeds of the Alaska property are adequate to compensate in their entirety the obligations but the demands on it from states other than Alaska makes it so the man in Alaska does not get the full value of his bill. My thought is that I like the idea of the UPC but I don't think Alaskan people should run a risk of being harmed for the sake of uniformity. Russ said he needed to go into this further. This is just one procedure. If an Alaskan knows he can refuse or stop the probate if he desires, this answers Earl's question. He doesn't need to turn it over to the other state. He can demand a separate probate here in this state. The old way is still available to you, if you wish. Moran asked how it would be to have the Lieutenant Governor have the requests made through him. Hillstrand asked if they meant that the certificate issued would have to show that there have been no claims filed or that all claims had been satisfied. The answer to this was Yes. This would be a provision for removing the things from the state. Hillstrand asked if an uninsured creditor if he had to share with other states and there wasn't enough money, could he get anything back. Russ said he could. Hillstrand then asked if his claim would take precedence. Russ said it would not. Moran said that a personal representative from elsewhere would not be able to remove things from this state until this had been satisfied or the estate settled. Moran felt you would run into a problem in Alaska if you wanted to share with the other states under similar circumstances. Hillstrand asked if the Lieutenant Governor held everything here until Alaska creditors are satisfied. Russ said he did until probate proceedings are settled. Rose said there was nothing that keeps the personal representative from settling the claims before final disposition of the estate. If it happens that assets are not sufficient--say maybe the family allowance wipes it out--there is nothing to distribute. He is treated equally as to the remainder of the assets of the estate.

Hillstrand said that he understood that under UPC uninsured creditors would be treated the same. So we could not be talking about the guy being permitted to pay the bills. Even if it was for legal obligations, loans, or otherwise. We are talking about the remainder of the estate that is open to uninsured creditors. Hillstrand asked if such creditors would be treated equally for the remainder of the assets. Rose said they wouldn't. Hillstrand then said there wasn't any uniformity in the code if this is the case. Rose noted that very few states adopt the code per se. The provisions are varied in some respects. Hillstrand then asked if the entire Alaskan estate is subject to those that

claim first to the extent of taking it all. Rose said it would only be subject to the allowances. Russ explained SB 248
Probate Code that if you were a creditor and you knew there were assets outside, you would go to the person who has the assets in Alaska and give them an affidavit. Say that Russ is the personal representative, he can turn over the assets to him as the personal representative to be administered or if you knew they were available you can stop the personal representative from getting those assets and have the court hold these until the estate is probated elsewhere. Then you would start your probate in Alaska on those same assets. This is the way the code is now.

Hillstrand thought they were talking about notice. Rose said this was proof that the notice has been published and a report of the things received for dispostion was noted. Hillstrand asked if this meant you couldn't get a release until all the claimants have proceeded against the estate to the extent that it might be exhausted, therefore not being able to apply to the reciprocal arrangement. Rose said this was correct. With the exception that allowances might wipe out the assets. Russ said that maybe he didn't understand correctly, but he felt that all you needed was proof that there were claims in Alaska. Assets to cover these claims would not be released but he questioned what would happen next. The creditors outside would have to start a probate action. Rose said that you would have to furnish proof or show that there aren't sufficient assets. The Lieutenant Governor signs the release. You are entitled to the allowances by law.

Russ gave an example. We are talking about creditors. The estate is in Washington. Probate is started. There are Alaska assets but in Washington there aren't any except to pay family allowances. Then what does the personal representative do? Send a notice to people holding assets here and ask for title to those? Or do Alaska creditors have priority to take these assets? This seems to be the question. Rose said the allowances are taken care of out of the Washington assets and you are dealing with creditors. The Alaskan creditors have preference. Moran asked how the claims would be adjudicated. Russ said that the way suggested was to have a self-executing approach. Rose said if you establish a preference, you can claim that preference. Russ said he didn't know we had provided a preference. We had only provided notice to be filed with the Lieutenant Governor that the Alaskan creditors have been given notice. Rose said if there were no claims after 30 days then the assets could be removed. If there are claims they should be disposed of. Moran didn't think that we could demand all the advantages and assume none of the burdens. Russ noted that if a creditor knows that there are assets in the state, he can stop the personal representative from taking them out. Then he would have to start a probate case up here. Rose said he still visualized a preference for Alaskans, but had not run into any difficulties in his own practice.

Meeting adjourned at 12:10 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, April 25, 1972

Moran called the meeting to order at 2:05 p.m. in the Masonic Temple. Present were: Barber, Rose, Banfield, Hillstrand, Randolph, and Peterson.

Practice of Medicine/ Licensure

HB 700

HB-700 - Practice of Medicine/Licensure - was the first item for consideration. Banfield asked the chairman to read the governor's letter on this bill. Rose asked who or what AMA referred to in this bill. Hillstrand said this bill was put in to get a doctor for Skagway. There was some discussion of whether the word "medical" should be in the bill. Art said we could only find out if we called the governor or a doctor because this was all new language and was not in the statutes. Art read from the statutes about the requirements. One thing was to be of good moral character, and the applicant should have a license from another state that has not been revoked and also a certification that he has been a practicing osteopath for one year after graduation from an accredited school. They cannot prescribe narcotics. Banfield did not want to exclude osteopaths from taking the test. Art said he did not feel that tests were that reliable. The amendment by HWE gives the Board the discretion of waiving the examination. Banfield asked if it was necessary to prepare a CS or would amendment be good enough. She still felt that the person should take the examination. Art suggested that a simple way to amend this would be by saying the requirement in (a) (3) may be waived and delete where it says no waiver may be given. It would say: "Takes the examination required by 210 of this chapter, however, this requirement may be waived." All the rest duplicates all of the existing applicable requirements for osteopaths. Banfield moved that all osteopaths take the examination and we will have no waiver. HIllstrand told Mrs. Banfield that this person has practiced for many years. He does good work. He wants to set up practice but is a little bit older when it comes to recollection of the details of the examining material. He could say, "I am a good osteopath, but I have some reservations about passing that examination." Rose asked if we could do this by reciprocity rather than waiver of examination. Art will check this out.

Headgear/ Motorcycles

HB 803

Moran asked the committee what they wanted to do with HB-803- Headgear for Motorcyclists. This would relieve persons over age 18 of the mandatory requirement of wearing headgear while riding a motorcycle. Randolph moves this bill out and asks unanimous consent. Moran said that Andy felt that people should be able to make up their own minds on this matter. The motion was to move this bill out with individual recommendations. The bill was signed out.

HB 700

Back to HB-700. Art said that the board may waive the examination if he meets 200 of this chapter. Art suggested that the committee adopt the HWE amendment. This bill was signed out. There was some discussion about a different amendment

to cover reciprocity. This would call for qualifications equal to those required in the state. Hillstrand said HB 700

Practice Medicine/ Licensure

if we adopted HWE amendment they would have to handle it on the floor. This was signed out 4-3.

HB 758
HB 759

ASHA

Moran asked the committee members to study House Bills 758 and 759 - Eminent Domain Powers/ASHA.

Cruelty/ Animals

HB-685 - Cruelty/Animals. Moran asked if committee members wanted to increase punishment for this. Banfield asked what type of punishment was meted out cruel and inhuman treatment to people. Randolph moved to table this bill. He asked unanimous consent. Moran objected. Hillstrand asked if we could discuss this. Banfield asked how you could be charged with mistreating an animal that doesn't even belong to you by not giving it proper care. You can get one year in jail and $1,000 fine or both. This bill was tabled. HB 685

Laymen on Prof. Brds.

HB-629 - Laymen on Boards. Hillstrand asked if there was any good reason for this bill. Rose moved to table this bill, Banfield seconds. Hillstrand objects. The bill was tabled. HB 629

Nat'l Guard/ Liab.

HB-379 - National Guard/Liabilities. Art was to review the federal law which was referred to in this bill. Rose had requested before and renews his request to put in the time as of this date so that we are not bound by any future changes of the federal law. This exemption would then be given under existing federal law. He made this motion and asked unanimous consent. Moran noted these exemptions applied only to emergencies called by the Governor, such as the Fairbanks Flood, Anchorage Earthquake, etc. Hillstrand said that if Rose's amendment had been approved he would move to report this bill out and asks unanimous consent. There was no objection. HB 379

Arbitration Small Claims

HB-638 - Arbitration of Small Claims. Randolph moved this bill out with a "Do Pass" and asks unanimous consent. Barber noted a typographical error on Line 28. Add a "d". Hillstrand asked if we needed a fiscal note. Rose said it wouldn't increase the costs. This was signed out. HB 638

Discrim. Sex

SCR-33 - Statutory Discrimination Based on Sex. Randolph asked how much it would cost to make these changes. Art said that this was his job. He is the revisor of statutes. Randolph moves to pass this bill out of committee with a "Do Pass" recommendation. Art , in response to Hillstrand's comment that this would be done any, said that it would receive priority if this resolution was passed. This was signed out. SCR 33

Drivers License Susp. Hear

SB-259 - Drivers' License Suspension Hearings. Moran said that this has the affect of doing something to the financial responsibility act. Rose said he didn't understand it. Art SB 259

Drivers License Susp. Hear

SB 259

said that under the financial responsibility law you are subject to losing your license. This would provide that they hold a hearing before suspension. As it is now they suspend licenses for not having financial responsibility even if you are not liable for the accident. Someone else can hit you. Rose said it seemed to him that there would have to be two hearings--one to prove that a judgment would not likely be rendered against the individual and one by the court. Randolph said that we were going to have to repeal the financial responsibility law because it was totally unworkable. Moran said that the only time you can escape the financial responsibility act is when your vehicle is not in motion. Banfield asked if this would include being illegally parked. Moran said he felt this was true. Randolph noted that the Pennsylvania case says that you have to give the person a hearing before you can take his license. Moran noted that driving is a valuable right or privilege and taking it arbitrarily without being permitted a hearing is quite serious. Rose asked what would be determined at the first hearing. Moran felt it would show reasonable possibility that you had been liable for the accident. Art noted that this was not a reasonable certainty, but a reasonable possibility. Moran said that it was in court where you showed the evidence that would show clear responsibility for the accident. This still is no safeguard for the fellow who was completely not at fault. Under present law you can make only one mistake. Rose moves that we pass this out. Randolph objects. There were four "Do Pass" votes for this measure. Randolph still feels that we should give this more consideration and have someone from the Department talk to us about it.

ASHA

HB 758

Moran asked the committee if they wished to consider the ASHA bills. 758 is a straightforward proposition giving ASHA power and authority to take by eminent domain. Barber asked if this just would give them a way to get property easier. Rose said it gave the power to erect public structures also. Moran checked the bill and said he was wrong about this bill. It was to give them the power of declaration of taking, like in urban renewal areas. It was asked why this bill was put in. Hillstrand said it was to get some property from somebody in Anchorage who doesn't want to sell. He moves to indefinitely postpone this bill. Vote was 4-2 for postponement. Banfield asked him to amend his motion. Hillstrand withdrew his motion. Rose moved to table the bill. No objection.

ASHA

HB 759

HB-759 - Rose moves to table 759. This bill has similar subject matter contained therein. He asks unanimous consent. Barber objects. This was tabled.

Escrow Agents

SB 155 am

SB-155 am - Escrow Agents. Banfield moved to indefinitely postpone this bill. She asked unanimous consent. There was no objection.

Crim. Code

Moran said he would like to see the criminal code be put into proper form and he was going to ask Joel to come and meet with us. He reported that he had an agreement with Senator Ziegler. All we need to do is put the material together and send this with a letter requesting the Legislative Council to do further work in the interim. This does not require the passing of a resolution. Rose thought we should put out a CS and recommend that this be made a matter of interim study by the Council. Moran said if you did that you would have to have some sort of recommendation on the bill and he was sure that it needed too much work on it yet. Rose asked for a further session on HB-524 to consider additional amendments. Art suggested that in the letter we indicate what form of study we wish the Council to conduct. This would cover specific problems of the bill. This would give more direction to the study. (Banfield left 3:45)

HB 524

CJIS

Material was distributed on HB-563 - Criminal Justice Information System.

HB 563

Expungency Statute

Rose asked if we had acted on an expungency statute. Moran said that we hadn't. Art said he thought it was a little late in the session.

Meeting adjourned at 3:50 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, April 26, 1972

Moran called the meeting to order at 8:15 a.m. in the Masonic Temple. Present were: Barber, Randolph, Flynn, Hillstrand, Banfield, and Rose.

No-Fault Insur.

Moran invited the people from the Insurance Division to join us at the table. We had covered the questions on Page 5. (CSHB-464- Modified No-Fault Insurance) HB 464

Randolph said that the way the bill is written there is no provision for pain and suffering or disfigurement up to $5,000. He felt that the public would like to have something like we have now. This bill would not allow anything for pain and suffering if your medical was less than $5,000. You would only get your actual medical expenses in such a case. The other bill had a provision that considered a percentage for this. Bob said that the original 356 had some type of compensation for this up to the threshhold. In 464 if you were going to compensate for this, the actuarial analysis showed that there would be no premium savings. Therefore, it would cost more and that's why he left it out of this bill.

Banfield asked the Department of Insurance if this was the case. Don said he hadn't done the studies. This information came from the AIA. Randolph said he knew it would cost money, but felt the people would be willing to pay for it. Rose asked that the actuarial studies be furnished to the committee. He did not mean the analysis, he meant the actual study.

Randolph asked if he were an uninsured driver and not in violation of the law and is involved in an accident, would he have any recourse. Bob said he would not. He would not be eligible under basic loss insurance or under the assigned claims plan. Randolph asked if the uninsured driver would be liable for suit for injury to the other person. Bob said this was not necessarily true. Randolph asked if this was the incentive for buying this insurance. Bob said it was. Randolph asked if the insurance company makes a settlement for anything up to $1,000, and the individual has signed a release . He asked if he had given up his right to sue. Bob said the lump sum payment would not negate his right to further medical expenses as needed. This goes up to $50,000. Rose carried on with Randolph's example. Rose gets in an accident, he is a careful driver, not speeding, and he gets hit by another vehicle, but Rose has a big car and gets slight injuries while the other individual is injured seriously. The other person was 100% at fault, this bill says I have no rights whatsoever. Bob said that was correct.

No-Fault Insur.

HB 464

Rose asked if the $5,000 threshhold would be included in the $50,000. Bob said that it would and also the $1,500 of funeral expenses would be included in the wage loss of $36,000. Bob said the reason that funeral and burial expenses were included in wage loss was to avoid setting up a third category or threshhold. This is only for the purpose of allowing you to go into tort--added to the $36,000 wage loss. Rose said that you would have to have $86,000 before you could qualify for a lawsuit. Bob said that you could sue as soon as you reached $5,000 in medical for pain and suffering only. Rose noted that if your wage loss amounted to $34,000 you would not be able to enter the tort system.

There was discussion as to what survivors would get and how soon. Bob said they would the loss of things considered to be economic value. Rose concluded that if you passed the threshhold you could go back to the beginning of the accident and be reimbursed but if you did not reach it you would only receive the basic benefits. Bob said he would not get everything, but would have to return to the insurance company what they had already paid and then would get everything over and above what has already been received. Moran noted that this is the whole theory. Rose thought that many persons who did not reach the limit would be getting considerably less than their actual losses. Bob disagreed with this and said they would be getting their actual expenses, but no more than that.

There was some discussion as to wage losses. Bob said there was a provision that allowed a person in the higher income brackets to purchase more protection for himself. On Page 4, Line 8 there is a limit of the monthly payment, but not in the amount paid. An example of a young man who was killed in a auto accident was given. He left a widow and three children. She could not go into tort immediately but after receiving the $1,000 for three years, she could go into tort, unless the policy includes additional coverage.

Hillstrand referred to Rose's request for actuarial studies and asked that this not hold up the bill. Rose said that he wanted to have copies of only the studies that were already completed. Rose also asked the Division of Insurance if they could provide a breakdown of claims that were over $5,000 and those under $5,000. Mr. Drake said they would have this information in their reports. This would be the 1970 report. Moran noted that the memo from Mr. Slevin was received from San Francisco by telephone. The statistical information for the study came from there. Mr. Banfield has also volunteered to provide an actuarial study for the committee. Mr. Banfield noted that he was getting two separate estimates. It is a comparison of what the CS would cost for the average policy holder in Alaska as compared to liability with certain limits. On the other

No-Fault Insur.

hand, if you want to get information as to what is the difference in cost between allowing for pain and suffering only over $5,000 as compared to allowing it in 356, we can get those figures in about three days.

HB 464

Hillstrand said that he could provide Mr. Rose with a national study and analysis. Bob said he had a compendium of the Department of Transportation with all the tables involved which would answer all of his questions. Rose said that he had an amendment that he would like to propose and that was why he was asking about the number of claims that were over $5,000 in total.

Moran said he wanted to work on the criminal code, HB-524, in the morning. Hillstrand asked if the chair would entertain a motion to move this bill out with a opportunity for Mr. Rose to receive his material. Rose said he thought we had only gone to Page 5. Hillstrand said if we didn't have any more questions that he moved to report this bill out. There were four votes to pass the bill out. Rose voted No. Rose objected to passing the bill out since this was a substitute and the only people who had a chance to study it were the ones working on it.

Mr. Schlanger thanked the committee for working so closely with him.

Hillstrand asked that a blank piece of paper be submitted with the Committee Substitute to show that a committee report would be submitted and would be spread on the journal. This report would show the reason for the bill and include the resumé as given in the meeting yesterday.

Meeting adjourned at 9:30 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, April 26, 1972

Moran called the meeting to order at 4:45 p.m. in the Masonic Temple. Present were: Flynn, Rose and Barber.

The purpose of this meeting was to set up a schedule for future meetings.

Drunkenness — We have HB-734 - Drunkenness--to treat this as a social problem rather than under criminal laws. HB 734

Academy of Sciences and Engineer. — Moran said that he had put in a bill by the Judiciary Committee on Alaska Academy of Sciences and Engineering. HB 816

HB-734 - The objections to this bill is that there is no mileage in continuing putting these people in jail for being drunk. We want to try to deal with this as a social consequence. Moran suggested that we have someone do research on this measure. HB 734

Study/Law Center — SCR-19 - This resolution would require that the Legislative Council study the possibility of setting up a law center. SCR 19 (Hillstrand arrived 4:50 p.m.) Barber felt that we had enought education problems without creating any more. Moran asked if there were any great objection to letting them study this. Rose didn't think this meant a law school. Flynn said it was both a law center and a law school. Rose said we could amend it. (Randolph arrived 4:52 p.m.) Rose moves to strike on Line 28 "including a law school". His reason for desiring this is that the paraprofessional is the coming thing in the legal profession. You are going to have lawyers expending less time with clients and with details. They will be devoting themselves to the purely legal portion. He hasn't seen anything that would convince him that it is the time to establish a law school in Alaska. Hillstrand said he felt a law center would be something established new through which the staff hopefully will make justice in the business a success. If this is to provide training and education, it is my opinion that this can be done without the establishment of a law center. We have a court system that takes this problem quite seriously and attempts to resolve it. We are opening the door to the thought that here is one more horn being blown in behalf of a law school. There is a consensus that we are not in favor of this. Moran felt that this was prejudging what their recommendation would contain. Barber said he had no objection in a study. There is a concept that appeals to Mr. Moran and that is the idea of upgrading lawyers, CPA's, doctors, and others by means of a continuing education program. There is a national program. Hillstrand said he would agree to sign this out. He moved and asked unanimous consent for a "Do Pass" recommendation. There was no objection.

