

HOUSE FINANCE COMMITTEE
April 10, 2002
2:16 PM

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CALL TO ORDER

Co-Chair Mulder called the House Finance Committee meeting to order at 2:16 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 John Harris
Representative Bill Hudson
Representative Ken Lancaster
Representative Carl Moses
Representative Jim Whitaker

MEMBERS ABSENT

Representative Richard Foster

ALSO PRESENT

Representative Lisa Murkowski; Representative Drew Scalzi; Representative Carl Morgan; Steve Allwine, Alaska Auto Dealer's Association; Clyde (Ed) Sniffen, Jr., Assistant Attorney General, Department of Law; Adjutant General BG Phil Oates, Commissioner, Department of Military and Veterans Affairs; Tina Lindgren, Alaska Travel Industry Association, Juneau; Kurt Parkan, Deputy Commissioner, Department of Transportation and Public Facilities

PRESENT VIA TELECONFERENCE

Ralph Seekins, Automobile Dealer, Fairbanks; Libby Dannenburg, Alliance Automobile Dealers; John Mecke, Ford Motor Company; Stan Hurst Chrysler; Mark Mueller, General Motors; Bob Dutton, Toyota; Mary Washburn, Director, Division of Motor Vehicles, Department of Administration; Steve Conn, Executive Director, Alaska Public Interest Research Group, Anchorage; Rick Morrison, Alaska Automobile Dealers Association, Anchorage; Sara Fisher-Goad, Alaska

Industrial Development and Export Authority, Department of Community and Economic Development.

SUMMARY

HB 182 "An Act relating to motor vehicles; and providing for an effective date."

CSHB 182 (FIN) was REPORTED out of Committee with a "do pass" recommendation and a new with zero fiscal note by the Department of Administration and a previously published fiscal note: LAW (#1).

HB 287 "An Act relating to the exemption of commercial fishing entry permits from claims of creditors, to loans to satisfy past due federal tax obligations of commercial fishing entry permit holders, and to loan origination charges for loans made by the commercial fishing loan program to refinance a debt obligation; and providing for an effective date."

SB 291 "An Act making supplemental and other appropriations; amending appropriations; and providing for an effective date."

HCS CSSB 291 (FIN) was REPORTED out of Committee with "no recommendation."

#hb182

HOUSE BILL NO. 182

"An Act relating to motor vehicles; and providing for an effective date."

REPRESENTATIVE LISA MURKOWSKI, SPONSOR, spoke in support of the legislation. The legislation establishes a comprehensive motor vehicle act. It is a compilation of work between the automobile manufacturer's alliance, auto dealers in the state of Alaska and consumer protection organizations. She observed that the legislation has had considerable work. She explained that the relationship between auto dealers and manufacturers was addressed along with that of prospective buyers. Guidelines to protect dealers and consumers and a framework for dispute resolution in regards to franchise agreements were established. The legislation addresses uniform procedures relating to transfer, termination and conveyance of franchise agreements, and guidelines for succession in case of the death or incapacity of the individual that holds the dealer franchise. The legislation also includes meaningful provisions for the auto buying public. Dealers are required to make reasonable inquiry as to the condition of used vehicles. Dealers would also be required to do a reasonable inspection of the vehicle under the consumer protection provision on page 18, sec.

45.25.470. Dealers have expressed concern with sec. 45.25.470, which was brought forward by the Department of Law. The courts already construe this provision to be a requirement.

Vice-Chair Bunde referred to page 3, section 5. He questioned how the amount for the bond was derived. Representative Murkowski noted that there is currently a bonding requirement under Title VIII.

Vice-Chair Bunde asked the rationale for the 18-month requirement on page 13, line 3. Representative Murkowski noted that the 18-month requirement was a compromise between fractions that wanted 12-months and those that wanted 24-months.

Representative Davies observed that test-driving provisions were removed [from sec. 45.25.470]. Representative Murkowski reiterated that dealers had expressed concerns regarding [sec. 45.25.470]. Section. 45.25.470 states:

If the dealer has information that reasonably should lead the dealer to know of the potential for a material defect in a used motor vehicle, conduct an inspection of the vehicle, including, at a minimum, placing the vehicle on a rack and inspecting under the hood.

Representative Davies observed that test-driving provisions had been included in this section.

Vice-Chair Bunde MOVED to ADOPT work draft 22-LS0239\R, 4/9/02. There being NO OBJECTION, it was so ordered.

STEVE ALLWINE, ALASKA AUTO DEALER'S ASSOCIATION, provided information on the legislation. He noted that the legislation would satisfy their needs with the exception of: Sec. 45.25.470, which deals with the sales of used vehicles. He noted that dealers support the concept of used car inspections, but have not been able to come up with a provision that they think is fair and reasonable. He explained that the section is a "deal breaker" because it is too vague. He felt that the provision would amount to "almost an express warranty." He maintained that most Alaskan dealers do an inspection because it is in their own best interest; dealers live or die by their reputations. He felt that the provision would prove difficult due to its vagueness. He suggested that the provision be withdrawn from the legislation. He stated that dealers would welcome the opportunity to continue work on the provision outside of the legislation.

Representative Hudson questioned what was the impetus for the legislation. Mr. Allwine noted that there are not huge issues between consumers and dealers. The legislation came

about because Alaska is the only state that does not have regulations that give dealers some protection and guarantees in their relationship with manufacturers. Dealer franchise agreements are arbitrary agreements. Dealers do what the manufacturer says they should do or they do not have an agreement and the franchise can be removed. Dealers also felt that it would be in the best interest of the community to clarify some of the business advisories dealing with advertising and marketing by putting them into statute. The changes would level the playing field and make people who deviate from the advisories accountable.

