

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 7, 2004
8:27 a.m.

TAPE(S) 04-67, 68

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 367(FIN) am

"An Act relating to the licensing and regulation of adult-oriented businesses; and providing for an effective date."

MOVED SCS CSHB 367(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 552(FIN) am

"An Act relating to the creation of the Alaska Gaming Commission to regulate gambling; authorizing the Alaska Gaming Commission to license gambling games and gambling casino owners and suppliers and to issue occupational licenses for gambling employees; limiting casino gambling to municipalities with a population of 150,000 or more; allowing the Alaska Gaming Commission to issue only one owner's license for a gambling casino in certain municipalities with a population of 150,000 or more; creating crimes relating to gambling and setting requirements for gambling; creating the state gaming fund in the general fund; setting a gross receipts tax on gambling games; limiting the authority of a municipality to tax the adjusted gross receipts of gambling games."

HEARD AND HELD

SENATE BILL NO. 246

"An Act relating to the commission of an offense or a juvenile delinquency act involving the victim's race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin; relating to sentencing, informal adjustment,

and adjudication for those offenses and acts; relating to a diversity tolerance program for certain juvenile delinquency acts; relating to a civil cause of action for certain acts involving discriminatory harassment; and providing for an effective date."

MOVED CSSB 246(JUD) OUT OF COMMITTEE

SENATE BILL NO. 397

"An Act relating to open meetings guidelines applicable to legislators, to the confidentiality of complaints and proceedings involving alleging violations of AS 24.60, and to hearings on formal charges by the Select Committee on Legislative Ethics or its subcommittees."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 367

SHORT TITLE: LICENSING ADULT-ORIENTED BUSINESSES

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE, GARA

01/12/04	(H)	PREFILE RELEASED (1/9/04)
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	L&C, JUD, FIN
01/30/04	(H)	L&C AT 3:15 PM CAPITOL 17
01/30/04	(H)	Heard & Held
01/30/04	(H)	MINUTE(L&C)
02/02/04	(H)	L&C AT 3:15 PM CAPITOL 17
02/02/04	(H)	Moved CSHB 367(L&C) Out of Committee
02/02/04	(H)	MINUTE(L&C)
02/05/04	(H)	L&C RPT CS(L&C) NT 2DP 3NR 2AM
02/05/04	(H)	DP: DAHLSTROM, ANDERSON; NR: CRAWFORD,
02/05/04	(H)	LYNN, GATTO; AM: ROKEBERG, GUTTENBERG
02/09/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/04	(H)	<Bill Hearing Postponed to 2/16/04>
02/16/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/16/04	(H)	Heard & Held
02/16/04	(H)	MINUTE(JUD)
02/23/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/23/04	(H)	Scheduled But Not Heard
02/25/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/25/04	(H)	Heard & Held
02/25/04	(H)	MINUTE(JUD)
02/27/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/27/04	(H)	Moved CSHB 367(JUD) Out of Committee
02/27/04	(H)	MINUTE(JUD)
03/03/04	(H)	JUD RPT CS(JUD) NT 3DP 3NR

03/03/04 (H) DP: ANDERSON, GARA, MCGUIRE;
 03/03/04 (H) NR: SAMUELS, GRUENBERG, OGG
 04/15/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/15/04 (H) Moved CSHB 367(FIN) Out of Committee
 04/15/04 (H) MINUTE(FIN)
 04/19/04 (H) FIN RPT CS(FIN) NT 3DP 6NR
 04/19/04 (H) DP: MEYER, HARRIS, WILLIAMS;
 04/19/04 (H) NR: HAWKER, STOLTZE, MOSES, CHENAULT,
 04/19/04 (H) FATE, FOSTER
 04/27/04 (H) TRANSMITTED TO (S)
 04/27/04 (H) VERSION: CSHB 367(FIN) AM
 04/28/04 (S) READ THE FIRST TIME - REFERRALS
 04/28/04 (S) L&C, JUD, FIN
 04/29/04 (S) L&C REFERRAL WAIVED
 05/05/04 (S) JUD AT 8:00 AM BUTROVICH 205
 05/05/04 (S) Scheduled But Not Heard
 05/07/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 552

SHORT TITLE: GAMBLING & GAMING

SPONSOR(s): FINANCE

04/06/04 (H) READ THE FIRST TIME - REFERRALS
 04/06/04 (H) FIN
 04/19/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519
 04/19/04 (H) Heard & Held
 04/19/04 (H) MINUTE(FIN)
 04/21/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/21/04 (H) Moved CSHB 552(FIN) Out of Committee
 04/21/04 (H) MINUTE(FIN)
 04/22/04 (H) FIN RPT CS(FIN) 2DP 1DNP 6NR 1AM
 04/22/04 (H) DP: FATE, WILLIAMS; DNP: STOLTZE;
 04/22/04 (H) NR: MEYER, HAWKER, CROFT, MOSES, JOULE,
 04/22/04 (H) HARRIS; AM: CHENAULT
 05/01/04 (H) MOTION FOR REFERRAL TO L&C
 05/01/04 (H) AMEND TO COMMITTEE OF WHOLE WITHDRAWN
 05/01/04 (H) REFERRAL TO L&C FAILED Y7 N31 E2
 05/03/04 (H) TRANSMITTED TO (S)
 05/03/04 (H) VERSION: CSHB 552(FIN) AM
 05/04/04 (S) READ THE FIRST TIME - REFERRALS
 05/04/04 (S) JUD, FIN
 05/07/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 246

