

HOUSE FINANCE COMMITTEE
May 10, 2002
2:17 PM

TAPE HFC 02 - 108, Side A
TAPE HFC 02 - 108, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:17 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 Ken Lancaster
Representative Carl Moses
Representative Jim Whitaker

MEMBERS ABSENT

Representative Bill Hudson

ALSO PRESENT

Ron Sommerville, Consultant, House and Senate Resource Committee; Dick Bishop, Alaska Outdoor Council, Fairbanks; Mike Tibbles, Staff, Representative Williams; Marilyn Wilson, Staff, Senator Donley; Alison Elgee, Deputy Commissioner, Department of Administration; Chris Christensen, Staff Counsel, Alaska Court System

PRESENT VIA TELECONFERENCE

Paul Lyle, Fairbanks; John Athens, Fairbanks.

SUMMARY

CSSB 180(FIN)(efd fld)

"An Act implementing pay differentials based on geographic areas for certain state employees and for members of the Alaska State Defense Force; relating to cost-of-living differentials for state aid to municipalities."

CSSB 180(FIN)(efd fld) was heard and HELD in Committee for further consideration.

CSSB 219(FIN)

"An Act establishing and relating to the Navigable Waters Commission for Alaska."

CSSB 219(FIN) was REPORTED out of Committee with a "do pass" recommendation and with a previously published fiscal note: #1 LAA/DNR.

#sb219

CS FOR SENATE BILL NO. 219(FIN)

"An Act establishing and relating to the Navigable Waters Commission for Alaska."

RON SOMMERVILLE, CONSULTANT, HOUSE AND SENATE RESOURCE COMMITTEE, testified in support of the legislation. He explained that Senator Halford and Representative Porter put the concept of the joint commission forward. The purpose of the Alaska Navigable Waters Commission would be to expedite transfers of title on submerged lands. Under the Submerged Lands Act, when Alaska became a state in 1959 it received the ownership of submerged lands that are under navigable and marine waters up to three miles. Approximately 60 million acres of submerged lands were transferred to the state (as long as the state can prove that they were navigable at the time of statehood). In order to claim title under the act the state has to file under the Act with 180-day notice stating its intention to claim land under a specific body of water. The courts and federal agencies have taken a narrow interpretation of the federal Quiet Title Act. The courts have ruled that the state has no jurisdiction if the federal government is silent; this creates a barrier to the state's acquisition of submerged lands. The definition of "navigable" has also created problems. In Oregon, the definition centers on the ability to float a log down a body of water. He noted that in the Gulkana case of 1987 the Ninth Circuit Court upheld that the Gulkana River was navigable all the way up to the lake. The key point was that the river was used for purposes of commerce or could be used for the purpose of commerce. A rubber raft or canoe could be floated up the river with approximately 1,000 pounds. The Court ruled in the state's favor. The problem was that there were a lot of conveyances prior to 1987. The Bureau of Land Management (BLM) has refused to correct errors in these cases. This has clouded titles. The state has not lost its title to navigable waters, but the determination of which waters were navigable was not made.

Mr. Sommerville noted that the BLM was not required to use its own manual for surveying instructions for conveying lands in Alaska until after 1988. The BLM, by their own manual, is required to meander boundaries around lakes larger than 50 acres or a stream wider than three chains or 198 feet, which would prevent the submerged lands that

belong to the state from transferring to the adjacent landowner.

Mr. Sommerville explained that since statehood title on submerged lands has been resolved on 13 rivers. There are 22,000 rivers that could be considered navigable. In 1992 and 1996 the state submitted to the BLM a list of 217 rivers on which quiet title was requested. The state did not receive federal cooperation and decided to take three rivers lying in the northeastern part of Alaska to court: the Black, Kandik and the Nation Rivers. After nine years the court ruled in the state's favor on two of the rivers. The third river was determined not to have jurisdiction. He concluded that it would take 99,000 years to resolve title at the current rate. Mr. Sommerville pointed out that it took approximately \$1 million dollars of state and federal funds to resolve navigability on two rivers. Title is needed for many reasons: to lease rivers, manage trespass, or extract gravel. He stressed that it is not a subsistence issue. Subsistence is a reserve water rights issue, which is a separate court issue.