Mr. Allwine noted that the bond was changed from \$10 thousand dollars to \$50 thousand dollars. The dealers support the provision but would like to see the amount raised to \$100 thousand dollars. He observed that \$10 thousand dollars does not represent much in a car; \$50 thousand dollars would represent a couple of cars. Dealers feel that there needs to be more protection for the consumer and pointed out that the state is a prime target for natural disasters such as floods.

In response to a question by Vice-Chair Bunde, Mr. Allwine explained that differences in philosophy between the manufacturer and dealer at a local level and the deal could result in the loss of a business. Dealers are at the mercy of a person that may not represent everything that the manufacturer wants.

Mr. Allwine explained that the prohibition against the use of "invoice" came about because of advertising by dealers, which use the term "invoice". The Attorney General has indicated that the term "invoice" is too ambiguous and may not adequately represent the actual net cost of the vehicle. The intent is to eliminate this from the advertising process, which is supported by Mr. Allwine. The "manufacturer suggested retail price" would be used since it is a document that is on every new vehicle.

Representative John Davies referred to page 18. He questioned if Mr. Allwine would recommend substitute language [for section 45.25.470]. Mr. Allwine emphasized that the provision needs considerable work. He stated that they would consider, in separate legislation, a documented disclosure by the seller that could be shared with the consumer. He emphasized that a consumer may not tell a dealer everything that is wrong. The dealer sells the car and "maybe we've inspected it and maybe we've missed something, whose to say that six months down the road this doesn't come up and the consumer we sold it to comes back to us and said this is here, you should have known about it." He maintained that it would border on an expressed warranty or at least be close to an implied warranty, "which is a situation that no vendor should be in." Even new car

manufacturers are not required to put a warranty on their vehicles.

Vice-Chair Bunde pointed out that if someone is trying to launder a car in Alaska they are not going to disclose the information. He didn't think [a documented disclosure] would have much use.

In response to a question by Vice-Chair Bunde, Mr. Allwine explained that federal law requires a sticker on the back of every used car. The sticker lists the components that [a consumer] must concern themselves with on their automobile and how they can protect themselves. The consumer has the right to take the automobile to a technician or mechanic of their choice to have the vehicle inspected. He maintained that the sticker addresses the "buyer beware" part of a used car. He stressed that section [45.25.470] needs so much work that they are not comfortable with the placement of it in statute. He maintained that the provision is too vague and it is not reasonable for merchants to have to face the liability issues that come with the provision.

Representative John Davies acknowledged Mr. Allwine's concerns, but pointed out that there has been extensive work on the legislation. He expressed support for the inclusion of a compromise on the issue.

Mr. Allwine noted that he received the current version the previous night. He stressed that the dealers have put their information forth and what has been received [back] has been essentially the same every time. He maintained that the provision should stand alone. "It is too important to be left in this piece of legislation. If we leave this in the legislation, we as a dealer group do not feel that we can support the bill."

CLYDE (ED) SNIFFEN, JR, ASSISTANT ATTORNEY GENERAL, FAIR BUSINESS PRACTICES, DEPARTMENT OF LAW provided information on the legislation. He observed that the original consumer protection section was 10 pages long and contained "real world things and problems that we have seen in our office". The provisions were reduced to 6 pages, most of which are agreeable to the dealers and have been changed in response to requests by dealers. He responded to comments by Mr. Allwine and noted that the original provision did provide specific information about the inspection process. He observed that the initial proposal stated: "This is what you do in a circumstance; you need to ask these questions; you need to write down this information; you need to tell the consumer what you find out; you need to do a visual inspection, a test drive. We defined what those things were. We also went on to include information about inspecting for dangerous or material defects." The proposal was reduced in response to concerns by dealers. The current version

requires dealers to ask if the seller knows what has happened to the car, for the accident and repair history and tell the consumer what they know. He noted that there have been circumstances where dealers have taken a car in trade and told the owner not to tell them anything about the car because if they know about it they will have to disclose the information. Dealers would be required to inspect the car for material defects only if the dealer knows of a potential for that kind of a defect to exist in the vehicle. The information could come to them in a variety of ways. Material defects are defined to only include defects that could affect the safe operation of the car by a reasonable person. He acknowledged that there is a point in time when the consumer must take responsibility for the vehicle purchase. Consumers are cautioned to hire a mechanic to inspect the car. He noted that a car can be sold "as is" even under the proposed legislation. He maintained that implied warranties would not be affected by the legislation. If there is an implied warranty, it already exists, as a matter of state law and the legislation would not make it any different. If a dealer inspects a car and misses something and sells it to a consumer, then the consumer is always going to have implied warranty claims, regardless if there is a duty to inspect under the statute. He stressed that the department has done a fairly good job in trying to limit the responsibility of the dealers under the section to fundamental and basic things. He encouraged the inclusion of the provision.

Co-Chair Mulder expressed concern with subsection (2): "If the dealer has information that reasonably should lead the dealer to know..." He asked for a definition of "reasonable".

Mr. Sniffen noted that the concept of "reasonable" exists in almost every law in the state. Concepts of negligence are defined by referring to the reasonable person standard. A "reasonable person" is a person that twelve people in a jury box think should have made a decision one way or another. Unfortunately, there is no way, in some circumstance, to narrow the definition beyond what a reasonable person should have known about a car.

