

HOUSE JOURNAL

ALASKA STATE LEGISLATURE

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

Juneau, Alaska

Friday

January 28, 2005

Nineteenth Day

Pursuant to adjournment the House was called to order by Speaker Harris at 10:10 a.m.

Roll call showed 25 members present. Representatives Coghill, Crawford, Elkins, Gatto, Joule, Kohring, LeDoux, and Ramras had been previously excused from a call of the House today. Representatives Berkowitz, Croft, Guttenberg, Kerttula, Kott, and Salmon were absent and their presence was noted later.

Acting Majority Leader Foster moved and asked unanimous consent that Representative Kapsner be excused from a call of the House today to 10:00 p.m., plane time, January 30, 2005. There being no objection, it was so ordered.

The invocation was offered by the Chaplain, Pastor Tom Matthews of Douglas Island Bible Church. Representative McGuire moved and asked unanimous consent that the invocation be spread on the journal. There being no objection, it was so ordered.

Respecting the religious differences present here, I would ask you to join me as we open this session in prayer.

Dear Lord:

It is a privilege to come before You in prayer. We thank You that as the great sovereign God, the creator of the universe, You still desire us to communicate with You and lift our requests before You.

Thank You that we can enjoy the freedom that our forefathers secured for us - freedom of worship, freedom in terms of our political process. I pray for our troops who are trying to implement and protect the process of open elections in Iraq. With increased pressure against them, they especially need Your protection at this time. Help the families of those killed in the downed helicopter to be comforted and strengthened in this time of loss.

I also pray specifically that You would bless the representatives gathered here today. Help each of them to exercise justice and fairness in all they say and do. Give them guidance, direction, and wisdom in any decisions to be made. Protect their families as they serve our state away from home during these legislative sessions.

And now, "Let the words of my mouth and the meditation of my heart be acceptable in Thy sight, O Lord, my strength and my redeemer."

In the name of Your Son, Jesus Christ I lift this prayer today.
Amen.

The Pledge of Allegiance was led by Representative Neuman.

CERTIFICATION OF THE JOURNAL

Representative Foster moved and asked unanimous consent that the journal for the 17th and 18th legislative days be approved as certified by the Chief Clerk. There being no objection, it was so ordered.

**The presence of Representative Croft was noted.

MESSAGES FROM THE SENATE

A message dated January 26, 2005, was read stating the Senate has passed the following and it is transmitted for consideration:

**FIRST READING AND REFERENCE
OF SENATE BILLS****SB 56**

CS FOR SENATE BILL NO. 56(JUD) by the Senate Judiciary Committee, entitled:

"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."

was read the first time and referred to the Judiciary and Finance Committees.

A Senate letter of intent was attached (Senate Journal page 102).

**The presence of Representatives Berkowitz, Salmon, Kerttula, and Guttenberg was noted.

COMMUNICATIONS

The following were received:

Dept. of Administration
Office of the Commissioner
Monetary Terms of Agreement Between the
State and the Inlandboatmen's Union of the Pacific
January 26, 2005
(as required by AS 23.40.215)

The Speaker referred the monetary terms of agreement to the Finance Committee.

Alaska Railroad Corporation
Special Report to the State of Alaska
Legislature and Administration
January 2005

Dept. of Health & Social Services
Office of the Commissioner
FY 2005 Operating Grants
December 30, 2004

Dept. of Natural Resources
Division of Mining, Land, and Water
2005 Report to the Legislature:
Report on Identified R.S. 2477 Rights-of-Way
Notification of Annual Mining Report
Land Disposal Income Fund Report
Notification of Annual Report on the
Status of Land in the Land Disposal Bank
Notification of Annual Report on
Water Removals and Exports
Notification of Interim Land Classifications
(Closing Land to Mineral Entry)
(as required by AS 19.30.400, 27.05.060,
38.04.022, 38.04.020, 46.15.020, 38.05.300, respectively)

REPORTS OF STANDING COMMITTEES

HJR 4

The Resources Committee has considered:

HOUSE JOINT RESOLUTION NO. 4

Urging the United States Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production.

and recommends it be replaced with:

CS FOR HOUSE JOINT RESOLUTION NO. 4(RES)
(same title)

The report was signed by Representatives Samuels and Ramras , Co-chairs, with the following individual recommendations:

Do pass (6): Olson, Kapsner, Seaton, Elkins, Samuels, Ramras

The following fiscal note(s) apply to CSHJR 4(RES):

1. Zero, Dept. of Natural Resources

HJR 4 is on today's calendar.

