

HOUSE FINANCE COMMITTEE
April 11, 2001
8:52 AM

TAPE HFC 01 - 81, Side A
TAPE HFC 01 - 81, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:00 PM.

MEMBERS PRESENT

Representative Bill Williams, Co-Chair
Representative Eldon Mulder, Co-Chair
Representative Con Bunde, Vice-Chair
Representative Eric Croft
Representative John Davies
Representative John Harris
Representative Bill Hudson
Representative Ken Lancaster
Representative Jim Whitaker

MEMBERS ABSENT

Representative Carl Moses
Representative Richard Foster

ALSO PRESENT

Senator Gene Therriault; Mike Tibbles, Staff, Representative Williams; Representative Gary Stevens, Sponsor; Steve White, Assistant Attorney General, Department of Law; Mary McDowell, Commissioner, Commercial Fisheries Entry Commission;

PRESENT VIA TELECONFERENCE

There were no teleconference testifiers.

SUMMARY

HB 193 "An Act relating to the primary election; and providing for an effective date."

CSHB 193 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note by the Office of the Lieutenant Governor.

HB 194 "An Act relating to fees for commercial fishing licenses and permits; and providing for an effective date."

HB 194 was heard and HELD in Committee for further consideration.

CSSB 103(FIN)

"An Act relating to election campaigns and legislative ethics."

HCS SB 103 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with a previous published fiscal impact note (#2) by the Department of Administration.

HCR 13 Relating to the nonresident fee differential for commercial fishing permits and licenses.

#hb193

HOUSE BILL NO. 193

"An Act relating to the primary election; and providing for an effective date."

MIKE TIBBLES, STAFF, REPRESENTATIVE WILLIAMS discussed the committee substitute work draft 22 GH1089\p, which incorporates a conceptual amendment adopted by the Committee on April 10, 2001, contained on line 28, page 3: the day of the primary election [JUNE 1].

Co-Chair Mulder noted that the amendment is consistent with the concerns expressed by the Department of Law. Individuals would be able to file a petition by the primary election day. Mr. Tibbles observed that the drafter concurs with the change.

Co-Chair Mulder reviewed the fiscal note by the Office of the Lieutenant Governor: \$5.2 thousand dollars in FY02 and \$269.5 thousand dollars in FY03.

Co-Chair Mulder MOVED to report CSHB 193 (FIN) out of Committee with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 193 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note by the Office of the Lieutenant Governor.

#sb103

CS FOR SENATE BILL NO. 103(FIN)

"An Act relating to election campaigns and legislative ethics."

Mr. Tibbles noted that members were provided with a proposed committee substitute, work draft 22-LS0148\H. He noted that three sections were modified or deleted by the proposed committee substitute. He discussed the changes.

Section 1 of the Judiciary version was deleted. Section 1 would have required the Commission to develop a single form for financial disclosure statements. The requirement was removed because the statute referenced two separate disclosure laws: one applied to the legislature and one applied to all public officials. The laws are distinct and different. The issue is still being reviewed.

Section 5 was also deleted. Section 5 allowed the use of office account funds to influence the outcome of an election concerning a ballot proposition if the use was permitted under the ethics law. Mr. Tibbles noted that testimony by Brook Miles, Executive Director, Alaska Public Officers Commission indicated that deletion of the section would not prevent the practice. The intent is to clarify that public money could not be used other than to perform the usual and customary duties of one's job. Members can support or oppose ballot propositions and send mailings. Members could not operate a campaign or influence a campaign out of their office.

Section 6, subsection 4(a)(ii): use by a political party was deleted. Mr. Tibbles explained that the provision was confusing. Under current law, a union or corporation could mail to their shareholders or members and families only if it is a regular communication, such as a newsletter. Special bulletins would not be allowed. It would be limited to \$500 dollars.

Representative Croft agreed with the elimination of subsection 4(a)(ii) and pointed out that there is a constitutional right to associate with people that want to form a group to communicate on issues.

Representative John Davies MOVED to ADOPT Amendment 1:

A campaign that receives \$500, or goods or services of a value of \$500, may file a contributor's statement as required under this section on behalf of the contributor.

Co-Chair Mulder noted that the amendment had been discussed in the previous meeting. The amendment would allow the 15.5 reports to be filed by the campaign with the Alaska Public Officers Commission.

There being NO OBJECTION, it was so ordered.

Representative John Davies MOVED to ADOPT Amendment 2:

Section 19.25.105 is amended by adding:

(a) (7) Political campaign signs no larger than 4 feet by 8 feet may be within the right of way within 45 days of an election in which a candidate or ballot issue or constitutional amendment is to be decided, and those signs must be removed within 10 days after that election.

