

HOUSE FINANCE COMMITTEE
May 03, 2001
1:55 P.M.

TAPE HFC 01 - 113, Side A
TAPE HFC 01 - 113, Side B

CALL TO ORDER

Co-Chair Mulder called the House Finance Committee meeting to order at 1:55 P.M.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Bill Williams, Co-Chair

ALSO PRESENT

Senator Rick Halford; Bruce Johnson, Deputy Commissioner, Department of Education and Early Development; Eddy Jeans, Manger, School Finance and Facilities Section, Department of Education and Early Development; Annette Kreitzer, Staff, Senator Loren Lemam; Paul Roetman, Staff, Senator Loran Lemam; Paul Roetman, Staff, Senator Loran Lemam; Guy Bell, Director, Division of Retirement and Benefits, Department of Administration; Darwin Peterson, Staff, Senator John Torgerson; Wilson, Condon, Commissioner, Department of Revenue; Mike Tibbles, Staff, Representative Williams; Thyes Shaub, Lobbyist for the Associated General Contractors of Alaska, Anchorage; Doug Gardner, Assistant Attorney General, Department of Law.

PRESENT VIA TELECONFERENCE

Major Douglas Norris, Alaska State Troopers, Department of Public Safety, Anchorage; Melissa Hill, Program Director, Alaska Teacher Placement, Fairbanks; Debbie Ossiander, Anchorage School Board, Anchorage; Kevin Brady, Attorney, Oles Morrison Rinker & Baker llp., Anchorage; Josie Styles, Village Public Safety Officer (VPSO) Program Director,

Bering Straits Region; Bill Reynold, Attorney, Oles Morrison Rinker & Baker llp., Anchorage.

SUMMARY

#HB185

HB 185 An Act relating to fees for certain uses of state water and the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date.

HB 185 was POSTPONED for a hearing at a later date.

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CS SB 145(FIN)

An Act relating to regional and village public safety officers; relating to the expansion of the village public safety officer program to include the provision of probation and parole supervision services; and relating to retirement benefits for village public safety officers.

CS SB 145 (FIN) was HELD in Committee for further consideration.

CS SS SB 149(HES)

An Act relating to reemployment of retired teachers, to eligibility for major medical insurance coverage for beneficiaries of the teachers' retirement system, and to teacher certificates; and providing for an effective date.

HCS CS SS SB 149 (FIN) was reported out of Committee with a "do pass" recommendation and with a fiscal note #1 Department of Administration dated 4/24/01 and a zero note dated 4/24/01, #2 by Department of Education & Early Development.

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.

HCS SB 152 (FIN) was reported out of Committee with a "do pass" recommendation and with indeterminate fiscal note #1 by the Department of Transportation & Public Facilities dated 4/25/01 and #2 by Department of Community & Economic Development dated 4/11/01.

CS SB 158(RES) am

An Act directing the commissioner of revenue to prepare a report to the legislature relating to the state's participation in owning or financing a gas pipeline project; and providing for an effective date.

HCS CS SB 158 (FIN) was reported out of Committee with a "do pass" recommendation and with a fiscal note #1 by Department of Revenue dated 3/29/01.

#SB145

CS FOR SENATE BILL NO. 145(FIN)

An Act relating to regional and village public safety officers; relating to the expansion of the village public safety officer program to include the provision of probation and parole supervision services; and relating to retirement benefits for village public safety officers.

SENATOR RICK HALFORD explained that the bill would do a lot of good with a little bit of money. He spoke to the pilot program for Village Public Safety Officers (VPSO), noting the success in dealing with the probation/parole problem and getting people back to their own communities. He advised that the bill costs a little over \$1 million dollars, however, it would save much more in stopping repeat offenders.

Senator Halford outlined four parts of the bill:

- Parole/probation supervision for VPSO's;
- Pay scale to accompany that responsibility;
- Career path for regional Public Safety Officers; and
- Officers eligible for the State's bottom line retirement system.

He urged that the bill pass from Committee.