Co-Chair Mulder questioned why not include a proscribed list of things and remove the attorneys from the equation. Mr. Sniffen responded that if they could anticipate everything the list would be long, and was not sure if it would accomplish the intent to make sure the consumer knows everything that the dealer should know about a car they took in trade. He emphasized that they are not asking dealers to go out of their way to find out the information. It is information the person providing the car may already have. The provision asks dealers to ask the questions and disclose what they find out.

Co-Chair Mulder observed that there is an element of risk from the person that gives the car to the dealer to be honest. Mr. Sniffen pointed out if the consumer fails to disclose the information that the dealer has done his job. He observed that the provision only requires the dealer to ask and make a good faith attempt to find out about the problems. If the consumer is dishonest, the dealer has done his job.

Co-Chair Mulder clarified that if the dealer asks and the seller is not honest that the dealer would not be liable. Mr. Sniffen affirmed that the dealer is not liable for the lack of previous owner to disclose information on any defects.

Representative Croft observed that everyone is asked to behave responsibly. He noted that concerns were expressed that the original proposal was too detailed but that the current standard is too general. He summarized that the dealer would not be liable unless they have some other reason to know.

In response to a question by Representative John Davies, Mr. Sniffen clarified that the original proposal included a more detailed inspection procedure. The inspection procedure required an initial inspection that would be extended if certain things were found. The detailed list raised issues among dealers.

Representative Whitaker asked if there is an outpouring of public concern regarding the issue. Mr. Sniffen noted that the number one complaint received by their office pertains to used automobile purchases. "A lot of those complaints are essentially: I bought this car. They told me it was a great car. I drove it for a week and it fell apart on me. What can I do, and we find out later on that perhaps the dealer knew things about the car that they did not disclose to the consumer, that might have affected the decision to purchase." Alaska is one of the only states that do not have an automobile dealer franchise law. There are other states with laws that deal with consumer protection issues and the purchase of used vehicles. The legislation is consistent with some states' laws.

Representative Whitaker questioned the number one consumer complaint in other states, which have these types of consumer protection laws. Representative Whitaker concluded that there was no information regarding their effectiveness.

Representative Hudson clarified that the "lemon law" would not be affected. Mr. Sniffen observed that lemon laws are only applicable to new cars.

RALPH SEEKINS, ALASKA AUTOMOBILE DEALER ASSOCIATION, FAIRBANKS, testified via teleconference in opposition to the inspection provisions in AS 45.25.470. He expressed concern that buyers would lie about the condition of their used cars. He noted that there is an old saying in the industry that "buyers are liars". Vehicle histories are currently kept for 18 to 24 months. The histories are "dumped out" if there is not an update. The requirement would cause dealers to maintain records on previous repairs in order to fulfill future reporting requirements. He referred to provisions of implied warranty and noted that the Uniform Commercial Code (UCC), which was adopted by Alaska, would allow the display of some of the implied warranties. He stressed that the legislation would not disallow the disclaimer of implied warranty under the UCC. He did not disagree with the intent. Every car he takes in trade is reviewed to determine if it will be certified under the manufacturer's program. He maintained that a lot of things happen in a new car dealership that might not happen in a used car dealership, which does not have \$5 - \$6 million dollars invested in their facilities and equipment. He felt that the issue could be beneficial to the buyer and most dealers and expressed the desire to work with the administration and legislature to "be able to place something in here in terms of inspection, from the beginning." He observed that dealers asked for licensing provisions and changes in bonding and advertising. He acknowledged that there is a tendency in certain areas for abuses to exist and stated that they would like to address them up front. Dealers also requested warranty coverage issues to protect buyers from manufacturer's policies. Those provisions have been removed to make the legislation easier for people to look at. He suggested that the provision be placed in separate legislation to allow the parties to come to consensus. He noted that anyone that sells less than five vehicles a year is private seller and would not be subject to inspection requirements as automobile dealers. He noted that they had just received model legislation from the National Automobile Association. He emphasized the intent to work on the issue and make it right.

Representative John Davies acknowledged Mr. Seekins' desire to "make it right," but observed that the committee substitute was version R and was in its second time through the alphabet. He asked if Mr. Seekins could recommend language to modify the legislation, which they would support. Mr. Seekins noted that the National Automobile Dealer Association was sending additional language that they could take a look at. He emphasized that they do not have a problem with trying to make it better, but stressed that they would like the opportunity to really make it right. He referred to provision (a) (2), which requires that an automobile be placed on a rack and inspected under the hood. He noted that the legislation doesn't require the vehicle to

be lifted up; it only has to be put on the rack. He maintained that this is too big a loophole to be addressed in the remaining time. He emphasized that he already inspects vehicles on their appraisals because he doesn't want to get stuck with a vehicle that has been rebuilt. He is willing to make appraisal slips available and to disclose repairs made after his purchase, but "some of the little things in here, just catch us".

LIBBY DANNENBURG, ALLIANCE AUTOMOBILE DEALERS, testified via teleconference in support of the legislation. She noted that the Alliance has some remaining concerns, but would not object to the current version.

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JOHN MECKY, FORD MOTOR COMPANY, testified via teleconference in support of the legislation. He noted that he was available for questions.

STAN HURST CHRYSLER testified via teleconference in support of the legislation. He observed that the legislation provides protections to both the dealer and the manufacturer.

MARK MUELLER, GENERAL MOTORS, DETROIT, testified via teleconference in support of the legislation and noted that he was available for questions.