**The presence of Representative Kott was noted.

HB 46

The Labor & Commerce Committee has considered:

HOUSE BILL NO. 46

"An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

The report was signed by Representative Anderson, Chair, with the following individual recommendations:

Do pass (4): Lynn, LeDoux, Rokeberg, Anderson

No recommendation (2): Kott, Guttenberg

The following fiscal note(s) apply:

1. Zero, Dept. of Commerce, Community, & Economic Development
2. Fiscal, Dept. of Environmental Conservation

HB 46 was referred to the Finance Committee.

INTRODUCTION, FIRST READING, AND REFERENCE OF HOUSE BILLS

HB 116

HOUSE BILL NO. 116 by Representative Meyer, entitled:

"An Act relating to the liability of certain persons for entry and remaining on licensed premises."

was read the first time and referred to the State Affairs and Judiciary Committees.

HB 117

HOUSE BILL NO. 117 by the House Rules Committee by request of the Governor, entitled:

"An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date."

was read the first time and referred to the Community & Regional Affairs and Judiciary Committees.

The following fiscal note(s) apply:

1. Zero, Dept. of Administration
2. Zero, Dept. of Law

The Governor's transmittal letter dated January 27, 2005, follows:

"Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to, as a matter of sovereign immunity, limit the award of attorney's fees against the state and municipalities.

Since territorial days, Alaska has had a statutory policy of requiring the losing party in most litigation to pay a portion of the prevailing party's attorney fees. In recent years, this policy has been embodied primarily in Alaska Rule of Civil Procedure 82, which the Alaska Supreme Court adopted in response to a legislative delegation, made immediately following statehood, in AS 09.60.010. In most cases, the prevailing party receives a partial fee award, equal to no more than 20 percent of a money judgment or 20 percent of actual fees in a non-monetary case.

In cases brought against state or local governments, departures from the general rule of partial fee reimbursement have occurred with some regularity, with the governmental party required to reimburse all of the prevailing party's fees. Ordinarily, the basis for these enhanced fee awards has been the judicially created public interest litigant policy, wherein selected litigants bringing suits to advance ends deemed by the court to reflect strong public policies are granted full fees as a

subsidy from the state treasury. The cost of this subsidy has been significant to the state in all recent fiscal years and, on a more irregular basis, has been significant to the municipalities targeted by such lawsuits.

There are instances where a Legislative policy sufficiently supports full attorney fee awards and the legislature has chosen to provide for them by statute. Full reimbursement is also important for eminent domain proceedings. Beyond these contexts, the Legislature has not identified a policy that would support a direct public subsidy to private litigants that goes beyond the traditional norm of partial fee awards. To ensure that public money is not disbursed as a subsidy to these litigants without an appropriate legislative authorization, this bill would provide, as a matter of sovereign immunity, that the state or a municipality would not be liable for an attorney fee award in excess of certain percentages of a money judgment or, if a money judgment is not recovered, certain percentages of the reasonable actual attorney fees the prevailing party incurred in litigating the issues upon which the party prevailed. This would prevent enhanced fee awards against the state or municipalities that are not authorized by statute, but leave those governments open to the standard partial fee awards called for in the Civil Rule 82 fee schedule.

Section 1 of the bill describes the purposes of the Legislation. It notes the fiscal impact of enhanced fee awards, and specifically relies on the legislature's constitutional authorities in regulating this area. Section 1 states clearly that this bill, if enacted into law, would neither preclude nor repeal specific statutes authorizing the award of costs or fees in particular situations.

Section 2 of the bill would create a new provision in the chapter of AS 09 devoted to immunities. It provides that for civil actions or appeals in which a money judgment is recovered, the state and municipalities are not liable to pay more than 20 percent of the money judgment. In civil actions in which no money judgment is recovered, the liability of the state and municipalities for attorney fees for cases that go to trial is capped at 30 percent of the reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed, and 20 percent for cases that do not go to trial. For appeals in which no money judgment is recovered, the liability of the

state and municipalities for attorney fees is capped at 20 percent of reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed. These limits on liability are very similar to the limits that courts have found for years to represent fair partial compensation to a prevailing party. These limitations do not apply if the statutes provide differently, if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Section 3 of the bill would make the bill, if enacted into law, applicable only to civil actions or appeals initiated after it takes effect.