Criminal Code

In the morning at 8:00 a.m. Joel Bennett will meet with us on HB-524 - Criminal Code. We will finish consideration of this and then write a letter to be attached to this. We will have this put in the Supplemental Journal showing what we have done on this bill and asking for consideration on certain points on an interim basis. Rose suggests that we have a resolution that the bill together with our amendments be considered for study. Moran said there had been discussion on this point and that it would be easier to do it on this informal basis. HB 524

Meeting adjourned at 5:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, April 27, 1972

Moran called the meeting to order at 8:35 a.m. in the Masonic Temple. Present were: Rose, Banfield, Barber, and Bennett.

Criminal Code

This is a continuation of our discussion of HB-524 - Criminal Code. We left off at Item #9. HB 524

Joel explained that we had stopped when we came to the big question of whether we should retain minimum terms and extended terms for misdemeanors. Joel said that the American Bar Association Advisory Committee recommended no extended terms for misdemeanors. If you eliminate minimums it would require some changes in the parole laws for Alaska. There was some discussion of this point after which Randolph moved that we maintain minimum terms and extended terms for misdemeanors. Banfield asked to keep a record of his motion and wait until more members of the committee were here to consider this point. This was agreeable.

Item 9.5, Page 14. This set the age to 21. Rose asked if this couldn't be 19. Joel said the Public Defender recommended 21. If you read the age in relation to the circumstances, it would be more acceptable. Especially as it relates to a professional criminal. You wouldn't want to label a 19-year-old a professional criminal. Banfield moved to change the age to 21. There was no objection.

Randolph said that on Page 14, Joel had a note for (a) and (b). He asked who made this recommendation. Joel said that it was the police. Randolph felt that this would be extremely difficult to prove. He asked Joel what he thought about it. Joel said it would be hard to prove but the fact that somebody has a large unexplainable income will reveal that it is a criminal activity. I recommend leaving this in.

Rose went back to #9. Randolph asked unanimous consent for his motion on this item. Rose objected. Banfield, Randolph, and Barber voted for the motion. Rose and Moran voted against it. Banfield commented that we say that the judge has to keep a person in jail as long as the minimum sentence says. Rose said that it causes judges to suspend sentences more because of this. It is a useless thing and restricts the courts. Randolph felt that there was a latitude between the minimum and maximum sentences. There should be some legislative intent. Rose did not want members to overlook the fact that this was written as for minimum terms throughout the bill.

Criminal Code

Barber suggested that we let the next study take this out. Lay people maximize sentences and the legal people minimize them. Moran said this was a package that we were putting together to guide the Eighth Legislature. The motion was to be accepted.

Barber moved to add on Page 14, Line 2, "reduced to writing and" "incorporated in the record". This was adopted.

Rose said that he would like to agree with the Peace Officers and moved to strike sections (a) and (b) under Section 2 on Page 14. Moran asked if this was on the amendment sheet. Rose said that it wasn't. He felt this was difficult to deal with. Banfield said that she agreed with (a) but not with (b). Randolph seconded Rose's motion. Motion carried and we will drop (a) and (b).

Item #10. This is on Page 16. Rose moved to adopt this amendment. Joel said that if you do this you as in 9.5 you will leave the professional criminal without being defined. Barber suggested taking out the last sentence on Line 10. There was unanimous consent to Rose's motion. Moran asked if we didn't have another bill which eliminates the alcoholic from the class of a criminal. Banfield felt that that dealt with the need for rehabilitative treatment. Moran said we should remove "prostitute" now. Barber said that (a) and (b) were being deleted. Banfield brought out that it did not mean sending them to jail but providing them with rehabilitative treatment. The committee agreed to delete "prostitute".

We have already adopted Item 11. Item #12. Joel said that this was suggested by Judge Monroe. Rose moved to adopt. There was no objection.

Item #13, Page 19. Banfield moves to adopt. This is on Line 8. Rose thought we should adopt the suggested amendment--the insertion should be "may order". So moved and adopted.

Item #15, Page 19, Line 7. This brings the language into conformity with present statutes. This is clean-up and deletes suffering from mental abnormality. Inserts mentally ill person as defined in AS. Randolph moves to adopt this item. No objection.

Item #16, Page 21, Line 25. A question was raised as to the necessity of inserting "either". Moran did not think this would be a good choice because either denotes two choices and here we have three. This was rejected.

Item #17. Banfield moves that we adopt this with "or" instead of "either". This was adopted. This was so that you could say purposely or knowingly or recklessly.

Item #18, Page 15. Rose said that he thought the idea was to bring a defendant to court for a minor misdemeanor and

Criminal Code

HB 524

at that time he admits a serious felony. The judge is supposed to take that into account at the time and sentence him accordingly. He would no longer be open to arrest for that felony. He is only charged with the one crime. That could be a serious problem. Randolph asked if that was the way it is now. Rose said No but that this was the multiple offender and he would be facing an extended term. Moran asked how this could be amended. Joel said we could delete (b) and (c). Randolph so moved. Rose questioned deleting (c). Joel said that (c) went right along with (b). Rose thought it could qualify (a). Banfield thought we would have to delete "including admitted crimes taken into account". She suggested deleting (b) and deleting the above in (c). This was on Line 9 and was adopted.

Item #18. Banfield asked if you have somebody committing a lot of robberies and they find him in one, and in court it develops that he has done lots of them, will you bring him up again for the other offenses. Rose asked about fake paper, too. Would you bring them up for each time as a separate offense. If so, this would be a problem. Moran felt this raises the question about the whole concept of extended sentences. Banfield said that the DA's office felt that someone was going to get off easy with extended terms. It may be a useful tool when a person is involved in a lot of misdemeanors and then you can give them an extended term. Rose moves that we leave this section alone. Banfield was going to move to delete the last half. Rose and Moran voted for his motion. It failed 3-2. Banfield then moved to take out the last half of (a) and part of (b) "including the crimes taken into account." This was adopted.

Item #19, Page 15. This is another objection from the DA's office. Rose said that the theory is that throughout our history the maximum has been one year. Now you are facing up to three years for this. And this is only a misdemeanor. Anything over one year was always a felony. Moran reminded that this was a habitual criminal concept. Rose said this was one of the problems with the extended terms concept. You could have consecutive sentences--three years on three misdemeanors of three years. Moran disagreed and felt this was an accumulation of convictions. You wouldn't have to try him. Banfield noted that we had shifted things that used to be felonies to misdemeanors. Rose didn't think we had. We just have misdemeanors go to a possible three year sentence. This is a departure from our historical background. Banfield said that for (a) we did not have any facilities at the present time. We just don't have rehabilitative services. Moran asked if the committee wanted to have an habitual criminal concept with respect to misdemeanors. Randolph did. Banfield said that it was harder to get convictions when there are longer sentences. Barber asked if there was any chance of putting someone away permanently on the number of citations against them for a misdemeanor like for a felony. Rose said that we didn't have that in Alaska. New York had that provision in their laws.

Criminal Code

HB 524

Randolph moves to accept the philosophy of extended terms for habitual offenders and asks unanimous consent. Joel will leave this in the bill and Item #19 will not be adopted.

Item #20, Page 24. Moran recalled that Judge Monroe said that mistake as to a matter of law would reverse what has been the status of things heretofore. You would hold a person to the fact that the law exists and also to the interpretation of it. Randolph said there was some comment on mixing common law and written law. Rose noted that this is a new concept. Rose thinks this type of defense ought to be available. He gave an example of a person who put the name of his company on the side of his truck to comply with a requirement of ATC. He goes to an employee handling these matters and says that he has his company name on the front of the truck. He asks if this will meet the requirements. He is told that it will be all right. Then he gets stopped because he doesn't have his company name on the side of the truck. I think he should be able to use this as a defense. Banfield asked if the official legal statement meant something by attorneys. Rose said he didn't think so. Moran thinks we should leave this in. Randolph objects. The committee did not adopt this Item #20.

Item 21, Page 26. Banfield said this was a problem for the stakeout. Rose said this referred to the person who is supposed to be stopping the crime and if that thinking was followed through, it would be difficult. Joel said this was excluded from the Washington Code. Banfield moves to delete (c). Randolph thought (a) should be deleted, too. Rose said that (a) should be left in. Randolph acceded. There will be a deletion of (c)(1)(C). Joel felt that (d) and (e) should also be deleted. They aren't necessary. Randolph moved to delete these and asked unanimous consent. There was no objection.

We will start next time with Item #22.

Meeting adjourned at 9:45 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, April 27, 1972

Moran called the meeting to order in the Masonic Temple at 3:30 p.m. Present were: Hillstrand, Barber, and Rose.

Moran introduced Mr. Willis Kirkpatrick, Division of Banking and Securities, Department of Commerce. He said that he had prepared written testimony because he wasn't sure that he would be able to be here. He read from his notes. He said this bill SB-377 - Exemptions from the Alaska Securities Act - is just what it says--an exemption. This is a full disclosure act. This allows the investor to make up his own mind. He said that when you buy a car or a horse you can look at them closely. Then you can decide whether you would like to buy the item. We don't want to put any hardship on the person buying the security. SB 377 provides that subsequent exchange of the mortgage or deed of trust for another or additional property to protect the creditor shall not terminate the exemption. We are really concerned about this: XYZ Mortgage Company buys and sells mortgages. They say if you don't like the deeds of trust or the mortgages just bring them back and we will exchange it for another. In actuality this ends up in being a guarantee. This is essentially an agreement between the seller and the purchaser which can be an investment contract. What are we to disclose? You should be able to find out who "XYZ" really is and what their financial condition is at the time of the transaction. Mr. Kirkpatrick said he was not concerned with the mortgage company in Anchorage because they had not had one foreclosure. There are a group of fellows that lots of people are investigating. They are engaging in various types of securities sales and unimproved land, etc. Also false advertising. Because of this we feel there should be a disclosure requirement. Mr. Kirkpatrick and Mr. McMurray had drawn up an analogy using a vendor of apples. You take a bite of it, if you don't like it you bring it back. What if I am not there for the exchange? What is the cost for a better apple? This kind of thing is in violation and if this bill should pass, we are setting up a trap for the mortgage companies in Alaska. The Seattle office is aware of this bill and right now is using the Act of 1933 on the federal level. He said his agency did not know what really was to be accomplished by this bill. He said they did not feel that the Alaska Securities Act is trying to impose hardships on any invester or any issuer.

SB 377

Exemptions Alaska Sec. Act

Barber asked what the purpose of this bill was and who was the sponsor. Mr. Kirkpatrick said it was probably from a mortgage company that would like to be exempt from registering exchange agreements and contracts. Moran said there had been no testimony given to the Senate. Rose asked Willis if a single transaction would be exempt under present arrangements. He said this was true. Rose asked if Willis sold him such an item and then in a month or two he or Mr. Kirkpatrick came to him and wanted to change positions in some way--maybe the two of them had made some promise about that same property--

Exemption Alaska SEc. Act

SB 377

You have another you can give to me. This is what Rose contemplates with the language of this bill. This would not be a formal contract but mortgage companies saying they will guarantee exchange. Willis said as long as it a single piece of property this would be proper. Rose asked if there was an agreement to exchange in the future at a particular, would that solve the problem? Willis felt this would solve the problem of exchange. He said they had considered an amendment that could be put in here. Because of the liability that it could set up under the Securities Act if the wording was as follows: "insofar as this is not inconsistent with the rules and regulations of the Securities Act of 1933 involving this type of security" this should take care of any problems.

Moran asked if there is no obligation to make this exchange which was incurred at the time of the sale or the mortgage, then what occurs thereafter is a cash transaction, does this violate the law. Rose said that if you had a provision indicating that such an agreement to exchange in the future there would be no problem. Hillstrand felt that we were getting different pictures of what we are dealing with. The Securities law is to protect those who invest in securities. It represents an interest in a concern dealing in just about anything. Applying it to this particular security saying here is an outfit that calls itself XYZ dealing in securities. They represent monies that are invested in mortgages, deeds of trust, etc. He can go to Willis for a $100 sale of one share in stock in XYZ. He says Why? For instance, you give us $100 we will put it in with the ones we already have. When we take subsection 2 of 140(b) they are talking about a transaction in a bonding or other evidence of security be it real estate and chattel mortgage or deeds of trust or by agreement, etc. They have the exemption provided the entire collateral and the bonds and stocks secured thereby is offered and sold as a unit. It is in effect an investment fund. What they do with the money is what comes out in the disclosure. Willis said that an individual was allowed 20 transactions in 12 months before being registered. Rose said this wouldn't apply to stocks because they are not secured by real property or deeds of trust. Hillstrand said this was representative and if sold in a unit they have this exemptive position. They want it to extend to when they exchange the evidence of indebtedness, whatever is supporting the stock issue for one on other additional property.

Rose asked if this section at any time contemplated any connection with stocks as an evidence of indebtedness. Willis said this was true. Rose felt that stock was evidence of ownership and not indebtedness. Moran asked what besides a bond would be secured by deeds of trust. Rose said that a note was a negotiable instrument. Willis said it was only where they would extend exchanges in these particular types of securities as an exemption that needs to be a protection to the paying public. Rose said that was why you needed a disclosure because after the guy sells you the contract and

says he will sell in the future he may have nothing to exchange. Willis said this was the whole problem. Moran said he supposed what we were trying to stop was the fact that a person could use this as part of the inducement to purchase the initial security by saying "If you don't like it you can get an exchange." The individual is entitled to know that he is dealing with a company that could hold good to the commitment. We are talking about a person, corporation, or company which traffics in instruments which are secured by real property. As an example B. M. Behrends Bank says they have FDIC. You are cautious where you put your money. I will put my money in there. Willis is saying this is an inducement which caused you to make the investment because they guaranteed you this exchange if not satisfied. If this is a long-term arrangement then they should disclose by law--an aid to know they are dealing with a sound operation. Moran said he had never in his commercial experience come into contact where this type of thing was a consequence. He does not follow the reasoning on this. Barber asked if this wasn't an attempt to carry the exemption forward on traded deeds of trust over and above the 20 transactions in 12 months. Willis said that was the whole problem. Barber asked if after this point they would have to meet the regulations. Willis said they would in the agreement but not in the mortgages. (Banfield arrived 4:20) The agreement to exchange becomes the security.

SB 377

Exempt. Alaska Sec. Act

Rose suggests that we provide an additional subsection stating that "any agreement to enter into subsequent exchanges of the mortgage or deed of trust for one or another additional property shall be subject to this Act." Willis felt this is the way it is now and there would have to be a determination whether this agreement is in fact an investment contract. There were some changes made in the proposed amendment by Rose and Rose moved to adopt the following: " 2(b) Any agreement to enter into future exchange of the mortgage or deed of trust for one or other or additional property shall be subject to this Act." Moran felt we should add "if such wasn't made at the time of original purchase." Rose asked unanimous consent for the combined amendment. Hillstrand objected. Moran said that he will talk to Ziegler and see if we need this bill and see where it originated. Willis thanked the committee for allowing him to testify in behalf of this bill.

Probate Code

Moran notified the committee that the amendments for SB-248 - Probate Code - will be put on the Chief Clerk's desk.

SB 248

Workmen's Comp.

Rose asked for consideration of HB-459 - Workmen's Compensation/Third Parties Liable - and explained that what has happened here is an error in the way that Workmen's Compensation Act was written when last amended a few years ago. It was provided that if a person dies, a workmen covered by the insurers, leaves no survivors as defined in the Act, then the carrier or employer is required to put $10,000 into the Secured Injury Fund.

HB 459

Workmen's Comp. — HB 459

The Secured Injury Fund is a fund to provide for rehabilitation of injured persons. The dead man or his family are not going to get any benefits out of this. Say someone representing the man's estate files suit against a responsible third party. He recovers in that law suit and the way the Act reads now the estate would be required to reimburse the company carrier the $10,000 he paid into the rehabilitative fund. The third party would have to pay for what the employee is supposed to pay. This was disclosed in a case Rose had last year. He told about his case. This bill says this is a pure insurance and not to be paid back by the dead man's estate. There are also a few minor corrections in the bill but this is the intent of the bill. Barber asked about the report of Labor and Management. Rose said they prepared a CS with a few additional minor changes to the original bill. They heard testimony from insurance companies, Department of Labor, and an AG's opinion. They studied this carefully and came up with a unanimous "Do Pass". Banfield agreed with Rose on this and said they had spent a lot of time on this bill. Barber asked Banfield what her recommendation would be. She said, "Do Pass". Banfield asked unanimous consent to move HB-459 - out with a "Do Pass" recommendation. There was no objection. All present signed "Do Pass".

Drunkenness — HB 734

HB-734 - Public Drunkenness - The object of this bill is to provide rehabilitation. This increased the period of punishment under certain circumstances in order to get a change to give rehabilitative treatment. Flynn moves to table this bill; Hillstrand seconds his motion. Banfield asked if we weren't taking care of this in the criminal code. We want to handle this in a different way and make this comply with the criminal code. Hillstrand objects to forcing a person into a state sponsored program. Moran asked if any of the members wished to hear testimony on this. Rose pointed out that this bill provides that a court may continue a confinement for more than five days. The amended language limits it to 30 days. The bill was tabled.

Comm. Fish. — HB 687

HB-687 - Commercial Fishing. Barber doesn't see anything wrong with this bill. Commercial fishermen can also fish for subsistence in certain locations. This just requires that you have your permit in your possession at the time. Banfield moves and asked unanimous consent to pass this out with a "Do Pass". There was no objection. The Resources Committee Substitute was signed out unanimously "Do Pass".

Legislators Age Qual. — SJR 51 am

SJR-51am - Age Qualifications for Legislators - You have to be a qualified voter and a resident of Alaska for three years. You have to live in the district for one year. This eliminates the age requirements. Banfield said this did not appeal to her. Rose said he did not agree with this bill and liked Jay's better. Moran wanted to put this bill out. This was signed out with four "Do Pass" recommendations and Flynn and Banfield signed "No Rec."

Meeting adjourned at 4:55 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, April 28, 1972

Moran called the meeting to order at 8:25 a.m. in the Masonic Temple. Present were Hillstrand, Barber, Rose, and Bennett.

HB 524

Criminal Code

This was a continuation of the consideration of HB-524 - Criminal Code. Joel started with Item #22 of his suggested amendments.

Item #22. He suggested striking (c) and (d) and (e) were in question. He felt that (d) was confusing. This was on Page 26. After discussion it was decided to leave (d) in. Joel explained that it was an attempt to clarify accomplice liability. After further discussion Rose moved to delete (d). There was no objection. Joel asked that we retain (1) and (2) of (c). We will strike (c); leave (1) and (2); and strike (d).

Item #23. Page 27, Line 2. Joel said this was an insertion for clarification. After the word "commission" insert "but no culpability is present". He thinks this would be vague without this change. Rose moves to adopt this suggestion. There was no objection.

Item #24. Page 28, Line 2. The word drugs used again to conform with our law and the definitions under our law.