BOB DUTTON, TOYOTA, testified via teleconference in support.

MARY WASHBURN, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION, provided information on the legislation. She noted that the previous dealer bond was \$10 thousand dollars, which was insufficient. They recommended the bond be raised to \$50 thousand dollars, which is an entry level. She noted that \$100 thousand dollars would be applicable but that they did not want to exclude anyone from becoming an automobile dealer because of bonding.

STEVE CONN, EXECUTIVE DIRECTOR, ALASKA PUBLIC INTEREST RESEARCH GROUP, ANCHORAGE, testified via teleconference. He noted that the original language contained a requirement for dealers to conduct a reasonable inspection of the vehicle including a test drive and visual inspection for material defects. He suggested that the provision be returned to the bill with the deletion of "material defects." After a reasonable inspection of the vehicle including a test drive and visual inspection that whatever information is gathered would be provided in writing to the prospective buyer of the vehicle before the sale. This is the salient component. He emphasized that most consumers believe that the dealer, when he takes on a vehicle, does make a reasonable inspection. Whatever the dealer knows from the seller and a reasonable

inspection would be provided to the buyer. He stated that after more than a year of working on the legislation that to "leave the consumer standing at the curb" and to make the legislation only a "deal between the franchisers and the car dealers" would do a major disservice and be an insult to consumers who are looking for enough information to make a good choice.

RICK MORRISON, ALASKA AUTOMOBILE DEALERS ASSOCIATION, ANCHORAGE, testified via teleconference in support of the legislation. He noted that the project has been seven years in the making. Alaska is the last state in the nation to have any franchise law protections for automobile dealers and manufacturers. The legislation provides clarity to protect both the dealer and the consumer. In 1973, the Federal Trade Commission (FTC) attempted to address disclosures and inspections on vehicles. The FTC found that the cost to consumers would be too great and the implied or express warranties made the issue so complex that they were unable to come to a solution. The FTC worked on the issue for 11 years and ended with the window sticker now applied.

Mr. Morrison observed that the dealer association prefers a \$100 thousand dollar bond. He noted that the market area is [a radius of] 14 miles [around an existing new motor vehicle dealer] and maintained that it should be extended to 50 - 100 miles. He referred to page 17, line 24 and observed that no vehicle should be required to be sold with accessories. He explained that accessories must be placed on the car in order to display them for sale. Some can be removed and others cannot. He agreed that a car should be able to be bought with just the factor options, but emphasized that it would be tough to make a particular car available without accessories. They compromised on many areas, but still have concern with portions of the bill. He pointed out that customers could be asked to disclose information relating to a car, but that under privacy laws they cannot share information relating to the seller with the buyer. He observed that, under the Fair Trade Practices law, if a dealer knows something is wrong with the car and it is not passed on to the consumer that they would be at fault. He maintained that the provision would result in frivolous lawsuits. He referred to Section. 45.25.470: "If the dealer has information that reasonably should lead the dealer to know..." He maintained that the provision is vague and open ended. He observed that if a car was serviced five years previously and recommendations were made for repairs, but the customer did not return, then they records would have been downloaded and deleted in 24 months. The dealer could be at fault if the car is subsequently sold through the dealer [and the problem was not identified]. He maintained that dealers would have to charge the consumer for a warranty or express warranty. He observed that he allows consumers to return cars in 3 days or exchange the car for

any car of equal value within 30 days. He does not support page 18, lines 16 - 28. He maintained that the section is onerous and would cause more difficulties for the consumer than it would solve.

In response to a question by Representative Davies, Mr. Morrison suggested the use of a substitute process. He noted that there could be a safety inspection of all vehicles. There could be a standard for all vehicles that are on the street. If there were an inspection than the customer that is trading the vehicle could sign a form developed by the state, which would be transferred to the buyer. He stressed that both ideas would need additional consideration and pointed out that the devil is in the details.

Representative John Davies asked if repair records would be given to a consumer who has a vehicle identification number on a car that they are considering for purchase. Mr. Morrison stated that he would supply repair information but not the names of the owner. He observed that he could only store two years of information. He does not charge for the service.

In response to a question by Vice-Chair Bunde, Representative Murkowski acknowledged that the provision under AS 45.25.470 has been a concern of dealers. She observed that it addresses the number one consumer complaint. She maintained that the provision fits within the bill and emphasized that the intent was to make the impact as minimal as possible while still protecting the consumer. She acknowledged that a separate vehicle could be used, but spoke in support of retaining the provision. She stated that removal of the consumer protection provision would not be a "deal breaker" but emphasized their importance.

Representative Lancaster MOVED to Delete Sec. 45.25.470 page 18. Representative John Davies OBJECTED. He stressed that the section retains a significant balance in terms of consumer protection. He observed that the issue has been discussed for up to seven years. He expressed disappointment that those in opposition have not been willing to put "their" version on the table. He thought that the current language, which has been worked and compromised on, should go forward, if those in opposition to the provision are not willing to put alternative language on the table. He thought that it would follow the reasonable persons standards.

Representative Croft pointed out that the legislation is balanced in terms of the significant protections for manufacturers and dealers, but that adoption of the amendment would withdraw protection for the public. He acknowledged that there could be arguments about the specifics of the obligation to inspect, but felt that there

should be a reasonable requirement to inspect the car being sold. The only requirement would be the FTC sticker.