SHORT TITLE: HATE CRIMES/DISCRIMINATION/TOLERANCE PROG

SPONSOR(s): SENATOR(s) LINCOLN

01/12/04 (S) PREFILE RELEASED 1/2/04
01/12/04 (S) READ THE FIRST TIME - REFERRALS
01/12/04 (S) STA, JUD
03/23/04 (S) STA AT 3:30 PM BELTZ 211
03/23/04 (S) Moved SB 246 Out of Committee
03/23/04 (S) MINUTE(STA)
03/24/04 (S) STA RPT 4DP
03/24/04 (S) DP: STEVENS G, HOFFMAN, STEDMAN, GUESS
03/24/04 (S) FIN REFERRAL ADDED AFTER JUD
04/07/04 (S) JUD AT 8:00 AM BUTROVICH 205
04/07/04 (S) Heard & Held
04/07/04 (S) MINUTE(JUD)
04/23/04 (S) JUD AT 8:00 AM BUTROVICH 205
04/23/04 (S) Scheduled But Not Heard
05/04/04 (S) JUD AT 8:00 AM BUTROVICH 205
05/04/04 (S) Scheduled But Not Heard
05/05/04 (S) JUD AT 8:00 AM BUTROVICH 205
05/05/04 (S) Scheduled But Not Heard
05/07/04 (S) JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Mr. Heath Hilyard
Staff to Representative McGuire
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented HB 367 for the sponsor

Ms. Cara Nyquist
Covenant House
Anchorage, AK

POSITION STATEMENT: Supports CSHB 367(FIN)am

Ms. Andree McCleod
No address provided

POSITION STATEMENT: Opposed to CSHB 367(FIN)am

Mr. Dale Fox
CHARR
Anchorage

POSITION STATEMENT: Opposed to CSHB 367(FIN)am

Ms. Carol Hartman
Fantasies
Anchorage, AK

POSITION STATEMENT: Opposed to CSHB 367(FIN)am

Ms. Kathy Hartman
Fantasies
Anchorage, AK

POSITION STATEMENT: Opposed to CSHB 367(FIN)am

Mr. Tom Wright
House Finance Committee Staff
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented HB 522 for the House Finance Committee

Senator Georgianna Lincoln
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 246

Mr. Jerry Luckhaupt
Legal and Research Services Division
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about versions S and Q of SB 246.

ACTION NARRATIVE

TAPE 04-67, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:27 a.m. Senators French, Ogan, Therriault and Chair Seekins were present. He announced that he would take up bills as people were available to testify, and that committee would begin with HB 367.

^#HB 367

CSHB 367(FIN)am-LICENSING ADULT-ORIENTED BUSINESSES

MR. HEATH HILYARD, staff to Representative Lesil McGuire, sponsor, told members that HB 367 has undergone numerous iterations with regard to the provisions included. When Representative McGuire began to work on this bill, she was looking at the concept of both business and occupational licensing: business licensing for the clubs and occupational licensing for entertainers. However, due to fiscal considerations and numerous objections raised, the bill focuses

only on business licenses. That focus is the most fiscally responsible and the element most agreed upon.

MR. HILYARD said the version that passed the House also specifies the types of sexual contact prohibited. Some Title 4 provisions, which pertain to regulating alcohol establishments and prohibit such specified sexual contact, were incorporated into CSHB 367(FIN)am and apply to establishments that do and do not serve alcohol. In addition, the House Labor and Commerce Committee raised the age of patron and entertainer to 21. However, after discussions in the House Judiciary Committee and on the House floor about an ongoing case in Missouri, the House dropped the age down to 18 to alleviate any constitutional concerns. The bill also provides for particular restrictions so that applicants for business licenses cannot have been convicted of certain sex and drug offenses. It also requires notification to community councils or other non-profit community organizations. He offered to answer questions.

SENATOR OGAN noted the bill talks about sharing a residential unit inhabited by minors and asked if that has been discussed.

MR. HILYARD said as a result of interim deliberations when this bill was being drafted, several people expressed concern about massage parlors and escort services in residential areas that might share entryways with places that minors enter and exit so that was added as a precaution. He said he is not aware of any existing problem with strip clubs.

SENATOR OGAN asked if this bill addresses a situation where a mother works as a prostitute at home.

MR. HILYARD said it does not, to his knowledge, only because prostitution is illegal on its face at this time. Representative McGuire's interest was to regulate activities that are not currently illegal or that the law is silent on.

SENATOR OGAN asked if all activities in adult oriented businesses will have to take place in the open so that a business cannot have private rooms for viewing pornography.

MR. HILYARD said he believes that is correct. CSHB 367(FIN)am addresses the interior layout of these establishments so that all areas are visible from the entrance.