Rose asked to go back to Page 27. Lines 10-14. He said he could not make any sense out of "g". How can one be an accomplice to a commission of an offense if the person is supposed to be an accomplice has been convicted of a different offense? If it was the same one it would be easy to understand. Joel said the main thing they are referring to is degree. Say a person committed fourth degree arson and was convicted of fifth degree arson. Rose said he could understand this if it was a different degree of the same offense. Joel read from the commentary on this point. Joel said that in the tentative draft they had to decide whether to keep this portion in or not. Rose said he could understand why this would be a problem. A man acts in some way and found not guilty but you are the accomplice to the commission of a crime that hasn't been committed. Moran agreed with Rose and could not see the value of an administration saying a person is not guilty and then that his accomplice is guilty. Joel said there was some precedence for this in Title 12 and read from same.

Item #24. Page 28, Line 2. Judge Monroe was against this. It is hard to prove that someone is under the influence of drugs. If the committee wishes to include this, it should be defined as presently in the law. Rose moves to adopt #24. (Banfield arrived 8:50) Joel had a question as to whether this could negative an element of the offense. Joel said that he thinks that even without drugs the section could be read to include drugs because it says substances but not

Criminal Code

limited to alcohol. Barber asked what the Judge was opposing. Joel said he didn't want to include drugs in that sentence. Joel thinks we can leave "drugs" out but that the language is broad enough to cover it anyway. "Drugs" will be deleted. HB 524

Item #25. The committee wanted a revision of this section. Section (a) now reads: It is an affirmative defense that the actor engaged in the action constituting an offense because he was coerced by a person or the person of another which a person of reasonable firmness in his situation would have been able to resist." This would not be a defense against violent or bodily injury. The revision would make the defense of duress not available in a case where the actor causes bodily injury or violence to another, however, the duress in that situation can be taken into consideration by the court to mitigate the sentence. Moran asked about Line 22, subsection (c). It should read--is not a defense that a person act on command of his "spouse" to be consistent with the present trend. Banfield moved to adopt this suggestion and also Moran's change. There was not objection.

Item 26, Page 30, Line 20. This is to insert "and willing" after "ready" to conform the language. This was adopted.

Item #26.5, Page 32, Line 28. Inserts language to conform with Miller versus State. This has been inserted but is not found in the amendment pages that you have before you. This is on use of force in self-protection. This would make it clear that the actor would reasonably apprehend bodily injury. On that portion "unless the actor reasonably apprehends bodily injury" a difficult one. In the case of an unlawful arrest a person can't resist that arrest even if it is unlawful unless he apprehends bodily injury. Moran felt this was almost a guarantee of bodily injury if you resisted. He said he could not imagine that if you are resisting a police officer that you wouldn't be inviting physical harm. Joel says you cannot resist even if the arrest is unlawful. Rose asked if this was a case of an overzealous cop. Joel said he would bring the case in tomorrow. Rose moves for the insertion of the language and asks unanimous consent. There was no objection. Moran noted that Joel would bring in the report for committee members. It is difficult to see how this could work.

Item #27, Page 33, Lines 11 and 12. This was suggested by the Public Defender. He recommended that paragraph 3, on Page 33, be deleted. Banfield moved to adopt this and asked unanimous consent. No objection.

On Page 34, Andrew J. objected to AS 11 on lines 24-26. Banfield asked if somebody was knocked out cold and you would use force when if he would have been able he would have done it to you. Is that what it means? Joel said that this would permit a person to kill a policeman perhaps a third party should be bound by the actual facts rather than his own reasonable belief. Rose said that we have been complaining about people not getting involved so they won't interfere in a situation, and it turns out that the guy was the bad guy and then you are held responsible.

Criminal Code

Banfield asked what happens when it is a plainclothes-man who is forcing someone into an unmarked car. Rose said it would have to be as you believed at the time because you wouldn't have time to investigate. It could result in an undesirable result, otherwise we are going to say if you help someone who looks like he needs help you had better make sure you are doing it right. Moran said that we didn't want to discourage people from helping. Rose felt this would do that if we deleted this. Banfield does not feel that Item 27.5 should be deleted and asked unanimous consent. So ordered.

Item #28, Page 38, Lines 27 and 28. Joel recommends deleting sections (g), (h), and (i). This deals with the use of force in protecting property. Joel doesn't think that we have the problem in Alaska and the committee agreed that substantial shortening should be done to this section. Rose asked what was wrong with (h). The committee discussed several types of booby traps and spring devices that could be used to protect property. Rose said if it didn't cause serious bodily harm it could be used. Also reasonable care must be exercised in its use. Joel said he feels this is unnecessary. At least he did not think we should spell it out in criminal law. Rose asked if common law coverage was sufficient. Rose moves to strike (h). Banfield asked about (g) and whether or not it would involve someone who had gone amuck and was tearing up his office. Would this apply to him? Joel said it would. Moran felt that it was the type of language like this which would defeat the passage of this bill. We are overwhelmed with language. Rose now moved to strike (g), (h), and (i). Joel said there might be one more suggestion. That would be to strike (c)(1). Banfield moves to delete (c). Rose felt that it was because of (c) that we could do without (g), (h), and (i). Joel felt we could eliminate the whole section on Use of Force for the protection of property. Barber asked what the effect would be. Joel said you would have to rely on common law. Banfield said that was our problem--we were trying to write common law into law. Rose stated this is what the model code is all about. Joel said he agreed with Moranthat the language here is burdensome. Rose asked if we were talking about all of Chapter 13. Joel said only 13.060. Rose then suggested then just leaving (a). This would establish the right to use of force and leave the details of the circumstances up to the particular case. Joel noted that in the commentary they restate tort cases. There are seven pages of commentary.

Moran said the thing that puzzled him with respect to what we are doing--is it not really an exercise in futility. Nothing that we do is binding on the House or anybody else. This comment was not meant to show disrespect for all of Joel's work. Rose said that previously it has come back year to year without being amended. The work we have accomplished should be turned over to somebody so the next person will not start all over again.

Criminal Code

HB 524

Moran said the ones studying this will be the ones to make the decisions on these things. Our views aren't going to make any difference. The same members will not be on the Judiciary Committee and the same would hold true for the Senate Judiciary Committee. We took testimony from witnesses and these changes were prepared from them. Hillstrand suggested that we submit Joel's contributions and what the committee has done and ask that it be reviewed. That would give life to our work. Moran said this was his intention. He said he wanted this to be a committee decision. Banfield did not feel that would do anything about it unless we had it made up as a CS and sent it to Rules. Moran said that he had suggested to Ziegler that as Chairman of the Judiciary as well as Chairman of Legislative Council that he accept this package of material and let them proceed to act upon it. This would be without the formality of a resolution. A letter from the committee would state our purpose and we could have this spread on the journal.

Banfield suggested that we send it with a report and say what we expect them to do, because none of us are willing to recommend this be passed. Hillstrand moved that the bill with the recommended modifications as prepared by the committee and council be transmitted to the Chairman of the Legislative Council and that a copy of the transmittal reflect the effort made by this committee in this regard by introducing this to the House and having it spread on the Journal to indicate to the body that this represents work that has been done. The chairman of the Council will be in his office and will continue to work on this in the interim. Action will result. They will review the work and this will become part of their working papers. Banfield said she would also like to discuss this with the speaker of the house. Moran said he had already done so and he liked the suggestion. Barber asked unanimous consent to Hillstrand's motion. So ordered. Joel said he felt that their suggestion was well taken. The proposal is to move this to Legislative Council for further work. He is opposed to a CS because the actual changes are not reflected in the bill. Moran said that he would draft a letter to Mr. Ziegler and will submit it to the committee before sending it.

Square Dance Resolution

HJR 136

Hillstrand said he had mentioned the square dance resolution. He didn't want to embarass anyone. He wanted to secure approval of the committee to introduce this. He asked that referral be waived to Judiciary and then it would not have to come back to us. This bill was moved out.

Meeting adjourned at 9:50 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, May 1, 1972

Chairman Moran called the meeting to order at 2:45 p.m. in the Masonic Temple. Present were: Randolph, Rose, Hillstrand, Barber, Flynn, and Peterson.

U of A Regents — HB 529

Moran noted that the University of Alaska and the Board of Regents are taken care of in another bill and that he would like to have a motion to table HB-529. (Regents of University of Alaska) Hillstrand so moved; there being no objection, it was so ordered.

Point System — SB 296 am

SB-296am - Point System motor vehicle violations. Moran asked what the committee wanted to do with this bill. (Banfield arrived 2:55 a.m.) Randolph moved that we pass this out and asked unanimous consent. The bill needed further work. Randolph withdrew his motion.

Embezzlement — HB 799

HB-799 - Penalty for Embezzlement. Moran noted that bankers, attorneys, or broker agents---when they embezzle it is only a misdemeanor but if others do, it is a felony. This is to correct that deficiency. This was signed out.

Mental Competency — HB 341

Moran noted that we had prepared some information on the legal test for competency in crime. Justice Connor had a good minority opinion in one case. This was using a much more enlightened approach to this problem. As it is now, every judge has his own rule. The question we want answered is what really is the legal test in this state. Then there is the additional problem when someone is charged with being guilty by reason of insanity--we have no place to put them. We have had a contract with Indiana and they will not renew the agreement. Now, the result is that the person would have to be discharged. In this state we have no facility to hold the criminally insane. Moran felt that we should consider what we had done on HB-341 and pass something out of committee. Rose noted that we had considered this with the criminal code. Art noted that the bill does not contain all of the sections of the model penal code. Rose said he felt that there should be a requirement for a court ordered examination. Rose moved that this section be added. Rose did not think that we would have to replace the entire second section. He would have to study it more carefully. It seemed to him that with the amendment it would be adequate to give guidelines to the judiciary as to what is the test. Art agrees with Mike that this should be used as a basic responsibility test. Moran said that we would add that provision. Rose moved to pass HB-341 - Criminal Responsibility - as amended and asks unanimous consent. There was no objection. HB-341 as amended was signed out.

Meeting adjourned at 3:30 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, May 3, 1972

Moran called the meeting to order at 8:20 a.m. in the Masonic Temple. Present were: Barber, Randolph, Rose, Hillstrand, and Banfield.

Crim. Jus. Infor.

HB 563

Banfield asked if the chairman had received the proposed regulations from the police. We were considering HB-563; HB-753; and CSSB-387 - Criminal Justice Information System.

Mr. Havelock had appeared before the committee earlier on HB-563. This was prepared by their office. HB-753 was put in by the Rules Committee in the House, probably by Mike Bradner. CSSB-387 was originally sponsored by Terry Miller. Sheri Gross was invited to testify.

Sheri noted that 387 and 753 were identical bills to start with. The CS for 387 is a better bill. Anchorage police chief and public safety considered the CS to be a better bill.

Moran said there was a fear that the point system would be nullified if we passed this bill. Sheri didn't think this was true because on Page 6 of the CS for 387, line 19, it provides for record keeping but prohibits subjective information from being included. She didn't feel that the point system would be subjective information. Randolph asked if this would allow for the tabulation of driving violations. Rose felt that it would. Sheri said that she did not object to adding language which would allow the operation of the point system. She did not want this to include juvenile offender records. Sheri noted that 563 did not provide for exclusion of subjective information in the records.

To answer the objection to 753 and 387 saying that this requires a separate computer for anything other than criminal justice information is not true. It was possible to use the same computer. They would have to be programmed differently. Sheri feels that 387 and 753 provide for the rights of privacy in more than the criminal justice information system. They do this by requiring each agency to set up its own rules and regulations on keeping files on a person. 563 deals only with CJI. She said that there is a real fear that as our government get more complicated and efficient, there is a danger of losing our right to privacy. CS for 563 lists some of the things that should be included and excluded. 753 allows each agency to set up their own system as to what would be included subject to approval by the Legislature. Banfield noted that this section applied to all agencies and not just the police. All state agencies, that is. Sheri recognized that the first section deals with all state agencies and the second section of CS387 deals only with CJI.

HB 563

Crim. Jus. Information

Barber asked where we had brought our state archivist and records management officer into this. Moran felt this was because of the nature of the records. Barber said there were a lot of confidential records that were controlled by these people. He was referring to state business records. Banfield noted that this is handled under the Department of Administration. Sheri noted that 387 would allow them to establish their own regulations regarding their records. Barber then asked who was going to destroy these records, maintain them, and store them. He understood the use of records during their active life, it was after this that he was concerned about. What do you do when they are 50 years old? Moran felt we could use the provisions for purging files. We are only talking about the AGIS. This refers to the Governor's Commission. In HB-563 we are talking about the Governor's Commission adopting regulations. On page 5 they start talking about the CJI (Criminal Justice Information System). Banfield gave an example of what type of records they might keep on a veteran. Sheri thought this would allow inter-agency exchange of information with a notification to the individual. Banfield said the bill says unless disclosure is provided by law. Sheri said that was where the regulations by the agencies came in--they adopt regulations on exchange of information, etc. Barber objected to this approach. This makes records management difficult. It has to be under the control of one individual or it is a hodge-podge. This way they will be allowed to throw away records they should be keeping and saving records they should be tossing. Moran felt that the records the archivist would be working with would be retired records. Barber noted that personnel records are permanent records. Moran said that the U.S. has a central filing system. There are regulations stating what type of records will be maintained and they usually want things of historical value. Rose said that the files at Elmendorf are culled every two years and essential documents are sent to the filing system and other matter is destroyed. (Peterson arrived 8:45 a.m.) Randolph said if the procedures for collecting and handling records were uniform this would make it easier. Sheri said there was no one agency to make the rules and regulations at this time. Sheri felt that would take away from the flexibility needed because of the variety of information in the differing agencies. She felt they should each be free to adopt their own regulations. Rose said he could see a problem in the CJI because there was no criteria for disposal of these records.

Barber read from page 13 of the bill. This referred to maintaining separate files. Banfield said that the police had many other files than the CJI files. Rose suggested that we hear from the archivist and records management people. Art said that we had some provisions for records management in Title 40. Banfield said that Barber could see no correlation between the system and archivists' records. Art thought it would be easy to tie 130 in with Title 40.

Criminal Jus. Infor. System

Moran suggested we have Hayden come over and see what he has to say as regards having a problem with Title 40 and records management. Art explained to Hayden that Barber had raised the point that Section 130 allows individual records keeping without tying it in with the state records management system. Hayden didn't think it would prohibit keeping various records. He said the agencies feared they were being restricted or limited to keeping files on CJI. Moran said he thought the key was in 40.21.060. This statute deals with public records and recorders. Barber thinks that reference should be made to Title 40 in this section. Hayden felt that the reference should be made in 09. 12 is dealing with CJI. Banfield suggests putting it in both places. Art thought this was pretty good idea. Barber said that this would clear us from being in noncompliance with previous law.

Rose moves the amendment of 09. Moran asked if this would be a new section. Hayden suggested Line 15, Page 1. The wording would be: "pursuant to the provisions of 40.21.060. Moran noted that this excluded the University of Alaska from the statute. Banfield said that was because they already were taking care of their records properly. Hillstrand commented that you really have records in several locations throughout the state. Things that should go into the archives. He said he didn't think that the archivist was interested in current records anyway.

Sheri next commented on the bottom of page 6 and the top of page 7. This made reference to deleting misdemeanor, drunk driving, traffic offenders, etc. Banfield suggests that we have Mr. Chapple tell us his problems with this portion of the bill. Hayden said these things were excluded when the computer idea came out. Under the model act they recommended that they be excluded from the computer system. This was Project Search recommendation. Rose didn't think there should be any problem since they could use the computers for this. Randolph didn't think the computers would be available. Moran said that the federal government is the one putting out the money for doing this and they were not trying to deal with minor offenses. Moran said the "x" number of people would be punching the cards all on the same computer. They would just have separate file cabinets.

Hayden said this would provide an additional handle to law enforcement officers. Everybody's name would be in a national data bank. Under federal law they wanted to have a list of everyone in the country who was a criminal. This would have been exchanged freely across the country and if you allow these small offenses to be added--this is the fear. Moran asked if there were any comments in Project Search on the material at the bottom of Page 6. Hayden said that was why a section had been added to allow individual agencies to have their own records. It is for the police that we are prohibiting from compiling this other type of information. Moran asked Hayden what he thought of adding a reference to Title 40 in here. Randolph said he would like to have Chapple come over and explain how this would affect his department.

HB 563

Criminal Justice Infor. System

Rose thought we should make reference to Title 40 on Page 13. Lines 19 and 21, adding the words "pursuant to Title 40". Hayden noted that the AGIS would be setting up the regulations and did not know if there would be any problem with them. Hayden felt that this commission would be cognizant of the archivist. Rose said that since this is a new records system that we are setting up, that we should show that it will be done pursuant to Title 40. Then there would be no question that they would be subject to it. Barber thinks it should go on Page 5, Line 1. "In conformity with AS 40." Hayden thought that this would better be placed under the regulations provision on Page 6. We could say "adopt regulations and procedures consistent with Title 40." Art checked the location of this and felt that Line 15 of Page 1 was the proper to place the amendment. It would say: "shall adopt regulations consistent with AS 40 which provides." Also we need this on Page 6, line 5. Banfield asked if we were putting it only in two places. Hayden said we needed three places to be complete.

Hillstrand asked why they needed this bill. Can't they do this computerization without the bill? Moran said that (1) we needed to establish guidelines and (2) absent this, they would have no statutory basis for adopting the regulations. This system is financed by a federal grant and there is a necessity to provide guidelines for its use. This is fraught with problems. A great number of citizens are becoming concerned about the numbers of records kept on people by governmental agencies. Data processing will make this information more readily available.

Moran introduced Commissioner Chapple and told him that we thought we would work with the CS for SB387 in the interest of time. There was some concern on Page 6, the last sentence. This related to the concern of your department in administering the point system if this bill is enacted. Our examination would suggest that information which was to be included in this particular aspect of record keeping is one thing--the bill as drawn does not keep you from keeping other department records and using the same equipment to prepare them.

SB 387

Chapple said that he was concerned about security and privacy. He said if this could be taken as the author intends his department could probably operate. If they take it as written then he is virtually out of business. The system as originally planned was for criminal justice information. We have included drivers' licenses and fishing and hunting licenses for the purpose of economy. CSSB387 is throwing in some things that will affect our manual records if we go to the machine system. The provision of notice is one problem area. He wanted to know if they would have to hunt people up in order to notify them that they were using and keeping records on them. He believes this to be a crippling bill.

Criminal Justice Inform. System

Banfield asked about Page 3(e). Does this apply to CJI? Moran said that this was the civil code. Moran said he could not understand why they needed separate systems for the record keeping. He understood that the same group of people punching the same cards would be doing the work. The question would be "where they are filed". Chapple said you could use the example of a hotel. There are many rooms in a hotel but you can only go in one. This is the same with the computers. Putting other file material in the one system is the main concern of his department. Rose had a fear of the department keeping dossiers on everyone. This bill would give more protection than we have now. By using a little imagination you could probably get any record you wanted in this state right now. When this is in the machine it will be more secure. Randolph asked if Chapple was in favor of the system, but only took exception to certain sections of the bill. Chapple said this was true. He said that he thought that the Governor's bill would allow the Governor's Commission to make the regulations. He was afraid that this might put some limitations on his department.