Section 19.25.150 is amended by adding:

A sign in violation of AS 95.25.105 (a) (7) may be removed immediately by the department, and returned to the candidate or campaign for upon receipt of a \$100 handling fee per sign.

Representative John Davies explained that the amendment would address the use of political campaign signs. He observed that there is confusion regarding the law. The amendment would allow the use of signs within 45 days of an election. Signs would have to be removed within 10 days after an election. The amendment would also clarify the penalty. The department would be able to immediately remove signs that are in violation of the law. Signs would be returned to the campaign with a \$100 handling fee. He noted that his intent is to clarify the law and even the playing field.

Representative Hudson expressed support for the amendment. He noted that the department must currently give a 30-day notice before signs can be removed. He maintained that there are violations under the current law. He noted that signs could not be placed near election sites and would not affect billboard laws. The amendment would legalize the status quo.

Co-Chair Mulder spoke in support of the amendment. He observed that current law has been inconsistently applied from location to location and campaign to campaign.

In response to a question by Representative Whitaker, Representative John Davies explained that the state version of the 1966 federal act was adopted by initiative. State law disallows billboards along state maintained roads. The Department of Transportation and Public Facilities has made a distinction between rural roads. During the last election, the Northern Region of the Department of Transportation and Public Facilities enforced the law on all state maintained road in Fairbanks. He observed that there was a lot of confusion regarding the use of signs. The department's interpretation was viewed as onerous, although it was the correct interpretation of the law. The amendment would clarify the law and draw a bright line as to the use of campaign signs.

Representative Lancaster questioned if the amendment would be self-serving.

SENATOR GENE THERRIAULT expressed concern that a specific allowance would be carved out. He noted that the Department of Transportation and Public Facilities is protective of the right away. He added that signs are not allowed if they are visible from a state maintained road on private property. He expressed concern that the amendment would set the Legislature up for criticism.

Representative John Davies responded that the exemption would be handled in the same way as other exemptions. He stressed that a large number of people are putting up signs. The amendment would specify what is allowed and what is not. He acknowledged that the 30-day rule makes sense for most business uses, but argued that the 30-day rule invites people to place signs 29 days before the election in violation of the law. The amendment would clarify the rules.

Representative Croft acknowledged that it creates an exception that other businesses won't have but stressed that it would confirm the current practice. He pointed out that there would not be further opportunity to debate the issue, since it is the final committee assignment on a senate bill. He acknowledged the need to review the issue, but suggested that it should be taken up in other legislation.

Representative Whitaker spoke against the amendment. He observed that the public approved of the limitations placed on the signs in the Northern Region.

Representative Harris questioned if there is any provision to allow the department to designate areas allowing signs.

Senator Therriault clarified that the department does not allow signs in the road right-of-way. He noted that the bill was scheduled for floor action that day and that there would be little time to review the amendment.

A roll call vote was taken on the motion.

IN FAVOR: Davies, Hudson, Mulder

OPPOSED: Croft, Harris, Lancaster, Whitaker, Williams

Representatives Foster, Moses and Bunde were absent from the meeting.

In response to a question by Senator Therriault, Co-Chair Mulder restated the intent of Amendment 1. He emphasized the intent of diminishing the "hassle factor" for individual donors.

Senator Therriault reviewed statute requirements for contributions. He noted that the contributor must state that they are not prohibited by law from making the contribution. He questioned if a campaign could fill out a form for the candidate. He questioned if the language had been reviewed by the Department of Law.

Representative John Davies pointed out that the amendment is permissive and states that they "may". He stressed that regulation would allow the intent to fit with the statute.

Senator Therriault did not have problems with the intent, but expressed concern that he was not sure how the drafter would interpret the language.

Co-Chair Mulder observed that the Division of Legal Services was reviewing the amendment. He noted that it was not his intent to diminish or threaten the bill. He noted that if the result is adversarial that the amendment could be withdrawn.

Co-Chair Mulder MOVED to report HCS SB 103 (FIN) out of Committee with the accompanying fiscal note.

HCS SB 103 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with a previous published fiscal impact note (#2) by the Department of Administration.

#hb194

HOUSE BILL NO. 194

"An Act relating to fees for commercial fishing licenses and permits; and providing for an effective date."

REPRESENTATIVE GARY STEVENS, SPONSOR testified in support of HB 194. He noted that the legislation is the result a class action suit against the Commercial Fisheries Entry Commission (Carlson vs. state). In the past the state has charged a ratio 3 to 1 - nonresidents to residents on commercial fishing licenses. The Court has disallowed the differential. The Court ruled that differentials must be based on the differences between resident and nonresident taxes. The bill would not affect the Carlson case, but would prevent further debt from acquiring. The legislation would reduce the cost to the state of Alaska in the event that it loses the case. The legislation repeals the 3 to 1 ratio. Wording would be added to allow the state to charge the maximum amount allowed by law. The state has argued in Superior Court that there are six categories where nonresidents should be charge more than residents. The Superior Court provided a formula, which outlines what the state can charge. Court allowed only two of the six categories. The suit could cost the state \$22 million dollars in claims and more 10.5 percent in interest. If the

bill is passed the Commercial Fisheries Entry Commission (CFED) would begin to use the Court's criteria. He maintained that passage of the legislation would help resolve problems without creating new ones. It would also demonstrate that the state of Alaska is acting in good faith.