Representative John Davies spoke against the amendment. He noted that the section is the only piece in the legislation that addresses what is the number one consumer complaint. He pointed out that no compromise is possible; nobody is willing to "roll up their sleeves and put it down on the table." He felt that the process was somewhat disingenuous and spoke in support of retaining some consumer protection in the legislation.

Vice-Chair Bunde suggested that retention of the provision might encourage further work.

Representative Lancaster spoke in support of the legislation. He observed that the industry has requested time to look at revisions.

Representative Whitaker spoke in support of the amendment. He stressed the difficulty of regulating truth telling in relationship to the selling and buying of cars.

Representative John Davies suggested that the use of another piece of legislation could be a dodge. He stressed that retention of the provision would provide incentive for additional legislation. He emphasized that the provision would send a message regarding the standard of care, justice and truth. He stressed that there should be at least one standard for public protection. He maintained that the legislation would be unbalanced with the [withdrawal of section 45.25.470].

A roll call vote was taken on the motion.

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

Representative Foster was absent from the vote.

The MOTION PASSED (6-4).

Co-Chair Williams MOVED to report CSHB 182 (FIN) out of Committee with the accompanying fiscal note. Representative Croft OBJECTED. He stressed that the time should be taken to craft a provision on a reasonable inspection.

A roll call vote was taken on the motion.

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

Representative Foster was absent from the vote.

The MOTION PASSED (8-2).

CSHB 182 (FIN) was REPORTED out of Committee with a "do pass" recommendation and a new with zero fiscal note by the Department of Administration and a previously published fiscal note: LAW (#1).

#sb291

SENATE BILL NO. 291

"An Act making supplemental and other appropriations; amending appropriations; and providing for an effective date."

Co-Chair Mulder provided members with a proposed committee substitute, work draft 22-GS2102\B, 4/10/02, and accompanying spreadsheet (copy on file.)

Representative Whitaker MOVED to ADOPT work draft 22-GS2102\B, 4/10/02. There being NO OBJECTION, it was so ordered.

DENNY DEWITT, STAFF, REPRESENTATIVE ELDON MULDER, reviewed the legislation. He provided members with a spreadsheet detailing the changes contained in the committee substitute (copy on file).

Section 1

Court System, Judicial Conduct, Legal

Mr. Dewitt observed that section 1 authorizes legal fees in excess of the FY2001 supplemental in the amount is \$6829.77.

Section 2

Department of Community and Economic Development, Alaska Science & Technology Foundation, Idaho National Engineering and Environmental Laboratory Grant

Mr. Dewitt noted that section 2 funds statutory designated program receipts for a contract for Alaska Business Research. Funds are available March 1, 2002.

Section 3

Corrections, Palmer Correctional Center

Mr. Dewitt noted that there is a problem with the water pump and well house, which the section would address. The request authorizes \$172 thousand dollar general fund appropriation. The request was for other funds but the other body felt that general funds would be more secure.

Section 4

Department of Health and Social Services, Medicaid Services, Medicaid Services

Mr. Dewitt observed that the funds are need to complete the year. They are projected to run out April 16.

Co-Chair Mulder noted that a lack of funding would result in a restriction of payments, which would result in a backlog.

Section 5(a)

Department of Transportation and Public Facilities, Marine Highway Stabilization Fund, Marine Highway Stabilization Fund

Mr. Dewitt noted that the appropriation would address the FY02 deficit due to M/V Columbia fire and fuel cost increases.

Section 6

Military and Veterans Affairs, Disaster Planning & Control

Mr. Dewitt noted that section 6 appropriates \$125 thousand dollars to cover costs to maintain the 24-hour State Emergency Coordination Center (SECC), the agency that coordinates all federal, state and local jurisdictional responses associated with any disaster or event.

Section 7

Department of Natural Resources, CIP

Mr. Dewitt observed that the section changes a capital improvement program in Kenai to reduce risks from wildfire.

Section 8

Office of the Governor, Elections

Mr. Dewitt noted that section 8 would cover costs for printing and mailing a Primary Election Voter Education Guide in time to explain the new law (shifted from the FY03 budget, which was amended). The \$125 thousand dollars was taken out of the House budget when it was passed, with the expectations that it would be in the supplemental.

Section 9

Department of Community and Economic Development, Power Cost Equalization & Rural Electrification Fund

Mr. Dewitt explained that the amount was inadvertently omitted from the FY02 appropriation from the Power Cost Equalization Endowment fund to the Power Cost Equalization and Rural Electrification Fund. The section appropriates 3.5% of market value.

Section 10

Department of Public Safety, State Troopers

Mr. Dewitt noted that the section is for one-time costs associated with response to the September 11, 2001 events.

Section 11

Legislature, Redistricting Board

Mr. Dewitt observed that section 11 provides additional funds for personal services and board meeting. The Board has an additional \$30 thousand dollars, which should cover the balance of the cost to redo their maps.

Section 12

Department of Community and Economic Development,
Qualified Trade Assoc. Contract

Mr. Dewitt noted that section 12 appropriates \$2 million dollars for additional tourism marketing efforts to mitigate the economic effects to Alaska from the September 11, 2001 terrorist attacks. The House sent a \$6 million dollar appropriation to the Senate for the same purpose.

Section 13(a)(1) - (4)

Department of Transportation and Public Facilities

Mr. Dewitt noted that there were a number of highway maintenance stations in disrepair. The funds would provide temporary rental and other costs of vacating the maintenance station due to imminent failure.

