HOUSE FINANCE COMMITTEE
February 28, 2002
1:54 PM

TAPE HFC 02 – 33, Side A
TAPE HFC 02 - 33, Side B
TAPE HFC 02 - 34, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:54 PM.

MEMBERS PRESENT

Representative Eldon Mulder, Co-Chair
Representative Bill Williams, 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

No absences

ALSO PRESENT

Representative Norm Rokeberg; Representative Drew Scalzi Anne Carpeneti, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law; Jerry McCune, United Fishermen of Alaska, Juneau; Mary McDowell, Commissioner, Commercial Fisheries Entry Commission; Jim Nordlund, Director, Division of Public Assistance, Department of Health and Social Services.

PRESENT VIA TELECONFERENCE

Sandy Hoback, American Institute of Full Employment Oregon.

SUMMARY

HB 288 "An Act relating to commercial fisheries limited entry permit buy-back programs."

HB 288 was heard and HELD in Committee for further consideration.

HB 330 "An Act relating to providing alcoholic beverages to a person under 21 years of age."

CSHB 330 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published fiscal notes: LAW (1), ADM (2) and DOR (3).

HB 402 "An Act relating to diversion payments, wage subsidies, cash assistance, and self- sufficiency services provided under the Alaska temporary assistance program; relating to the food stamp program; relating to child support cases that include persons who receive cash assistance or self-sufficiency services under the Alaska temporary assistance program; and providing for an effective date."

CSHB 402 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published fiscal note: HSS #1.

#hb330

HOUSE BILL NO. 330

"An Act relating to providing alcoholic beverages to a person under 21 years of age."

REPRESENTATIVE NORMAN ROKEBERG, SPONSOR, testified in support of HB 330. He observed that a major tragedy occurred in Anchorage last summer. An Anchorage police officer, Justin Wollan, was killed in an automobile accident. The officer was killed when he was hit by a teenager [under the influence of alcohol], who perished along with other young people in the automobile. The two individuals that were convicted of furnishing alcohol to a minor could only be charged with misdemeanors. The legislation would raise the penalty for a person who furnishes alcohol to a minor from a misdemeanor to a class C felony, if the action of the minor results in serious injury or death. A class C felony is punishable by a sentence of up to five years and up to a $50 thousand dollar fine. A misdemeanor is limited to up to one year in prison and up to a $5 thousand dollar fine. He noted that in the Anchorage incident one of the individuals was convicted of two counts of misdemeanor furnishing alcohol to a minor and sentenced to a maximum penalty of two consecutive years [in prison] and a fine of $10 thousand dollars. The legislation would allow the judge to pursue a felony if the situation is egregious; where there was a serious injury or death as a result of the cause of drinking alcohol.

Representative Croft spoke in support of the legislation’s intent. He questioned if “negligently causes serious physical injury" would include "intentionally" causing

serious physical injury. Representative Rokeberg noted that the standard is simple negligence. Representative Croft asked if the legislation would cover a case where a minor who was provided alcohol assaulted somebody or, as in Officer Wollam's case, they intentionally drove across the meridian. Representative Rokeberg deferred the question to legal counsel.

Representative Croft expected the legislation to tie the harmful act to the intoxication. He asked the legal standard for "under the influence". He questioned if it would be the .08 blood alcohol content (BAC) level or the alcohol having any affect on the conduct. Representative Rokeberg thought that the standard was changed from .10 BAC to .08 BAC. He pointed out that impairment is .04 BAC.

Representative Croft concluded that impairment would be included. Representative Rokeberg agreed, in that it affects the actions of the youthful miscreant. He stated that it was his interpretation that "impairment" would be included under the legislation.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW provided information regarding the legislation. She clarified that the Department interprets the law to be "under the influence" of an alcoholic beverage. She pointed out that the state prosecuted DWI cases for "under the influence" prior to blood alcohol standards and breathalyzers. She observed that it is a question of fact; whether or not the state can prove beyond reasonable doubt that the person was under the influence of alcoholic beverages. "Under the influence" is not defined statutorily. There are definitions of drunken person in Title 4. "Under the influence" is a term that courts apply depending on the individual defendant and the surrounding circumstances of their behavior.

