

MINUTES
SENATE FINANCE COMMITTEE
April 05, 2001
9:18 AM

TAPES

SFC-01 # 69, Side A
SFC 01 # 69, Side B

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 9:18 AM.

PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Jerry Ward, Vice Chair
Senator Gary Wilken
Senator Alan Austerman
Senator Lyman Hoffman
Senator Lyda Green

Also Attending: WENDY HALL, Staff to Co-Chair Kelly; ELMER LINDSTROM, Special Assistant, Office of the Commissioner, Department of Health and Social Services; WALTER MAJAROS, Director, Division of Mental Health and Developmental Disabilities, Department of Health and Social Services; GARTH HAMBLIN, Chief Financial Officer, Bartlett Regional Hospital; PAT CLASBY, Alaska State Hospital and Nursing Home Association; LENORD ABEL, PHD, Program Administrator, Mental Health Services, Division of Mental Health and Developmental Disabilities, Department of Health and Social Services;

Attending via Teleconference: From Fairbanks: KARL SANFORD, Assistant Administrator, Fairbanks Memorial Hospital; R. DUANE HOPSON, MD, Medical Director of Mental Health, Fairbanks Memorial Hospital; LIZ WOODYARD, Registered Nurse and Manager, Inpatient Unit, Fairbanks Memorial Hospital;

SUMMARY INFORMATION

SB 154-REPEAL SUNSET OF MENTAL HEALTH ASSISTANCE

The Committee heard from the sponsor, the Department of Health and

Social Services, and representatives from the Fairbanks Memorial Hospital and Bartlett Regional Hospital. The bill moved from Committee.

SB 136-RESOURCE DEVELOPMENT: BD./GRANTS/FUND

The Committee heard from the sponsor and adopted a committee substitute. The bill was held in Committee.

HB 103-APPROP: OPERATING BUDGET
HB 104-APPROP: MENTAL HEALTH BUDGET

The Committee adopted a committee substitute for each bill, considered amendments and moved the bills from Committee.

SB 123-FEDERALLY FUNDED PROJECTS OF RAILROAD

This bill was scheduled but not heard.

#SB154

SENATE BILL NO. 154

"An Act relating to mental health treatment facilities; repealing the termination date of the mental health treatment assistance program; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

WENDY HALL, Staff to Co-Chair Kelly read a statement into the record as follows.

The designated evaluation treatment program is a critical component to the continuum of mental health services in Alaska, particularly for indigent persons with mental illness who are being civilly committed or meet the criteria for civil commitment.

Through this program, many poor people with mental illnesses, who do not qualify for Medicaid, are able to receive services in community hospitals across the state closer to their families and local support systems. Without [this] program, it would necessary to transport many consumers in crisis to Alaska Psychiatric Institute to receive evaluation and treatment services.

Ms. Hall then stated that this bill repeals the sunset date of existing statute to allow continuation of this program.

ELMER LINDSTROM, Special Assistant, Office of the Commissioner, Department of Health and Social Services, testified that the department is in full support of the bill and appreciates the legislature's adoption of the original legislation.

Co-Chair Kelly inquired about the fiscal note.

Mr. Lindstrom replied that although the fiscal note shows the full cost of the program in FY 02, these costs are included in the Senate version of the FY 02 operating budget. He noted that the program has increased over time, as expected. He shared that a non-general fund source has been used to fund the bulk of the program over the past year. He pointed out that this fund source expires at the end of the current fiscal year but that an alternate non-general fund source has been identified and would be used to continue the program.

Co-Chair Kelly clarified that the fiscal note represents the full cost to operate the program rather than the increase of the previous year, due to the sunset date.

Mr. Lindstrom affirmed.

Co-Chair Kelly asked the increased general fund cost compared to the previous year.

WALTER MAJAROS, Director, Division of Mental Health and Developmental Disabilities, Department of Health and Social Services, stated that the fiscal note contains a general fund increment of \$100,000 and a Mental Health Trust Authority (MHTA) fund increment of \$200,000. He expanded on Mr. Lindstrom's comments, noting the non-general fund source is available through a "creative use of a federal self-insurance program."

Co-Chair Kelly surmised that in a normal situation, the fiscal note amount would be approximately \$100,000. He again pointed out that the appearance of a higher amount is because the program is otherwise concluded at the end of the current fiscal year unless extended through this legislation.

KARL SANFORD, Assistant Administrator, Fairbanks Memorial Hospital, testified via teleconference from Fairbanks in support of the legislation. He listed the decrease in the number of patients transported out of the community over the past two and one-half years. He surmised this program has resulted in cost savings for the state due to quicker access to care for mentally ill patients as well as a continuity of providers for these patients. He spoke

of the quality of care provided, which is possible because of the provider's familiarity with their situations and needs. He asserted, "The health of the community is better off for that."

Mr. Sanford added that the reduced number of patients transported to the Alaska Psychiatric Institute (API) has increased the level of service provided at that facility as well.

Co-Chair Kelly asked the number of patients transported from the Fairbanks Memorial Hospital to API during the last year compared to the number the year prior.

Mr. Sanford answered approximately 70 transfers occurred in the year 1999, reduced to five in 2000.