Mr. Sommerville observed that SB 219 is a process worked out with the federal government to create a commission to identify navigable and non-navigable rivers and develop a list and where possible work with the Administration to certify the list. He observed that Congress and the state legislature might need to be consulted on certification of some rivers. There is a CIP fiscal note of \$200 thousand dollars, which is exclusively for the conduct of the commission. The operation of the commission would have to come from the agencies and federal assistance.

Vice-Chair Bunde referred to the number of members in section 3. He observed that the membership composition was different in state and federal legislation. Mr. Sommerville explained that the membership component was altered in the Senate Finance Committee. The congressional version was made prior to the Senate change. He anticipated that the congressional version would be changed to correspond to the state version. The sponsor was agreeable to the change in the Senate Finance Committee and did not think that it would be difficult to change the federal law to coincide with the change.

Representative Croft questioned if any part of the Katie John decision was based on the title of land. Mr. Sommerville observed that some jurisdictional issues occur with the exercise of submerged title. In the Katie John case the state maintained that the area in question was a navigable stream. The claim revolved around the reserved water right. The argument did not center on the issue of navigability.

Representative Croft questioned if the fact that the land had never been certified under the Quiet Title Act played into the jurisdictional issues in the Katie John case. Mr. Sommerville observed that he is not an attorney, but did not recall it being part of the case.

In response to a question by Representative John Davies, Mr. Sommerville discussed title meandering. He explained that the mean high waterline of a river or lake estimated for the conveyance in order to assure that no submerged lands are convey. The boundary of the uplands would be conveyed to the adjacent landowner.

Representative John Davies observed that Mr. Sommerville had indicated that there were mistakes made in the Gulkana case. Mr. Sommerville clarified that mistakes were made prior to issuance of the order. The BLM did not follow its own surveying instructions until told to by Congress. Some streams less than 3 meters wide and some lakes less than 50 acres were transmitted as submerged land. Some of these bodies are clearly navigable and should have been corrected. Those titles are still clouded.

Representative John Davies asked the interpretation of navigable land through a national park. Mr. Sommerville explained that ownership of submerged lands in parks would belong to the state of Alaska. The question is how much authority does the adjacent landowner, the federal government, control. The federal government can exercise some control if the activity would impact the adjacent federal land. If the state controls the submerged land in a national park or refuge area they could exercise control of access to the navigable water. For instance the state could limit by permit the number of people or how they access the water.

Vice-Chair Bunde observed that as long as an individual is on the water afloat that they are in state territory. If a foot were stepped on the land than they would be in the private landowner's water and would be trespassing. Mr. Sommerville pointed out that the submerged landowner could exercise some control. If a person floats down a river on private land the state law, which applies to the use of state waters, would apply as long as they remain on the water. If the federal government owned the submerged land they could exercise "quite a bit" of control on the water. Representative Bunde pointed out that if the state did not have control and a dispute occurred over the recreational use of submerged lands, state residents would be in trespass on federal land if they put foot on the surrounding land. The state would not have significant use for recreational purposes of the land, even though there is access to the water.

DICK BISHOP, ALASKA OUTDOOR COUNCIL, FAIRBANKS, testified in support of the legislation. He observed that the Gulkana case was just the beginning of the story. He noted that he had been contacted by the BLM regarding the use of rivers in Alaska, which indicated that the task was difficult and moving at a glacial pace. There has to be a means to expedite the process. There are a number of loose ends that could cause problems in the future. There are millions of acres of state lands in limbo. The federal government hasn't asserted interest in the lands. The legislation could provide the factual background and legwork to allow it to be settled by the courts.

Representative John Davies asked if the Commission could identify rivers that are less controversial and could be presented to Congress and resolved. Mr. Bishop responded that resolution is contingent on a determination of navigability and the process by which a decision is made. There is not a lot of controversy about the basic issue of the terms of the Submerged Lands Act. He concluded that bureaucracy is more of an issue than controversy. The difficulty is in getting a determination.

Vice-Chair Bunde observed that some of the rivers would be used for travel during frozen periods. He questioned how the legislation would interplay with the Katie John decision. Mr. Bishop responded that they are different issues. The Katie John issue relates to the reach of the federal authority and Federal Reserve waters. The controversy is tied to federal authority under the Reserved Waters Doctrine, not the Submerged Lands Act.