Representative Croft reiterated that he expected to see a nexus between providing the alcohol, specifically being under the influence, and the negligence. He noted that [the legislation pertains] to persons who cause physical injury and are under the influence, without any link that indicates that the drunken state was a contributing factor to or was a substantial factor in the injury. Being negligent and being under the influence are independent in the bill.

Ms. Carpeneti thought that the conditions were connected. She thought “while under the influence of the alcoholic beverage received in violation of the section" speaks to the intent of the legislation. She noted that the intent was to cover situations where individuals furnish alcoholic to minors and [the minor] goes out and hurts people because of their alcoholic intoxication. She emphasized the difficulty of defining “under the influence” because it depends on the

person. Young people tend to be influenced at a lower level of alcohol than more experienced drinkers.

Representative Croft observed that in cases where a license holder in alcohol provides alcohol to a minor or someone who is intoxicated, and they can be held civilly liable do not require that it be shown that the particular alcohol that was sold contributed to the accident, but they do require a link to the actual drunkenness to the incident. He stressed that there is precedent for linking the intoxicated state to the negligent act.

Representative Rokeberg noted that the previous versions of the bill connected both negligence and under the influence; both negligence and under the influence would have to be present. The current statute for .08 BAC is driving while intoxicated.

Ms. Carpeneti explained that criminal law sets a certain culpable mental state for the state to prove in order for a person to be found guilty of an offense, Title 11 provides that any culpable state more serious than that stated, qualifies for that culpable mental state. She explained that if the standard is criminal negligence and a person is proved to have acted recklessly then they could be convicted for criminally negligent homicide under the circumstances. Representative Rokeberg added that the standard is civil negligence.

Representative Lancaster questioned if drugs could be included. Representative Rokeberg pointed out that Title 4 deals with alcohol. The inclusion of “controlled substances” would need to be included under another title.

Representative Lancaster questioned if there is a way to present the message without the legal penalty. Representative Rokeberg noted that other laws have required the posting of signs. He did not think that [posting signs] would be warranted if the state does its job and gets the word out. He expressed the hope that people would become aware that the Legislature has reacted to the Anchorage tragedy. He maintained that young people and children often know the laws, such as minor possession, before adults.

Representative John Davies asked for further interpretation regarding the language contained in the legislation.

Ms. Carpeneti explained that Title 11 speaks to the person that furnishes alcohol to a minor, which results in harm to other persons.

Representative Croft read A.S. 11.81.900:

(1) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Representative John Davies questioned if a person would be criminally negligent if they had alcohol in their cupboard and knew that [the minor(s) who consumed the alcohol and subsequently committed an offense which causes harm to another person] knew that it was there. He also questioned if a person provides alcohol [to a minor] and the minors promise not to go anywhere but subsequently go out and drive, if the person would be criminally negligent. Representative Rokeberg observed that there were substantial discussions in the House Judicial Committee on the "hosting event" issue. He explained that criminal negligence is on the part of the person that furnishes. The person that does the act would also have to be negligent and cause physical harm. Supervision around the dispensing of alcohol, such as from a parent to a child, is recognized as legal under the statutes. There are circumstances that are allowed under Title 4 for hosting. He did not think that the situation in a home where there was no supervision would be qualified as a criminally negligent activity.

Ms. Carpeneti stressed that, as in all criminal cases, it depends on the facts. If the alcohol is in a cupboard and the person doesn't invite their children or their friends to use it they would not be criminally negligent. If the adult invites the underage children to consume the substance then they would be negligent because they would know that there was a risk that the minors would drink [the alcohol]; they would be inviting them to violate the law.