Banfield asked about the things that could not be stored in the computer. They are juvenile records, drunk related offenses, traffic offenses, and misdemeanors. Juvenile records need to be properly protected. The rest of these are of proper police concern. It may not include intelligence or analytical files. There is no indication that Public Safety would have this type of files anyway. Wellington wanted to point out that Public Safety was not going to create any new files or records. They only want to be able to maintain what they now have. Chapple said that they had 250,000 active drivers' licenses and that they cannot be efficiently managed unless they are computerized. They want DL and accident reports to be readily available. They have spent the last two years for designing and programming the system. They have received comments from the AG's office and there are differing opinions as to what this bill will do to Public Safety. They do not want to rely on legislative intent, but desire clear-cut guidelines. The AG has prepared a 5-page memo on this showing the things that are vague.

Chapple said that Anchorage was concerned with this legislation, also. They are going on the line with their new system very soon. Rose asked for specific objections to the bill. Wellington said there was a problem with juvenile records which are protected by law and the courts and corrections objected that this information should be on the system. Moran said this was excluded by recommendation of Project Search. This was prompted by reason of the funding. Banfield asked if in the pilot program this was located in a jurisdiction where a point system was in operation. Hayden said he didn't know. Moran said he didn't think there was anything that said it couldn't be maintained on the system. Moran said the FBI had many files and for example, their fingerprint files were kept separately. They were prepared in the same offices and with the same personnel, but were filed separately. Sheri

HB 563

Criminal Justice Inform. System

said that you can separate filing systems on a computer. Randolph asked to have the AG come over and talk about this. Rose noted how you can purchase time on a computer. He gave the example of a contractor. This is under a separate card system, but the same computer is used. Moran thought it might help the committee to have Will Condon come over and discuss his list of objections to this bill. Banfield asked if we should call the archivist over to our next meeting.

Chapple said if this bill passed this would put his department back to the old type of records. This would also put some restrictions on that type of record keeping. Moran felt that he was confusing two things--the operation of the department and the other which is the operation of the CJI service. There is nothing in the department of public safety that is running under regulations adopted by the AJIS. The reason is that CJI is subject to particular kinds of arrangements.

Meeting adjourned at 9:50 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Thursday, May 4, 1972

Moran called the meeting to order at 8:20 a.m. in the Masonic Temple. Present were: Barber, Randolph, Rose, and Hayden.

Moran said that we were working with the CS for SB 387 because it has already been through the Senate. This will make it easier to get it through. We also have HB-563 which was prepared in the Department of Law. We may put their approach in as the CS for SB387. The concepts have been reviewed by the committee. We talked with the Commissioner of Public Safety and his deputy yesterday. Barber brought up a question with regard to records management of state archivist being in conflict with this bill. It was agreed that this might be the case. This was true of Title 12 and Title 9. We had a lengthy discussion of the material on the bottom of Page 6--the last sentence. This was brought to our attention because of the possible passage of Senate Bill 296am proposing a point system. If we excluded traffic offenses from this bill, it might prejudice the functioning of the point system. (Hillstrand and Peterson arrived 8:25) Hayden told the chairman that when this was considered as a CS in the Senate (387) that they had met with Anchorage police, Department of Law, Public Safety and others.

SB 387

Criminal Justice Inform. System

HB 563

The committee has received the five pages of comments from the AG's office. This was dated April 10.

Chapple said he was sure that the people that gave their work to Project Search were well qualified but that their recommendations were for a nationwide network for crime detection and not necessarily cognizant of the situation as it exists in Alaska. They have elaborate systems for taking care of things like drivers' licenses, etc. We are a small state and need the economy of using one computer for all purposes. He said he heard the comment about public safety participation in the preparation of the CS. He didn't think that anything that they said was taken into account.

Will Condon appeared before the committee to go over the bill section by section. He wanted to give some general comments first. (Banfield arrived 8:30) Moran said that general comments are helpful but that we wanted to deal with the problems on a more specific basis. Mr. Condon said he thought that CS for SB387 was a bad bill. He said that the overall approach of the bill is to do three things. It sets up a scheme for regulating all records now maintained by the state agency people. This regulates the CJIS--a computer system that manages criminal offender records. HB-563, which he aided in the drafting--was submitted by the Governor. This attempts to do one thing--to regulate the computer information system on criminal justice. The present SB attemptsto do too much. Rose asked what committees this bill went through in the Senate. Moran said it went

Criminal Justice Inform. System

HB 563
SB 387

through Judiciary and Rules in the Senate. Condon said he felt they had focused their attention on some real problems but had missed the mark in solving them. He did not think we should attempt to regulate state and local records. This asked departments to promulgate regulations for records that contain people's names or numbers. The regulations would have to spell out whether or not there is a need to notify that person that they are maintaining a record.

Paragraph 2 requires an agency to adopt regulations for obtaining permission of persons or his next of kin before they can disclose information to another person or agency when it is not a public record under any existing statute. This would include vital statistics, medical records, and records protected by state law, such as adoption records. If the agencies adopt regulations that find that the disclosure would be of a routine nature and would not violate a person's right to privacy--no permission would be required.

Paragraph 3 requires that an agency adopt regulations to notify the person when his records have been exchanged or transferred. Condon said that some sections of the bill just impose a burden upon all administrative agencies in the state to make up some regulations. They will all come to the Department of Law and ask us what they are supposed to do. They would first have to go through their files and see if there is need to notify, establish whether some of the material is routine, and then a regulation relating to notice. It isn't clear what type of regulations they would need.

Paragraph 4 has already been covered. This may be a duplication of existing law. This may be unnecessary but it may provide an added protection.

Paragraph 5. This requires the adoption of regulations to maintain an accurate record of the names and positions of those persons inspecting the records. Also you would have to show the purpose for which the inspection of the records was made. He thinks there are some records that should require this but not all records in the state. This would require extensive record keeping. This would frustrate the policy already in the same chapter that says that records should be freely open to the public. This also frustrates freedom of inspection of records.

Paragraph 6. We can live with this provision. This requires the promulgation of regulations for inspection and copying of records. It exempts investigatory files from this requirement. Condon feels that there are some records which it would be inappropriate to allow a person to copy.

Paragraphs 7-9. This covers purging of files. We can live with this. Subsection b exempts records from the provisions of (a). Investigatory files are exempt, adoption proceedings, and interagency or intra-agency memos are also exempt. He didn't see the point in this. Barber said this was used

Criminal Justice Inform System

when one agency of the state sued another agency of the state. They would want to have the interagency memos to prove their case. Normally inter-office memos are not available to the public. Condon brought out that this was transfer between agencies. He also brought out that the legislature has the right of review of regulations. These will have to be prepared by March 15 of 1973. The Legislature will approve or disapprove them at that time. If they are disapproved, we are back where we started. In subsequent years no regulations can be changed or new ones adopted unless approved by the legislature. Condon questions the wisdom of this. This frustrates the regulation process we now have. It will also burden the legislature with a large volume of legislative review. This would also require the management of all records within all departments to become a matter of statute.

Subsection (d). This is too vague. You would have to decide what kind of protection you have to provide as a municipality. The penalty at the end of this section is too high--a felony.

Subsection (e). There is no definition of criminal offender information in 12.62. There is the statement that COI may be put into the computer and states a whole list of things that can go in the computer along with a list of things that cannot be put in the computer. Any information you say can go into the computer isn't going to be regulated by 09.25. Any information they collect which they can't put in the computer will have to be under 09.25.125 and not under 12.62.030. COI is referred to in the bill but there is no definition for this term. He has spent some time trying to figure out how this bill works.

Subsection (f). He did not comment on these. He said there would probably be some people who would object to that. That is probably the approach that ought to be taken.

Subsections (g) and (h) deal with civil actions. This is on Page 4 and may be considered a nit-picking comment. In subsection (b) it says that a violator is not entitled to claim any privilege of a defense because of the regulations. You make it a felony to mishandle personal records and nowhere do you have this term defined. It would be unfair to subject people to a potential felony liability without spelling out the offense. He thinks we would have constitutional problems with this. Condon thinks that in 09.25.125 there are two competing interests. There is freedom of information which is an important element of freedom in government and there is also the protection of the individual's privacy. It does not address itself to both aspects adequately. 12.62 is a jumble of two separate regulatory schemes--computers and criminal offender information. In some sections it talks about one and in some another and in some cases it talks of both. There is not a clearly defined regulatory scheme for computers and then one for the class of information.

HB 563
SB 387

With respect to regulating CJI, it regulates them by saying what you can put in them. Then we would have to decide how it should be distributed, what kind of security should be provided and this is only for CJI. He felt that other records that apply to CJI would have to be included.

Criminal Justice Inform System

Rose said he couldn't find where it said you could or couldn't put information in the computer. Condon referred to 12.62.030 which says that only COI may be put in the CJI system. Moran said that this did not mean that other matter cannot be maintained as an agency record. It only says that COI is the scheme which this bill contemplates. Condon said according to this section you can only put criminal offender information in the CJI. This is because it is designed as a computer system funded through the LEA grants. Then it proceeds to state what can go into this system.

This further provides that the Governor's Commission will regulate the exchange of information in the state. Moran said that in the definition we have by exclusion and admissions defined the system. Mr. Condon agreed with this.

Mr. Condon said that he understood the regulation to apply to the manual files that agencies keep also. He did not feel the AJIS was qualified to promulgate these required regulations. He said they could probably do this if they were given more money. It regulates systems which are funded by LEA and criminal offender information somehow as defined throughout the state. The restrictions in this bill are overly restrictive. The efficiency that can be gained by Public Safety, Corrections, the Courts, etc., are not to be so great as to imperil freedom. Banfield asked what Mr. Condon's recommendation would be to the committee on this subject. He said we should take the approach of the Governor's bill (563) which focuses on CJI. This would be done under the regulations as put out by the AJIS. This would allow more flexibility. Banfield asked if we adopted the Governor's approach would the Department of Law come back to add this first section next year. He said he would recommend that the whole picture of government be considered during the summer. Law and administration could be asked to look at information gathering and exchange by all state agencies. Banfield asked if he felt it was necessary to pass the Governor's bill this session. He said he felt that it was.

Moran asked if this bill provided an adequate guide as to what should be in a criminal justice system. Condon said he didn't think that we should in any way be guided by the Project Search recommendations. This was a study to develop a nationwide criminal exchange of information system. This doesn't deal with Alaska's problems. That is why he feels this study should not be treated as an authority.

HB 563

SB 387

Criminal Justice Inform System

Mr. Condon said that Public Safety has made plans to include DL and Fishing and Hunting Licenses in the system along with the CJI. Moran said that the CJI could not keep a file on you until after you had been arrested. Condon said they want to do this because they don't have the money for two data banks. This bill would prohibit using the computer for this purpose. Moran said in any of our discussions we were not concerned about listing the DL. Condon said if the person could not have his name or number recorded in the computer until he had been convicted that they would be prohibited from doing this. Moran said the concern of committee members was the type of information gathered on Alaskans and then allowed to be exchanged throughout the nation. Condon said there should be no trouble here since the only transfer of information that is allowed is that obtained as the result of a conviction. Moran said he didn't object to this, but felt that disposition of arrests should also be reported. Condon said that under present plans they would show the disposition of every arrest.

Public Safety is concerned about their ability to operate the point system if they cannot have DL and accident data on a data retrieval system. If the committee passes this bill they will have to find separate funding for them to be able to do this.

Public Safety feels that they will have to operate separate lines to Anchorage if you do not allow DL and fishing and hunting licenses on the CJI system. Moran asked that the committee be provided with a copy of the terms of the funding under LEAA. Randolph asked for an estimate of the cost if they were operated separately. Rose asked about the operating of the system. Wellington said that it was a television type screen which transmitted the information. This made it so that you did not always have to copy the material. You could read it and then you would be finished with it.

Barber asked about the retention period of the records. Condon said that this hadn't been decided as yet. Back to adopting regulations with respect to the records. Rose doesn't think this should be so difficult. You would say records were administrative, privileged, or not privileged. Rose didn't see anywhere it said you had to classify all information in the files, but it says that no information will be released unless it fits into the proper category as called for. Condon felt that 09.25 did require such classifying.

Meeting adjourned at 9:50 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, May 5, 1972

Chairman Moran called the meeting to order at 8:15 a.m. in the Masonic Temple. Present were: Banfield, Barber, Randolph, Hillstrand, and Hayden Kaden.

Criminal Justice Inform. System

SB 387

HB 563

Moran invited Deputy Commissioner of PUblic Safety, Pat Wellington, to give any comments he might have on SB 387. (Criminal Justice Information System)

Mr. Wellington said that he would like to make some general comments at the start. He commented on Project Search and said that this was originally designed to be a team to work on interstate transportation of criminal histories only. He said the state did not intend to have criminal history offender information on the file. That will be a later portion of the system. This was to develop a prototype statistical system for the first time for interstate and intrastate. Since then it has expanded membership to one member from each state. Mr. Wellington has been appointed as the representative for the State of Alaska. He does not think that the information in Project Search should be taken to mean this is the legislation that should be adopted. He distributed a sheet showing what items the justice committee feels should be on the system in the first year. One thing he has been concerned with is the security of the information. The table that was distributed was developed after a meeting with the Commissioner of Health and Social Services, Public Safety, Anchorage police, Fairbanks police, Division of Corrections. They decided what ought to be in our first year program. This took place about two weeks ago. They considered rap sheet and information like that and decided that known convictions were the only ones to be listed.

The criminal justice planning agency is to fund the project for $300,000. A few days ago the Governor's Commission made some minor changes. At that time the Commission said they approved the project in the amount of $300,000 and that nothing would go on the line until August 1, 1972. Either the legislature provides guidelines or the Commission provides same. Nothing will go on line unless these guidelines are provided. Proper security will have to be developed.

When the legislation is finally enacted, we have to go to our attorneys to see what the legislation means. We have to use those in the AG's office. We also have a consulting firm working on the project. Wellington asked the statistical people what would happen if this bill were passed. They said they didn't know.

Criminal Justice Inform System

Wellington said that one thing the department was really concerned about was the provision for notification. If they have to notify someone that they are keeping a record on them and if this requirement is retroactive it will cost about $500,000. Each year thereafter it will cost about $50,000 to notify people. If they would have to have a separate computer for DL this would cost 1/4 to 1/2 million dollars per year. This would include separate lines that would be leased, separate terminals, etc. The computer they will be using will be located in Anchorage. Only those agencies authorized will be able to get the information. There will be direct lines between Anchorage and Fairbanks and Juneau. This will cost $35,000 per year. Separate systems would increase these costs. He said the attorneys for Public Safety said that DL could not be included in the system.

For two years the department has been working on the DL files and the accident reporting system. On August 1 they want to put this on the computer. They will not be allowed to use LEA funding to implement this program.

Page 2. Maintains an accurate record of names and positions of all people looking at the records. He asked how diligent would this have to be. What do you do with radio requests? Does this have to be in person? Do they have to sign the form? Public Safety feels this would be very cumbersome and burdensome record keeping. Also, does the record of inspection include the person who released the information as well as the person who obtained it? There is a felony attached to misuse and abuse of these records. We feel this is a very severe penalty for something that cannot be easily defined.

There appears to be a conflict with our present statute in reporting. Right now cities have to report to us and we report back to them. We have regulations governing this. This proposed statute may prevent us from doing this.

Page 3. Approval of regulations by the Legislature. If the legislature fails to approve our regulations, where are we? Anchorage is going to go on the line today or tomorrow and we don't have regulations or rules established. If we immediately establish same we still have to wait for the legislative review next session. Wellington feels that the Governor's Planning Commission should put down and implement security for this first year. Then you should take another look at it next year. You have stated what things can go in the computer this year, and the Governor's council can provide adequate safeguards.

Barber asked what Wellington thought if we would delete the first five pages. He said it would be more in line with their thinking. Barber asked if there were any objections from page five on.

Wellington said on Page 6 there was no clear definition of criminal offender records information. This is in 12.62.030. Wellington said the criminal history is only a small part of CORI. Next year they are planning information for the court system. They will want juvenile records and traffic offenders put into the system to better manage their problems. The probation department wants juvenile information on the system, but public safety will not have access to this information. It will be in the system, however. SB 387 HB 563

Criminal Justice Inform. System

Moran asked Mr. Wellington is he could interrupt his presentation so that Senator Miller could testify since he had only a few minutes left before session. Mr. Wellington will finish his testimony at a later meeting. Barber felt that by eliminating the controversial portions of this bill we might be able to pass it with criminal information only. Next legislative session this could be reviewed as to manner of operation and then make necessary additions, corrections, etc. Wellington said that traffic information can't be in the system, which they need, and the penalty listed as a felony. is too much.

Senator Miller expressed his appreciation for the opportunity to come before the committee on his bill. He wanted to give the history of the bill before going into the contents. He introduced this by request but since then has been put out as a CS. Senate Judiciary held three public hearings. The administration testified, including the AG, where they indicated some of the problems with the bill. Essentially the AG's major objections are accommodated in this first section of the bill. His original bill simply provided standards that will have to be met. We have allowed time for the administration to promulgate regulations. The AG in his testimony said it would be impossible to broad-brush all types of individual agencies with one set of regulations or statutes. More properly this would be set out administratively through regulations in each agency. He feels the Judiciary Committee should adopt this bill.

Notification of persons. We state that each agency make regulations that will cover this. The administration may say it isn't reasonable to notify under some circumstances. This would be particularly true of records that are public records anyway. The person already knows he has records with utility companies, driver's license department, etc. I know that there are some records kept of which the individual has no knowledge. They have until March 15 of next year to prepare regulations. Senator Miller was a little bit surprised by the opposition to his bill. He felt he had answered all the problems of the various agencies in previous meetings with them. Senator Miller feels the first section of this bill is the most valuable. This is in respect to the state going to complete computerization. He said he was familiar with SWIS which is a good management tool. In a small state like Alaska it will all be on one computer. This presents certain dangers which should be dealt with legislatively. This is the purpose of the bill.

SB 387

HB 563

Criminal Justice Inform. System

Terry said that this bill was asking the administration to go through all their records and adopt regulations which have to be approved by the legislature. Next year they can make reasonable recommendations to us. Should they notify the individual--maybe it is only routine. A couple of administrators had admitted to him privately that the state was maintaining a lot of information that it had no business maintaining. That's the reason for the first part of the bill. Based on the premise that when we go to computers the biggest threat to individual freedom is from big government itself. This is an attempt to balance things out. Banfield asked about the type of records he was talking about and he said he would talk to the chairman privately about this. We have been advised that the AG says there is no regulation about exchange of information between the departments. (Flynn arrived at 8:45 a.m.)

Miller said that the second thrust of the bill was that in the Senate they felt the system should be limited to criminal justice information. That information maintained on a statewide system ought to be confined to criminal offender information. This is adequately defined. There is just a difference in approach. This bill was not rushed through the Senate. Barber asked SEnator Miller if at any time in the investigation on review of records he had noted records management in Title 40. Barber then asked if this wouldn't supply him with the safeguards necessary in the way of records management. Terry said this was not sufficient. There are instances of where the public ought to know and they should be advised that the records are being maintained. They should be able to review that record. They should be able to check its accuracy.