SENATOR OGAN asked Mr. Hilyard if he anticipates any First Amendment issues arising from that requirement. He said that

technically, an adult oriented business does not differ from a hotel that offers sexually explicit materials on a pay-per-view basis.

MR. HILYARD acknowledged that Senator Ogan's concern about the First Amendment is a good point and is one of the reasons the House backed away from requiring participants to be 21. The State of Missouri enacted a provision to raise the age of dancers from 18 to 19 last year and that is currently in federal court.

He explained that the First Amendment does not provide a guaranteed constitutional right to be entertained. However, the courts have said, particularly in *Barn v. Glen Theater*, that the act of erotic dancing is covered but that right is not as important as other core rights such as political speech. Representative McGuire believes that the House has gone to the extent possible in this particular version to alleviate any First Amendment concerns.

SENATOR OGAN asked if the bill addresses private rooms in adult oriented businesses that do not have entertainers.

MR. HILYARD said this version does not. Representative McGuire backed away from trying to regulate bookstores or other such businesses because there are very few in the state and because Assemblyman Dan Sullivan sponsored a zoning regulation in November that addressed those types of establishments in Anchorage.

SENATOR OGAN asked if requiring a partition in adult book or video stores would cause a First Amendment problem.

MR. HILYARD said he did not believe so because the issue has to do with the expressive act of dancing and whether the right to be entertained falls under the First Amendment. He deferred to Senator French for more information.

SENATOR FRENCH said this is an unclear area and one would not know until the U.S. Supreme Court decided the issue.

SENATOR FRENCH then asked the minimum age at which one can legally buy tobacco products.

MR. HILYARD replied 19.

SENATOR FRENCH said he asked that because this bill is the result of some community activists who were concerned that minors were frequenting or working at these establishments. He participated in a community council discussion the previous evening. That council was very unhappy that the minimum age in the bill was raised to 21 and then dropped back down to 18. He said he appreciates the huge amount of work Representative McGuire has done on this bill and then suggested that the committee raise the age to 19 as that would alleviate the problem of 18-year-old high school students going to or working in strip clubs. He said he believes that would withstand a constitutional challenge and that it would be worth challenging.

SENATOR FRENCH then moved to raise the age of participation or employment in an adult oriented business to 19 [Amendment 1].

CHAIR SEEKINS objected for the purpose of discussion.

MR. HILYARD said Senator French is absolutely correct with regard to the community council's concern: that high school students are both working in and visiting these establishments. However, with regard to raising the age to 19, Representatives McGuire and Gara have discussed the issue at length and felt that would be difficult to get through the legislature and the courts. He did not believe Representative McGuire would oppose raising the age but she is concerned about the case underway in Missouri. He said she also looked at the Alaska Constitution and was concerned that if the bill would not meet federal constitutional scrutiny, it would have more difficulty meeting state constitutional scrutiny.

SENATOR FRENCH asked if Representative McGuire considered including a severability clause to moot that one provision and make the default age 18 if the court decision is adverse.

MR. HILYARD said the House Judiciary Committee adopted a version that included a severability clause but it was pulled out when the House dropped the age back to 18.

SENATOR FRENCH moved to amend Amendment 1 to add a severability clause.

SENATOR OGAN spoke in support of the amendment.

CHAIR SEEKINS announced that without objection, the amendment to Amendment 1 was adopted.

MR. HILYARD asked Senator French if he intended to raise the age to 19 for both patrons and entertainers.

SENATOR FRENCH said he intended the age of 19 to apply to both.

CHAIR SEEKINS said that was his understanding. He then noted that without further discussion or objection, Amendment 1 as amended was adopted as a conceptual amendment.

CHAIR SEEKINS then announced he would take public testimony but placed a two-minute time limit on each participant's testimony.

MS. CARA NYQUIST, an Alaska attorney, stated support for HB 367 and informed members she submitted written testimony. Regarding the First Amendment, she believes the age for patronage and employment could be 19 or 21. She reviewed the constitutional issues and found the case law to be clear that states have a duty to regulate these types of businesses. She said she believes the committees have heard a lot of testimony about the local effects of these unregulated businesses. She believes this legislation is distinguishable from similar laws in other jurisdictions that are being challenged. In those jurisdictions, the legislatures did not make an extensive record of testimony on the local effects. She said she does not believe this bill is about a moral agenda, it originated as the result of stories told by young people about some shocking things that are going on in these establishments.

MS. ANDREE MCCLEOD stated opposition to CSHB 367(FIN)am because it was poorly researched and presented and doomed from the start. She said one thing she has learned while researching this bill is that women are not the people being exploited. The impetus for this bill was information compiled by unknown individuals at secret meetings held during the interim. That information cannot be substantiated. She is aware that the director of the Covenant House and some of her clients were involved. She learned that during the intake process at the Covenant House, the more perverse the story told by the client, the more services are provided. This correlation is ripe for abuse. When the clubs got involved, a true examination of CSHB 367(FIN)am began.