Section 13(b)

Department of Transportation and Public Facilities,
Central Region CIP

Mr. Dewitt noted that section 13 (b) is for the Anchorage Bowl - Long Range Transportation Plan Update for 2025. Federal funds would be moved forward, for immediate implementation.

Section 13(c)

Department of Transportation and Public Facilities,
Southeast Region CIP

Mr. Dewitt clarified that section 13 (c) changes the title from West Douglas Highway Extension to Gastineau Channel Second Crossing to match the federal project name. This is a change from the Senate version.

Section 13(d)(1)

Department of Transportation and Public Facilities,
Central Region Highways and Aviation, Security and
Emergency Access Routes in Anchorage

Mr. Dewitt explained that section 13 (d) revises traffic patterns for enhanced security and emergency routing at the Port of Anchorage Access and access/egress from Elmendorf AFB and Ft. Richardson onto the Glenn Highway.

Section 13(d)(2) (4)

Department of Transportation and Public Facilities

Mr. Dewitt explained that these sections fund liability premium increases as result of the September 11, 2001 terrorist attack.

Section 13(e)(1)- (8)

Department of Transportation and Public Facilities

Mr. Dewitt noted that these sections increase the presence and visibility of law enforcement officers required by the federal government and authorizes the expenditure of federal funds.

Section 13(f)(1) - (7)

Department of Transportation and Public Facilities

Mr. Dewitt explained that these sections are activities relative to the Anchorage and Fairbanks airports. Liability premium increases are authorized as result of the September 11, 2001 terrorist attack, along with security measures, which are funded through the International Airport Revenue Fund.

Section 13(g)

Department of Transportation and Public Facilities,
Alaska Marine Highway System

Mr. Dewitt noted that section 13 (g) allows funds to come out of the Alaska Marine Highway System Fund to pay for liability premium increases as result of the September 11, 2001 terrorist attack (See 5(b)).

Section 13(h)(1) - (4)

Department of Transportation and Public Facilities

Mr. Dewitt explained that these sections are a mixture of federal funds and International Airport Revenue funds at Anchorage and Fairbanks airports.

Section 14(a)

University, System wide Small Planning, Design and Construction

Mr. Dewitt noted that section 14(a) allows \$800 thousand dollars in university receipts to be used at the Lena Point fisheries and ocean sciences laboratory.

Section 14(b)

University, CIP

Mr. Dewitt explained that section 14 (b) allows a scope change for Sec 3, Ch 61, SLA 2001 to include UAA Heating, Ventilation, and Air Conditioning Piping Replacement Phases 1-4.

Vice-Chair Bunde asked for more information on section 12. Mr. Dewitt observed that the funding would help increase marketing. He observed that the funding might not be in time to help with the current season. The funds are in addition to the \$4.5 million dollars currently going into the tourism-marketing budget.

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In response to a question by Representative Lancaster, Mr. Dewitt observed that the funding was added in the proposed committee substitute. Discussion ensued regarding funding for tourism. The House legislation appropriated \$6 million dollars. The legislation has not passed the Senate. The Senate did not provide additional funding for tourism.

Representative Harris asked for further information regarding Power Cost Equalization. Mr. Dewitt noted that the statute would have 7 percent of the fund appropriated. He indicated that additional funding would be provided through another vehicle.

Representative Lancaster referred to section 5 (a), fuel costs. Mr. Dewitt explained that the section appropriates funds related to fuel costs and the M/V Columbia fire.

Representative Davies asked for more information the 7 percent funding for Power Cost Equalization.

SARA FISHER-GOAD, ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT testified via teleconference. She explained that the request was 7 percent from the Power Cost Equalization Endowment Fund. The legislation would appropriate 3.5 percent. The Fund is out of money; an additional amount is needed to meet the FY02 obligations. The additional \$3.5 million dollars would provide funding through April. There is a \$1.5 million dollar backlog for PCE payments. The full 7 percent is needed to meet FY02 obligations.

Representative Lancaster noted that a pro rata amount was begun on June 1. Ms. Goad explained that the pro rata amount was to the appropriation of \$15.7 million dollars. The issue before the Committee was the capitalization of the Fund. There was an error in the 7 percent appropriation to the

Endowment Fund, which did not happen. They prorated to \$15.7 million dollars, but there was not \$15.7 million dollars in the Fund. The Fund is \$7 million dollars short. She explained that the \$1.1 million dollars was a supplemental request to fully fund the program for March through June, which would allow payments of 100 percent. The current pro rata is at 80 percent of the PCE level. The amount is based on PCE levels set by the Regulatory Commission of Alaska.

Representative Lancaster interjected that the amount is subject to interpretation on what is full funding: whether it is \$15.7 million dollars total with or without fuel cost increases or new people on the program. The amount needs to be finalized.

ADJUTANT GENERAL BG PHIL OATES, COMMISSIONER, DEPARTMENT OF MILITARY AND VETERANS AFFAIRS provided information on requests by the department. He observed that there were several problems within the fast track supplemental. He noted that the department had many expenditures based on the attacks of September 11. The expenditures as they related to the Trans Alaska Pipeline, Valdez Airport and the Fox weigh station were communicated through teleconference to the House and Senate leadership. The decision was made that the threat was not worth the cost and that risk would be taken in these areas. He pointed out that although many of the areas where money has already been spent have been addressed, there are some areas that have not be covered. Three areas of concern remain. The first is the checkpoint for the Trans Alaska Pipeline. The Department of Public Safety and the Military and Veterans Affairs established the checkpoint for a total cost of \$433.2 thousand dollars. The total includes the cost to call the Alaska State Defense Force up to state active duty and to administer the checkpoint. The cost to the Department of Public Safety was \$288.2 thousand dollars. The cost to the Department of Military and Veterans Affairs was \$145 thousand dollars. He noted that hours were expanded at the Fox weight station to 24/7 in order to fully inspect all the vehicles and cargo transiting the Trans Alaska Pipeline. He pointed out that there has been an attack on the pipeline. The checkpoints were established in response to calls from the White House. The United States Attorney General and the director of Homeland Security called the Governor and said that there was a threat against all infrastructure across the United States. They stressed that security needed to be improved. The leadership was notified and checkpoints established. Expanded use of the weigh station cost \$42.2 thousand general fund dollars.