Representative Harris summarized that Alaska residents are paying what they should, but that non-residents are paying too much.

Representative Stevens responded that the Court has not commented on the amount charged. The Court has maintained that there needs to be a logical reason to charge nonresidents more than residents.

Representative Harris concluded that the formula is flawed and the methodology must be changed.

TAPE CHANGE, HFC 01 - 81, SIDE B

Co-Chair Mulder noted that the maximum charge to fish in Alaska waters is \$750 dollars. He questioned if the amount was unreasonable and pointed out that out of state fishers can make as much as \$50,000 dollars. He wanted assurances that the legislature could charge the maximum amount.

Representative Stevens responded that the legislation would allow the state to charge what the courts would allow in each of the six categories. He pointed out that the bill responds to federal law and that rights cannot be denied to U.S. citizens. The bill doesn't prevent the maximum from being charged.

Co-Chair Mulder questioned how the legislation presents the policy of the Legislature regarding the costs to the state that are not incurred by out of state residents.

Representative Stevens pointed out that the state is bound by the options provided by the Court. He did not agree with the Court's limitation to the two categories. Co-Chair Mulder suggested that language be added to represent the Legislature's position regarding the fair costs incurred by the state of Alaska in relations to the fisheries. Representative Stevens noted that the Commercial Fisheries Entry Commission must continue to follow the 3 to 1 ratio [in its licensing structure] unless the statute is changed. The legislation would allow the state to charge the maximum allowed by the Court, which currently only includes the two categories. He argued that the state could charge more if the additional categories are added. Representative Stevens observed that the Commercial Fisheries Entry Commission must follow state statute. The legislation would allow the maximum amount allowable by law.

Co-Chair Mulder questioned who establishes policy in the state of Alaska and indicated that the Legislature properly establishes policy. He stressed that the legislative policy should be clearly put in record to the Court. He asked what would be the (monetary) affect on resident licenses.

In response to a question by Representative Croft, Representative Stevens pointed to page 4, section 5 as an assurance that the maximum amount could be collected. Representative Croft questioned why the legislation should not included language indicating that the state wants to ignore the federal Constitution's restrictions on discrimination between residents and nonresidents.

Representative Stevens responded that there is an accompanying resolution (HCR 13), which would outline the state of Alaska's position. He maintained that the Court would determine the case based on facts with a rational approach. He did not think that all of the categories should be contained in the legislation.

Representative Croft summarized that the legislation gives the Commission the authority to charge the maximum allowable amount, once it is determined. Representative Stevens noted that it is the intent of the Commission to charge the maximum amount allowable to out-of-state fisherman.

Representative Lancaster pointed out that the legislation does not jeopardize the state's case before the Court.

Representative Stevens maintained that the legislation would not indicate fault or guilt and leaves the state of Alaska in a strong position. The legislation would allow charges in any of the six categories.

Representative Harris asked if the state had exhausted its legal options. Representative Stevens noted that the Superior Court has ruled. The case is on appeal to the Supreme Court.

Representative John Davies referred to page 4, lines 7 - 9: The fee shall be higher and not exceed the maximum. He questioned why the fee should not equal the maximum. Representative Stevens did not have an answer.

STEVE WHITE, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW provided information regarding the legislation. The Superior Court decision was decided and appealed with the Alaska Supreme Court. The issues on appeal concern the six budget categories, payment of issues and class action issues regarding the composition of the class. The Alaska Supreme Court would be guided by other decisions by the U.S. Supreme Court and other United State decisions.

Mr. White noted that the purpose is to direct a mechanism for charging fees in the future. The formula needs to be placed into statute. The maximum amount under the formula would be charged. The formula itself is not a matter of appeal. The sooner the formula is placed into statute, the sooner the state begins to save in potential refunds. The Alaska Supreme Court first announced the formula in 1991. The class and the state of Alaska tested the formula. The Court confirmed it with a few adjustments in 1996. The basic formula is set; it says the state can charge a dollar amount more for nonresidents than residents based on what the state spends for commercial fisheries, derived from the amount that only residents pay for direct services. The formula would be put into statute. He reiterated that the Court's decision is based on federal constitutional law.