Barber asked if they had contemplated public information going through the news media. Miller said he had covered freedom of the press--the necessity for obtaining permission of a person is exempt if it is a public record. Barber said what he was getting at was in the ordinary legal process it is the custom to notify the public a certain number of times. He thought that the material on Page 1 could be handled in this way, rather than individual mailing of notification to those on whom folders are being maintained. Miller thought this was a good idea. In many cases the form could say, the one the individual fills out, that this will be maintained in the records of the State of Alaska. You would use the mass media in other instances. Sometimes you would notify individually by mail. In fairness to the public we could not broad-brush this. Barber felt that records management should have a direct tie with the consideration of this bill. Barber asked Terry the same question he asked Mr. Wellington. If we eliminated the first section of the bill in view of the time factor, would that meet the immediate demands and the next legislature could contemplate joint agreement between records management and the AG's office with respect to the first section of the bill?

Criminal Justice Inform System

Miller could see no reason for deleting the first section since we were giving the administration the latitude to promulgate regulations. He said he recognized that this bill needs more refinement and expected the House to make some changes in the bill. He felt that the first section of the bill was the most important part and did not want to see it deleted. There was no thought about an AJIS system until they wanted to pick LEAA funds. Under this bill the departments can do everything they are now doing subject to the reasonable provisions contained herein and there is nothing preventing them from using the same computer. Miller said public safety objected to any type of regulation and they looked at this as an inconvenience.

Randolph said that the main problem with Public Safety was that they didn't have the funds available to computerize DL and fishing and hunting licenses, i.e., unless we make some changes in the bill. Miller said that this may be true but that they can put this on the same computer only it will not be in the AJIS system. He didn't think they would lose the money. If they filed a separate application they make get the funds. Miller was not concerned so much with AJIS as he was that guidelines be established. He said he felt that in the Senate they would be more willing to make changes in the AJIS than in deleting the first section.

Hillstrand asked if Terry had become familiar with Chapter 62 as in CSHB 563 as compared to what is in CSSB 387 on the same chapter. Miller said that he had. Hillstrand asked if they were opposed to each other. He said the one in 563 was considerably broader. This has been tightened up from the original 563 and the CS is more acceptable. Terry said that he applauded the AG's office for what they have done. Hillstrand thought that they could take the second part of the CS for the Senate Bill and take the first section and make a resolution that will ask Legislative Council to study this in respect to keeping records. Miller said that he would prefer to see constructive changes made rather than a resolution. He doesn't think that the administration will do these things unless they are legislatively mandated to do so. Hillstrand noted that records management was an exact science. Terry said that you can't completely compare maintenance of state records with the maintenance of business records because of the difference of purpose. He said that one senator wanted to give the state the same management tools as the businessman. The reason for maintaining good business records is so they can be controlled and you can't do that in government. You will probably have a little bit of inefficiency built into the system. You don't want information to be too easily retrievable. Moran noted that there is a list of information that is excluded from the system. Miller said this was so they could get the LEAA funding. Miller had to leave for the session. He said there would probably have to be some constructive changes made in the CS for SB 387. Change the first section if there are problems. Don't take it out. It will probably cost a little more money.

Sb 387

HB 563

Criminal Justice Inform. System

Mr. Wellington again joined us at the table. Hillstrand asked if the CS for HB563 provides for Chapter 62. He said he had looked at it. Hillstrand then asked if this were substituted for CSSB 387 would that be agreeable. Wellington asked if that was the authority for adopting regulations. He thought it would be reasonable to regulate AJIS and not try to regulate the entire records management system of the state of Alaska. Moran said this was directed to whether Chapter 62 in the senate version would be replaced by the CS for HB563. Hillstrand said that a records management review should be made, this takes time and money. Under Title 40 this portion could be dealt with either by the senate bill or resolution to the Legislative Council to study and make recommendations. Moran said that under Title 40 the records management does not supersede the particular department or agency with respect developing rules and regulations for their own records. There are no uniform regulations throughout the state. Barber said he thought we should have. Moran said we do have in Title 9--we direct these through statutory process, and this is probably the particular area in our code which has traditionally placed civil rights protection.

Hillstrand asked Wellington what he thought about accommodating those that are concerned about their right to privacy in 563 as compared to 387. Wellington said there was need for an overall study of the entire state record keeping system. He did not think that the Department of Commerce, Labor, and others, should be listed with the criminal problem as it is in 387. 563 deals strictly with AJIS. He thinks we should deal with a system that the justice committee is trying to get off the ground.

Wellington said they have purged information from dead or inactive driver's license files and also have not listed deceased persons. We will update current information. Randolph asked what would be a reasonable time in which to properly purge their files. Wellington thought it would take six months to a year. They have 250,000 DL. We receive citations from all over the state. Moran asked if they were advised of the disposition of the cases. Wellington said that would be costly and time consuming.

Randolph asked if we passed 387, could this be accomplished. Wellington said they couldn't do what was required. LEA money could not be used for their DL program. Under federal guidelines funding is not available for this. We are incorporating this into the justice system as a by-product. Randolph asked how much funding they were getting. Wellington said it was $150,000 and for next year they are asking for $300,000. The major portion is $30,000 for leasing of lines. $100,000 goes to the Division of Data Processing for extra equipment. $86,000 goes to develop court system records for inclusion next year.

SB 387

HB 563

Criminal Justice Inform. System

Hayden asked if the records maintained under the way AJIS is envisioned--are they classified as public records management. Wellington thought that a portion of them might be but he hadn't reviewed this. Hayden also noted that there was some problem with compliance with the first section of this bill by the City of Anchorage. Under 40.070 they are covered in the statutes now--how are they meeting these now? Wellington said we should ask John Spencer, City Attorney for Anchorage. He was in the audience. Moran said that we had Mr. Henri here with us, too. He said we would probably find that there are no overall records management regulations that the City of Anchorage could follow.

Mr. Henri was the next witness. He is Commissioner of the Department of Administration and came over rather than anyone else from the department because of the far-reaching consequences of this bill. He said he wouldn't have a department left if this bill were passed. Mike Wheeler, Data Processing, also came with Mr. Henri. The computers of all three branches of our government are under the control of Administration and the University has a computer as does the Department of Labor.

Senator Miller said he wanted to help build inefficiency into government. He said it was healthy to review records. I submit that we have so much to do and so few people to implement what has to be done, that we can't afford inefficiency in government. As to the review of records--the state has more important things to do. There have been no abuses in the area of 09.25. This stipulates the drawing of regulations rather than the doing of anything. This will take a lot of energy and will have to be approved by the Legislature. The business of fearing the government of Alaska seems to me to be invalid. I do not fear the government. This bill says the government is to be feared because the government is going to abuse Alaskans. This is an attack upon the government.

Mr. Henri said that he had asked for $160,000 for the archives branch and the senate cut this money down to $100,000. If this bill goes through I would need a bigger staff.

Page 1 of the SB 387. Obtaining permission for transfer of records. You either ask the person or somebody in his immediate family. I have heard of family feuds. Moran has an amendment to propose for this section. (Rose arrived at 9:30 a.m.)

Page 2. It mentions violative to the invasion of the person's right of privacy. This bill attempts to set and establish a person's right to privacy but it doesn't tell what that right is. The Legislature should tell us exactly what this is.

Criminal Justice Inform. System

Number 4 speaks of the complete confidentiality of information. Huge classes of information are to be made top secret. They are not designated as such at this time. If he had to choose how to classify, he would make most records public. I don't agree with Gravel on the Pentagon Papers. I don't want to make any thing more secret.

Number 5 - List of persons who view the records. If some one comes in and wants to see some records I have to list their name and position. This is a very inimical thing to the way our country operates. You ought to be able to look at any government records except miliary records without having to identify yourself to anybody. You should be free to go in freely. This has the essence of totalitarianism or fascism. This type of government is imposed from above. I don't see why we should fear. I do fear any government that comes in with a show of force and says I am the government.

Number 6 - This indicates that a person cannot see his own records if there is some kind of provision in the law saying he can't. I think that would be a good law to change. Government should be compelled to let me see what that record contains. This bill indicates there may be a time when you can't see your own records.

Number 7 - This allows you to supplement the records. In my department I don't just deal with some poor guy that got maligned by a bureaucrat. I can see somebody loading me up with file cases to supplement the record. If we are in charge of record keeping, why do you need any help? You could flood the state with needless material.

Number 8 - Remove errors in the files. I don't know what this means. Any time in the Division of Personnel an employee or his supervisor makes a comment about somebody that is against them in their view that worker thinks this is erroneous material. It is just a matter of opinion.

Number 9 - This covers Barber's Comment. Purging--this is already covered in Title 40. I appointed our archivist. He gave a list of the records he keep in his department. He said they were in the business of shuffling papers. All of them have names. We receive 6,000 job applications per month. I say again without fear that if this thing passes, I can't do business over there. I don't think there have been any abuses in my department. Rose said he was happy to hear his statement about the records. He would like a copy of these minutes and will quote Mr. Henri in the future. Moran said we had a problem and it was recognized that this could be a threat to personal privacy. Mr Henri indicated real problems with the CS for SB 387. We still feel that we have to provide necessary safeguards and yet still have a workable tool.

Criminal Justice Inform. System

Mr. Henri said that he agreed with Mr. Hillstrand and Mr. Wellington that we should pass the legislation relating to AJIS this year. He would then like to have the state records management division give an analysis to the legislature and tell them what information is available and point out what ways it could be misused and how the state could stop abuses.

Rose asked Mr. Henri if he had looked over the revised version of the CS for HB 563. The concern of the members here was that there could be abuses by allowing too many things to be in the system. This was particularly so when you consider that this is a nationwide interchange system. Mr. Henri said he wanted to make it clear that we don't have to have a special computer for the criminal work. With the dual computer 350 that we are going to have in Juneau you can departmentalize the computer. We can compartmentalize the computer without having two machines. Rose said that he was glad to hear that. We had thought this was different. Joe said there would just have to be certain tooling done on the machine. Rose wanted to know the cost of setting up a separate system in the same machine.

Mr. Wheeler commented on this. He said that they envision that they will have one central machine. There would be a separate file for criminal justice information. He was not certain as to the cost. Rose asked if this would be the same plant, same personnel, just different data schemes. Mr. Wheeler said this was correct. He said that was the reason they had come up with a proposal for a affidavit of confidentiality in their department. They wanted to make those that had access to the information were not misusing the files. Rose said that that led to his next question. He wanted to know what punishment was meted out now under such circumstances. SB 387 contemplates a possible felony. Mr. Henri said they did not have any recommendation of this point. Wheeler said they could make the computer system more secure than a file system. There can be a monitoring of the system.

Chairman Moran asked if we couldn't hear from John Spencer, City Attorney of Anchorage. John said that the first section of the bill presented problems to the City. He said their system was set up for billing for telephone bills, electric bills, water bills, garbage bills, etc. Employment records, parking tickets, business licenses, and personnel records, too. With the modification of this bill we can lock out our CJI. We can lock that system out the same as the State. However, when you look at the first portion of this bill and if you were required to go through the problem of advising someone if we going to disseminate information on him to another agency--say a collection agency receiving information about nonpayment of utility bills.

SB 387

HB 563

Criminal Justice Inform. System

Mr. Spencer does not think that the state should be regulated by a bill such as SB 387. As a city, they have people's names, numbers, cross references, etc. He felt that the portion that dealt with individual records should not be in the bill. He feels this puts an unfair advantage on a business. We disagree with Senator Miller in that we don't want our government to operate inefficiently. We think 09 has to come out of this bill. He said this because the City has parking ticket violations records in their computer. When you go to court and try someone who is subsequently convicted the judge wants to know what type of record this person has. We want to put this in the computer and we want traffice violations included. Under the CJI system they don't want this is the computer. This in effect ties the hands of the police. Secondly this would preclude the transfer of information of the MO file on anybody. This bill would not let us have that type of information. He recommended that an amendment be made which would allow them to get into the CJI files and allow transfer between agencies.

Moran said we will be back here in the morning at 8:00 a.m.

Meeting adjourned at 10:00 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, May 8, 1972

Chairman Moran called the meeting to order at 8:20 a.m. in the Masonic Temple. Present were: Hillstrand, Barber, Rose and Hayden Kaden.

Criminal Justice Inform. System

Moran said that we would give no further consideration to House Bill 753 since this was the twin of SB 387 - Criminal Justice Information. HB 753 SB 387 HB 563

Mr. Wheeler, Deputy Director of Data Processing, will continue the testimony. He said that most of what he had to say was said by other witnesses. He said that he testified before the Senate against the dedicated computer system.

There was one point in the first section that wasn't mentioned. If this were passed there would be a need for setting up regulations and this would cause a problem for his department. They keep no records of their own. They do keep other agencies records. We would have to set up another set of regulations for the same records. He then asked if anyone had any questions. Moran said that from this standpoint he would assume that "it says these agencies should adopt, etc." I would say if I were making the decisions--I would be thinking of an interagency group that would draft the regulations that would be appropriate to all departments. Then deal with the exceptions on a department by department basis. He mentioned Ned Kester and the Department of Vital Statistics. He also said he would assume that the records of this type would show no need for giving notice. As for permission of the person about whom maintained--some of this division's records are public records. Thus, no need for notification.

Moran on court records could see no reason to exempt them from supplemental information. He gave the example of separate divorce proceedings. You might add some supplemental in this case. Wheeler said that addition of information to their records would cause problems in their department. Any tape records they have are fixed. If you have to expand them you would have to change the programs which use the records, too. This would be extremely expensive. Moran noted that there are two things with this bill--we have to remember that we are talking about guidelines for the development of regulations. Some think that this is the finished product of the bill. Then there is the need for notification. The regulations could say there was no need. Senator Miller said that he thought it would be a salutary thing to have the departments to force them to go and see what they have. Then they could say they didn't require notice. Olson, Alaska Peace Officers Association, thought this was legislatively mandated. Moran said he did not read the bill this way.

The other problem, he thinks, is a difficult one. Trying to impose upon local governments those not less rigorous than those adopted by the state.

(Hillstrand arrived 8:35 am.) Hayden commented on Mr. Henri's statement where he implied that this type of legislation would destroy the Department of Administration. This raises questions about the public right to know about their records. This legislation in written in this vein. He read from testimony on data banks on the federal level. He thinks we should give the citizen the right to know what the government knows about him. There should be control on collection of data and regulations that cover the first section. Hillstrand asked if there were any limitations on these things. Hayden investigatory files were excluded. It also excludes intelligence files. Moran said that it did include court records. Moran said that one thing that CS SB387 did was to exclude certain juvenile records, drunk charges, and traffic charges. It was difficult for some of us to follow this. Moran could not understand why it would create all this extraordinary expense. They are already maintaining this information so why are they objecting to putting this in the AJIS. Mr. Chapple and Wellington said that this would be an extra amount of expense and they would not be able to get any federal funding. Wheeler said he was not personally acquainted with the extent of the systems. He felt it would probably be a duplication. Moran asked if this would require the hiring of a board. Wheeler said it would include more equipment and personnel. Moran asked if they wouldn't use the same equipment and the only difference is that they would be handled in a different phase. There would be separate access, filing would be different, and exchanges regulated. It was felt that a visit to Mr. Wheeler's office where they could observe data processing would help in this discussion.

SB 387

HB 563

Criminal Justice Inform. System

Barber asked about collection and storage of juvenile offender, drunk related offense, and misdemeanors, if these records were maintained could they be excluded from the CJI data bank. Mr. Wheeler said that they could be coded so that only certain people could gain access to this information. Banfield asked if he meant that while they are being maintained as useful records within the state they could automatically not be sent out of the state. Mr. Wheeler said this was true. Banfield commented that Chapple and the AG had said there would have to be additional lines and asked Mr. Wheeler to comment on this. He said that would be a correct assumption the way the bill is written. The proposal came in for the statewide teletype system. Right now the proposal would cost approximately $35,000 for the statewide net. This amount to a 45-hour week or a 9-hour day. The lines between Juneau and Anchorage is $518 per month . Fairbanks and Anchorage are $249. We need to go to a 24-hour system. That would be $1007 for Juneau and $485 for Fairbanks and Anchorage. It costs about $35,000 per month for a private line. If you have dedicated terminals where no other state agency can use the terminal it will cost more. These devices can be coded and used by more than one agency.

Number 10. Systems security. Mr. Wheeler said that we should specify that a terminal used shall be installed in an appropriate location and be operated by a person other than a criminal justice administrator. An appropriate code system shall be made to key the information. A common terminal with the ferry system, for instance, would use the same operator. You could use that for routine business matters. All of the criminal justice data would be locked out. This could be by time of day, by operator, code, etc. It just depends upon how much money you want to spend on this. Rose asked if this meant that we wouldn't have to go to additional equipment. Wheeler said this was true. There probably isn't enough equipment in the state to handle this job but this equipment can be used for more than one purpose and safely. Rose said there seemed to be a cost disparity. Wheeler said there was a difference in the type of equipment. This has a hard-copy printer which is faster than the teletype. You can display your data without having to print it. If you do want a hard copy then you can get that, too. You can page through a file forward and backward. He gave an example of the payroll file. You can make changes in this by giving your social security number. You can then see your file. There usually will not be any changes in actual salary, but for routine information.

SB 387
HB 563
Criminal Justice Inform. System

Rose said he understood that by system we mean strictly a file system. Wheeler said it can be the entire thing or a small portion of it. Banfield said that we really didn't understand the computer system. Moran said we could set up an appointment to visit Data Processing Division.

Hillstrand asked if it was necessary to pass this bill this year in order to take advantage of the federal contributions in the accumulation and collection of this information and its use in interchange with other agencies within and with out the state. Moran said he would join with Havelock in saying that some form of Chapter 62 needs to be enacted as a matter of urgency. Absent that there are no guidelines with respect to the whole AJIS. That means section 2 of this bill, House Bill 563, or CS for House Bill 563. We need some form of that because these people are setting up the system.

We also have Section 1 of CSSB 387. Barber thought this would be a good subject for Legislative Council to study in the interim. Hillstrand asked why federal and state couldn't agree through a memo or cooperative agreement. Moran said he would like to hear from Larry Parker and ask him about the terms of the federal grant.

Parker said he would like to cover some of the questions raised before going into his comments on the bill. Mr. Parker is Executive Director of the Governor's Commission on Criminal Justice Planning Agency. He distributed a sheet showing the general conditions of the grant. Under #2 deals with system security and protection of individual privacy.

Criminal Justice Inform. System

He notes that they will coordinate development of the program with any compatible multi-state effort to secure the benefits of exchange of data, etc. He was hoping that (a) would give the committee the answer to whether you have to have this immediately. Parker said that we needed systems security, privacy of individuals, accuracy of data collection, but it doesn't say that you need legislation. He said they had looked forward to activity on the part of the legislature this year, though. Moran asked if there was adequate statutory authority to adopt regulations. Parker said the federal was satisfied if they were to extend the regulations they now have to the new system. They will be adequate. As long as they know what is going into the system and how it can be retrieved, this is adequate safeguard at the moment. Not everything will be on the line this fiscal year anyway. Moran asked if the committee could get a copy of the agreement that Mr. Parker had with the federal government. He said he could get a copy.