Co-Chair Mulder requested comments on Amendment #1 and #2. [Copies on File]. Senator Halford explained that the amendment dealing with the Internal Revenue Service (IRS) would address the taxability question in regard to the system. Current Village Public Safety Officers are employees of the regional non-profit system. There are tax questions whether they are governmental employees. There are other exceptions within that program and because of that language should be inserted to address any tax problems. The second amendment stipulates employee officers within the

list of police officers for the State, clarifying the category which makes them distinct.

Co-Chair Mulder agreed that the pilot program would allow VPSO's the ability to enhance the State's probation/parole opportunities. He asked if the effort was to encourage career opportunities. Senator Halford explained that the turnover rate is very high and that the training costs are high. Eventually, there will be a reduction to the Department of Corrections budget, as those people will not be going back to jail because they failed to make it out of parole or were jobless.

Representative Foster voiced appreciation to the sponsor for the legislation.

JOSIE STYLES, (TESTIFIED VIA TELECONFERENCE), VILLAGE PUBLIC SAFETY OFFICIER (VPSO), PROGRAM DIRECTOR, BERING STRAITS REGION, voiced support for the legislation. She requested that members move the bill from Committee.

Recess: 2:05 P.M.
Reconvened: 4:55 P.M.

MAJOR DOUGLAS NORRIS, (TESTIFIED VIA TELECONFERENCE), ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE, testified in support of SB 145. He noted that the bill addresses State Troopers needs throughout the State. He offered to answer questions of the Committee.

CS SB 145 (FIN) was HELD in Committee for further consideration.

#SB149

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 149

An Act relating to employment incentives for teachers and health care providers, to reemployment of retired teachers, to loans to and loan forgiveness for teachers and health care providers, to awards to teachers, to eligibility for major medical insurance coverage for beneficiaries of the teachers' retirement system, and to teacher certificates; and providing for an effective date.

PAUL ROETMAN, STAFF, SENATOR LORAN LEMAN, noted that SB 149 responds to Alaska's current teacher shortage. It would establish a multi-pronged approach to increase and retain personnel in critical staffing areas. The bill would create a new teacher certification that would allow the State to recognize the credentials of teachers certified out-of-state. The "preliminary teacher certificate" would include

the same endorsements as those on a teacher's current, valid certificate issued out-of-state.

Mr. Roetman added that the bill would ease recertification requirements for teachers previously certified in Alaska through the creation of a transitional teaching certificate. The certificate would be valid for one year during which the teacher would complete requirements for the issuance of a regular teaching certificate.

SB 149 would promote employment of retired teachers through the creation of a retirement benefit election option and it would promote teacher retention by improving coverage and easing qualifications to receive major medical benefits. Under SB 149, a teacher could qualify for 100% medical coverage by:

- Years of service (25 years);
- Age (60 instead of 65); or
- If disabled and appointed to normal retirement.

Vice-Chair Bunde asked if the teacher competency test required of all out-of-state teachers was included in the legislation. Mr. Roetman referenced Page 3, and noted that the manner in which the bill was drafted would make it easier for teachers to be certified within one year.

Representative Davies asked what an out-of-state teacher would have to do to get a regular certificate. Mr. Roetman explained that the preliminary teaching certificate would only last for three years. Within the first year, a practice exam is required and in the two successive years, the teacher would have to meet the course criteria.

Representative Davies asked if the requirements placed in the end of the bill were the same as the bill previously adopted. Mr. Roetman replied that they were identical.

Co-Chair Mulder pointed out that there was a committee substitute, 22-LS0769\W, Cramer, 5/01/01. Vice-Chair Bunde MOVED to ADOPT the committee substitute as the draft of the bill before the Committee. There being NO OBJECTION, it was adopted.

Mr. Roetman explained the differences between the committee substitute and the House HES version of the legislation. He noted that a sectional change had been added in the House HES Committee, incorporating the recertification section. He added that there were minor changes to Page 5, adding the SLA section and on Page 7, the effective date was changed to indicate "four years".

Representative Davies asked if the sunset had been consistent with the current sunset date. Mr. Roetman explained that HB 242 was identical to SB 149. He added that HB 242 was currently in the Senate Finance Committee (SFC).