Representative John Davies concluded that the alcohol has to be provided with criminal negligence and secondly, the person has to negligently cause physical injury. Ms. Carpeneti stated that the legislation is more of a penalty provision because the law already prohibits providing alcohol to minors.

Representative Rokeberg interjected that the legislation is just stepping up the penalty provision. Ms. Carpeneti pointed out that the second time a person furnishes alcohol to a minor they can be charged and convicted of a class C felony.

Representative Croft questioned if someone who creates an intentional act would be covered. Ms. Carpeneti stated that

the intent was that an intentional act be covered as long as the child is acting under the influence of alcohol at the time.

Representative Croft expressed concern that an adult that allows their 19 or 20 year old child to have a beer would be the guarantor of their subsequent conduct.

Representative Rokeberg pointed out that it is currently a misdemeanor [to furnish alcohol to a minor] even if the child does not injure someone. Representative Croft concluded that it would be a class C felony if a person negligently furnishes a minor with alcohol, who causes injury, even if it is not related to being under the influence.

Ms. Carpeneti noted that it would be class C felony if it were the second occasion and no one was hurt. The clear intent is that the injury is related to "under the influence".

In response to a question by Representative Foster, Representative Rokeberg reviewed the sentencing of the individuals convicted of furnishing alcohol to the minors involved in the Wollam case.

Representative Harris referred to the fiscal note by the Alaska Public Defenders Agency. The Alaska Public Defenders Agency expressed concerns regarding determinations and what constitutes an "injury". Representative Rokeberg noted that the definition is in Title 11. He explained that “serious physical” was added [to injury].

Vice-Chair Bunde drew the parallel of a loaded firearm and questioned if it would be negligent to have a loaded firearm in a home where it is misused and someone is injured. Ms. Carpeneti did not know the civil negligence ramifications under the law. On a personal level, she felt that it would be egregious to leave loaded guns where children could get them and felt that it could rise to civil negligence. It would depend on the facts. Vice-Chair Bunde asked if alcohol in the home would potentially have the same problems as the loaded firearm. Ms. Carpeneti responded that alcohol has the potential of being very harmful, "as we have seen, over and over."

Representative Rokeberg noted that there is another piece of legislation on the issue, which provides a cause of action in civil damages that would come before the committee. The could not be combined due to the single subject rule.

Vice-Chair Bunde stated that he did not think it was negligent to have a bottle of wine in an unlocked cabinet.

Ms. Carpeneti agreed and explained that the legislation addresses “furnishing” which is much more serious.

Representative Whitaker agreed with the intent but questioned the threshold necessary to achieve the intent. He summarized that there must be a provision of alcohol by an adult, which is currently a misdemeanor. Then there must be a criminally intent occurrence, which also has a provision of negligence associated with the minor. He questioned if both were necessary to make the penalty more severe. Ms. Carpeneti explained that the legislation addresses the penalty section. The legislation provides a standard for the negligent furnishing of alcohol to a minor to be classified as a class C felony on the second occurrence within a five-year period. The legislation also provides a class C felony if the alcohol was given to a minor with criminal negligence and the minor commits an act with civil negligence (after they received and consumed the alcohol), which results in serious physical injury or death to another person.

Representative Whitaker concluded that criminal negligence must be attached to the provision of alcohol to the minor. Ms. Carpeneti explained that for the offense to move to the next penalty that there would have to be a past occurrence of furnishing to a minor; or the minor would have to commit an act, which causes serious physical injury [or death], with some degree of negligence.

Representative Whitaker questioned if the act of illegally receiving and consuming the alcohol could be deemed to be negligent on the part of the minor, automatically rising to the second standard. Ms. Carpeneti did not think that the mere act of drinking the alcohol would raise the standard. The minor would have to drink the alcohol and then act in some way that was not free from guilt. Alcohol consumption alone would not be considered civil negligence on the part of the receiver. The child is breaking the law by consuming, but it is a violation, not a crime. The law does not make the association.