MR. DALE FOX, Executive Director of the Cabaret, Hotel and Restaurant Retailers' Association (CHARR), said CHARR is opposed to CSHB 367(FIN)am in its current form as it believes the legislation is a solution looking for a problem. He referred to the purpose and findings of the bill and said the authors of the

bill have borrowed from other states where such problems exist. The findings refer to law-abiding people being accosted and harassed on the street, which does not happen in Alaska. The findings also refer to the proliferation of pornographic litter, which does not happen in Alaska. He noted that prostitution is also suggested as one of the reasons for this bill, however prostitution is already illegal. Regarding the issue of age, he said the legislature could establish a minimum age based on the age it believes people are mature enough to be tried as adults.

SENATOR OGAN countered that he has spent time patrolling with Anchorage Police Department officers in Anchorage at night and a lot is going on.

MS. CAROL HARTMAN, co-owner of Fantasies, an adult-oriented business, said the adult-oriented club industry is being singled out because of one circumstance. She said if the legislature is going to take action, the same restrictions should apply to all 18 year olds seeking employment. [Most of Ms. Hartman's testimony was inaudible.]

MS. KATHY HARTMAN, co-owner of Fantasies, told members that Fantasies is an 18 and over gentlemen's club. Its clientele is made up of people of all ages and all walks of life. She said this bill is the result of [complaints made by] a woman who danced in the 1980s, when all clubs were regulated by the ABC Board. The problems she discussed have already been taken care of. Clubs are licensed and required to have annual inspections. All dancers must be employees, not contractors. Laws are on the books to deal with drug use, prostitution, sales, sexual assault, wage and hour issues, and employment of minors. She maintained that high school students are not hired in her club and that if that is a problem, parents, teachers and counselors should be addressing that problem, not the legislature. The Alaska Supreme Court has already determined that erotic dancing is constitutionally protected under the federal and state constitutions.

SENATOR OGAN said he wants to know whether Bethany Carrera's murderer, when found, ever attended adult-oriented clubs.

CHAIR SEEKINS closed public testimony, due to no further participants.

SENATOR FRENCH commented that he is impressed by the work done by the House on this bill.

SENATOR OGAN moved SCS CSHB 367(JUD) from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, the motion carried.

#

^#HB 552

CSHB 552(FIN)am-GAMBLING & GAMING

MR. TOM WRIGHT, staff to the House Finance Committee, which sponsored HB 552 by request, explained that the bill establishes an Alaska gaming commission designed to oversee the statutes established in the bill that pertain to gambling. It also creates new statutes that authorize the commission to issue a license to own and conduct gambling games at a specified gambling facility in any municipality in the state with a population of 150,000 or more. The House amended the bill to say that if a municipality adopts an ordinance, it must be ratified by a majority of the municipal voters.

MR. WRIGHT told members that the new gambling commission would administer, regulate and enforce licensing for gambling facilities, its employees and its suppliers. The commission would collect fees and taxes and place them into a state gaming fund, which would consist of all revenue received from gambling activities. The fund will pay any activity conducted by the commission and other agencies related to gambling and gaming. The state would receive a 17 percent tax; the municipality where the gambling facility is located could also collect a tax, but not more than 3 percent of adjusted gross receipts. CSHB 522(FIN)am also creates new class C and class A misdemeanors for crimes related to associated gambling operations and activities. Currently 48 states have some form of legalized gambling. The purpose of CSHB 552(FIN)am is to provide tools and strict supervision of gambling and gaming activities authorized by the Alaska gaming commission.

9:05 a.m.

SENATOR THERRIault asked for a description of the level of debate that took place in the House about the possibility that if this legislation passes and a casino were to be licensed, that would open the state up for the spread of Indian gaming in the state.

MR. WRIGHT said this bill would allow gambling operations on certain Indian lands: the Metlakatla reservation and Kake and Angoon.

SENATOR OGAN said it was his understanding that the issue of Native allotments was not resolved by the Venetie case. He recalled a briefing given by the former attorney general to the Majority Caucus on that issue. That was one reason the legislature did away with allowing non-profits to conduct Monte Carlo nights.

MR. WRIGHT had the same recollection. He noted that Susan Burke, a Juneau attorney who has worked on this issue, believes that Native allotments would not be considered as Indian land under the Indian Regulatory Gaming Act.

SENATOR OGAN surmised that no one will have the final answer until the court rules on the question.

MR. WRIGHT agreed.

SENATOR FRENCH asked if any discussion has taken place about potential land swaps for reservation land.

MR. WRIGHT said he was unable to answer that question as he did not have enough experience in Indian law.

CHAIR SEEKINS referred to Sec. 05.18.100, beginning on page 11, entitled, Ejection or exclusion from facilities, and noted the section does not clarify that the provision is in addition to the power of the police to remove a trespasser. It basically says the commission will determine that. He then said, "The next part of that, if I go down to [Sec. 05.18.120[, on the same page, here it appears to me to subject the investigative powers of the state and the local police to the Alaska gaming commission. It puts it in a subjective role."

