

HOUSE FINANCE COMMITTEE
April 30, 2001
2:04 PM

TAPE HFC 01 - 107, Side A
TAPE HFC 01 - 107, Side B
TAPE HFC 01 - 108, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:04 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 Richard Foster
Representative John Harris
Representative Bill Hudson
Representative Ken Lancaster
Representative Carl Moses
Representative Jim Whitaker

MEMBERS ABSENT

None

ALSO PRESENT

Don Smith, Staff, Senator Cowdery; Barbara Miklos, Director, Child Support Enforcement Division, Department of Revenue; Douglas Gardner, Assistant Attorney General, Department of Law; Darwin Peterson, Staff, Senator John Torgerson,

PRESENT VIA TELECONFERENCE

Larry Smith, President, D and L Construction, Kenai; Dick Cattanach, Executive Director, Associated General Contractors of Alaska, Anchorage; Michael Swalling, President, Swalling Construction, Anchorage; Kevin Brady, Attorney, Olds, Morrison, Rinker and Baker, Anchorage; Bill Renno, Olds, Morrison, Rinker and Baker, Anchorage; Fred Thompson, Herman and Thompson, Homer; Brad Finney, South Coast Construction, Ketchikan; Jerry Renich, President, South Coast Constructions, Ketchikan; Diane Wendlandt; Bill Britt, State Pipeline Coordinator, Department of Natural Resources.

SUMMARY

CSSB 19(HES)

"An Act relating to federal child support enforcement requirements regarding social security number information, employer reports about employees, and certain kinds of automated data matching with financial institutions; repealing the termination date of changes made by ch. 87, SLA 1997, and ch. 132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date."

HCS CSSB 19(HES) was REPORTED out of Committee with a "do pass" recommendation and with a previously published zero fiscal note (#2) by the Department of Revenue.

SENATE BILL NO. 143

"An Act authorizing the Department of Natural Resources to enter into agreements with a person or persons desiring to own an oil or natural gas pipeline proposed to be located on state land for the purposes of providing for payment of the reasonable costs incurred in preparing for activities before receipt of an application under the Alaska Right-of-Way Leasing Act and for activities relating to the processing of an application under that Act; and providing for an effective date."

SB 143 was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note by the Department of Natural Resources.

SB 152

"An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

SB 152 was heard and HELD in Committee for further consideration.

HCR 10

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 19, relating to certain federal child support enforcement requirements, so that the phrase "relating to child support payments" may be added to the bill's title.

HCR 10 was REPORTED out of Committee with a "do pass" recommendation.

#sb152

SENATE BILL NO. 152

"An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

DON SMITH, STAFF, SENATOR COWDERY explained that the legislation would require the Department of Transportation and Public Facilities to pay interest on disputes, which are settled in favor of the contractor. Interest accrues at a rate applicable to judgments. Interest accrues on the date the claim is filed and continues until the date of settlement. The interest rate would be guided by AS 09.30.70, which is three percentage points above the 12th Federal Reserve District discount rate. He stressed that the current situation is unfair to contractors in dispute with the state of Alaska. Disputes are taking too long to settle. The state of Alaska earns money while the case proceeds. Contractors may be forced to settle because they cannot afford to carry the burden of the expense.

BRAD FINNEY, SOUTH COAST CONSTRUCTION, KETCHIKAN testified via teleconference in support of the legislation. He recounted an incident with the Department of Transportation and Public Facilities. He observed that it should take 9 months for a claim to go to a hearing officer. It took four years for his claim to receive a hearing, which resulted in a \$400,000 thousand dollar settlement with prejudgment interest of \$240 thousand dollars in his favor. The state has refused to pay the interest. He maintained that the best way to resolve a contract issue is through negotiation. He asserted that without a prejudgment interest award the state has nothing to risk and no incentive to equitably and timely settle disputes.

Mr. Finney reviewed the timeline of the claim process. He noted that it is difficult to formulate amounts until the project is complete.

Representative John Davies clarified that the claim is denied by the on site project manager before it is submitted for further review.

Representative Hudson questioned if there would be cases where the contractor would owe the state and if interest would be assessed if there were. Mr. Finney pointed out that it is not in the contractor's best interest to submit a frivolous claim. Minor issues are not worth the lawyer fees.

He added that the state might be able to introduce punitive or liquidated damages if the project is not completed timely.

JERRY RENICH, PRESIDENT, SOUTH COAST CONSTRUCTIONS, KETCHIKAN testified via teleconference. He expressed concern that the state has protected itself. The legislation would put the state and the contractor on a reasonable level playing field.