MARY MCDOWELL, COMMISSIONER, COMMERCIAL FISHERIES ENTRY COMMISSION responded to questions. She noted that the legislation was worded to not exceed the maximum because the exact amount is unknown until the following year. It would not be administratively feasible to estimate the exact maximum dollar amount. The bill does not drop nonresident fees across the board. Passage of the legislation would not result in a negative fiscal impact in 2001. The current maximum differential in the highest fee category is \$500 dollars. Other fee categories are less. The legislation would place the maximum allowance on every fee category. Nonresident fees would go up on the lowest categories. The bill also addresses crewmember licenses, where the state is currently foregoing nonresident revenues. Under Carlson the average differential was \$118 dollars. In areas such as crewmember licenses where the 3 to 1 ratio is under the differential there is no refund. The legislation would add more money to the state by raising the crewmember licenses to the maximum amount that it would lose from nonresident permit holders. The legislation changes who has the burden of paying, but the overall total would be approximately the same. If the state of Alaska were to succeed in its argument before the Supreme Court and the legislation were to become law then state revenues would be greater than under the current 3 to 1 ratio.

In response to a question by Co-Chair Mulder, Mr. White noted that the courts allowed the direct operating and indirect operating costs in the calculation of fees. Indirect operating costs include the overhead costs of departments that have direct costs. Salaries of fish and game personnel in the Commercial Fisheries Division are included. Indirect costs for the Department of Fish and Game would be a proportion of the overhead that supports those employees.

Co-Chair Mulder pointed out that it costs the state of Alaska to build hatcheries, support habitat, provide

enforcement, and marine research. Mr. White agreed and noted that these items were included in the state's arguments. Enforcement costs have been included as direct costs. Costs to the University of Alaska have also been included as direct operating costs.

Co-Chair Mulder noted that there are also costs to the city of Kodiak for water systems. Mr. White noted that costs to local communities are outside of the analysis. The Court is considering what it costs a person to participate in a state regulated activity and how much the state pays for the activity.

In response to comments by Co-Chair Mulder, Mr. White noted that the cost of legislative debates before the Legislature has been captured and allowed by the Court.

Co-Chair Mulder questioned why all the costs associated with fisheries management should not be put onto the record in HB 194. Mr. White emphasized that the Court is not going to take into consideration state policy. He felt that additional itemization of costs would be redundant, but acknowledged that it would not hurt. He pointed out that he could not cite the substance of the bill [in arguments before the Court]. He maintained that the Court would base its decision on constitutional law. He acknowledged that if the categories were not included [and were subsequently allowed by the Court] that the statutes would have to be amended to add the missed items.

Co-Chair Mulder questioned what provision in constitutional law states that differentials are allowed. He stated that the Court has "opened the door" to differentials recognizing the fact that Alaska spends money in support of its commercial fisheries.

Mr. White stated that the Court is dealing with a Constitutional clause that was interpreted in a fisheries case in 1948. The Supreme Court announced the principal that a state can charge a nonresident more if they cause the state more expenditures and based on the services the state is providing, which are paid by residents and not the nonresidents. The state of Alaska has argued that while state residents don't pay taxes they are foregoing opportunities from state oil revenues that belong to them. Oil revenue expenditures are being counted just as if they are taxes. The ruling is derived from the U.S. Constitution based on U.S. Supreme Court decisions. The Alaska Supreme Court is further extending the decisions.

Co-Chair Mulder stressed that characterizations of disparity are arbitrary. Mr. White responded that they are not arbitrary, but they are reasonable. There is no precedent in which a state has had to identify its expenditures in this

manner. The state will look at expert witnesses in public finance that will identify appropriate costs, which should be included.

Ms. McDowell pointed out that under the 3 to 1 ration, the state of Alaska is accruing an additional \$1.13 million dollars of potential liability every year. An additional 250 new members are being added to the Carlson class due to turnover. Old members remain in the class. If the 3 to 1 ratio were replaced with all of the fees reflecting all of the budget categories, then the potential liability would ski rocket. There is a \$500 dollar maximum spread between residents and nonresidents. If all categories were applied than every permit category would be at the maximum \$500 dollar spread, including those that are currently at the \$100 dollar differential. If the state did not prevail all of this would have to be refunded with interest. The legislation would keep the revenues from nonresident fees steady or slightly increased while liability is minimized.

Representative Hudson acknowledged the concern of Co-Chair Mulder that the legislature makes policy and incurs costs. He referred to page 4, section 5 line 8. He suggested that the language be changed to:

The fee for a nonresident entry permit or a nonresident interim-use permit shall be three times higher than the annual base fee or by an amount established by the commission by regulation, that is the maximum allowed by law.

Representative Hudson stressed the need to spell clearly the legislative intent, while halting the entry of new applicants into the class action suit.

HB 194 was heard and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 10:20 a.m.