Mr. Parker said that the only experience he could bring to the table--matter of licenses, fish and game, etc.--was that of the court system. The bill on safe streets act of 1968 and the amendments of 1970 was aimed at crime on the streets. When it came time to work with the courts we had to ask the federal people just what we could do. As long as the civil action was in the minority of the situations that we would be facing, because they are part of the caseload, there would be no problem. Work on the whole situation as long as the principal effort was in regard to crime. That's the way the Chief Justice is working on this. Hayden asked about the authority to adopt regulations and whether this was by Alaska laws. Wellington said that GCOJ is a new commission and has the authority to promulgate regulations. Moran said he didn't doubt they had the authority, his only concern was if they would do it or not. Hayden didn't think that this was spelled out in the statutes and didn't think they could do this without the statutory authority. Parker said he didn't know if this was right or wrong but the Commission takes the attitude that regulations will be promulgated. Moran feels that we have to eliminate any question about this. It is desirable that absent the enactment of something like 563 it is uncontrolled. Banfield thought there was some question about the Commission's ability to promulgate proper regulations. Parker said that the Commission would have to say what regulations will be used--that will be their determination. He gave some statistics on the projection of their plan. Rose didn't think we were talking about the same thing. Rose said Parker meant the Commission in Alaska, but this is the commission that is going to decide what the federal government is going to do. Rose asked Parker if he thought the state would receive increased funding from the federal government for the next ten years. Parker said not for ten years, but you have to write a plan showing a reason for using the money you have proposed, by rules set up by the commission. The money comes in in a

SB 387

HB 563

block and the commission decides where the money will be used within the state. That's why I called your attention to the fact that by 1975 they are phasing out this part of the operation. We are turning it over complete to the local agencies at that time. The federal government could fund it beyond that point but they would have to have a good reason for doing so.

Criminal Justice Inform. System

Rose asked if it were true that the federal government was starting this information system but that the states would have to pick up the tab in the future. Parker said that when the program started out as a council there was $750,000 put into it. It is now known as AJIS and they decided to increase the council and they have increased the amount of money put into it this year. They do have to report to the federal government on how they will be using the money.

Moran said that the original act that set up LEA must have had some time schedule. Parker said that it was five years. We would have to assume that this would be the end of it. Moran asked if it would be Public Safety that would operate the system after the five-years' period was completed. Would the program be funded by the state thereafter? If so, how much money are we talking about? Parker said that the formula for matching funds was 75/25 now. There is $285,000 of federal funding set out for this project for this coming year. Hayden said it could run the state $500,000 a year for a complete program. Parker did not think it would run this high, but the figure was given also by Mr. Wellington. Banfield asked how much would be for salaries and Parker said he thought most of the expenses would be for line costs. Hayden asked if at the time the Governor's Commission fades out, if each agency will pick up their own part of the computer costs. Will one department be designated to supervise the whole thing? Parker said it will have to have the same operation as it does now. Wellington said it would be up to the agency to budget and determine how many terminals and where they want them located. Moran said that each of the using agencies would incorporate this into its own budget.

Marlene Lesh was the next witness. She was representing herself as a private citizen. She said that she was concerned that we should pass a bill this session. She said that she felt it was critical for many reasons, some of which had already been mentioned. She feels that the CS for 563 is a good bill because it controls AJIS. There is no confidential information allowed on the computer system. She thinks that no matter what anybody says about how easy it is to change the information, for the average person it would be difficult to do this. Any information coming out on the TV screen looks very official--it is not taken into account where it came from. We are not talking about clarifying government records, but there are confidential records in existence now. She said that she had gone in to see her own criminal record file. She asked to see this and the surprised clerk found a piece of paper saying that she would have to be fingerprinted and could only see the record in

respect to a previous arrest for which she had been fingerprinted. She was not allowed to see her rap sheet. There were other things she was not allowed to see, also. She did not understand what existing regulations really mean. She did find out that there was information that she could not ascertain the contents of that she was not allowed to see about herself. Mrs. Lesh likes the CS for 563 since this has a broader base for a computer system. She also is in favor of going to data processing. She agrees that court scheduling should be done by computer and would like to see traffic violations in the file. She didn't think this should include parking tickets, but for traffic violations that have to do with life and death--areas of concern of the police.

SB 387
HB 563
Criminal Justice Inform. System

Mrs. Lesh said she thought that SB 387 is a good bill, or at least it was the best until the AG came out with the substitute for HB 563. If it takes that kind of pressure to get a specific bill, then 387 has done its job. A great deal of work went into that bill. She said that she had contributed written comments to Senator Miller and attended all the hearings. This bill speaks to regulating AJIS and beyond. It puts the burden on the Legislature rather than the Commission in her opinion. Maybe it could be done another way.

Mrs. Lesh feels that the whole problem of regulation record keeping is a serious one and until now has only been partially dealt with by the State. Alaska is a small state, and this will prove to be an advantage if we take care of the problems now. She said that she heard in testimony that the records of the state were well protected now, and then again, she heard that they weren't. She was confused on this situation. She feels that people do have cause to wonder what records are maintained and how they are to be used. Some records that are maintained are potentially frightening. She said if the Legislators would talk to the people on the street she felt they would find this feeling was true. She said this concern was noted in questionnaires when people were asked questions that were completely unnecessary to get the job done. Mrs. Lesh said that her husband subscribed to a number of magazines which had articles showing what errors can do in the field of computers. She told of her experience while working with the state's health records. They needed to know who could have access to the files and what kind of safeguards there were. They referred their question to the AG and did not get an answer. They then wrote to the Regional Health Director and he wrote them a letter saying that it was left up to our own good sense. This was quite a responsibility. Sometimes you need something for your own benefit and also for the one asking for the information. Every clerk will be interpreting this differently. During her work there she found files marked "confidential" and didn't know whether to put this in the computer or not. She thinks there should be regulations for reference by employees and also for conformity. She especially thinks we should have statutory safeguards because Wellington, Chapple, and Henri, for instance, in fact, all of us, are temporary. We need to look ahead to the future.

SB 387

HB 563

Criminal Justice Inform. System

Mrs. Lesh agreed that setting up these regulations is a lot of work, but felt it would be helpful and useful to the agencies. She didn't think that it would be done any better without any legislative guidelines. She felt that the notification required in 387 was a good provision. This would keep administrative activities visible. Moran said the agencies said this would be a burden to them--notification. Mrs. Lesh said that it shouldn't be since the agency can say what kinds of information need to have this notification. They could make this as simple as possible through regulation.

Mrs. Lesh said that she was somewhat certain that she would be able to peruse the files of the Personnel Department, but she did expect that Mr. Henri might want to see her file, so she felt she should be notified and be sure that he had a good reason to see the file. She said if the committee decided to use just the second half of 387 would not be effective in controlling AJIS. She said that her greatest reserve on 563 was giving the entire responsibility for regulating and controlling AJIS in the Governor's Commission. It is unhealthy for those who enforce the laws to regulate themselves. She attended one of the Commission meetings and felt that her interests as a citizen were poorly represented. There seemed to be a lack of balance. The meeting lasted six hours. In the CS for HB 563 hearing are required before adopting the regulations. That may be a safeguard.

Meeting adjourned at 10:00 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Monday, May 8, 1972

Chairman Moran called the meeting to order at 4:05 p.m. in the Masonic Temple. Present were: Flynn and Hillstrand.

The chairman asked for a motion to table HB-753- privacy of records - since we would be working with HB 563 and SB 387. HB 563

Liability Damage to Underground Utilities

HB-787 - Liability for damage to underground utilities. HB 787 Moran said that he did not introduce this but it had been prepared as a result of a meeting held in Anchorage which involved representatives of utility operations. It was transmitted by Leroy Barker, who is an attorney. He also sent Moran an amendment to correct an error. This bill came out of Commerce Committee this morning. There is a problem and the trend is to put utilities underground. One of the main problems is that they are getting ripped constantly. This causes a problem in keeping services in operation and also a safety problem. This is especially true of people who are excavating around high power lines or gas lines. Hillstrand asked if "locate" is a proper term. Moran said that it was utility jargon. Flynn asked why a person would be liable for up to three times the damage and also subject to an additional $500 in civil damages. Moran said that they have this in anti-trust and it is a deterrent. They have the opportunity to ask, and if they don't they are subject to that hazard. Moran noted that a utility never receives payment for consequential damages--like outages of power lines. The amendment asked for was under definitions. He forgot to add that a person "means corporations, companies, business association, borough, or natural person." Hillstrand asked about line 22. A person who while subject to damages and the locate has not been provided as required and is inaccurate and the accuracy to it is the proximate cause of the damage, would that mean that this is a defense. Moran said Yes. Barber said there would be no fault. Moran noted that it is very difficult to say that a line is so and so and have it exact. As a contractor you usually have property damage insurance that would cover anything of this nature. So they don't care if they tear up the lines, let the insurance company pay for it. Now they would have to pay treble damages and have a fine, too. Banfield mentioned that there is no mention of the person who has to go without power or water, etc. Hillstrand wondered if there would be a defense when the person had gone to reasonable effort to be informed. Moran said that if he has asked and they say there is no definite location, then he would be okay. Moran noted that Anchorage Gas Company has at least two people who are designated and set apart to make nothing but locates. Chugach has only had one. In the future they will probably need another man for the increased number of excavations. This also covers petroleum products. Hillstrand moved to pass HB 787 with amendment out of committee with a "Do Pass". There was no objection.

Moran asked the committee what they wanted to do with HB 585 - Mobile Home Standards. Moran suggested that we use the House Bill rather than the Senate Bill but that we could use the Senate Bill as the vehicle. We could put the contents of the house bill in the senate bill as an amendment. Banfield noted that this bill was still held in Commerce Committee. Moran said he would try to get Rep. Kerttula to do what he proposed. (SB 420) HB 585

Mobile Home Standards

HB-529 - Regents of U of A. Moran said he was going to propose that this bill be tabled. Rep. Naughton had tried unsuccessfully to amend the other bill so this would have no chance of passage. Flynn moved to table this bill. There was no objection so it was tabled. HB 529

U of A Regents

Banfield moved to table HB-753 because we were using SB-387 (governmental privacy). There was noobjection.

Banfield asked about HCR-49 - Leasing space ASHA for Court facilities. Moran felt that the approach used in HB-801 - providing courtroom facilities in rural areas - was preferable. These will be facilities with multiple use. HCR 49

Leasing Space ASHA

Moran asked if we could divide HB-563 and SB-387 because he thinks that we have to pass Chapter 62. Banfield suggested that we take the new governor's bill and pass that as the CS for HB 563. Barber noted that there was one section on page 3 that needs to be included in Chapter 62. This was in Section 1(d) on that page. Moran didn't feel that this applied. Barber agreed. It was decided to put out the CS for HB 563 and take off Section 2 of SB-387 and put that out on its own merits. This way the other legislators will get a chance to vote on each issue. Hillstrand moved to put out HB 563 as a CS. Banfield said Public Safety would not be able to operate the point system if we pass this. Banfield noted that there would have to be an amendment to SB-387 so the police can keep driver's license records and also drunk driving records. Moran will have an amendment drawn up on this bill since Art isn't here today. SB 387 HB 563

Criminal Justice Inform. System

Meeting adjourned at 5:25 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuseday, May 9, 1972

Chairman Moran called the meeting to order at 8:15 a.m. in the Masonic Temple. Present were: Barber, Banfield, Hillstrand, and Hayden Kayden.

Provide Courtroom Facil.

HB 801

HCR 49

Red Swanson appeared before the committee in favor of HB-801 and HCR-49. These both would provide courtroom facilities. He said that he had introduced these bills after talking and seeing some of the bush buildings in Alaska. He said he doubted whether the legislature could come up with

ASHA Leasing Space

$32,000,000 for such a large building program but that the Rural Development Program had done a lot for this program. In most areas the fairsized communities have built buildings. Even though this is so, there are no facilities for nurses, personnel, state police, game wardens, or any other state traveling personnel. HB-801 would allow adding on to facilities now in existence for court facilities. As long as it is in the law, they would be entitled to use the Rural Development funds for increasing the size of the community halls. This could take care of a traveling court, house a magistrate or maybe provide a detention room. This could also be used for traveling nurses for their clinics. The community intends to help in this and has estimated a $18-$20 per square foot price. ASHA buildings range from $50-$60 and on up per square foot. (Rose arrived 8:25)

Swanson would like to see one of these built this year on a pilot project with the $20,000 that we set aside for this. Banfield thinks that this is a good approach--letting people do things for themselves. Banfield moved and asked unanimous to pass HB-801 and there being no objection, it was signed out.

CJIS

HB 563

Moran noted that Hayden had some proposals for HB 563 - Criminal Justice Information System. Hayden turned the committees attention to the list of things on page 1. They have left out a few general types of information. One is AS 20 which deals with infants and incompetents. This would also include adoption records. Since the other things are listed as an exception, he thinks we should add this to the list. Rose noted that on page 2 - air licenses - are excluded. Moran said that this raised a question as to whether or not we have excluded the applications for surface transportation. Rose suggested that we put in any application for license, permit, or certificate to engage in an occupation, profession or business--that would cover it all. Moran noted that on line 13, it is our practice to add a "0" when there is only one digit. Moran thought that 08 takes care of everything. Hayden said that 42 is surface transportation and this is not included. Rose's motion for amendment was not adopted by the committee. (Flynn arrived 8:50 a.m.) There is an exclusion for needy and destitute persons under AS 47.25 so probably delinquents and wards of courts can be included.

CJIS

HB 563

Banfield asked if "insane" include the criminally insane. Hayden said that he didn't know. Hayden felt that he should talk with Mr. Condon and try to figure this out more rationally and bring it back to the committee. He will have the suggestions typed out with enough copies for the committee.

There was one more thing on CS for SB-387, page 14, Section 3. This deals with an already existing law which relates to the maintenance of records and files of public safety. We felt that in dealing with SB-387 we would make that amendment there. This would be subject to AS 12.62 otherwise there was a conflict which authorized the collection and maintenance of files and the AJIS. There needs to be a cross reference. Banfield didn't want to hamper the police. Hayden said that all this says is that CJI as defined in 12.62 compiled by the department of public safety is subject to 12.62. If they are participating in this system, they have to be controlled by this system. That was the whole object of this bill.

Moran said we would break SB-387 at Page 5. Delete Section 2 and make a CS out of the first five pages. After Hayden talks to Will Condon, Moran would like to put this out so both can be placed on the calendar at the same time.

HB-585- Mobile Home Standards. Moran noted that the state ran into problems last year on some bids. Commerce Committee has the Senate bill. The House bill is considered to be the better approach. All we have to do is switch numbers. Moran said Kerttula would see that we got the bill right away. We want to push this into regulations pursuant to hearings rather than adopting by statute a lot of regulations that they found would not work in Alaska. The committee will put this out as a CS for the Senate bill.

HB-781 - Suspension of driver's licenses. This was requested by John Spencer, City Attorney of Anchorage. This was to avoid the necessity of jury trial. Moran suggested that we see what the State has to say about this. Herb Soll feels this is blown all out of proportion. Rose noted that this was putting one more place where licenses could be suspended. We already have this in the court system, under the point system, driving while under the influence, etc. Moran felt that this restricted rather than expanded because it limits it to state statute. We will hear from the state before action on this measure.

HB-763 - Certificate of Need/Health care facilities. Flynn asked that people from Health and Social Services talk to us on this measure. Moran noted that there was competition for the public dollar and also revenue sharing comes into this. Barber didn't think this should be true if you used private funds. Neither did Rose. He felt this was a means of control.

Meeting adjourned at 9:25 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Wednesday, May 10, 1972

Chairman Moran called the meeting to order at 8:45 a.m. in the Masonic Temple. Present were: Banfield and Hayden Kayden.

Criminal Justice INform. System

Hayden presented some information on HB-563 - Criminal Justice Information System. Page 1, line 29 language was changed to say: Except for information related to criminal justice. He worked out these changes with Will Condon and he agreed to all the ones that hadn't been excluded. We have 02, air commerce, 20, 30, and 35 information could be included. The state will want automobile registration records and they need aircraft registration to help find lost aircraft. Hayden also said that AS 5, except 20,25,30, and 35--these are sports-would be included. Moran said that the theory was that there is as much reason for putting those in the data bank as driver's licenses. Hayden said they included aircraft and watercraft for tracing theft. This would also apply in case of accident. Court records are not to be made available to police departments although they will be maintained. There is a provision that no CJI may be disseminated before the commission determines that agencies not having this information could obtain same. On page 3, add subsection (d). Agencies holding or receiving CJI information shall hold a list of the agencies or person who have received the information. This is a good protection. Rose felt that the individual person should be noted. If you need to trace the person that has misused the information, then this would be helpful. Rose said this has been done with the Transportation Commission and it has not created any problems. HB 563

Page 4, line 5. This provides for proper identification for the person who wants to see his own file. Hayden said that he added that the fingerprints may not be transferred to any other agency or another person. Banfield asked what if they already have your fingerprint in the file, could they use it. Hayden said he just didn't want them to give these out for other purposes. Hayden said this was to try and alleviate the fears of the citizen that his fingerprints would be misused. Rose asked why the hearings were not under APA. Hayden said he didn't know. Rose would like to see this included under APA. Moran felt that there were provisions in the bill that would take care of that.

Banfield felt that we were protecting the guilty rather than the innocent by not allowing public safety to keep records. Hayden said they had a lot of records. Banfield said they would have to prove that everything was accurate. Hayden said this was true only if challenged in the Superior Court. The individual would have to go through the interagency proceedings, cross examination, and then he would have to go through the

whole thing again in the Superior Court. The question is: "Should the people have the burden of showing that the agency is keeping inaccurate records?" This is certainly something to think about. HB 563

Criminal Justice Inform. System

On page 4, line 28, Hayden changed the Governor's CS to read "shall be removed from the records". The word was "may". This shows that records will be destroyed mandatorily when they have outlived their usefulness.

Rose asked about the penalty for willful dissemination. This carries a maximum of $1,000 or one year. He felt this was very light. Hayden felt this was true but thought that a felony was too severe. Rose felt it should be severe because this was "willful misuse". Hayden said that he took the "escape clause" out of this measure.

On page 7, Hayden added Section 2. This deals with the record keeping function of Public Safety. It was felt that there may be a conflict between the AJIS portion and the normal record keeping. Therefore, it was stated in here that that information is subject to regulation by AJIS.

Banfield suggests that we prepare a committee report saying that this should be passed by August 1.

CS for HB-563 was signed out.

Hayden said he deleted that portion of SB387 that related to "next of kin". Page 3, line 7, shows that the provision of this section does not apply to investigatory files, inter-agency memos, etc. SB-387 was signed out of committee.

Hayden will prepare a committee report to express the intent of committee members.

Meeting adjourned at 9:40 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, May 9, 1972

Moran called the meeting to order at 2:50 p.m. in the Masonic Temple. Present were: Banfield and Rose.