LARRY SMITH, PRESIDENT, D AND L CONSTRUCTION, KENAI testified via teleconference in support of the legislation. He suggested that it be amended to cover all claims to the date of the legislation. He recounted his experience with claims before the Department of Transportation and Public Facilities. The legislation would provide equity for contractors. Most other tort claims and contract actions in the state of Alaska pay prejudgment interest. The hearing officer awarded them all but \$50 thousand dollars of their \$900 thousand dollar claim. The commissioner reduced the claim by \$100 thousand dollars. They collected \$750 thousand dollars, but the state of Alaska did not pay the \$93 thousand dollars owed in interest.

Vice-Chair Bunde questioned why persons with pending claims would be excluded.

FRED THOMPSON, HERMAN AND THOMPSON, HOMER testified via teleconference in support of the legislation. He asserted that the claims process can be unfair. He maintained that the process would be fairer if the state had an incentive to settle. He felt that it was unfair for private business to sponsor the claims process and to be punished by a refusal of interest payment. He spoke in support of amending the legislation to cover all pending claims.

DICK CATTANACH, EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF ALASKA, ANCHORAGE, testified via teleconference in support of the legislation. He pointed out that contractors have already spent thousands of dollars by the time the claim comes to judgment. He questioned why the Department of Law feels that the construction industry should be discriminated against.

Representative Hudson asked if the federal government authorizes interest from the date the claim is made when the contractor prevails. Mr. Cattanach affirmed that the federal Highway Administration and the Federal Aviation Administration (FAA) include interest. He noted that the model procurement code calls for a payment of interest.

MICHAEL SWALLING, PRESIDENT, SWALLING CONSTRUCTION, ANCHORAGE, testified via teleconference in support of the legislation. He noted that funds have been spent in advance.

He observed that his banker expects to be paid if he has borrowed funds. The lack of interest amounts to no penalty and no compensation for the time and money spent redeeming the funds.

In response to a question by Representative Hudson, Mr. Swalling noted that municipal contracts do provide for interest on claims settled.

KEVIN BRADY, ATTORNEY, OLDS, MORRISON, RINKER AND BAKER, ANCHORAGE testified via teleconference. He clarified that the state demands interest on cases where the state is owed funds. He maintained that the state should pay interest if it expects to collect interest. Small independent contractors are financing state projects interest free. This is unfair and anti business.

BILL RENNO, ATTORNEY, OLDS, MORRISON, RINKER AND BAKER, ANCHORAGE testified via teleconference in support of the legislation. He recommended that the legislation be amended to affect pending claims. Pending claims would have to appeal to the Supreme Court if the legislation is not applicable to all claims. He maintained that Supreme Court appeals would be unnecessary, which would reduce the state's legal costs.

DOUGLAS GARDNER, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW provided information. He clarified that punitive damages do not pertain. If it were made retroactive for all pending claims, the date would have to go to 1996. The state would also have to treat with other contractors that have settled claims but were similarly situated at the time of settlement. The fiscal note would be huge [if pending claims were included]. There would be no participation in retroactive payouts by the federal government. He discussed the Kennicott case, which started as a \$50 million dollar claim against the state of Alaska. The claim came in with eight pages without documentation. The Department of Law already has difficulty obtaining documentation for claims and questioned if the legislation would encourage poor documentation. Few states have similar provisions. The department must ascertain that the claims are sound. Municipalities don't enjoy sovereign immunity as the state. The state cannot consent to pay administrative claims.

There are several constitutional problems with equal protection. The bill would single out construction claims. Other claimants in a wide variety of issues will argue that construction contractors should not be singled out. A court may decide that interest should be paid on all claims, which could amount to a large general fund amount.

It is true that the Federal Highway Administration and the FAA has a restricted ability to participate in interest.

However, the bill covers all buildings. There is no federal agency with additional funds to pay the interest. Interest payments would come from general funds.

There are a number of construction projects that are not subject to AS 36.30, including new vessel construction. Mr. Gardner noted that because projects by the Alaska Railroad Corporation (ARRC) or Alaska Aerospace Development Corporation generally have to follow procurement code that they would also be subject to interest payments.

Representative Croft questioned if the date of a decision of an administrative officer had been considered. He referred to the Kennicott claim. Mr. Gardner noted that the claim came in the form of an 8 - 10 page letter without documentation. After two years of working with the case a large amount of documentation has been submitted.