Representative Hudson questioned if the current law defines "provider". He questioned if a parent who had a bottle of scotch in the cupboard, which was consumed by minors, would be guilty of a felony. Representative Rokeberg pointed out that a person may not furnish or deliver an alcoholic beverage to a person under the age of 21. It must be a willful act on the part of the deliverer. Merely having a bottle of wine in the cupboard would not be negligent.

Vice-Chair Bunde acknowledged the egregious behavior of providing alcohol to 13 - 14 year olds. He observed that there are indeterminate fiscal notes from the Department of Corrections and the Alaska Public Defenders Agency. He

questioned the fiscal impact. Representative Rokeberg emphasized the difficulty of making projections about discrete criminal activity and did not think that the statute would be frequently enforced. He noted that the law would be put on the books as a deterrent. He could not determine the specific cost. There would already be a charge under current law. The statute change would result in additional hard time.

Vice-Chair Bunde questioned how many people had been charged with furbishing alcohol to a minor in the last 5 years, whether or not a serious accident was involved. Representative Rokeberg observed that the fiscal note was based on the original draft, which spoke to “injury”. The current version speaks to “serious [physical] injury”. Vice-Chair Bunde reiterated that they should be able to tell how many cases occurred in the past five years.

Co-Chair Mulder summarized that there is a certain amount of anxiety about the family member who is caught in a bad situation, which was not intentional, but could somehow be construed as negligent. He emphasized that it is difficult to establish the negligence standard in court. Ms. Carpeneti explained that the culpable state of criminal negligence must be proved beyond a reasonable doubt. Co-Chair Mulder felt that the provision would only occur in extreme cases. Ms. Carpeneti agreed. She thought that the Department of Law would have looked at statistics for second offenses. She reiterated that it would be utilized for extreme cases, "not for your everyday furnishing, which is not the most common offense anyway." Co-Chair Mulder stated that he would support the legislation with the assurance that it would be used for extreme cases.

Representative John Davies questioned if the simple provision of alcohol to a minor is by definition criminal negligence. Ms. Carpeneti noted that criminal negligence, which is a higher standard, would have to be proved in order to convict someone of a class C felony.

Representative Davies asked if: "I were in my house, [and] I provided alcohol to a friend of my son's or daughter's, is that provision of alcohol to a minor criminally negligent?" Ms. Carpeneti responded that it would be criminally negligent, if he knew that they were minors. Representative Davies concluded that the simple provision of alcohol to a minor is by definition criminal negligence.

Representative Rokeberg observed that under AS 04.106.051, the mere act of the misdemeanor would not be negligent. Representative Davies disagreed with Representative Rokeberg's interpretation of the statute. He concluded that he would be criminally negligent if he provided a beer to the underage friend of his son's. Ms. Carpeneti affirmed

that it would be criminally negligent if he knowingly provided the alcohol to minors.

Representative Davies MOVED to ADOPT Amendment 1: Page 1, line 12 delete, "while" and insert "as a result of being".

Representative Rokeberg stated that he would not object to the amendment if there were no objections from the Department of Law.

Representative Davies clarified that the intent of the amendment is to make it clear that there is a causal element. He stated that there could be circumstances where the fact of the alcohol could be a non-issue in the cause of the injury.

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Ms. Carpeneti expressed concern that if the minor received alcohol from multiple sources it would be impossible to prove that it was the result of one particular place.

Representative Davies stressed that the furnisher might not be criminally negligent if there were multiple sources that they were not aware of. She acknowledged the intent to specify causation, but argued that the intent could be established without having to proving that a particular alcohol was the one that caused the injury to a person.

Representative John Davies WITHDREW his amendment.

Representative John Davies MOVED to ADOPT Amendment 2: insert “acting” after "while" on line 12, page 1. There being NO OBJECTION, it was so ordered.