I urge your prompt consideration and passage of this bill.

Sincerely yours,
/s/
Frank H. Murkowski
Governor"

HB 118

HOUSE BILL NO. 118 by Representatives Ramras and Samuels, entitled:

"An Act relating to an address confidentiality program for victims of stalking, domestic violence, or sexual assault."

was read the first time and referred to the State Affairs and Judiciary Committees.

HB 119

HOUSE BILL NO. 119 by the House Community & Regional Affairs Committee, entitled:

"An Act extending the termination date of the Alaska regional economic assistance program; and providing for an effective date."

was read the first time and referred to the Community & Regional Affairs and Finance Committees.

CONSIDERATION OF THE DAILY CALENDAR**SECOND READING OF HOUSE RESOLUTIONS****HJR 4**

The following was read the second time:

HOUSE JOINT RESOLUTION NO. 4

Urging the United States Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production.

with the:

Journal Page

O&G RPT CS(O&G) 5DP	115
FN1: ZERO(DNR)	116
RES RPT CS(RES) 6DP	182
FN1: ZERO(DNR)	183

Representative Foster moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original resolution:

CS FOR HOUSE JOINT RESOLUTION NO. 4(RES)
(same title)

There being no objection, it was so ordered.

Amendment No. 1 was offered by Representatives Gara and Kerttula:

Page 3, lines 11 – 15:

Delete all material and insert:

"BE IT RESOLVED that the Alaska Legislature urges Congress to allow oil and gas exploration on the Coastal Plain of the Arctic National Wildlife Refuge; and be it

FURTHER RESOLVED by the Alaska State Legislature that the Congress is urged to consider 1) the desire by Alaskans for long-term

prosperity; 2) the preference of Alaskans for long-term employment for Alaskan workers over shorter-term larger-scale economic development that requires the excessive use of non-Alaskan labor; and, 3) the need by Alaskans for long-term revenue from Alaska's resources, for this and subsequent generations; and be it

FURTHER RESOLVED that the Alaska Legislature urges Congress to consider providing for the development of oil and gas in the Arctic National Wildlife Refuge after construction of a natural gas pipeline that brings North Slope gas to market, and after the substantial development of oil and gas resources in the National Petroleum Reserve-Alaska, so that Alaska's largest remaining resource development projects are developed over the long term, and not all at the same time; and be it

FURTHER RESOLVED by the Alaska Legislature that Congress allow for this development on the Coastal Plain of the Arctic National Wildlife Refuge earlier if needed to ensure that oil transportation through the Trans-Alaska Pipeline falls below 300,000 barrels/day and it is determined that oil production from the Coastal Plain is needed so that transportation through this pipeline remains economically feasible; and be it

FURTHER RESOLVED by the Alaska Legislature that Congress is urged to adopt policies to promote, to the greatest extent economically and fiscally feasible, the use of directional drilling from outside the Coastal Plain to produce oil and gas located within the Coastal Plain of the Arctic National Wildlife Refuge."

Page 2, line 22, insert:

"**WHEREAS** it has been estimated that construction of an Alaska Gas Pipeline is expected to generate between 4,000 and 8,600 jobs; that it is expected there will not be enough available Alaskan workers to fill these new positions and non-Alaska labor will be utilized for positions Alaskans are not available to fill; and, that it has been estimated by consulting groups promoting oil development in the Arctic National Wildlife Refuge that oil development in this Refuge will create in excess of 20,000 additional jobs in this state; and

WHEREAS according to reliable estimates there are not enough available Alaskan workers to staff both the construction of an Alaska Gas Pipeline, and oil development in the Arctic National Wildlife Refuge if both projects occur at the same time; and"

Representative Gara moved and asked unanimous consent that Amendment No. 1 be adopted.

Representative Hawker objected.

Representatives Meyer and Hawker moved and asked unanimous consent that they be allowed to abstain from voting because of a conflict of interest. Objection was heard, and the members were required to vote.