Representative Croft felt that contractors raise a good point that once the administrative process is completed that payment should occur. He questioned the affect of an amendment [to make interest due from the date of the procurement officer's decision].

Mr. Gardner noted that there are three levels before an administrative case goes to Superior Court.

TAPE HFC 01 - 107, Side B

Mr. Gardner noted that 80 percent of cases are solved at the first step: the Engineer's report. The second step is the contracting officer's decision. Then the director of a region will evaluate the engineer's decision. In some cases a contracting officer's decision may change the engineer's decision and settle the case. Representative Davies clarified that the contracting officer is the procurement officer, which is the last division level. Mr. Gardner explained that the next level goes to the commissioner. If the party is still not satisfied it is appealed to the Superior Court.

Mr. Gardner referred to a possible amendment to run the interest from the time the contracting officer or the procurement officer issues their decision. He explained that administrative claims process is an alternate dispute resolution process. It is a way to settle cases before they go to court and carries a high success rate. The policy concern is: should the state be exposed to interest on a claim that has not been documented.

Vice-Chair Bunde questioned if the federal government would pay 90 percent of the interest that accrues on prospective application of the law. Mr. Gardner clarified that the federal government would only pay on projects where the

Federal Highway Administration is the participating agency. If the law were retroactive the same funds would not be available from federal highway payments.

Vice-Chair Bunde asked if this is a good idea why should it not apply to all state agencies. Mr. Gardner noted that all departments that perform construction work would be covered. He added that there might be situations where the claims were not allowed. Contractors can incur costs due to their own lack of due diligence. Disputes are not always the state's fault. Mr. Gardner argued against having interest running from the beginning of the case.

In response to a question by Representative Hudson, Mr. Gardner noted that interest is paid on overdue liquidated claims.

In response to a question by Representative Hudson, Mr. Gardner explained that the procurement officer is the last staff level person that makes a decision on behalf of the department.

Mr. Smith summarized that the bill is about fairness. It was introduced as a response to requests from the contractor community. He maintained that the state of Alaska has no incentive to move the process along. Years can pass before payment occurs. Contractors would be required to pay interest on their bank loans during the time.

Representative John Davies did not think that there was evidence that the state is trying to draw out the process and questioned if it was fair for the state to pay on cases where there is a legitimate dispute.

Representative Lancaster MOVED to ADOPT Amendment 1.

APPLICABILITY.

(a) AS 36.30.623 and 36.30.625(c), added by this Act, and AS 36.30.625(a), as amended by this Act, apply to controversies

(1) That are pending before an agency on the effective date of this Act; or

(2) For which a claim is filed with an agency under AS 36.30.620 on or after the effective date of this Act.

(b) In this section, "agency" means the Department of Transportation and Public Facilities or a state agency to whom the responsibility for handling the controversy is delegated by the Department of Transportation and Public Facilities under AS 36.30.632.

Representative Lancaster explained that the amendment would make the bill retroactive.

Representative Croft acknowledge the need for the legislation but pointed out that every case would have to be reviewed for equal protection.

Mr. Gardner argued that the amendment would require a search of all the claims.

Representative Croft gave the hypothetical case were two claims were submitted at the same time. One claimant provides all the necessary documentation and the case is resolved. The other fails to submit the necessary documentation and the case is dragged on [until the passage of SB 152]. The first case would not receive interest because it was settled before the effective date of the legislation. The second settles after the date [in the favor of the contractor] and is awarded interest. He suggested that the first claimant would seek interest through litigation.

Co-Chair Mulder questioned the state's exposure if the amendment were adopted. Mr. Gardner stated that he could not quantify the exposure. He observed that if interest were applied in only the three cases represented by previous testifiers that there would be well over million and a half dollars in owed interest. He stressed that the number could be quite large if previous settled cases came forward. Claims that were entered but not settled through litigation would also be subject to the amendment.

Representative Hudson questioned if the Kennicott claim would be at risk if the amendment were adopted. Mr. Gardner noted that the Kennicott case has been posed hypothetically and that he did not have any information on how it would be affected.

Mr. Gardner explained that the retroactive problem was with subsection (1).

Representative Whitaker MOVED a conceptual amendment to amend Amendment 1 by deleting subsection (1). There being NO OBJECTION, it was so ordered.

Representative Hudson WITHDREW Amendment #2: Insert "from the date the procurement officer's decision is issued in accordance with AS 36.30.620."

Representative John Davies MOVED to ADOPT #2. Co-Chair Mulder OBJECTED for the purpose of discussion.