MR. WRIGHT thought that if a trespassing complaint is filed, nothing would prohibit the local police force or DPS from becoming involved. He was unable to answer Chair Seekins' second question.

CHAIR SEEKINS said Sec. 05.18.220 on page 18 appears to give the Alaska gaming commission the right to issue liquor licenses and security guard licenses, which are currently the responsibility of the Department of Public Safety (DPS).

MR. WRIGHT said the licensed owner has to apply to the commission to hold any license if the owner is going to supply to that gambling facility. However, the bill also contains supplier license provisions that say what can be supplied, and he did not believe that includes alcohol or food. He clarified that it applies to all other licenses.

CHAIR SEEKINS said it appears that the commission has supplanted the authority of DPS in that it says a license holder may apply to the commission for and may hold licenses that are necessary for the operation of a gambling facility, including the license to prepare and serve food for human consumption and any other necessary license. The commission will be putting itself in a position now held by other state agencies because the owner will just go to the commission to get what he needs.

MR. WRIGHT said he believes that DEC and some of the other agencies that are responsible for food preparation inspections will still do so.

CHAIR SEEKINS felt that should be clarified in the bill.

SENATOR FRENCH referred to Sec. 05.18.010 on page 2, which pertains to the commission itself. He asked if it will consist of three members and how that number was arrived at.

MR. WRIGHT said that is correct and that various numbers were floated around but three is the number the House decided to adopt. He noted the bill is based on the Indiana gambling law.

SENATOR FRENCH said if this bill is enacted, three people will decide who will get the one casino license.

MR. WRIGHT said the bill contains certain parameters that must be used when determining who will get that one license.

SENATOR FRENCH expressed concern that there may be a fierce amount of competition for that one casino license.

MR. WRIGHT said he could not argue that point.

SENATOR FRENCH said he would prefer to see more decision makers and a broader array of interests represented on the commission. He said he appreciates the fact that the commission will include a person with a law enforcement background and another with an accounting background and that the majority cannot be from any

one political party. He repeated that his concern is the large amount of power that those three people will have.

MR. WRIGHT explained that one thing the [House Finance Committee] wanted to exclude from membership is anyone with a potential conflict of interest.

SENATOR FRENCH asked, given that a fierce amount of competition for the license is likely, what the appeals structure will be for the applicants.

MR. WRIGHT said the bill contains an appeals process that is based on the Administrative Procedures Act that can be used for any disagreement with a decision made by the commission.

TAPE 04-67, SIDE B

CHAIR SEEKINS questioned why Sec.05.18.450 on page 25 does not provide any authorization for the Anchorage police to inspect a facility; only the Department of Public Safety or commission employees can do an inspection.

MR. WRIGHT did not believe the local police would be precluded from doing an inspection and said he was not opposed to including that in the bill.

CHAIR SEEKINS said it appears that the forfeiture provision allows for the forfeiture of property belonging to innocent suppliers and might violate the substantive due processes in State v. Wilder [626 P2nd 104 1981].

MR. WRIGHT pointed out that a supplier's license issued under this chapter would allow a person to supply security, surveillance, supplies, money counting machines, gambling paraphernalia, supply services, and equipment to a licensed owner. Therefore, a supplier's license is limited to that scope.

CHAIR SEEKINS maintained that the forfeiture section may still have due process problems. He then referred to Sec. 05.18.540 and said it reduces the level of certain crimes already in Alaska's criminal code, such as bribery.

MR. WRIGHT said the new crimes established in the bill only pertain to the gambling operations.

CHAIR SEEKINS said he has a problem charging a casino owner with a lower criminal charge than that given to any other gambling

operator or otherwise. He then pointed out that (a)(1) and (6) in Sec. 05.18.540 are duplicative. He indicated that he has not had a lot of time to review the bill but from his quick review, he has some serious concerns. He said despite his personal disapproval of legalized gambling, as a legislator he is trying to craft a bill that he could approve of. He offered to make a list of the concerns he has with the bill itself so that the sponsor could address some of them.

MR. WRIGHT offered to review the list.

CHAIR SEEKINS asked if members objected to setting the bill aside for further review.

SENATOR THERRIAULT said he had hoped to have a copy of a memo from independent counsel on the Indian gaming issue today but was unable to reach Mr. Popely. He offered to provide copies at the next meeting.

CHAIR SEEKINS said it is not his intent to prevent people from testifying at this time but, rather, he does not want to take testimony on the bill in its current form so he would take public testimony when some of the concerns are addressed.

SENATOR ELLIS asked about the timeframe.

CHAIR SEEKINS said he intended to shut the committee down tomorrow.

#

^#SB 246

SB 246-HATE CRIMES/DISCRIMINATION/TOLERANCE PROG

SENATOR GEORGIANNA LINCOLN, sponsor of SB 246, asked to be joined by the legal drafter, Mr. Luckhaupt. She then pointed out that the latest version of SB 246 needed to be adopted by the committee.

CHAIR SEEKINS announced that the latest draft, labeled version Q, was before the committee, and that without objection, it was adopted as the work draft before the committee.