The question being: "Shall Amendment No. 1 be adopted?" The roll was taken with the following result:

CSHJR 4(RES)

Second Reading

Amendment No. 1

YEAS: 6 NAYS: 25 EXCUSED: 9 ABSENT: 0

Yeas: Cissna, Gara, Gardner, Kerttula, Moses, Salmon

Nays: Anderson, Berkowitz, Chenault, Croft, Dahlstrom, Foster, Gruenberg, Guttenberg, Harris, Hawker, Holm, Kelly, Kott, Lynn, McGuire, Meyer, Neuman, Olson, Rokeberg, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

Excused: Coghill, Crawford, Elkins, Gatto, Joule, Kapsner, Kohring, LeDoux, Ramras

Salmon changed from "Nay" to "Yea".

And so, Amendment No. 1 was not adopted.

Amendment No. 2 was offered by Representative Salmon:

Page 3, line 17, following "herd":

Insert "respects the concerns of the Gwich'in people,"

Representative Salmon moved and asked unanimous consent that Amendment No. 2 be adopted.

Representative Hawker objected.

The question being: "Shall Amendment No. 2 be adopted?" The roll was taken with the following result:

CSHJR 4(RES)
Second Reading
Amendment No. 2

YEAS: 13 NAYS: 18 EXCUSED: 9 ABSENT: 0

Yeas: Berkowitz, Cissna, Croft, Dahlstrom, Gara, Gardner, Gruenberg, Guttenberg, Kerttula, Kott, Moses, Salmon, Weyhrauch

Nays: Anderson, Chenault, Foster, Harris, Hawker, Holm, Kelly, Lynn, McGuire, Meyer, Neuman, Olson, Rokeberg, Samuels, Seaton, Stoltze, Thomas, Wilson

Excused: Coghill, Crawford, Elkins, Gatto, Joule, Kapsner, Kohring, LeDoux, Ramras

And so, Amendment No. 2 was not adopted.

Amendment No. 3 was offered by Representatives Hawker and Salmon:

Page 3, line 17, following "herd":

Insert "on which the Gwich'in and other local residents depend"

Representative Hawker moved and asked unanimous consent that Amendment No. 3 be adopted.

Objection was heard.

The question being: "Shall Amendment No. 3 be adopted?" The roll was taken with the following result:

CSHJR 4(RES)
Second Reading
Amendment No. 3

YEAS: 24 NAYS: 2 EXCUSED: 9 ABSENT: 5

Yeas: Anderson, Berkowitz, Chenault, Cissna, Croft, Dahlstrom, Foster, Gara, Gardner, Gruenberg, Guttenberg, Harris, Hawker, Kelly, Kerttula, Kott, Lynn, Meyer, Olson, Salmon, Samuels, Seaton, Thomas, Wilson

Nays: Neuman, Stoltze

Excused: Coghill, Crawford, Elkins, Gatto, Joule, Kapsner, Kohring, LeDoux, Ramras

Absent: Holm, McGuire, Moses, Rokeberg, Weyhrauch

And so, Amendment No. 3 was adopted.

Representative Foster moved and asked unanimous consent that CSHJR 4(RES) am be considered engrossed, advanced to third reading, and placed on final passage. There being no objection, it was so ordered.

CSHJR 4(RES) am was read the third time.

Representative Rokeberg placed a call of the House and lifted the call.

The question being: "Shall CSHJR 4(RES) am pass the House?" The roll was taken with the following result:

CSHJR 4(RES) am

Third Reading

Final Passage

YEAS: 26 NAYS: 4 EXCUSED: 9 ABSENT: 1

Yeas: Anderson, Berkowitz, Chenault, Croft, Dahlstrom, Foster, Gardner, Gruenberg, Guttenberg, Harris, Hawker, Kelly, Kott, Lynn, McGuire, Meyer, Moses, Neuman, Olson, Rokeberg, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

Nays: Cissna, Gara, Kerttula, Salmon

Excused: Coghill, Crawford, Elkins, Gatto, Joule, Kapsner, Kohring, LeDoux, Ramras

Absent: Holm

And so, CSHJR 4(RES) am passed the House and was referred to the Chief Clerk for engrossment.