Co-Chair Mulder observed that the fiscal notes were zero and MOVED to report CSHB 330 (FIN) out of Committee with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 330 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published fiscal notes: LAW (1), ADM (2) and DOR (3).

#hb288

HOUSE BILL NO. 288

> "An Act relating to commercial fisheries limited entry permit buy-back programs."

REPRESENTATIVE DREW SCALZI, SPONSOR, spoke in support of the legislation. He observed that the legislation would change state statutes governing the buy back provision, currently allowed under the limited entry permit system. He noted that the bill removes the requirement that a state buyback

program be implemented after determination from an optimum number study that the optimum number of permits is lower than the number of permits currently in fishery. The legislation eliminates the requirement that a buyback program, buy out vessels and gear as well as permits. This is the biggest detriment to a buy back program. He maintained that the provision has prevented the implementation of a program since its inclusion in statute 28 years ago. [Buying back vessels and gear] is a very cumbersome and costly process.

Representative Scalzi explained that the legislation also eliminates the mandate for a “dedicated fund”, which is a constitutional problem that exists in the funding mechanism under current law. The provision provides that an assessment on fishermen go directly into a buyback fund. Currently, assessments go to the general fund and the legislature has the discretion to appropriate the funds. The Commission has no taxing authority. The provision [for a dedicated fund] would be eliminated because it is constitutionally illegal.

Representative Scalzi observed that the legislation makes only transferable permits eligible for buyback. (Current law has provision for buying out nontransferable permits if sufficient funds are available in the buyback fund.) He acknowledged those with a nontransferable permit would be unhappy with the provision, but emphasized that it would help to extenuate a cheaper buy back program.

Representative Scalzi summarized the remaining changes incorporated in the proposed committee substitute. The committee substitute would eliminate the requirement to buy the permits back within a 10-year period. The holder of a permit may voluntarily relinquish their permit (whether under a fleet consolidation or for any other reason). The committee substitute also adds a definition of “optimum number” to set an optimum number range, rather than one number. The Commission doesn't know the optimum number that would constitute a buy back. The only way that the Commission can do it now is to throw out a number, buy the permits to that number and then go to a judicial test; the courts would decide the actual optimum number. He observed that there is a disincentive since the court could rule permits must be put back into the system if the buy back is too low.

Representative Scalzi reiterated that under the current law, the permit, vessel, and gear would have to be bought out, which would be cumbersome and expensive. The legislation would help streamline the process.

Vice-Chair Bunde questioned which limited entry permits would be non-transferable.

Representative Scalzi explained that there were non-transferable interim permits.

Vice-Chair Bunde questioned if permits that are bought back would still be transferable and could be reissued if the fisheries regained strength or would they always remain property of the state. Representative Scalzi explained that the permits would be retired unless the court required them to be issued.

In response to a question by Vice-Chair Bunde, Representative Scalzi noted that there is a zero fiscal note because the provision already exists. Until a buy back plan is implemented there is no cost. The state controls the resource and permits, but those remaining in the fishery would pay for the Fund. The provision was removed because the dedicated fund portion was illegal. However, a collected program receipts such as operates under Alaska Seafood Marketing Institute would be possible and the sponsor would not object. A buy back plan would be tailored to each individual area. He observed that other legislation would allow a consolidation and stressed that the intent is to stimulate buy backs.

Vice-Chair Bunde questioned if the legislation would make a buy back more likely and asked when a buy back program would begin. Representative Scalzi noted that there have been no buy backs since 1974, due to the difficulty.

Co-Chair Mulder noted that: "The commission may establish a buy-back program, a buy-back plan, and a buy-back fund for that fishery. If the commission establishes a buy-back program for a fishery, the commission shall request the legislature to appropriate money…" He asked why "shall" was used instead of "may". He clarified that it would be funded through an assessment of the membership.