GUY BELL, DIRECTOR, DIVISION OF RETIREMENT AND BENEFITS, DEPARTMENT OF ADMINISTRATION, noted that the Department supports the proposed version of the legislation. He pointed out the small differences between the retirement sections of the two versions.

Representative Davies asked if the "declaration of shortage" was contained in Section #3. Mr. Bell stated it was.

Representative Davies inquired how that provision would work. He understood that the shortage language would allow for a short-term hire. Mr. Roetman explained that language was intentionally drafted to be liberal in application. The language would not limit the school district from declaring a shortage and would not be prohibitive in hiring retired teachers. Representative Davies interjected that there are two reasons why a school district would hire a teacher; either to teach or to do other projects. He noted that the language stipulates that there would have to be a shortage of teachers in order to hire someone to do special projects.

Vice-Chair Bunde believed that the effect would be that every school district would anticipate a shortage of teachers. Representative Davies stressed that the district could want to hire someone just to do a specialized project. Under the terms of the legislation, they would not be able to do that. Mr. Roetman stated that if it was a non-teaching job, the school district could contract.

BRUCE JOHNSON, DEPUTY COMMISSIONER, DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT, voiced support for the legislation.

Representative Davies asked how about the out-of-state teacher having a preliminary certificate, what they would need to do in order to receive a State teaching certificate. Dr. Johnson noted that the State Board just passed into regulation, a provisional certificate that would be for two years. SB 149 would change that from two years to three years. The bill grants hiring authority with the opportunity to stipulate that a person from another state, who holds a valid regular teaching certificate could come and work in the State of Alaska for three years. There are requirements that must be met. They would have to take the competency exam and may have to take an Alaska studies and Alaska history course. Those requirements would be time period specified. Dr. Johnson explained that those requirements are established through regulation.

Representative Davies asked if the districts could currently hire a teacher to do a special project and still have that person receive their retirement benefits. Dr. Johnson advised that districts are allowed to currently do short term contracts as an independent contractor.

MELISSA HILL, (TESTIFIED VIA TELECONFERENCE), PROGRAM DIRECTOR, ALASKA TEACHER PLACEMENT, FAIRBANKS, voiced support for the legislation.

Representative Hudson MOVED to report HCS CS SS SB 149 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes.

HCS CS SS SB 149 (FIN) was reported out of Committee with a "do pass" recommendation and with fiscal notes by #1 Department of Administration dated 4/24/01 and #2 by Department of Education & Early Development a zero note dated 4/24/01.

#SB158
CS FOR SENATE BILL NO. 158(RES)

An Act directing the commissioner of revenue to prepare a report to the legislature relating to the state's participation in owning or financing a gas pipeline project; and providing for an effective date.

DARWIN PETERSON, STAFF, SENATOR JOHN TORGERSON, stated that commercialization of North Slope natural gas has been one of the Legislature's priorities. SB 158 would direct the Commissioner of the Department of Revenue to retain a financial expert to examine whether the State should participate in either ownership or financing of a natural gas pipeline project. The expert would examine any benefit or detriment to a project caused by the State's participation.

Mr. Peterson continued, the bill would ensure that the Legislature participates in the preparation of the report by:

- Requiring that the chairs of the Senate and House Resource Committees periodically meet with the expert to review data and information about there report; and
- Require that the Commissioner of Department of Revenue provide progress reports to the chairs every 60 days. The bill would require the Commissioner to prepare a comprehensive report, with recommendations, addressing the State's options by January 31, 2002, and submit it to the Legislature and the Governor.

Co-Chair Mulder asked the name of the new committee established to address gas and oil concerns. Mr. Peterson replied it was the Joint Committee on Natural Gas Pipelines, which was established for the remainder of the 22nd Legislature. Co-Chair Mulder inquired if it would be more appropriate for the report to be focused on that Committee. Mr. Peterson believed that it would and commented that the sponsor would support that motion.

Vice-Chair Bunde inquired if there was anything included within the bill which the Commissioner currently does not do. Mr. Peterson deferred that comment to Commissioner Condon.