SENATOR LINCOLN said she would not repeat the testimony she gave at a previous hearing on SB 246, but would repeat a statement by Walt Monegan, Anchorage Chief of Police, who said when asked about the difference between rage and hatred that rage is usually directed at an individual while hatred is directed

toward a group. Mr. Monegan's point was that greed motivates most people to commit a crime; however, the primary motive behind a hate crime is to create fear in a group.

CHAIR SEEKINS asked Senator Lincoln to review the changes made in version Q.

SENATOR LINCOLN said the major change was to the title - the civil aspect was removed because of the question about the title containing a dual subject. She asked that Mr. Luckhaupt review the remaining changes.

MR. JERRY LUCKHAUPT, legislative counsel, Division of Legal Services, told members that Section 1 of one of the previous versions of the bill was removed. Section 1 pertained to the civil enforcement scheme, which provided the opportunity to sue for damages. That was removed because it is already available under other provisions. The major change was made in Sections 10 and 11. A provision was added to those sections that describes the penalties that juveniles can receive. He explained:

To correspond with the hate crime or the juvenile that directs a crime at a person because of their individual characteristics, we provided the same penalty for a juvenile that directs a crime at a police officer, fire fighter, or other emergency responder. That's section 10 and 11.

SENATOR THERRIAULT asked Mr. Luckhaupt if the hate motivation issue has been added to a list that already includes those things or whether a new section was created.

MR. LUCKHAUPT replied that Senator Lincoln's bill contained additions to the possible penalties for juveniles for other crimes motivated by hate. He continued, "As part of the direction I received, the idea was that we wanted to correspond that, as was done previously in portions of the bill, to the penalties that are provided for crimes that are directed against law enforcement or other emergency responders based upon their duties and so we added in law enforcement provisions to the juvenile penalty schemes and provided the same penalties as for the hate crime as for the law enforcement officers."

SENATOR THERRIAULT asked if Mr. Luckhaupt copied the existing language located elsewhere in the statutes for the police officers.

MR. LUCKHAUPT said language exists in statute for crimes committed against peace officers that heightens penalties for both class A felonies and for misdemeanors. He noted the Legislature has consistently provided heightened punishment for that crime and it may be the only crime the Legislature has consistently provided greater presumptive terms or mandatory minimum sentences for misdemeanors. He explained:

And so what we did because that was in statute and from the direction of the Chairman and Senator Lincoln, we decided to in each place where we're proposing a greater punishment for hate crimes, if you don't already impose a greater punishment for law enforcement officers, I brought up the law enforcement officer to correspond to that and that was just in these few areas that I'm going to highlight.

CHAIR SEEKINS said many people who commented about the bill felt that a hate crime should not be heightened above a similar crime against a police officer or an emergency responder. However, their objections began to melt if the motivational level was no greater than the existing language in statute for peace officers.

SENATOR LINCOLN added that is why the title was changed to include an offense against peace officers, fire fighters and emergency responders to correspond to those areas.

CHAIR SEEKINS asked Mr. Luckhaupt if that was covered everywhere he could think of in statute.

MR. LUCKHAUPT said yes, and that was the point of the new draft version. He said those areas in which the heightened punishment language did not exist were raised to correspond with the punishment in Senator Lincoln's bill. He explained that Sections 10 and 11 apply the same penalty for law enforcement officers and Section 9 allows the court to refer a person with special potential for rehabilitation to a three-judge panel for sentencing purposes. The aggravating factors for felony sentencing are on page 5, line 21. He explained:

[On line 21] (13) is the aggravating factor for crimes committed against cops and emergency responders, (22) is the aggravating factor that exists in statute relating to hate crimes. So we've added both of those into this list of offenses where you can't refer the case to a three-judge panel. Working back from there,

the rest of the bill is the same and then Senator Lincoln pointed out to me that Section 13 of the bill has a requirement that the diversity tolerance program that is a requirement of sentencing for juveniles, we put in a provision saying that the court may not require somebody to take that program until the Department of Health and Social Services has actually developed, implemented, and designated the program as required under the statute so it's not something - a little Catch 22 for people that you have to take the program as part of their juvenile adjudication that doesn't actually exist yet.

SENATOR FRENCH referred to Section 7 on page 4, line 27, which reads:

(k) A defendant is convicted of a misdemeanor in AS 11 shall be sentenced as

and moved to delete the word "is".

CHAIR SEEKINS announced that without objection [Amendment 1] was adopted.

MR. LUCKHAUPT indicated that law enforcement officers were also added to Section 7. The category of a court being able to classify someone as a worst offender applies to the hate crime situation in paragraph (1) on line 30, and it also applies to the existing language for other penalty schemes relating to directing the offense at a police officer, firefighter, or emergency responder. The idea of a worst offender is based on the rationale that the Alaska courts have developed over time, which allows the court to impose a sentence at the top end of the range or to the maximum offense if that offender is classified as the worst in that class of offender.

SENATOR FRENCH, in response to a question from Senator Ogan, said the motive of the person who attacked a peace officer is not considered. He continued:

The officer in the uniform is sort of protected by the uniform and we don't worry about the mental state of the person who assaults a police officer or a paramedic or anybody else. We just say that's a worst offense. You're going to get a minimum of 60 days and you're a worst offender, which authorizes a maximum sentence if the judge decides to impose it.