Representative Hudson observed that it would be similar to the funding of the Northern/Southeast Aquaculture Associations. Co-Chair Mulder pointed out that there are alternative means to asking the legislature for a "big check." He suggested that the language be clarified to indicate that a general fund expenditure is not expected; it would be an other funds expenditure.

Representative John Davies questioned if the intent was for the Fund to be capitalized with an appropriation from the legislature. Co-Chair Mulder noted that he would not support capitalization by the legislation.

MARY MCDOWELL, COMMISSIONER, COMMERCIAL FISHERIES ENTRY COMMISSION, DEPARTMENT OF FISH AND GAME explained that the intent was to get around the designated fund source problem, with the understanding that an assessment of fishermen would

be the most likely source of funds. Any money collected has to come into the general fund and be appropriated by the legislature. The current language does not provide authority for an assessment on fishermen. She observed that language would need to be added. There is a question as to whether the Commercial Fisheries Entry Commission has taxing authority. Language would need to be drafted to allow funds collected off fish sales to go through the Department of Revenue. She clarified that state funds for a buy back are not anticipated. The legislature would be the source of the pass through funds. There may be some federal funds. The legislation removes the provision to automatically kick into a state run buy back program if an optimum number study determined that there are too many permits in the fishery. Under current law, if a study were done, the state would automatically kick into a buy back program [if the number of permits exceeded the optimum number. Fishermen are interested in pursuing other options such as federal funding. The legislation would provide the flexibility for the Commission to do an optimum number study. She noted that there is a risk [without an optimum number study] that the court would declare that the fisheries is too exclusive and permits would have to be put back in [after a buy out] and all of the effort and expense of buying permits would have gone to waste. Fishermen would like help in determining a defensible range, so that they would have some assurance that that they won't be forced to put bought out permits back into the fisheries.

Representative Lancaster summarized the need to clarify the funding source.

Representative Scalzi explained that is the current language identifies the legislature for the appropriation. The state controls the fisheries and the permitting process.

Representative Hudson agreed that clarification is needed to establish the funding source; how it is to be accounted for; and the responsibility of all the participants. He noted that aquaculture associations tax members a little so that the funds continue to grow. He agreed that section 5 needs more work. He thought that the language inferred that the legislature would put the “seed” money into the fund. He noted that the money would go out but nothing would come in. Both need to happen. He observed that the remaining members might want to underwrite an assessment in order to refuel the fund. He agreed concluded that more work needs to be done regarding an assessment.

Ms. McDowell recounted discussions with fishermen. She noted that if a particular fleet had an optimum number determination which showed that it was necessary to buy out some of the permits a plan would be establish, which would probably included an assessment. A statutory request would

then be brought back to the legislature for that fishery. Buy back programs would be specialized for the individual fisheries. There has been an assumption that the fishermen would have to pay for the program "one way or anohter." An assessment would have to be authorized in another piece of legislation if it is not included in section 5.

Representative Hudson recommended the addition of assessment authorization.

Representative Scalzi did not object to the addition of assessment authorization. He acknowledged that it has been difficult to get fishermen to consider a buy back program. There is no one that feels that the state of Alaska is going to pub money into a buy back program without an assessment. The language was removed because it was illegal. He observed that there are concerns regarding a mandatory buy back program.

Representative John Davies did not think that the Commission could establish a fund. There needs to be a receiving fund and an expending fund created by the legislature. He stressed that the intent needs to be clarified if it is to be a sub fund in the general fund.

Ms. McDowell noted that discussions with the sponsor occurred regarding an assessment of fishermen, which the legislature would appropriated for the intended use. There was legal concern about the Commission's taxing authority to implement an assessment. An amendment would be needed to allow the Department of Revenue to collect the funds.

HB 288 was heard and HELD in Committee for further consideration.

#hb402

HOUSE BILL NO. 402

> An Act relating to diversion payments, wage subsidies, cash assistance, and self- sufficiency services provided under the Alaska temporary assistance program; relating to the food stamp program; relating to child support cases that include persons who receive cash assistance or self-sufficiency services under the Alaska temporary assistance program; and providing for an effective date.