Certificate of Need/ Health Care Facilities

HB-763(CS) was to be discussed by people from the Hospital Association. (Need, Certificate of - Hospital and Related Construction) Larry Sullivan, Coordinator of the Office of Comprehensive Planning, Health and Social Services, was the first to testify. He told the committee that there could be problems brought upon communities from duplication of services. He stated that in Juneau other facilities are being planned and felt that this legislation was needed to protect the consumer. Every empty bed adds to the increase in the cost of hospitalization. He also said that there had been requests for information about construction for nursing homes in the Anchorage and Fairbanks areas which would be a duplication. He felt it was necessary to serve our communities fully by maintaining full use of our hospital facilities. Mr. Sullivan said that 20 states in the U.S. have enacted similar legislation and the Comprehensive Health Council asked them to submit this legislation. HB 763

Moran said that the feeling of the committee was that this bill had been contrived to referee an argument in Anchorage. Moran sees this as a utility commission where they would be sharing public funds, etc. Mr. Sullivan said that there was no doubt that this had come to their attention because of the situation in Anchorage. Larry said that they had included other facilities because they sometimes took patients from the hospitals leaving empty beds. A nursing home is an example.

Suspension Driver's Licenses

Moran said that Dan had some information on HB 751. Dan said that there were a couple of problems with this. He couldn't understand why it was changed. It appears to delete from the statute as it presently exists. It could be susceptible to a number of interpretations. Under Out-of-State violations, i.e., for some reason the point bill did not pass--under 220 (b) the Department could bring a complaint to the court for suspension of license. Most are by regulation in this state. Moran said that he knew this had arisen after the Baker case in Fairbanks. Wherever the possibility of detention or of being deprived of a valuable right or privilege. In this case the person was entitled to trial by jury, at least this was the reaction of the City of Anchorage. Moran said that he did not know how the other cities around the state felt about this. In Anchorage they have a busy municipal court and this puts an extraordinary burden on them. They have been tossing over to the state district attorney in Anchorage many cases which they had tried in a municipal court with a municipal prosecutor in the past. Shoplifting--they rather enjoyed that particular kind of jurisdiction because this would develop good public relations with the business community. HB 751

Suspension Driver's Lic.

Banfield thought there was some comment about the Public Defender in previous testimony. Something about the local government picking up the tab. Dan said this was true. Herb Soll had quoted an annual figure of $30,000. John Spencer, City Attorney of Anchorage, said the estimate was a lot higher. They want to turn all criminal prosecution over to the state courts. (Flynn arrived 3:00 p.m.) HB 751

Certificate of Need/ Health Care Facilities

The discussion returned to HB-763. Mr. Pratt said that he was opposed to this measure. Moran asked if there were any more questions to be asked of Mr. Sullivan. Larry asked to restate his position since some of the committee members were not present at the beginning. He wanted committee members to know that this bill was not submitted from the Department of Health and Social Services but that they did endorse the bill. He said that the Health Council was a consumer oriented group and represented the citizens of the State of Alaska. Their prime concern is that of the consumer by not allowing duplication of services. He said that it was estimated by hospital authorities that it costs 80% of the per diem cost of a bed to keep an empty bed in a facility. Having this certificate of need and going before the Council and getting their recommendations, we have the community in-put as to what they feel on this. This is a necessary piece of legislation. It is not primarily aimed at the Anchorage area--this is aimed at the whole state and we feel it is necessary at this time. HB 763

Mr. Sullivan said that when you go before the Comprehensive Health Planning Council to get the certificate of need they can project what the bed needs are--say for five years. They also hired a consultant firm. They reviewed the certificate of need. We are getting requests from out of state corporations asking for our building codes in nursing home construction. Anchorage and Fairbanks areas are where we don't need them. Problems are beginning to crop up. Flynn asked if this was aimed at any individual or private corporation. Larry said it was not.

Mr. Pratt said that they did not have an opportunity to review the CS. He did say that he disagreed with Mr. Sullivan. He only knows of one privately funded hospital plan. When you talk about public protection Mr. Pratt thinks you should also consider the legal implications of the public protection. In the original bill the legislation is granting the state the capability of issuing a monopolistic license which are not regulated. There has been no mention of price control. He was not suggesting that prices should be regulated, but he pointed this out that it is a practical matter when you tell a hospital that they will be the only one in the area until the Commissioner says there is need for another, then you must also consider price of service to the consumer. Unless you do this, you will giving them a monopoly without regulation. What it boils down to is that the local agency can make recommendations to the Commissioner and he may or may not grant a certificate of need. Mr. Pratt thinks that the public as well as the hospitals are entitled

Certificate of Need/ Health Care Facil.

to some sort of equal protection. He thinks it should be something that could be followed--such as a procedural method. HB 763 Then everyone would know what the criteria is to be met. There has been an attempt to do this in this bill, but not in enough detail. Mr. Pratt said that Larry had referred to 20 state laws. He has not seen that many laws but has seen 18-20 bills introduced last year and the year before that. He doesn't know if they have been enacted or not. He suggests that the committee review these bills. He also thinks the committee should review some of the certificate of need application provisions. One of the points discussed at the Council meeting was the matter of local control. Mr. Pratt suggests that the committee take a few days to look at some of these points. Moran asked if the privately financed hospitals were eligible for federal monies. He said they would be. Moran felt this would require a review or authorization. Hank said this was true and in this specific case--the Community Hospital--arose last September when they wanted to expand and add an additional 80 beds. They were going to move the doctors out and make more bed space. The state disagreed with us and said we couldn't do this.The point about federal funds probably wasn't mentioned. Mr. Sullivan discussed the Anchorage situation further. No Hill-Burton Funds could go into that hospital because the building was owned by the doctors. None of these funds can go to a profit-making corporation. That was why Community Hospital did not get these funds. The Council deliberated and felt that Providence made the better presentation and had better plans so the funds were given to them. No certificate of need was requested. Up to now you did not need a certificate of need for privately funded institutions. This will be changed by this bill. This bill also regulates medical services. If you are providing a service you cannot drop it and you cannot add a service without going before the Council. Mr. Pratt said he did not argue with the philosophy of that thought but felt there should be better rules established for this.

Mr. Sullivan said that Anchorage Community Hospital has a kidney program and Providence has a cobalt program. It is for the benefit of the consumer to prevent duplication of the same kind of equipment and the same type of program. In these cases mutual use should be encouraged. Flynn asked about the profit factor and if Community Hospital received revenue sharing. Pratt said they may be getting a personal tax advantage but there was no cash flow profit. The hospital is making money and the rentals to the doctors are in line with other rentals in the area.

Commissioner McGinnis said he wanted to comment on this legislation. This type of legislation has either been enacted or is pending in 27 states. One of the great problems is the fact that the dollars available for hospital construction is limited. The public has a great stake in this. The public is affected because public monies go into this. If an organization can build totally with private funds, that is fine, but this is becoming very rare because of the great cost of construction. They usually ask for

Certificate of Need/ Health Care Facil.

HB 763

Hill-Burton Funds. They want to take part in revenue sharing. This is written so that if certain minimum qualifications are met, they automatically can share in these funds whether it has been private funds or public monies. There is a proposed amendment which would speak to this point. This is very important to Alaska for another reason. If a community or region begins to overbuild then it will be the public who will pay. That is why the commissioner feels it is in the public interest that there be a plan to limit construction. If any of these hospitals get in trouble the state has to bail them out. In the statutes it brings this resposibility back to the state. That is the reason we feel this is desirable legislation. The commissioner suggested some changes. He said that he had strong personal conviction that the surgicenters should be left in the definitions section. He thinks they are as important as another hospital. He gave an example of the one in Fairbanks. They skim off the cream or the most productive areas and this does not save public money. They usually perform limited surgeries. These cases would ordinarily go to the hospital. They encroach on the area of the hospitals. If it could be shown that these centers would indeed reduce the cost so that the public saves and makes it more economic for health services, then it would be all right. When a community such as Juneau has put millions into hospital facilities it does not make it more economical to open surgicenters.

He had another question on the CS. He would like to have one word changed. On page 3, Line 21, he would like to see the word "recommendation" changed to "decision". There is no one to make the recommendation to and the commissioner will be the one making the decision.

Mr. Sullivan told the committee that besides federal monies, there are also state funds and local funds involved. The federal funds are alloted according to bed needs of an area. If an existing facility operated by the state or local community expanded their facilities and this made an excess of beds then you couldn't receive federal funds. This is another area in which we are trying to protect the public dollar. Besides stopping private facilities, we also need to prevent expansion of any other existing facilities.

Banfield asked about the definition of "home care facilities". Mr. Sullivan said that there had been discussion on this in the HWE committee. We told them we did not have a definition of this but that it was used in federal literature that there would be sources of funding for home care facilities. We thought it would be easier to include this now instead of coming back next year or later and trying to insert this type of care facility. At this time there is no specific definition for this term. Banfield felt that we should have one. Banfield asked if this would mean an individual home. Larry said this was not meant for an individual home. It would have to be something of a commercial nature. The Commissioner said that it would have to be licensed by the department. Mr. Sullivan said that we don't have any at the present time.

Certificate of Need/ Health Care Facil.

Banfield asked if a couple of doctors wanted to start up a health care facility and call it a home care facility could this fall in the latter category? Larry said that was why they had included surgicenters in the original bill. The Medical Association thinks that doctors will open up their own practices. The only thing we had is several doctors have opened clinics and these aren't health care facilities. McGinnis said that if a doctor thinks he could just add a wing and put in some beds--then it would come under the provisions of this bill. Banfield asked about a doctor that was operating by himself and put in a lot of equipment that even the hospital doesn't have--would this be included. Mr. McGinnis didn't think it would include a situation like that. He said he did not anticipate this getting into group practice or clinics. He said there was another aspect that should be considered. These were X-ray centers or plaster casting centers. There is some slight relationship to the hospital in these cases. When a doctor develops an operating room with all the equipment and the procedures, that is getting beyond the normal thing done in a doctor's office.

Flynn said they had a problem in Sitka. They have a doctor who has a clinic with x-ray equipment. They also have an x-ray lab at the hospital. The doctor was instrumental in building the hospital, also. They have to hire a technician at the hospital and he hires his own and sets up his own lab. McGinnis said that he recognized this problem but didn't feel that the department had the responsibility to handle this. Larry said that the local planning council with the citizens in the community should handle these matters and not have the state interfere.

Rose didn't think we had any extended care facilities in the state. Larry said that we did and that is one of the problems that we are facing with insurance. In order for health facilities to be covered by the health policies the services have to be furnished by a hospital facility or else the claim is rejected. Anything privately owned does not qualify for these policies. Larry said the CHPC sponsored a meeting here with the insurance people. They were discussing transfer of profits for a trial period of time into the extended care facility in Anchorage. We were told by the insurance companies that they would be glad to remove the patients at a lesser cost but that the premium would have to be increased. There are two agencies in Anchorage that are recognized by the insurance companies--Glenmore and Careage House. Rose asked how these compared to convalescent home care facilities or residential care facilities. Larry said that nursing homes have rehabilitation services, RN's, etc. Boarding homes and convalescent care facilities decrease the amount of services.

McGinnis said he felt the value of the list was there for those who might want to start something along this line. That way the people can say, "I am not this type of facility, but I am this." Otherwise we have no way to control operations that come in under different names. That's why we used residential care facilities.

Certificate of Need/ Health Care Facil.

HB 763

Banfield asked for clarification on home care facility. Larry repeated that this term was found in government literature and that they had not been able to get a definition. Hank said there was some doubt expressed by the dentists that this could include their offices when they have to use anethesia or do some dental surgery. McGinnis said that there was an exclusion that would take care of that. This does not include the individual practitioner. We did not anticipate that a dentist's office would be a health care facility. Rose said that this is the interpretation that the Commissioner gives, but the terminology is so broad as to include these as Hank says. Moran asked if Rose had some suggested language to cover the problem. He said he hadn't figured any out as yet.

Banfield wanted to strike "home care facilities". Moran said that he is afraid the federal government will put in some home care facilities and then they won't be covered.

Line 5 of Page 4 says that they will make regulations governing these very things and this is to be done under APA. If this is the case, there shouldn't be any problem.

The committee wanted to see outpatient centers and surgicenters spelled out exactly.

In conclusion Commissioner McGinnis said that he wanted to have the word "decision" inserted and "recommendation" deleted. He said it would be all right to leave "home care facility" in or out of the bill. He did want to include "surgicenters". Flynn asked if surgicenters were licensed now. McGinnis said no but they have to have approval for performing abortions and this permit is only allowed for 90 days. After that, it has to be renewed. Larry said both hospitals had surgicenters but that facilities had to have certain services available to be called a hospital. McGinnis said he did not see this as having an affect on either of the Anchorage hospitals or the proposed hospital there.

Flynn had a question about revenue sharing. There is a bill in the Senate and there is some talk of amending it. It says that instead of going to the borough you would go to the hospital. Would that allow eligibility for funds under the law? McGinnis said it was all in how this was interpreted under the present structure. There are three corporations involved. There is the non-profit operation, medical-dental and the clinic. We have asked for an AG's opinion. They have made application for revenue sharing. This is for construction money. We can't say that they qualify until we have a legal opinion. Next year the same question will arise as to revenue sharing. There is nothing in this that says it has to go just for hospitals, it says for health purposes. This could mean public clinics, or other such things.

Suspension Driver's Licenses

Moran said that he would like to discuss HB-751 - Suspension of licenses - with Dan Hickey. Dan said that seems to revolve about the concern of the City of Anchorage. We don't object to this change, but he did suggest that we add "and regulations" after statutes. Banfield asked if it shouldn't be "or regulations". Dan felt it should say "and". Banfield asked if it was true that they had to have public defenders. Dan said that it hadn't come to his attention. Moran said he felt having it spelled out was more helpful to the people who are not so well informed. Flynn thought we were accomplishing the same thing with the point system. Moran said this deals with conviction for violating specific violations. The fact of conviction causes you to get demerits. This only refers to your right to drive. Dan asked if the final draft of the point system had been put to rest. Banfield said all excepting sections 300 and 305. Dan said that unless a court imposed an additional offense upon an offense then the department can take no action. That was not the intent. Rose said that the Department of Public Safety wanted to take care of all violations and to **mete out** all punishments without going to court. Dan said that the points could not be applied until after conviction. HB 751

Mental Comp.

Moran had been talking to Judge Fitzgerald on the phone in regard to the need for a bill on mental competency as a defense. Art has the information on this and there are five cases on appeal. They thought the M'Naghten Rule shouldn't be used but in this case they had better use it. They don't have any place to put these people and they can't put them in API.

Flynn moves to pass HB-751 as amended with a "Do Pass" and asked unanimous consent. The amendment was on Page 1, Line 12. After the word statute add: "or regulation pursuant thereto". There was no objection. HB 751

Point System

Banfield noted that on SB 296am she had a problem because of the sections of the law that were listed. Art said that he was drafting some language changes. Banfield asked to have a copy of the changes Art was proposing. SB 296 am

Personal Juris over Nonres.

Rose asked if we were going to consider SB 137 and if we could act on it. He moved that we pass this out with a "Do Pass" recommendation and asked unanimous consent. Moran said that Allen Compton, from Alaska Legal Services, was here to testify of this measure and we should hear him before we take any action. He said that he works with welfare mothers and there is a problem with the children whose fathers are absent from the home and many times from the state. In attempting to get support from the father who is not physically present in the state we have supported this bill. As it is now the Alaska Court does not have the power of jurisdiction to get a personal judgment against him for support. Therefore, the decree of divorce is silent as to support to the mother and the children. This also applies as to paying any debts, maintaining insurance policies, etc., for the children. SB 137

Personal Juris. over Nonres.

Mr. Compton said that Alaska should adopt a broad jurisdiction bill so that if people come into the state and then leave, even though they have moved, they could be prosecuted in the Alaska courts. That way he could get a personal judgment against the offending party. This bill includes the granting of power to the court to obtain personal jurisdiction over the nonresident father in most cases. This could also be the mother in some cases. This would facilitate getting child support payments to the children. In this way the mother could have several choices, to go under the Reciprocal Support Act, which has been unsuccessful, or for a judgment outside the state. SB 137

There could be another application of this, too. The case of the father that leaves the state and dies or is killed in an accident. At the time he left there was a personal judgment against him. He leaves an insurance policy. The judgment could be made against the estate. This will not solve all the problems in this field but it is an improvement. Mr. Compton said that the principles of this law were derived from Wisconsin's and it has been approved for use in their state. Rose's motion was acted upon favorably.

We will meet tomorrow on HB-341 - Mental competence-criminal.

Meeting adjourned at 4:50 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Saturday, May 13, 1972

Vice-Chairman Rose called the meeting to order at 8:55 a.m. in the Masonic Temple. Present were Rose, Barber, and Banfield.

Legislative Continuance

There was no objection to requesting the AG to represent, in the event of a writ of review in Mr. Barber's case, legislators to test the question of the validity or constitutionality of the legislative continuance.

Banfield said that there may be need to have something more written into the law to cover this. Barber said that he had discussed this and was told that the proper way to handle this question was through the Judiciary Committee and hiring an attorney to represent the interest of the legislators in legislative immunity.

Mechanis and Materialmen's Liens

SB-151am - Mechanics and materialmen's liens. Moran noted that this bill was in the committee and asked members to consider it. The present law on this subject which this purports to amend by adding an additional section assures a lien for both a materialman and a laborer provided that the lien is filed within 90 days from the delivery of the last materials or the time any labor was performed on the project. Moran felt that this set an exact date when a job is considered complete. This requires the person who owns the property to make a filing. Rose felt this would be a very complicated thing. This requires that the owner of the land file the notice. Many times the owner of the land doesn't even know about what is happening on his land, especially if it is leased. Rose noted that the practice with workmen is to wait until the 90 days is almost up and then return to the job, pound a few nails, and then do the same thing over again. Rose doesn't think this bill accomplishes anything. Banfield felt you would have to educate a lot of people.

SB 151 am

Moran said the provision of notice being given to the contractor that the notice has been filed appealed to him. This was on Page 2. The thing that bothered Moran was that there are many times when the owner is completely unaware that any lien has been filed on his property. He doesn't find out until suit has been filed against him. If a person had notice given to him, then he could make arrangements to pay. The idea of giving notice to the owner of the property really appealed to Moran. Rose said you still had the problem of the lessee. In this case you would have an absent owner. The lessee may make the improvement, changes, construction--the lessee pays the contractor but he doesn't pay the subcontractor. He leaves the state and is judgment proof. The unpaid workmen or subcontractor files a lien against the property which affects the owner as well as the lessee. The owner or lessee would have to make sure that the checks were distributed to each one on the job. This will manufacture litigation. Rose requested that the committee hear Mr. Groh on this subject.

Mechanics & Mater. Lien

SB 151 am

Barber also noted that they can encumber the property and leave the lien on it and the owner might never have known about the lien. Moran said that he would talk to Senator Groh. Moran said what bothered him about this is that the owner of the premises has not had any dealing with these people and the property can be foreclosed within six months after the lien is recorded. By that time the contractor could have been fully paid, and the owner has paid all the money he knows about. Then the owner has to try to get the contractor to pay the laborer.

Point System

SB 296 am

Moran asked what the committee wanted to do on SB-296am - Point System Motor Vehicle Violations. Banfield noted that we never had received the regulations that the police were going to send to us. Rose thinks that we should do something about this. He doesn't see any great urgency that it be done this year, though. More research could be done and it could be considered in the next session of the Legislature. Barber felt it could use more study. Barber asked what was being done in Public Safety. Banfield said that this would be before the Legislature next year in order to have their regulations approved. Rose disagreed with this and thought that the legislature would act on the regulations only if there were complaints against them.