LEGISLATIVE CITATIONS

Representative Foster moved and asked unanimous consent that the House approve the citations on the calendar. There being no objection, the following citations were approved and sent to enrolling:

Honoring - YWCA 2004 Women of Achievement Award Winner, Susan Churchill

By Senator Ellis; Representatives Gara, Harris, Anderson, Berkowitz, Chenault, Cissna, Crawford, Croft, Dahlstrom, Elkins, Gardner, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

Honoring - St. Mary's Episcopal Church

By Senators Ellis, Guess; Representatives Harris, Anderson, Berkowitz, Chenault, Cissna, Crawford, Croft, Dahlstrom, Elkins, Gara, Gardner, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

In Memoriam - Marguerite Mead

By Representatives Meyer, Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Elkins, Foster, Gara, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, McGuire, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

In Memoriam - Sadie Neakok

By Representatives Joule, Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Elkins, Foster, Gara, Gruenberg, Guttenberg, Hawker, Holm, Kapsner, Kerttula, Kott, LeDoux, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

In Memoriam - Ronald Wilson Reagan

By Representatives Kohring, Gatto, Neuman, Stoltze, Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Elkins, Foster, Gara, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, Lynn, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson; Senators Green, Huggins

In Memoriam - Florence Orr

By Senator Ellis; Representatives Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Elkins, Foster, Gara, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

In Memoriam - Mrs. Joan Elva Corliss

By Senator Ellis; Representatives Gara, Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Elkins, Foster, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

In Memoriam - Gordon Jensen

By Senator Stedman; Representatives Wilson, Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Elkins, Foster, Gara, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch

UNFINISHED BUSINESS

Representative Foster moved and asked unanimous consent that the following member be excused from a call of the House. There being no objection, the member was excused as noted:

Representative Anderson - from 1:00 p.m., January 28 to 10:00 a.m., plane time, January 31, 2005

Pursuant to AS 24.20.680(b), the Speaker made the following appointments to the Homeland Security and Emergency Management Subcommittee of the Joint Armed Services Committee:

Representative Harris
Representative Foster
Representative Croft
Representative Dahlstrom

HJR 4

Representatives LeDoux, Rokeberg, Harris, Meyer, Gardner, Olson, Croft, and Gruenberg added their names as cosponsors to:

CS FOR HOUSE JOINT RESOLUTION NO. 4(RES) am
Urging the United States Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production.

HJR 6

Representative LeDoux added her name as cosponsor to:

HOUSE JOINT RESOLUTION NO. 6
Relating to the labeling of fish products and processed food items containing fish to identify the country of origin and to distinguish between wild and farmed fish and fish products.

HB 13

Representative Gara added his name as cosponsor to:

HOUSE BILL NO. 13
"An Act relating to reimbursement of municipal bonds for school construction; and providing for an effective date."

HB 53

Representative Rokeberg added his name as cosponsor to:

HOUSE BILL NO. 53
"An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid;

relating to a duty and standard of care for services to children and families; amending court hearing procedures to allow public attendance at child-in-need-of-aid proceedings; establishing a right to a trial by jury in termination of parental rights proceedings; reestablishing and relating to state and local citizens' review panels for certain child custody matters; amending the duty to disclose information pertaining to a child in need of aid; establishing a distribution age for permanent fund dividends held in trust for a child committed to the custody of the Department of Health and Social Services; mandating reporting of the medication of children in state custody; prescribing the rights of grandparents related to child-in-need-of-aid cases and establishing a grandparent priority for adoption in certain child-in-need-of-aid cases; modifying adoption and placement procedures in certain child-in-need-of-aid cases; amending treatment service requirements for parents involved in child-in-need-of-aid proceedings; amending Rules 3 and 18, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

HB 111

Representative Gruenberg added his name as cosponsor to:

HOUSE BILL NO. 111

"An Act adding birthing centers to the list of health facilities eligible for payment of medical assistance for needy persons."

ENGROSSMENT**HJR 4**

CSHJR 4(RES) am was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

ANNOUNCEMENTS

House committee schedules are published daily under separate cover.

ADJOURNMENT

Representative Foster moved and asked unanimous consent that the House adjourn until 11:00 a.m., January 31, 2005. There being no objection, the House adjourned at 11:35 a.m.

Suzi Lowell
Chief Clerk