REPRESENTATIVE FRED DYSON spoke in support of HB 402. He explained that the legislation would take Alaska Temporary Assistance to Needy Families (TANF) funds and food stamps to subsidize employment. Instead of receiving a welfare check clients would get a job. This would allow small businesses to employ persons that they might not otherwise have been able to justify. He noted that in the state of Oregon 65 - 85 percent of their clients retained their jobs after the

subsidy period. He noted that Sandy Hoback, American Institute of Full Employment Oregon, helped to draft the legislation based on the experiences of the state of Oregon.

This bill authorizes full family sanctions, which allows the Department to sanction (withdraw benefits) until a job is found. The bill repeals the limit of the percentage of people on welfare that can extend the benefits past 60 months. There is currently a 20 percent limit. The department supports the lifting of the 20 percent cap. There are some people that will not be able to make the transition due to disabilities or other problems. A percentage of hard-core welfare people will need to have continued assistance. He acknowledged concerns that elimination of the 20 percent cap could be taken advantage of and that there should be some limits. He observed that the legislature could require a report regarding the number of waivers or exceptions.

Representative Dyson provided members with a committee substitute for consideration. He acknowledged that concern remains regarding the 20% limit. The proposed committee substitute raises the limit to 30 percent for discussion purposes.

Representative Hudson MOVED to ADOPT the committee substitute 22-LS1431\F, Lauterbach, 2/27/02. There being NO OBJECTION, it was adopted.

JIM NORDLUND, DIRECTOR, DIVISION OF PUBLIC ASSISTANCE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, voiced his appreciation for creation of the bill. He noted that the department supports all five provisions of the bill. He noted that the department has some trepidation with the family sanction provision. This provision would require the department to fully sanction a family off benefits for failure to cooperate with the program. He pointed out that very few families are not cooperative with the Department. He noted that the department would support the provision with adequate protection to make sure that the department does not make a mistake in cutting off a family’s benefits. He stressed the need to for a determination to fully explain the sanction to the family.

Mr. Nordlund discussed the 20% provision. He noted that of the temporary caseload, 20% of the current caseload can be exempt from the 5 year limit. He observed that the caseload has come down by 40 - 50 percent across the nation. The 20 percent applies to the current size of the caseload not the caseload that existed when the law was passed in 1996. As the caseload has been reduced 20% becomes a lower number of families. Those that are most able to get off the caseload have moved off, but those with the greatest disability or inability to work stay on the caseload.

Mr. Nordlund maintained that there will be families forced off the caseload that have disabilities, are caring for disabled children, victims of domestic violence or have some other form of hardship that prevents them from working and supporting their families. The Department proposes getting rid of the arbitrary number and look at the circumstances of the family. If the family meets a set of strict criteria than they would receive an extension.

Mr. Nordlund observed that the terminology would be changed from exemption to extension. Situations would be reviewed and decided based on the circumstances of the family. The proposed committee substitute would change the cap to 30 percent, which the department would prefer over current law. The department would prefer not to have any arbitrary number, but rely on criteria established in regulation.

In response to a question by Representative Croft, Mr. Nordlund explained that the maximum under federal law is 20 percent. State law provided for 10 percent or the federal percentage, whichever is greater. Federal law is greater. passed before the federal law passed. State law was passed before federal law.

Mr. Nordlund noted that the original caseload was 12,483. The department anticipates a caseload of 5,598 in FY03.

Representative John Davies suggested that if the caseload was reduced to less than 50 percent, that the limit should go from 20 - 40 percent.

In response to a question by Representative Davies, Mr. Nordlund noted that the limitation was repealed in section 54 of the original version of the bill.