Commissioner Oates discussed the Valdez airport expenditures. The Valdez airport was not qualified under federal funding. State funds were spent because the FBI, FAA, and Alaska Coast Guard commander were concerned with

the level of security. Total expenditures were \$542.3 thousand dollars.

Commissioner Oates noted that legislation for homeland security has not moved. The funding [requested in homeland security legislation] has come out of the departments' existing budgets. He stressed that his department would be in a crisis to get to the end of the year. Recovery will be harder the longer they wait for funding. The money has already been spent and is coming out of existing budgets.

Representative Lancaster questioned if the department has worked with ALESKA since 9/11/01. Commissioner Oates affirmed that he has worked with ALESKA. He emphasized that the pipeline has national and worldwide significances. He emphasized that there have been expenditures to increase security. The pipeline could be lost if the line was done for more than 10 days.

In response to a question by Vice-Chair Bunde, Commissioner Oates clarified that the checkpoint is at the Yukon River. It is a critical point of vulnerability. The Fox weigh station is further south. The checkpoint was established to get situational awareness of who was up there. Every vehicle was stopped, identification was required, and cargo and the purpose of travel were logged. He noted that 8,849 commercial vehicles and 774 public vehicles were checked.

Vice-Chair Bunde noted that there is a lot of road access to the pipeline and pointed out the difficulty of securing the entire pipeline. Commissioner Oates acknowledged the difficulty of securing the 700 plus mile pipeline, but pointed out that the most critical points in regards to the ability to repair is along the Yukon River bridge to the north. The key factor is how quick the pipeline could be repaired. The idea is to take risk in some areas but to decrease risk in areas difficult to repair within the 10-day window in which pressure could be lost. The protection of the Transatlantic Pipeline is the best in the United States, but is still inadequate. He emphasized the need for a presence to know who is there.

Representative Harris questioned the affect of the added expenditure on the rest of the department's operations.

Commissioner Oates explained that the Military and Veterans Affairs is requesting \$145 thousand dollars. All discretionary maintenance would be withheld without the appropriation, which would increase future costs. Contracts to keep on water and heat or to do emergency repairs would remain. He observed that funding was provided in the supplemental for the State Emergency Coordination Center, an emergency transportation of blood to the lower 48 states and

provide required state security at airports during the attacks.

Co-Chair Mulder MOVED to ADOPT Amendment 1. Vice-Chair Bunde OBJECTED. Co-Chair Mulder observed that the amendment would require a 30 percent match from the Alaska Tourism Industry Association (ATIA) by June 30, 2002. The lapse date would be extended to June 30, 2003.

Vice-Chair Bunde spoke against the amendment. He maintained that [additional funding to support the tourism industry in the aftermath of 9/11/02] would send the wrong message in terms of the fiscal gap. He stressed that the match level should be higher.

Representative Hudson questioned if the Alaska Travel Industry Association would be able to meet the 30 percent match.

TINA LINDGREN, PRESIDENT, ALASKA TRAVEL INDUSTRY ASSOCIATION, JUNEAU, stated that the ATIA would be able to meet the match. The match would be about \$1 million dollars.

Co-Chair Mulder noted that there was \$4.5 million dollars in the FY02 budget for tourism marketing. The total budget would be approximately \$6 million dollars.

Representative Croft questioned if the match date should be changed to the end of this fiscal year.

Representative John Davies clarified that the 30 percent match would be to the \$2 million dollar supplemental grant by the end of FY02. Ms. Lindren noted that the ATIA has already met the required match for the FY02 appropriation.

Representative Croft questioned why the appropriation goes to FY03, while the match is due by June 30, 2002.

Co-Chair Mulder responded that the intent is to provide for a match. The ATIA indicated that they could make the match in the time allocated.

Vice-Chair Bunde MOVED to ADOPT Amendment 1B: Delete funding for the Alaska Travel Industry Association. He stressed the need to reduce the budget. Representative Lancaster spoke in support of the legislation.

Co-Chair Williams spoke in opposition to the amendment. He stated that the appropriation sends the message that the legislature is attempting to help an industry in need. He observed that state support for the tourism industry has been reduced. He acknowledged that the cruise ship industry has improved, but emphasized that the amount of money being spent off ships has been reduced.

A roll call vote was taken on the motion.

IN FAVOR: Moses, Bunde, Croft, Lancaster

OPPOSED: Whitaker, Davies, Harris, Hudson, Mulder, Williams

Representative Foster was absent from the vote.

The MOTION FAILED (4-6).

Representative Harris MOVED to ADOPT Amendment 2. He explained that the amendment would appropriate \$145 thousand dollars for the Department of Military and Veterans Affairs, for costs to maintain a temporary checkpoint at the Yukon River Bridge.