Representative Lancaster referenced Page 2, Line 28, "the State should participate". Mr. Peterson referenced Page 2, Line 2, and inclusion of the language "whether the State should participate".

Representative Davies voiced concern with the separation of powers in requesting the Commissioner to provide a report for the Legislature. Mr. Peterson responded that the sponsor envisions that the Commissioner of Revenue will work directly with the report. He noted that there are a lot of experts in that Department.

Representative Whitaker inquired the base line for data analysis. Mr. Peterson did not know. He noted that the Department had done similar reports in the past. Representative Whitaker commented that it was important to know what the procedures would be.

WILSON CONDON, COMMISSIONER, DEPARTMENT OF REVENUE, offered to answer any questions of the Committee.

Representative Whitaker asked if the basis for analysis could be contained in the requested reports. Commissioner Condon replied that the report would contain whatever information the Department could "get their hands on". He stated that they did not have a particular report in mind at this time. The data would be available for both a third party and legislative review.

Representative Hudson asked if the fiscal note would be adequate to achieve the intended goal. Commissioner Condon responded that the Department would be able to accomplish the work with that note.

Representative Lancaster asked if the report would include tariff rates and costs. Commissioner Condon explained that it would reference tariff costs, however, those costs are not known until they are set.

Representative Davies referenced Page 3, Section 2, and asked if there could be a conflict of who would be "running" the contract. Commissioner Condon understood that the Commissioner of Revenue would administer the contract.

Representative Davies reiterated his concern with that language and thought that the legislators would be controlling the preparation and content. Commissioner Condon did not read the language that way. Following the completion of the report, the contractor would be available to the Legislature to address what they used to prepare the report. Mr. Peterson read the language the same way as the Commissioner. He stated that the experts would share the data that they used to prepare the report. That information could be provided during the preparation of the report.

Representative Davies declared for the record that he hoped that legislators would not be telling the Commissioner how to prepare the report. Mr. Peterson stated that was not the intent of the sponsor.

Co-Chair Mulder offered a conceptual amendment, to Page 3, Line 9, inserting language which clarifies that the report comes back to the Joint Committee on Natural Gas Pipelines. Representative Davies argued that another location in the bill would be more appropriate.

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Co-Chair Mulder commented that the amendment could be made on the House Floor. Following Committee discussion, Co-Chair Mulder suggested moving the bill out of Committee "as is".

MIKE TIBBLES, STAFF, REPRESENTATIVE WILLIAMS, commented that he could have the language drafted as indicated by Co-Chair Mulder.

Co-Chair Mulder proceeded to MOVE the conceptual amendment. There being NO OBJECTION, it was adopted.

Co-Chair Mulder referenced the fiscal note.

Representative Lancaster MOVED to report HCS CS SB 158 (FIN) out of Committee. There being NO OBJECTION, it was so ordered.

HCS CS SB 158 (FIN) was reported out of Committee with a "do pass" recommendation and with a fiscal note #1 by Department of Revenue dated 3/29/01.

#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.

Representative Davies WITHDREW Amendment #2. [Copy on File]. There being NO OBJECTION, #2 was WITHDRAWN.

KEVIN BRADY, (TESTIFIED VIA TELECONFERENCE), ATTORNEY, OLES MORRISON RINKER & BAKER LLP., ANCHORAGE, testified in support of the Legislation. He offered to answer any questions of the Committee.

Vice-Chair Bunde asked Mr. Brady for a comment on the time line. Mr. Brady explained that document had not yet been provided to his firm. In response to comments made by Co-Chair Mulder, Mr. Brady advised that language was standard specification from the State procurement contact language. He noted, for a practical matter, it is not what actually takes place. From those that intend to claim, in order to procure an officers decision, there must be a period in excess of 18-24 months unless the contractor demands immediate action. To forestall that process, the engineer would request additional information on the 25th or 29th day. And then the procurement officer would request additional information on the 70th to 89th day.