MR. LUCKHAUPT agreed.

SENATOR OGAN commented that he would be more comfortable confining it to a person who committed a crime against a peace officer because that person was a peace officer or paramedic and focus on the intent of the crime rather than the commission of the crime.

CHAIR SEEKINS asked if this bill will now treat a crime against a person because of the person's race, etcetera, at the same level of sentencing and with aggravators as a crime against a police officer.

MR. LUCKHAUPT said there is no longer an aggravator for class B and class C felonies or an increased presumptive term for first offenses directed against peace officers. Those were removed by the Legislature three or four years ago. He chose not to put those back in after the discussion yesterday because those were removed at the request of the peace officers and their associations because they felt they were getting greater sentences than any presumptive term that could be provided in statute. Those are the only two areas that differ and that was to follow what the Legislature has previously done.

CHAIR SEEKINS asked if there is now an aggravator for class B and C felonies, for example a crime based on sexual abuse.

MR. LUCKHAUPT said that is correct. They were in the original bill and remain in version Q as Sections 3 and 4.

CHAIR SEEKINS asked if that same rationale would apply to a hate crime for a class B or C felony as it would to peace officers.

MR. LUCKHAUPT said possibly but it would depend on the sentences judges are giving. He explained that when those provisions were removed four or five years ago, the thinking was that the aggravating factors could be applied to the sentences of worst offenders. The Legislature did not want to include presumptive terms because judges were inclined to follow the presumptive terms. He said in this case, if there is the perception that hate motivated crimes are not receiving an adequate starting point, making a distinction would be beneficial.

SENATOR THERRIAULT asked if this language is all attached to a motivation that is actually illegal.

MR. LUCKHAUPT said anything related to civil enforcement was removed so an action for damages based upon a comment someone made would not apply.

SENATOR THERRIAULT asked if there would have to be an underlying criminal act with an aggravator. He noted the bill does not contain any definition of sexual orientation. This version was derived from a Department of Law bill, which was introduced two years ago, and he is not aware of what the thinking was on that topic. He deferred to Ms. Carpeneti.

CHAIR SEEKINS said that was the one area that remained unresolved among the people he worked with to get support for the bill. He noted that version S had been distributed and addresses that topic. He then described version S as follows.

In the first part, Senator Lincoln removed the civil liability and we've left that alone.

Secondly, I think we've gotten everything except in the area of what the offense is - we've removed sexual orientation to address that question.

SENATOR ELLIS asked for the rationale behind removing sexual orientation.

CHAIR SEEKINS said it was removed to get support for the bill. He pointed out that sexual orientation is not mentioned anywhere else in statute and he is not sure that subject should be addressed for the first time in this legislation.

SENATOR ELLIS asked if hate crimes based on sexual orientation would not be addressed.

CHAIR SEEKINS said sexual orientation would be on par with anything other than what is addressed in the bill.

SENATOR OGAN said he has heard privately from pastors that they are worried that if they quote at a church service certain passages of the Bible that deal with sexual orientation, they could be charged with some sort of crime.

CHAIR SEEKINS said he would bring that up for discussion when he finished explaining the bill. He continued:

The next area that I went into was in - speaking again with some of the people who I've been working with,

they've said that community service for a juvenile - we yesterday passed a bill that on a third offense for driving under the influence of alcohol a juvenile had a 60 to 80 hour community work service schedule. What we've suggested in here was 60 to 80 hours [page 6, subsection (6)]. We would just reduce it from 100 hours flat to 60 to 80 hours to give the judge some discretion and then farther down, in paragraph (b), it states that the court would allow the minor's successful participation in the diversity tolerance program to count toward the minimum hours of community work service. If they go to the diversity class, that counts against their community service time.

And then finally, at the very end, I believe on page 11, we just put ... a four-hour sideboard on the length...[page 10, lines 29 and 30]. The program should be designed to be completed in four hours or less - that's the only change that we made.

SENATOR LINCOLN asked Chair Seekins if the diversity tolerance program cannot be more than four hours.

CHAIR SEEKINS said he was just trying to put a sideboard on the timeframe and would not object to an eight-hour program.

SENATOR LINCOLN explained that is why she put language in the bill allowing the department to develop these programs.

CHAIR SEEKINS said he was trying to provide some direction about how comprehensive the program should be.

SENATOR LINCOLN did not think four hours was long enough.

SENATOR OGAN said he understands why the sponsor wants a diversity training program and that he would like to think such training would have a positive effect but he doesn't believe the prejudices that people are raised with are likely to change with such training.

SENATOR LINCOLN said she is uncomfortable with a four-hour program. She was thinking the time spent in a tolerance program would count toward the community service hours. She said she is unaware of any program that will reach everyone but was hoping the program would spark some good in a person and she doubts that can be done in a four-hour time period.

CHAIR SEEKINS said he would agree to change the requirement to an eight-hour program. He said he trusts the Legislature more than he trusts the bureaucracy to set those limits.