Representative John Davies asked if there is a federal limit, which would limit the state. Mr. Nordlund acknowledged that the federal limit is still 20 percent. He explained that many states do not have a time limit. States that want to provide benefits to families over the 20 percent limit use their state funds. Alaska law does not allow the use of state funds. He thought that a 30 percent limitation would be better, but emphasized that it is still an arbitrary number, which creates a disincentive to reduce the caseload. He pointed out that it is a federal block grant with a required minimum effort of state general funds. The program has a set amount of funding regardless of caseload.

Representative Lancaster questioned if clients are returning to the program. Mr. Nordlund noted that after 2 years, 30

percent of their clients had returned to the caseload. There is a 60-month lifetime limit.

Representative Dyson stressed that he did not want people to get waivers because there are no jobs where they live. He maintained that people should move to where the jobs are. He suggested that there is a stable group of chronically unemployed. He thought that those coming into the state would be more employable. He did not think that the percentage of new people coming on to rolls would be less than 30 – 40 percent. He pointed out that as the numbers shrink, the percentage of chronically unemployed increases. The department will be against the 20 percent limit in a couple of years if it is not removed. He maintained that an increase in the limit would provide additional time to see what is happening and make adjustments based on better factors. He emphasized the importance of moving the legislation.

Representative Hudson asked if there is anything in the existing law that establishes the standards. Mr. Nordlund explained that there are criteria for exemptions in law. Exemptions include persons with disabilities, caring for a disabled child, victims of domestic violence, and people who face hardship. The hardship category needs more definition. The department is in the process of defining hardship in regulation.

Representative Harris asked for a clarification on the limitation. Representative Dyson stated that he did not have a strong feeling on inclusion of a limitation. He expressed confidence with the department. He would support the bill with or without the limit.

SANDY HOBACK, INDEPENDENT CONSULTANT, AMERICAN INSTITUTE OF FULL EMPLOYMENT OREGON testified via teleconference. She noted that she helped to draft the legislation. The legislation incorporates the five legislative recommendations that were made to improve the program. Their report recommended the use of narrowly crafted criteria as opposed to an arbitrary cap. She emphasized the need for legislative reporting regarding extensions and cautioned that a cap not be a disincentive for caseload reductions. She agreed that the there would not be the same level of need for new clients in regards to the five-year limit. She thought that a 30 percent cap would be reasonable, especially for the next couple of years.

Ms. Hoback explained that Oregon reduced their caseload by 65 percent. She estimated that when the caseload is reduced to about 35 percent that a third of the remaining caseload would remain for a significant amount of time.

Representative John Davies questioned why the new population would not have the same percentage of the population staying on the caseload.

Ms. Hoback noted that a portion of the chronic unemployed have been on welfare for a long period of time and were unable to be re-meditated. New clients have a higher level of employability. She pointed out that the chronically unemployed have been attached to assistance for years. She did not think that the same level of difficulty would be brought into the system. She acknowledged that there would be some multi generation welfare recipients. She emphasized that if the Department is doing a good job that there would be fewer children coming into the system as adults. She did not think that there would be the same flow rate as the old system, which did no more than provide a welfare check.

Representative Whitaker asked why the legislation needed to pass in the current year. Representative Dyson stressed that there is a paradigm shift toward providing a job instead of a check. He stated that the sooner that the Administration is empowered; the sooner benefits would be reaped. He noted that the 20 percent limit would present a problem in the future and emphasized the need to get the program going.

Vice-Chair Bunde spoke in support of a 30 percent limit accompanied by reports.

Mr. Nordlund responded that first timer's will meet the limit in July. There will be families without benefits in July because they do not meet the criteria for an extension.

Representative Dyson observed that the measures had been adjusted.

Representative John Davies MOVED to ADOPT Amendment 1: delete "30" and insert "33" percent. There being NO OBJECTION, it was so ordered.

Representative Davies MOVED to report CSHB 402 (FIN) out of Committee with the accompanying fiscal note.

CSHB 402 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with previously published fiscal note: HSS #1.

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ADJOURNMENT

The meeting was adjourned at 4:09 PM