Mr. Brady claimed that was the problem in that would be the incentive to delay the process. If interest were accruing, there would be no incentive to delay the process. He added, the engineer's position would be to say that the contractor is entitled to nothing. It would not be until the contractor got beyond those hurdles that he would receive a fair hearing by a hearing officer.

Representative Whitaker summarized that the bill relates to the point in time in which interest would begin to accrue. Mr. Brady understood that interest begins to accrue from the date the claim is filed. Mr. Brady stated that would occur within 45 days of the contractor filing his claim. The process is such that the contractor files his intent to claim, if it cannot be worked out on site, then between the contractor and the resident engineer within 7 days, the contractor would have 14 days to file his formal notice of Intent to Claim. Then the contractor has an additional 30 days in which to put together all the information and get it certified.

THYES SHAUB, LOBBYIST FOR THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA, ANCHORAGE, noted that she had assembled a flow chart of the Current Department of Transportation & Public Facilities Claims/Resolution Procedures. [Copy on File]. She noted that the 90 days spoken about in the Procurement Code is the 60 days plus the 30 days separated out on the chart. There is another 90-day period after the claim is filed with the contracting officer or the procurement officer. The way in which SB 152 is currently written, the point in which interest would accrue after filed with the procurement officer.

Vice-Chair Bunde understood that would take 111 days. Mr. Brady clarified that some events occur in which the contractor must immediately report to the engineer. There is a 7-day period, during which the contractor and the engineer must work together to establish a resolution. If that does not occur within 7 days, the contractor must file a notice of intent to claim within 14 days. Upon filing the notice of intent to claim, the contractor must submit his actual claim within 60 days. The total number of days would be 81.

Vice-Chair Bunde asked at what point would the interest clock begin. Mr. Brady replied that the interest would begin on the day that the contractor certifies his claim. The Department could either request additional information or kick it back because it does not meet the statutory requirement. That would be the date that the Department of Transportation & Public Facilities would have a formal notice. The Department has the benefit of 81 days.

Co-Chair Mulder understood that interest would not take effect until the formal claim, but rather when the claim is filed with the contracting officer. Mr. Brady responded that there is a disconnect between the standard specification for dispute and the actual statutory regime.

Discussion followed among Committee members regarding the accruing of interest. Vice-Chair Bunde hoped to create a balancing act between the State and the contractors. He asked if there was an advantage of establishing a time limit. Mr. Brady replied that there is no advantage to delaying the certification of a claim.

Vice-Chair Bunde asked Mr. Brady's reaction to changing the interest clock ticking 80 days after the initial claim. Mr. Brady replied that the fundamental problem would be that delaying would act as a disincentive for the Department to process the information in the contractors claim. Interest does not begin to accrue on the contractors claim until he submits it after that 7-day period, 14-day period or the 60-day period. Vice-Chair Bunde emphasized that would be the maximum. Mr. Brady agreed.

Vice-Chair Bunde saw no incentive for the contractor to provide information if the interest clock started ticking on day #1. Mr. Brady disagreed. He stated that there are jobs in which the contractor takes losses. The last thing that the contractor wants to do is call a lawyer. He would rather negotiate a claim than to get involved in a costly battle. He emphasized that there is no incentive for the contractor to delay his claim.

Vice-Chair Bunde interjected that the Committee was attempting to reach a compromise. He noted that there should always be a contingency.

BILL REYNOLD, (TESTIFIED VIA TELECONFERENCE), ATTORNEY, OLES MORRISON RINKER & BAKER LLP., ANCHORAGE, interjected that the filing concern would not provide a benefit to the contractor. The interest would not start to run until the contractor had certified it. The motivation of the contractor would be to file as soon as possible.

Representative Croft referenced Amendment #3. [Copy on File]. The amendment would insert "filed" and delete "under" and insert "that meets the requirements of" on Page 1, Line 13. He believed that could provide a complete standard. Mr. Reynold agreed and suggested that language be included. Mr. Brady noted that language would clarify and make it concrete that the contractor files a complete claim.

Representative Whitaker asked the definition and determination of what "complete" is and how it would be interpreted. Co-Chair Mulder advised that a definition for completed claim does exist.