Representative John Davies spoke to the amendment. He observed that documentation must be in place before the claim can be settled. He suggested that the procurement

officer's decision is the earliest bright line decision point in the process and the last staff level decision.

Representative Croft noted that AS 36.36.20 was attached to the fiscal note and that the decision should be made no more than 90 days after the waiver. He pointed out that good timelines are included to assure that everything necessary to determine the claim is available.

Representative Hudson suggested that "up to 30 days after the claim was filed" could be added to give the department 30 days to move the claim to the final adjudication point.

Representative Croft argued against the change. He pointed out that the claim could be submitted without proper documentation.

Representative Whitaker asked clarification of the proposed language. Representative John Davies referred to subsection (b) of AS 36.36.20. The contractor has 90 days to submit material. The contracting officer then has 90 days from the time that they agree the materials are complete to make a decision. John Davies noted that there might be additional time between these timelines. Representative Whitaker thought that 180 days would be enough time to address the dispute. Discussion occurred between Representative John Davies and Representative Whitaker regarding the 90-day concern.

Representative Croft noted that under AS 36.30.620 (b) that: "The decision shall be made no more than 90 days after receipt by the procurement officer of all necessary information from the contractor." He observed that the issue is with the receipt of all necessary information from the claimant.

Representative John Davies pointed out that: "Failure of the contractor to furnish necessary information to the procurement officer constitutes a waiver of the claim." The only time the case would be delayed would be at the contractor's request. The state may grant a delay requested by the contractor. He questioned why interest should run during this period.

Representative Whitaker asked what would preclude the state officer from being unreasonable in their request for information. Representative John Davies pointed out that the contractor could litigate against unreasonable requests.

SB 152 was heard and HELD in Committee for further consideration.

#sb143

SENATE BILL NO. 143

"An Act authorizing the Department of Natural Resources to enter into agreements with a person or persons desiring to own an oil or natural gas pipeline proposed to be located on state land for the purposes of providing for payment of the reasonable costs incurred in preparing for activities before receipt of an application under the Alaska Right-of-Way Leasing Act and for activities relating to the processing of an application under that Act; and providing for an effective date."

DARWIN PETERSON, STAFF, SENATOR JOHN TORGERSON, testified in support of the legislation on behalf of the sponsor. He observed that the legislation was introduced to facilitate the state's effort to issue right-of-way leases for a gas pipeline project. Any sponsor of the pipeline project would have to obtain a right-of-way lease across state lines. The legislation would authorize the state to be reimbursed by work performed by the State Pipeline Coordinator's Office in processing an application for a right-of-way lease. The current law allows the collection of a fee for submitted applications. The legislation would allow the reimbursement for fees before an application has actually been filed. There must be agreement by the pre-applicant and the department. The state incurs a financial burden from the preliminary activities of processing of a right-of-way application before it is issued. The legislation lifts the burden from the state and facilitates the process by allowing the applicant to pay in advance for what they would have to pay for anyway.

Co-Chair Williams asked the type of work that would be required. Mr. Peterson explained that the work would be for technical assistance and consultation. He referred to the fiscal note by the Department of Natural Resources and noted that costs include work to establish a Gas Pipeline Office, provide technical assistance to proponents, reimburse efforts related to permit process streamlining, and consultation with the state's federal and Canadian counterparts.

BILL BRITT, STATE PIPELINE COORDINATOR, DEPARTMENT OF NATURAL RESOURCES, ANCHORAGE, testified via teleconference. He observed that there are a variety of activities that occur before the permit application is received; all are directed toward receiving a complete permit application. The better the application the faster the processing. It is in the interest of all parties to resolve questions before the application is received.

TAPE HFC 01 - 108, Side A

Co-Chair Williams asked what would happen if the application were not granted. Mr. Peterson clarified that the state

would keep any money given to the State Pipeline Coordinator's Office for pre-application work.

In response to a question by Representative Lancaster, Mr. Peterson observed that the practice has already occurred and is supported by industry.

Representative Whitaker asked if existing gas pipeline permits and leases are in place. Mr. Britt stated that the pre-application agreements have been related to all the oil and gas lines on the North Slope in the last 5 - 7 years. He observed that there is one conditional state right-of-way in place, which is held by Yukon Pacific Lines for the tag lines. He clarified that Foothills Pipe Lines Alaska Inc. went through an extensive amount of processing but has not completed the process or been given a state right-of-way for the alignment. They completed the federal process and were granted a federal right-of-way. The state would probably enter into a pre-application agreement with the gas producer's consortium and Foothills Pipe Lines Alaska Inc. He did not anticipate an agreement with the Yukon Pacific Lines.