Financing of State Court System

HJR 120

HJR-120 - Financing of State Court System. Moran noted that this was one of the items we had not considered as yet. This will put the court system in a situation where they prepare their own budget. Banfield suggests that we send this out and have the Finance Committee examine the contents. Rose said there was improvement in this resolution. It says Supreme Court instead of Chief Justice. Rose moves and asks unanimous consent to pass HJR-120 with a "Do Pass" recommendation. There was no objection.

SB 296 am

Moran turned attention back to SB-296am and noted that we had a CS prepared on this. Banfield felt that it probably would go to Free Conference Committee. Banfield suggested that we put the CS out and tell Bradner that we want this CS to be studied in the interim. Rose agreed that it should be printed and sent to Rules. Barber moves that we put out the CS with a "Do Pass" recommendation and asked unanimous consent. Rose suggested that it be all no recommendations. Moran thought that the Speaker would have to put it up for a vote on the floor and ask is anyone wanted it on the calendar. Banfield said if you had one Do Pass" it would be all right. She voted "Do Pass". The bill was signed out.

Fifth Dist. Sup. Approp. Court Room Facil.

HB 811
HB 798
HB 801

Rose asked what could be done about the fifth district - HB 811. Moran thought we could amend HB-798 by $525,000 to cover the purchase. We have adopted HB-801 - Red Swanson's plan to add facilities to existing community facilities.

Meeting adjourned at 9:45 a.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, May 19, 1972

Chairman Moran called the meeting to order at 1:35 p.m. in the Masonic Temple. Present were: Banfield, Barber, Hillstrand, Rose, Randolph, Flynn, and Peterson.

Certificate of Need/ Health Care Facilities

HB-763 - Certificate of need/Health care facilities. Moran noted that the only person appearing before the committee in opposition to this measure was Mr. Pratt. He represents the Anchorage Community Hospital. HB 763

Dan Meddleton said he had one concern. The programs that are in affect at the time of the implementation of this measure should be allowed to be completed. Providence Hospital has a program under way. This is part of the Hill-Burton funds.

Dan read from Page 2, paragraph 1. They have included as a requirement of completing the application that a copy of that application be submitted to the local agency and the Commissioner. It has to be acted on in 120 days and you don't receive it until 30 or 60 days have already passed--this should be spelled out. The Local Health Planning Agency endorses the concept on this legislation and feel that without this type of review and study with appropriate representation from the community involved that health facilities will be in the same situation as free enterprise. These are public type entities and should not be subject to the same competition as a grocery store, for instance.

Dan said that specialized equipment should not be flooded into an area. He gave the example of equipment that analyzed blood. He said Anchorage should not have more than two of these machines. He said if there was duplication of equipment and services, the community pays the price.

Moran noted that in Mr. Pratt's testimony that he did not feel it was necessary to have a certificate of need if you used private funding. He did not object to certificate of need if public funding was used. The second point is that if you are going to grant monopolies by the certificate of need process then you should be able to also control rates. This way, you put the public at their mercy by not allowing competition. The Assistant Administrator of Providence Hospital agreed that there should be rate controls. Rose said that he understood that the present situation has cost higher rates to the users. Dan said that this was true.

Flynn gave an example of what had happened in Sitka. They have Mt. Edgecumbe, Sheldon Jackson sickbay, and the people in Sitka wanted a Community Hospital. When it was completed the occupancy in Mt. Edgecumbe went down. PHS couldn't contract with Sitka Community because they had the government hospital across the water. The fishermen were no longer able to use the Sitka Hospital and so the local community

Certificate of Need/ Health Care Facil.

had to pay for the empty beds. Rose didn't think that a certificate of need would apply to this. Flynn also noted there was doctor with X-ray equipment in a lab of his own. This took business from the community hospital. Moran didn't think there was any community in Alaska that has more than one hospital, except Anchorage. Dan noted that Anchorage could have a third one. Moran said that Mr. Pratt said that they were going to move the doctor's offices out of the main building and clear the remainder of the hospital for providing additional beds. He said they were precluded from using their own money to provide the hospital beds. Dan said he didn't want to comment on this.

HB 763

The question Rose raised about increased costs in the state should be considered. Dan didn't think that it could be shown in the state where it has cost the people more because of a development within it. There is the potential that such an entity could be created that would serve to the disinterest of the community. You need full utilization of a facility.

Moran noted that in our discussion of this bill that the definition of health care facility is much broader than just hospitals. The list is on page 4 and 5. Banfield noted that Commissioner McGinnis wanted to add surgicenters. Moran said that he did not insist upon adding this after the medical fraternity felt it was some undue invasion of their opportunities to do various things in their own clinics. Genie Chance said that all the things listed on pages 4 and 5 had definitions in regulations, but there is no definition for surgicenters in state laws. It is a new concept and the department is presently going through the Administrative Procedures Act to develop a definition. Until we have this definition we felt we should delete it. HWE Committee took it out of the bill. Many felt that it goes into their private practice. Moran gave an example of the dentists who sometimes perform surgery in their offices.

Banfield also noted that there was no definition for "home care facility." Moran said that we had reached an agreement with the Commissioner of that point. He said that that was what was used in federal regulations, etc. Banfield asked Chance if we should take out "home care facilities" too. She said there was no problem with that. Barber feels that these terms should be examined--nursing home care center, nursing home daily care center, and domiciliary home care.

Keith Campbell said that he heard Dan Meddleton state his case and said that he was rather a disinterested party. As a professional administrator in the field, he said that we could all agree on a theoretical level that these kinds of controls in shelter legislation are needed to combat and assure the consumer that he is getting a good buy. Nationally there is the feeling that they are not necessarily getting a good buy.

Certificate of Need/ Health Care Facil.

Alaska is unique and we should take precautions not to let costs run rampant. We can endorse these things although it does put individual institutions in a bind at times. To be honest, from an association point of view, we say that we could endorse a good legislative proposal for a certificate of need. Mr. Campbell said that the Seward General Hospital was operated by a church related group. HB 763

Disposition Certain Bodies

Moran asked those in attendance about HB-551 - Disposition of Certain Bodies. This is a bill introduced by Rep. Tillion and it is trying to cover the problem of stillborn babies or those that die within 24 hours of birth. Mr. Wangsmo, of Providence Hospital, said that they would endorse that. He understood that this would be handled the same way as an amputated leg or arm. Moran noted that the Vital Statistics Division was concerned about the reporting of such things. They were concerned about keeping the statistics. Banfield noted that it was to relieve the families of the high costs of burial in these instances. Mr. Campbell, Seward General Hospital, said in his experience this was always regulated on the number of weeks of the gestation period. If the spontaneous abortion showed nothing viable, the parents had the choice of having a funeral or not. Banfield noted that this also required a fetal death registration. Moran noted that the committee had had a CS prepared. HB 551

Banfield asked about price regulation. Keith Campbell said that no one likes to be controlled. He said that Blue Cross has a price formula and the hospital deals with them on a contractual basis. In that way they are already controlled. At this time, they are also controlled by Phase II. Keith said you might not think there is competition in Seward but he could not change charges by increasing specific items because they may decide to go to another hospital--like Anchorage. There is also competition from "outside". HB 763

Rose asked about conditions where the requirement of certificate of need has been adopted. He wanted to know how many there are and if any have adopted a price control structure to go along with this granting of this exclusive right. Keith said that there are numbers of them throughout the U.S. Rose asked how many jurisdictions had adopted this. Marion Lampman, Executive Director, Alaska State Hospital Association, had mailed a copy of the AHA Journal to McGinnis which has a list. She said that there are five with rate controls that are under the certificate of need program. They have to have rate reviews and this requires that there is an equity between all patients regardless of source. The basic advantage to the program is the elimination of automatic increases in costs. Rose noted that this was because of Blue Cross. Moran asked if state law required this in any of the jurisdictions.

Gary Wangsmo said that most were voluntary now. Montana is voluntary, New Jersey and Washington have proposed legislation to be considered next year for a regulated state agency. They are trying to preclude any federal regulation. Flynn said that he had no problem with this bill and felt

Certificate of Need/ Health Care Facil.

HB 763

that we should have this. Rose said he did not have any dispute with the concept but would like to see how it has been handled in other states. He thinks we should also consider rate regulatory schemes and then we could have a comprehensive package. He couldn't see why anyone with private funds would be willing to invest their funds unless it was economically feasible. Randolph said the individual might come up with a facility where they provide only certain types of service and they could bankrupt the community services.

Flynn moved and asked unanimous consent to pass HB-763 with a "Do Pass" recommendation. Hillstrand asked him to amend his motion to say "as amended". This was acceptable to him. Flynn asked if the committee could write a letter of intent with this and ask that the rate structure be considered. Moran suggested that we ask the Legislative Council to make this a subject of study. Genie Chance said that we had to remember that 51 per cent of the membership in the local planning group is the consumer. This does not concern just the hospitals. If we could have this at this time, you will come nearer to having a natural control of rates. We are trying to prevent problems with this legislation by handling the situation before it arises. Other states are trying to correct their mistakes by going back in this direction. Rose said he was not arguing with the concept, but he wanted to make this a complete package.

Moran noted that the Commissioner wanted us to change the word on Page 3, Line 21. "Recommendation" shall be changed to "decision". They acted on Flynn's motion at this time. Randolph, Flynn, Hillstrand and Banfield voted to put this bill out. Moran noted that we would also include that when a certificate of need has been filed and a copy will be filed with the local health agency at the same time. We will have to say "if a local agency has been organized" because not all areas have local health agencies. Mr. Meddleton also wanted us to include a grandfather's clause saying that this would not affect construction in progress. Dan said they did not actually have a certificate but were issued an authorization in the form of a certificate. Art will prepare an amendment changing "recommendation" to "decision"; surgicenters will be omitted.

Right to Privacy

SJR 68

SJR-68 - Right to Privacy. This adds a new section to Article I of the constitution. This was prepared by Terry Miller. Moran asked if the committee wanted to delay action on this in order to hear Mr. Miller.

90-day session

SJR 73

SJR-73 - 90-day session. Rose moves to table this measure. Flynn seconded. Motion failed. Randolph moves to pass this out with "do pass". Banfield objected. Rose felt that we should hear from Mr. Speaker on this subject. Banfield said she had not heard Wright on this yet. Hillstrand moved to amend Randolph's motion to put this out with individual recommendations. Barber and Banfield objected. Moran felt that we should give the Speaker the opportunity to be heard. Hillstrand was not in agreement with this but said

90-day session

would appreciate the same courtesy if it was him that was in the same position. Banfield said she overheard the Chairman say he would call the Speaker when we talked about this. Mrs. Mason will call the Speaker. He was unable to come at this time. Randolph requested that we act on the motion. Rose asked for a division of the question. The motion that we will act on is that we pass SJR-73 out with individual recommendations. Hillstrand and Randolph voted to put this out. Moran asked if the committee wished to defer further action until Rep. Guess and Rep. Wright could be invited to attend. Barber said he felt that deferring action would be a good thing and that he had a proposal that he wanted the committee to consider. Moran asked if he had a CS prepared. He said he was going to put unicameral under this same title with a Barber recommendation for passage. Banfield said that we had already put that out. Barber said that didn't make any difference. It was understood that Rep. Guess was against this resolution and that Rep. Wright was for it. SJR 73

Hillstrand wanted Randolph's motion to be amended to some appropriate phrase to reflect Mr. Barber's proposal and that the SJR-73 be reported out as each member desires. Banfield and Flynn object. Hillstrand said that he wanted the people to have their say about these things and that was why he wanted to put this out now. Barber wants this to come out as a CS. Hillstrand moved that Barber's amendment to the resolution be so worded that as a CS it incorporates his proposed amendment. The staff could accomodate that really simply. Banfield objected. Moran noted that in HJR-7 - Unicameral - they are going to call all members senators. Rose asked that Barber explain the new section 2. Barber said that this was basically to create a presiding officer in the person of the Lieutenant Governor. He is available and is elected statewide. This will eliminate the possibility of an individual having to become the Speaker of the House or the President of the Senate. This would leave it up to the electorate. Then the LG would be running for an office that would mean something rather than just being chosen to run with the Governor. He will become one of the more powerful individuals in the State. Barber thinks this approach is worthy of consideration. Rose said he didn't object to the substitution of HJR-7 for SJR-73 on this one concept. This is the system which has been adopted in Nebraska but from what he read they suggested removing any connection with the Executive and the Legislative. They felt it was necessary to free the legislative branch from invasion by the executive branch.

Unicameral

HJR 7

Hillstrand understood Barber's amendment to include three propositions. (1) Do you favor a unicameral system and should it be adopted for the state, (2) should it be directed by the LG as presiding officer or by one elected by the membership of that body, and (3) shall that body be limited to 90-day sessions each year and all three being put before the people, argued pro and con, and then let the people decide what they want. Barber said he was going

90-day session

to back the bill and leave the 90 days out of it. Rose didn't think that a limitation of days would be necessary because there is a built-in limitation on unicameral. Flynn moves to lay this on the table until tomorrow. Rose asked him to amend that to Monday since he would not be here. Hillstrand and Randolph objected. Flynn, Rose, Banfield and Barber voted to table the measure until Monday.

SJR 73

HJR 7

Unicameral

Study of No-Fault

SCR-20 - Study of no-fault insurance. Moran asked if he could get committee concurrence to amend this to reflect that a bill was passed on this subject. Hillstrand doesn't want to hinder any chance that the Senate should have this matter up for a vote. This will be scheduled for Monday, also. (Rose, Barber, and Randolph left at 3:35 p.m.)

SCR 20

Medicaid

Mr. Dan Meddleton wanted to comment on SB-56 - Medicaid. He said that last evening the Commissioner had met with a number of the State Hospital Association members in an effort to try to come to some mutual understanding. They also met with members of the Senate and Mr. Larry Sullivan this morning. He said they had recommended to the Commissioner and the Senators that an amendment to the proposed SB-56 should be made. He said it would be up before the House within a day or two and urges support for this measure as it now reads. It passed the Senate 13-2.

SB 56

Meeting adjourned at 4:00 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Tuesday, May 30, 1972

Chairman Moran called the meeting to order at 2:55 p.m. in the Masonic Temple. Present were: Flynn, Rose, Barber, Hillstrand, Banfield, and Randolph.

No-fault Insur.

SCR 20

HB 464

SCR - 20. Study of no-fault insurance. Moran noted that there is a great deal of interest in no-fault insurance and the House passed HB-464. We do not know if the Senate will act on this so the Chairman has asked Art Peterson to prepare a CS to reflect the concept of continuing study. Randolph moved and asked unanimous consent to sign out the CS for SCR-20. Hillstrand objected. He noted that we had passed HB-464 and now to sign a resolution for a study would be ridiculous. He also felt this would allow the Senate to kill the bill. Randolph felt that if the bill became law this resolution could be ignored, but if the bill failed this would give some indication that we wanted the Legislative Council to spend some time on this problem. Hillstrand did not feel it was an advantage to move from a position of strength to one of weakness. SCR-20 was signed out with individual recommendations.

90-day session

SJR 73

SJR-73 - 90-day sessions. Rose moved to table this measure. Banfield, Barber, Rose and Flynn voted to table. Hillstrand moved that the measure be removed from the table and placed for action. Rose did not think this was a proper motion procedurally. Randolph moved to rescind our action in tabling. The motion failed with Barber, Banfield, Flynn, and Rose against the motion.

Randolph moved to adjourn. Randolph and Hillstrand voted to adjourn. Motion failed.

Individuals right to privacy

SJR 68 am

SJR-68am - Individual's right to privacy. Rose moves that we report this out with a "Do Pass" recommendation. Banfield objects. Rose stated that this makes sure that we may have a possible defense to invasion of privacy. We are moving into an electronic age and this will give a measure of protection and would prevent excesses in this field. Art explained about the right of privacy. It seems personally advisable to add this to the constitution if you are concerned about vagueness. This is more specific than other general laws which are statements of principles. He gave an example of the 27th amendment. There have been instances where women were not accorded due process on the basis of sex distinction and where something like the 27th amendment would have been helpful. Moran wondered about the phrase "shall not be violated". What really is the right to privacy? This needs to be defined. Barber moved to delete that phrase. Art checked other laws as to how they were written. Moran then suggested that we stop after "recognized" and say it "shall be implemented by the Legislature". Banfield read from lines 13-15. Moran didn't think this should be in the constitution. Art said that Moran's amendment would cover the question by Banfield.

5/30

Individuals Right to Privacy

Moran said that he would like to see the people have the right to privacy but would like it phrased like other sections of the constitution. Banfield moved to delete the second sentence. There was no objection. Art said we could say "shall implement this section" or "shall provide for the implementation of this section" and leave out the details. This would be stating principles generally without the details which allows for easier administration. Barber felt that we were leaving out the penalty section. Moran said this would be covered in the "implementation". Rose agreed that leaving the entire first sentence with the broad general language of the second sentence providing for legislative implementation would be entirely adequate. It was decided to change "violate" to "infringe". A CS will be prepared by Art.

SJR 68
am

Meeting adjourned at 3:35 p.m.

HOUSE JUDICIARY COMMITTEE
MINUTES OF THE MEETING
Friday, June 9, 1972

Chairman Moran called the meeting to order at 8:35 a.m. in the Masonic Temple. Present were: Flynn, Barber, and Rose.

Mechanics and Material. Lien

SB-151 - Mechanics and Materialmen's liens. Moran said that now they have a 90-day limit before filing a lien. They can go back and hammer a few nails and extend the period. This is to establish a date on which to process the lien. Moran said that there is a problem which has come to his attention. The person who is the owner of the premises very often does not know the lien was recorded. Barber said that sometimes they don't even know the work is being done. There is the problem of contractors. They are paid with the exception of 10 per cent which is withheld until completion of the contract. They have subcontractors and the contractors sometimes fail to pay them. This is when you will find that there is a lien on the property. Flynn moved that this bill be taken from the table. There was no objection. SB 151

An amendment was proposed for Line 4, Page 2. After "of" insert "all other persons having an interest in the property and". Moran said that this provided some protection. On execution you have an opportunity to take some action to get the lien removed. Moran said that you could say that the lessee is to give notice to the owner for any work to be done. Rose felt this placed a tremendous burden on the labor and materialmen. Right now these people can be assured of getting their money. This means that the owner or lessee would have to give everybody notice including labor and materialmen and also subcontractors. This would be done after recording the notice of completion.

Moran said that the owner is the one who puts out the notice of completion. Moran said that if any workmen hadn't been paid in 90 days--he couldn't believe that a man would work that long without looking into his pay. Most are paid on a weekly basis. Moran said that you have to protect the interest of the person who owns the property. Rose disagreed with this and felt that the lien law was for the protection of the working man. Rose said that the owner could provide proof that everyone else involved in the job were paid. The working man cannot do this.

Moran asked if the committee wanted to pass this bill out. Rose said he would vote "do not pass". Barber asked if we were improving the situation. Moran said he thought we were. The bill was not signed out.

Meeting adjourned at 8:55 a.m.