Representative Hudson pointed out that Page 1, Line 12, calls for time lines for the controversy asserted by the contractor and provides for the required flexibility. He noted that in the context of the bill, it was well defined. The final decision of the procurement officer is the date that the interest begins to accrue.

Representative Croft ascertained that there was not sufficient language to protect the contractor's interest. The claim language should be complete.

Representative Croft MOVED to ADOPT Amendment #3. Co-Chair Mulder OBJECTED for the purpose of discussion.

DOUG GARDNER, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, offered to answer questions of the Committee. Representative Croft asked if on Page 1, Line 13, deleting the language "the claim was filed under" and inserting "a complete claim was filed and meets the requirements of" would work. Representative Croft MOVED that language as the

new Amendment #3. Co-Chair Mulder OBJECTED for the purpose of discussion.

Mr. Gardner commented that he was not sure how that would change anything. He stated that would continue to keep the legislation in a gray area. If that were the case, the Committee should consider an amendment to AS 36.36.25.

Co-Chair Mulder explained that that was not the case at this time. Mr. Gardner stated that it is not unusual to get to a commissioner hearing officer stage and find that a party has a new case, a new set of legal theories for recovery and new facts. If you want to tackle a problem of a completed claim and do it through the proposed Amendment #3, adding language specifying that is the claim, then the amendment could address that; however, without that language added, the amendment will keep the State in a gray area.

Co-Chair Mulder acknowledged that was reasonable. He asked if the rules of engagement were tightened, would it then be an appropriate compromise. Mr. Brady noted that he had reviewed the language of Amendment #4. [Copy on File]. Co-Chair Mulder corrected Mr. Brady's comment to the amendment. Mr. Brady responded that the problem exists with how it would relate to the claims process.

Mr. Brady explained the process. The contractor already knows that he will not get relief from the engineer. The only real adequate relief that he has the opportunity to get would be through the hearing officer. The contractor would document his plan and provide all the information that he has, but to have a fully developed case takes a great deal of time and effort. Adding the amendment would simply give the Department of Transportation & Public Facilities an excuse to state that the information had not been previously presented.

Mr. Gardner referenced the letter from Mr. Brady's law firm dated May 1st, suggesting that all the information would be provided in that period. He stated that the clients are not having a difficult time meeting that time line. In the language, the appeal may not raise new factual issues or theories of recovery. The contractors could be working on two jobs at the same time. And standards should not be less in the State system. He knew that the Committee was struggling to determine a "level playing field". Mr. Gardner referenced a fair spot. If the Department gets a fair chance to hear everything, and the Department makes a mistake, the Committee owes it to the Department to let them have a full and complete claim.

Vice-Chair Bunde commented on information contained in the handout from the Department of Law, clarifying that it would apply to most construction projects run by State agencies

including and not limited to Alaska Industrial Development Export Authority (AIDEA), Alaska Energy, Department of Administration, Department of Fish and Game, and the Department of Health and Social Services. He asked if that was accurate.

Mr. Gardner replied that there are some agencies that do not fall under AS 36.36.30. Mr. Gardner added that those agencies received their delegation of authority from Department of Transportation & Public Facilities.

Vice-Chair Bunde advised that if it is important for the Department of Transportation & Public Facilities that it should be important for all major projects that the State contracts for.

Co-Chair Mulder WITHDREW his OBJECTION to Amendment #3. There being NO further OBJECTION, Amendment #3 was adopted.

Representative Davies MOVED to ADOPT Amendment #4. [Copy on File]. There being NO OBJECTION, it was adopted.

Representative Lancaster MOVED to report HCS SB 152 (FIN) out of Committee with individual recommendations and with the attached fiscal notes. There being NO OBJECTION, it was so ordered.

HCS SB 152 (FIN) was reported out of Committee with a "do pass" recommendation and with indeterminate fiscal notes by #1 Department of Transportation & Public Facilities dated 4/25/01 and #2 by Department of Community & Economic Development dated 4/11/01.

#

ADJOURNMENT

The meeting was adjourned at 6:20 p.m.