Co-Chair Mulder MOVED to report CSSB 219 (FIN) out of Committee with the accompanying fiscal note. Representative Croft OBJECTED for the purpose of a statement. He concluded that the issue did not interact with the Katie John case and WITHDREW his OBJECTION. There being NO OBJECTION, it was so ordered.

CSSB 219(FIN) was REPORTED out of Committee with a "do pass" recommendation and with a previously published fiscal note:
#1 LAA/DNR.
#sb180
CS FOR SENATE BILL NO. 180(FIN)(efd fld)

"An Act implementing pay differentials based on geographic areas for certain state employees and for members of the Alaska State Defense Force; relating to cost-of-living differentials for state aid to municipalities."

MARILYN WILSON, STAFF, SENATOR DONLEY, testified in support of the legislation. Ms. Wilson read the sponsor statement into the record:

Committee Substitute for Senate Bill 180 adopts the most recent study to determine geographic differential payments for cost-of-living differences paid to state employees who are not union members. This legislation adopts the most current geographic differential report. The current statutory formula has not been updated since June 1976 and unfairly discriminates against some state employees while unfairly benefiting others. All union state employees are already under the new formula based on the most recent 1995 study. A similar change in law was passed by the legislature in 2000. That legislation contained other changes effecting public employees and was vetoed by the governor. This bill does not contain the provisions the governor cited as the reason for his veto of the 2000 bill.

The geographic differential calculation utilizes a percentage above a specific measurement baseline. In Alaska, Anchorage is the only federal measurement of the cost-of-living. Therefore, Anchorage is used as the baseline measurement for determining the cost-of-living in the various Alaska election districts and "out of state" locations. This legislation will affect employees in the executive branch of government in partially exempt service or not covered by union contract, and members of the Alaska State Defense Force whenever they are called to active service.

Committee Substitute for Senate Bill 180 effects employees hired on or after the effective date. Current employees will remain under AS 39.27.020, even if they leave and return to state employment after AS 39.27.021 goes into effect.

Committee Substitute for Senate Bill 180 purposely holds harmless other programs that use these statutory sections for calculation of revenue sharing cost-of-living adjustments. It also makes no change to the current differential applicable to state employees who work in another state.

Committee Substitute for Senate Bill 180 will ensure all new state employees receive fair pay adjustments based on a new fairer cost-of-living analysis.

Fiscal Notes indicate that immediate savings in FY 03 will be approximately \$55,000, increasing to \$370,000 by FY 08.

Co-Chair Williams provided members with proposed committee substitute, work draft 22-LS0324/R, 5/10/02 (copy on file).

MIKE TIBBLES, STAFF, REPRESENTATIVE WILLIAMS, provided information on the legislation. He explained that the new cost of living differential would only apply to new employees. A new employee in an area where the cost of living differential was higher would receive the higher cost, but the old employee would not. It would be possible for an employee who had been working in an area for several years to receive less than a brand new employee. The proposed committee substitute resolves the equity issue by providing that everyone gets the old cost of living differential unless that area went up; then everyone would receive the increase.

Co-Chair Mulder MOVED to ADOPT work draft, 22-LS0324\R, 5/10/02. Representative Croft OBJECTED.

Representative Croft questioned if the change would depend on the two employees staying in the same area. Mr. Tibbles noted that the new schedule applies to all employees. The old schedule would apply to old employees only if it is better.

There being NO OBJECTION, it was so ordered.

Ms. Wilson explained that the issue was brought up in the House State Affairs Committee. She provided members with Amendment 1 (copy on file). She observed that the intent is to save money. The amendment would exempt election districts 11, 14, 16c and 17 from the provisions of the legislation. These areas would receive the current cost of living differential. Co-Chair Williams noted that the amendment had not been moved. Co-Chair Williams OBJECTED.

Representative Croft questioned why 1961 election districts were used. Ms. Wilson responded that they are the election districts that were used in statute. She clarified that Kotzebue, Bethel, and Barrow would be affected.

Representative Harris WITHDREW Amendment 1.