Representative Lancaster MOVED to report SB 143 out of Committee with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 143 was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note from the Department of Natural Resources.

#sb19

CS FOR SENATE BILL NO. 19(HES)

"An Act relating to federal child support enforcement requirements regarding social security number information, employer reports about employees, and certain kinds of automated data matching with financial institutions; repealing the termination date of changes made by ch. 87, SLA 1997, and ch. 132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date."

BARBARA MIKLOS, DIRECTOR, CHILD SUPPORT ENFORCEMENT DIVISION, DEPARTMENT OF REVENUE provided information on SB 19 (HES). Congress passed welfare reform legislation in 1996. The legislation's intent was to reduce the number of people receiving public assistance. Regulations relating to work and child support programs were initiated to support reforms. States were required to pass laws to help collect child support. Alaska passed laws in response to federal requirements in 1996 - 1998 and were compliant with federal

requirements. She maintained that the programs have been effective. The state collected and dispersed \$81 million dollars in child support. In 2000 the state collected \$85 million dollars and it expects to collect \$91 million dollars in the current year. She observed that legislation passed in 1997 and 1998 would sunset in the current year. The law has to be reenacted to continue the programs. Without these programs the state could be in jeopardy of losing all the money that goes to child support and public assistance: \$70 million dollars.

Ms. Miklos discussed provisions of the bill. She observed that the Senate placed a 5-year sunset on the use of social security numbers on applications and the financial data match program. These were changed to a two-year sunset in the House Health and Social Service Committee. Two new provisions were also added. Section 11 would provide that a violation does not give rise to a private cause of action. This means that a private individual could not sue an employer that did not properly report. Section 12 would prevent the situation where three payrolls are received in one month from resulting in a shortage on the following month. Extra payments in one month would be held and accounted against the subsequent month.

Ms. Miklos explained that provisions removing social security numbers from statutes take affect in 2003.

Ms. Miklos noted that the Division's would prefer not to have a sunset date on any of the provisions.

Representative Davies observed that use of social security numbers referenced in sections 1 - 10 are required by federal law. Ms. Miklos did not know of any pending legislation to change federal requirements.

Co-Chair Mulder asked if the legislation meets all the requirements of the federal guidelines. Ms. Miklos affirmed that the legislation would bring the state into compliance for the next two years.

Co-Chair Mulder suggested that the two-year sunset might be good with the complexity of the provisions contained in the bill.

Representative John Davies asked how long the existing provisions have been in place, if there have been any problems and if they have been effective. Ms. Miklos responded that the provisions have been in effect for the last 3 years. There have been no problems and they have been helpful. She acknowledged that there have been concerns expressed by individuals, but there have not been a problem in any cases.

Representative John Davies MOVED to amend the legislation by deleting "2003" and inserting "2006" on line 16, page 6. Co-Chair Williams OBJECTED for the purpose of discussion.

Representative John Davies argued that the legislation has been effective and that the use of social security numbers is essential in making the connections between cases. There doesn't seem to be any change in the federal requirement and the state would be out of compliance if the requirement were deleted. The use of social security numbers has been effective in getting payments to children. He noted that the provisions have worked for the past three years and that the Senate agreed to a 2006 sunset date. Co-Chair Mulder felt more comfortable with the 2003 sunset date. He acknowledged that the division has done a good job, but noted that it is a contentions issue and asserted that it would be good to review it in two years.

A roll call vote was taken on the motion to change the sunset date to "2006".

IN FAVOR: Lancaster, Davies
OPPOSED: Hudson, Whitaker, Bunde, Croft, Harris, Mulder, Williams

Representatives Moses and Foster were absent from the vote.

The MOTION FAILED (2-7).

Vice-Chair Bunde MOVED to report HCS CSSB 19 (HES) out of Committee with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HCS CSSB 19(HES) was REPORTED out of Committee with a "do pass" recommendation and with a previously published zero fiscal note (#2) by the Department of Revenue.

#hcr10

HOUSE CONCURRENT RESOLUTION NO. 10

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 19, relating to certain federal child support enforcement requirements, so that the phrase "relating to child support payments" may be added to the bill's title.

Vice-Chair Bunde MOVED to report HCR 10 out of Committee. There being NO OBJECTION, it was so ordered.

HCR 10 was REPORTED out of Committee with a "do pass" recommendation.

#

ADJOURNMENT

The meeting was adjourned at 4:00 p.m.