Representative John Davies spoke in support of the amendment. He noted that there was a great deal of concern following September 11, 2001 regarding the security of the pipeline.

Vice-Chair Bunde OBJECTED. He noted that other departments had made expenditures, which they have been asked to absorb.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Davies, Harris, Hudson, Lancaster, Moses,
Whitaker, Williams

OPPOSED: Bunde, Mulder

Representative Foster was absent from the vote.

The MOTION PASSED (8-2).

Co-Chair Williams MOVED to ADOPT Amendment 3. He explained that the amendment would raise the appropriation for the Alaska Marine Highway System to \$2,038,500 dollars. He observed that increased fuel costs and the fire on the M/V Columbia were not under the department's control. He noted that \$2.8 million dollars were requested.

Vice-Chair Bunde spoke against the amendment.

Representative Whitaker spoke in support. He pointed out that the cost of fuel increased and that the money is needed for operations.

Representative Harris questioned if the amendment would address the issue of reduced service.

Representative Hudson affirmed that the appropriation would affect service; without the funds ships would be laid up and paid passengers turned away.

Co-Chair Mulder observed that the total amount needed is approximately \$2.8 million dollars. He stated that he anticipated additional funding could be in the next supplemental legislation. The amendment would allow some security.

Representative Croft questioned if service to Cordova would be affected.

Representative Lancaster stated that he would support the legislation but noted that he did not think that the department did a good job in estimating fuel costs.

Co-Chair Mulder noted that he would not object to the amendment and pointed out that the M/V Columbia fire was in the nature of an emergency.

KURT PARKAN, DEPUTY COMMISSIONER, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES stated that the department would have to see how the \$600 thousand dollar restoration would affect the overall impact. He noted that the department provided the Committee with impacts of a \$1.4 million dollar reduction. The restoration of \$600 thousand dollars would help considerably but he could not speak to which vessel would be brought back on. Impacts were stated for the M/V Bartlett in Prince William Sound, the M/V Aurora and the M/V Malaspina in Southeast, as well as holding open vacant positions for shore side employees. He added that the additional amount would minimize impacts to service.

Representative Harris noted that the concern in Cordova is that the fishing season is about to begin. He referred to the proposed schedule and expressed concern that reductions in service could adversely impact the fisheries.

Vice-Chair Bunde stressed that if government is reduced that new and creative ways would be found at less cost.

A roll call vote was taken on the motion.

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

Representative John Davies MOVED to ADOPT Amendment 4: delete "\$135 thousand dollars" and insert "\$423.2 thousand dollars" for the Department of Public Safety to cover their costs for the Yukon River checkpoint.

Commissioner Oates maintained that the expenditure came as the result of a call from the White House and is "absolutely justified." The funds have been expended and the checkpoint is now closed.

Co-Chair Mulder OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Harris, Moses, Croft, Davies

OPPOSED: Hudson, Lancaster, Whitaker, Bunde, Mulder

Representatives Williams and Foster were absent from the vote.

The MOTION FAILED (4-5).

TAPE HFC 02 - 80, Side B

Representative Croft MOVED to ADOPT Amendment 5. He explained that the amendment would add the sum of \$26.4 million dollars for the University of Alaska. He expressed concern that progress at the University would be reduced without additional funding and pointed out that there would be limited opportunities to add money to their budget. The amendment would be a general fund appropriation and would add an increase of \$16.9 million dollars, which would allow them to overcome \$9.4 million dollars in fixed costs, of which the majority is for contract increases.

Representative Whitaker MOVED to AMEND Amendment 5, by deleting "26.4" and inserting "\$16.9" million dollars. Co-Chair Mulder OBJECTED. Representative Whitaker spoke in support of the amendment. He noted that the University's request of \$16.9 million dollars was reasonable. There has been significant momentum associated with the University of Alaska. Co-Chair Mulder WITHDREW his OBJECTION.

Representative Harris observed that the \$16.9 million dollars would be in addition to the current appropriation.

Co-Chair Mulder explained that \$4.4 million dollars in one time funding sources were utilized in FY02. The FY03 appropriation substituted general funds. The total amount for the university would be \$219 million dollars. The University requested an increase of \$16.9 million dollars plus an additional general fund appropriation of \$4.4 million dollars to replace the one-time funds. The amendment mirrors the request by the University of Alaska.

There being NO OBJECTION, the amendment to the amendment was adopted.

Co-Chair Mulder maintained his objection. He acknowledged the intent but maintained that the supplemental is not the right place or time for the appropriation to go forward. He felt that there would be other opportunities to help the University and pointed out that the appropriation would

"blow the lid" off of the attempt to hold the line on spending.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Davies, Whitaker

OPPOSED: Bunde, Harris, Hudson, Lancaster, Moses, Williams, Mulder

Representative Foster was absent from the vote.

The MOTION FAILED (3-7).

Representative John Davies MOVED to ADOPT Amendment 6: increase the appropriation for Power Cost Equalization (PCE) from 3.5 percent to 7 percent (\$7.622 million dollars). He spoke in support of the amendment.

Representative Harris clarified that the Senate funded PCE at \$3.5 million dollars. The legislature committed to fund PCE at 7 percent. Co-Chair Mulder agreed and acknowledged that it was an oversight.

Co-Chair Mulder WITHDREW his OBJECTION.

Representative Hudson MOVED to report CSHB 291 (FIN) out of Committee.

HCS CSSB 291 (FIN) was REPORTED out of Committee with "no recommendation."

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ADJOURNMENT

The meeting was adjourned at 4:55 PM