ALISON ELGEE, DEPUTY COMMISSIONER, DEPARTMENT OF ADMINISTRATION, testified in support of the legislation as an effort to bring equity to the state employee salary schedule. She explained that the last comprehensive cost of living differential study was done in 1985. The legislation incorporates the salary schedule for non-covered employees. She stated that the Administration would support the committee substitute, but not the amendment proposed by the sponsor. The four districts that would receive increases under the proposed committee substitute are: Kotzebue, Kodiak, Bethel, and Barrow.

In response to a question by Vice-Chair Bunde, Ms Elgee explained that, under the legislation, the existing

employees would be protected from any loss of pay as long as they remain continuously employed; this is similar to the method used under the collective bargaining agreements. Vice-Chair Bunde summarized that there is equity between union and nonunion employees, but inequity between new hires and old.

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Representative Croft questioned how the amendment would affect the four areas that were identified for increases: Kotzebue, Kodiak, Bethel, and Barrow. Ms. Elgee explained that a new differential would be adopted but not applied to the four election districts, which would increase under the study. Collective bargaining agreements use the same differentials. The legislation would apply the results of the study, which determined that there should be an increase in the four areas.

Co-Chair Mulder questioned if the amendment would result in greater savings to the state of Alaska in the long or short term.

Ms. Elgee explained that the legislation would result in a savings of approximately \$26 thousand dollars for the executive branch. There would be an initial cost of \$8 thousand dollars under the proposed committee substitute. She clarified that the proposed committee substitute would be cost neutral in the first year. The cost savings by the third year would be almost identical to the House State Affairs version. By FY08 there would be a savings of \$134 thousand dollars in the executive branch. The amendment would retain the old differential in districts 11, 14, 16c and 17 and result in greater savings. She observed that the amendment would provide greater savings in both the long and short terms.

Co-Chair Mulder provided members with Amendment 2 (copy on file). Ms. Elgee clarified that the proposed committee substitute would grandfather in existing employees in districts that would see a decrease in the cost of living differential. These employees would continue to get cost of living adjustments and merit increases as if the new differential had not been adopted. Amendment 2 would freeze those employees at their July 2002 salary level until such time as the cost of living adjustments applied to their salary in conjunction with the new differential was equal or greater than the salary that they had been frozen at. The amendment would apply to executive branch employees in Fairbanks, Palmer, Kenai, Sitka, and Dillingham. There are 60 employees in Fairbanks, 15 in Palmer and, 10 in the Kenai.

Co-Chair Mulder observed that the amendment would establish a floor until they grew into the floor. Then they would grow with the floor. He questioned the savings.

Ms. Elgee acknowledged that the savings would be greater than the fiscal note and stated that the department would have to recalculate the savings.

Representative Lancaster asked if employees transferred in and out of the four areas. Ms. Elgee noted that personnel transfers occur. The majority of the non-covered employees in the executive branch are with the Department of Law or Alaska Public Defenders Agency.

CHRIS CHRISTENSEN, STAFF COUNSEL, ALASKA COURT SYSTEM, noted that the legislation would affect some employees positively and some negatively. He observed that 240 court employees would be affected. He observed that 170 employees work in communities in which the differential would be reduced and 70 work in communities in which the differential would be increased. He stressed that the union employees receive a 42 percent differential in rural areas such as Barrow. The court non-union employees are being paid a 31 percent differential. He noted that the previous version proposed to pay new employees more than existing employees. He pointed out that this would have resulted in cases where range 12 supervisors would be paid less than new range 10 employees. The previous senate version would have saved the Alaska Court System \$28 thousand dollars in the first year and \$235 thousand dollars by year six. The proposed committee substitute would not start saving money until year three. The first year would cost \$70 thousand dollars; the second year it would save \$15 thousand dollar; it would save \$40 thousand dollar in year three; and over \$200 thousand dollars by year six. The proposed committee substitute would treat all employees fairly by grandfathering existing employees.

Vice-Chair Bunde observed that there would be an urban/rural fairness issue. Mr. Christensen acknowledged the urban/rural fairness issue but observed that new employees know what they are getting when they take the job. Tiered systems are not unusual. The Senate version would reduce the salaries of existing employees.