SENATOR LINCOLN said she also does not like the "or less" language because the requirement could be as short as a 30 minute program.

CHAIR SEEKINS said he would agree to putting a minimum and maximum time limit in the bill.

SENATOR THERRIAULT said it would still be up to the department to develop the program; the bill only contains the upper time limit. He did not think the department would design a 30-minute program.

SENATOR LINCOLN said she preferred that no time limit be placed in the bill and thinks the department will have to do some research and identify what programs work.

SENATOR FRENCH commented that he was thinking the program would be designed to do some indoctrination one day, let the person sleep on it and do more indoctrination the next day. He felt an overnight reflection might stimulate greater understanding and was thinking of a 16-hour program.

SENATOR LINCOLN said that is why she suggested no less than eight hours.

SENATOR OGAN felt the public humiliation suffered by the perpetrators of the paintball incident was probably more effective in changing behavior than any class.

SENATOR THERRIAULT agreed with Senator French that time for reflection could be useful but that could be provided with a four-hour program for two days each, and although he is not suggesting a specific number of hours, he sees the need for a cap. He thought that to some extent, public condemnation keeps society on track. He said he was unaware of version S, which does not cover sexual orientation. He questioned how a 20-year old who dates 15-year olds would be considered under the bill and cautioned the need to be careful.

CHAIR SEEKINS said he did not want to open that "Pandora's Box" and was only trying to get support for the bill, which required that topic be left out. He then said he had no problem with requiring a two-day program with a minimum of six hours and a

maximum of 12. He said he would prefer to use public humiliation but does not know how to do that under the law.

SENATOR THERRIAULT said he believes the Legislature needs to give the agency that designs the training program some latitude to put together a program that works and would not want to require the agency to split the training program over a two-day period.

SENATOR FRENCH suggested putting a cap at 12 hours so that the program cannot be completed in one day. He then so moved.

CHAIR SEEKINS announced that without objection, the motion carried.

SENATOR ELLIS questioned whether the committee had adopted version S.

CHAIR SEEKINS clarified that it had not and moved to adopt version S as the working version before the committee.

SENATOR ELLIS objected and said he is opposed to the deletion of sexual orientation because he believes it would be easy to get a standard definition of sexual orientation.

TAPE 04-68, SIDE A

SENATOR ELLIS maintained that to exclude certain people is wrong.

SENATOR LINCOLN said that while she appreciates the Chair's effort to pass the bill out of committee, sexual orientation is a term that has been used by programs elsewhere for hate crimes. In addition, she has received letters supporting the inclusion of sexual orientation in the bill. She agreed that sexual orientation is not defined in statute at this time but said that doesn't mean it can't be done. She said as the sponsor of the bill, she believes it should remain in the bill because it has widespread support.

CHAIR SEEKINS thanked Senator Lincoln but said a lot of work would have to be done to include it and with it he could not get support for the bill.

SENATOR OGAN said he is uncomfortable with adopting a new committee substitute this late in the session.

CHAIR SEEKINS announced an at-ease.

CHAIR SEEKINS asked for a roll call vote on the motion to adopt version S. The motion carried with Senators Therriault, Ogan and Seekins in favor and Senators Ellis and French opposed.

CHAIR SEEKINS moved to adopt Amendment 1, to remove the word "is" on line 24 of page 4. Without objection, the motion carried.

CHAIR SEEKINS moved to adopt Amendment 2, to replace the number "4" with the number "12" on page 10, line 30. He then announced that without objection, Amendment 2 was adopted.

SENATOR LINCOLN asked if he intended to also delete the words "or less".

For the purpose of clarification, CHAIR SEEKINS moved to withdraw Amendment 2. The motion carried with no objection.

CHAIR SEEKINS clarified that Amendment 2 is to read as follows, "to be completed in a maximum of 12 hours."

SENATOR OGAN raised a point of order and asked that the motion to adopt Amendment 2 be rescinded.

SENATOR OGAN moved to rescind the committee's action on Amendment 2. With no objection, Amendment 2 was before the committee.

CHAIR SEEKINS moved to withdraw Amendment 2. Without objection, Amendment 2 was withdrawn.

CHAIR SEEKINS moved to adopt Amendment 3, which would replace, on page 10, line 30, the phrase "in four hours or less" with "in a maximum of 12 hours."

SENATOR LINCOLN asked if that means the program must be designed to be completed within 12 hours.

CHAIR SEEKINS asked if she wanted to include a minimum number of hours. He then withdrew Amendment 3 and rephrased it to say "in 12 hours." There being no objection, Amendment 3 was adopted.

SENATOR FRENCH thanked committee members for their hard work on this legislation and then moved CSSB 246(JUD) to its next committee of referral with its attached fiscal notes.

CHAIR SEEKINS announced that with no objection, CSSB 246(JUD) moved from committee.

#

SENATOR THERRIAULT asked that Mr. Hove distribute copies of three memos that detail some of the problems with the passage of HB 22 to members.

CHAIR SEEKINS then recessed the meeting to the call of the chair.