In response to a question by Representative Croft, Mr. Christensen observed that Amendment 1 would carve out four rural areas that would have received the greatest increase. He pointed out that the sponsor statement indicated that the intent was to treat employees fairly, but Amendment 1 would discriminate against employees by continuing to pay certain employees too little.

Mr. Christensen referred to Amendment 2. He summarized that the intent of the amendment is to make sure that existing employees would continue to get the new differential, in an area where the geographical differential would go down, but would not be entitled to COLA's or merit increases until they catch up. The provision would not apply to internal promotion; the provision would only apply to longevity and COLA increases.

PAUL LYLE, FAIRBANKS, testified via teleconference in support of the committee substitute. He urged the Committee not to adopt Amendment 1, which would freeze their pay. He maintained that the non-covered employees are already behind in their pay. He stressed that it would mean that many in state service would not receive another pay increase during their employment. He stated that the committee substitute would be a fair treatment of employees.

JOHN ATHENS, FAIRBANKS, testified via teleconference in support of the committee substitute. He observed that the differential change is based on a 1985 study by the Department of Administration. He felt that it would be unfair to reduce salaries of career state employees based on a 1985 study.

Representative Whitaker observed that he would object to the amendments.

Co-Chair Mulder MOVED to ADOPT Amendment 2, 22-LS0324\R.1, 5//10/02. He noted that Fairbanks has a 15 percent COLA, which he thinks is unjustified. The new COLA is 4 percent. He felt that it would be fair to hold those employees to the existing COLA until they reach the floor. He observed that the legislation would not generate real savings without the amendment.

Representative Davies argued against the amendment. He observed that the savings would be delayed for the first couple of years, but that the full savings would be realized as employees retire. He noted that employees have been hired based on a certain pay rate and argued that it is not fair to change the amount after employment. He emphasized that employees have made financial commitments based on the anticipation of their pay. He spoke in support of the grandfather provision of the employees.

Representative Whitaker spoke against the amendment.

Representative Croft noted that the grandfather provision would fade out through attrition. He questioned if the data is really based on a 1985 study.

Ms. Elgee acknowledged that the last full differential study was in 1985. She observed that similar legislation has been

introduced every year. Representative Croft stressed that the data is not good enough to justify Amendment 2.

Vice-Chair Bunde spoke in support of the amendment.

Co-Chair Mulder argued that employees do not base their finances on anticipated raises or COLA increases. He pointed out that COLA's are adjusted periodically. He maintained that it would be fair to hold the floor.

Representative Davies argued in opposition to the amendment. He maintained that the fairest method would be to protect current employees and set up a standard for those that are hired with the understanding [of the new differential].

A roll call vote was taken on the motion.

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

Representative Foster and Hudson were absent from the vote.

The MOTION PASSED (5-4).

Co-Chair Mulder MOVED to report HCS CSSB 180 (FIN) out of Committee with the accompanying fiscal note. Representative John Davies OBJECTED.

Representative Croft stressed that the legislation is based on 1985 data, which could result in radical different calculations. He maintained that it would be appropriate to do another study and implemented it quickly.

Representative Lancaster stated that he has a philosophical problem with COLAs.

Vice-Chair Bunde spoke in support of the legislation. He observed that the cost of living in Anchorage is no longer significantly higher than other west coast cities in the United States.

Representative Davies spoke in opposition to the legislation. He stressed the inequities and maintained that it would be challenged in court.

Co-Chair Mulder argued in support of the legislation. He stressed that the numbers still pertain and that the intent is to save money for the state.

Representative Davies stressed that the primary reason for the COLA is to provide equity. The savings to the state of Alaska is only \$300 thousand dollars. He did not think that the denial of someone's pay increase for the next five years based on unsubstantiated data would stand up in court.

Co-Chair Mulder pointed out that the legislation protects rural Alaska.

A roll call vote was taken on the motion to move CSSB 180(FIN)(efd fld) from Committee.

IN FAVOR: Moses, Bunde, Williams, Mulder

OPPOSED: Lancaster, Whitaker, Croft, Davies, Harris,

Representative Foster and Hudson were absent from the vote.

The MOTION FAILED (4-5).

CSSB 180(FIN)(efd fld) was heard and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 3:49 PM