R. DUANE HOPSON, MD, Medical Director of Mental Health, Fairbanks Memorial Hospital, testified via teleconference from Fairbanks in favor of the bill. He spoke of the consequences of delayed treatment for mental illness, which he noted increases the cost to the patient and sometimes increases the necessary hospitalization time.

LIZ WOODYARD, Registered Nurse and Manager, Inpatient Unit, Fairbanks Memorial Hospital testified via teleconference from Fairbanks to emphasize the benefits of family involvement in treatment of mentally ill patients.

GARTH HAMBLIN, Chief Financial Officer, Bartlett Regional Hospital, testified in Juneau in support of the bill, stressing that the program allows treatment of the mentally ill within their own communities.

PAT CLASBY, Alaska State Hospital and Nursing Home Association, testified in Juneau in favor of the legislation. She gave history of the previous two years of the program. She listed the primary providers as Fairbanks Memorial Hospital, Bartlett Regional Hospital, the Kodiak hospital, and the Yukon-Kuskokwim Health Center in Norton Sound. She added that other smaller facilities in the state also provide services to patients in the civil commitment process prior to transport to a regional treatment facility of the API. She opined this program is "the modern approach to care at the local hospital" and avoids transports to the state-facility in as many cases as possible. She stressed that if this program continues it would become the primary aspect of continuing mental health care.

Senator Ward commented that he fully supported the program and noted that members of his family benefited from it. He asked if the

state receives reimbursement for services provided to Native Alaskan patients.

LENORD ABEL, PHD, Program Administrator, Mental Health Services, Division of Mental Health and Developmental Disabilities, Department of Health and Social Services, responded that the federal government, "truly is the payer of last resort." He explained these funds are used only after it is determined that the patient is not eligible for any other services.

Senator Ward stressed that many people are not receiving these services because the funds run out. He emphasized that Alaskan Natives have a right to this service. He asserted that the MHTA has a responsibility to Natives to provide services and informed that if the Trust does not pay, the state must pay. He opined that the federal government should pay this cost.

Co-Chair Kelly asked Senator Ward to assist in monitoring this legislation as it progresses through the House of Representatives.

Senator Ward agreed to do so.

Senator Green asked if this program is related to Medicaid.

Mr. Abel replied that it is not, and explained this program is intended to help indigent persons, who do not have Medicaid coverage or private insurance.

Senator Hoffman wanted to know how this program impacts other communities in the state not mentioned.

Co-Chair Kelly answered that because patients from Fairbanks and Juneau are not occupying beds at API, more space is available for patients from other communities.

Senator Green offered a motion to move SB 154, 22-LS 0748\A from Committee with accompanying \$2,652,100 fiscal note from the Department of Health and Social Services.

There was no objection and the bill MOVED from Committee.

AT EASE 9:37 AM / 9:48 AM

#SB136

SENATE BILL NO. 136

"An Act relating to resource development and to grants for the purpose of promoting resource development from appropriations

of a portion of the revenue derived from the extraction of certain state natural resources."

This was the second hearing for this bill in the Senate Finance Committee.

Senator Austerman moved for adoption of CS SB 136, 22-LS0083\S as a work draft.

PAT CARTER, staff to Senator Pearce, detailed the changes in the committee substitute made to address concerns voiced by the Senate Finance Committee.

Mr. Carter pointed out the Resource Development Fund and oversight board of directors were moved from the Department of Natural Resources into the Department of Community and Economic Development. He explained this would reduce the cost associated with administrating and processing the grants since the Department of Community and Economic Development is regularly involved with grant activities.

Mr. Carter informed that in the committee substitute, 20 percent of the Resource Development Fund would be allocated to the New Business Incentive Fund, which he described as an unfunded program created several years prior. He reminded the Committee the intent of the New Business Incentive Fund is to attract companies to Alaska to "build on our resource base."

Mr. Carter stated that in an attempt to increase the efficiency of the Board, the membership is reduced from seven to five seats in the committee substitute. He listed the membership seats as one held by the commissioner of the Department of Community and Economic Development, and the remaining seats held by representatives of the resource industry, one each from forestry, mining, oil and gas, appointed by the governor.

Mr. Carter next told of a requirement added in the committee substitute stipulating that grants are awarded in a "matching format". He explained the grants would require matching funds from the recipient to demonstrate that industry would help support this program. He noted that a particular match percentage is not established in the committee substitute because some companies could contribute more then could others.

Mr. Carter continued that a grant limit of \$500,000 is contained in the committee substitute. He commented this is because of concerns voiced that any grant above this amount should receive a separate

legislative appropriation.

Mr. Carter pointed out that a preference was granted to Alaskan non-profit corporations in the committee substitute.

Mr. Carter also noted the committee substitute includes a stipulation that the funds could not be used for election or campaign purposes or for specific lobbying efforts at the state or local level.

Without objection the committee substitute, version "S" was ADOPTED.

Senator Austerman stated that his earlier concerns were alleviated with the changes made in the committee substitute.

Senator Green asked if the grants could be awarded to a for-profit organization.

Mr. Carter answered they could not under the current language.

Senator Green requested an example of a non-profit corporation that would receive the grants.

Mr. Carter gave an example of the Miners Association that might wish to perform a public relations campaign to promote the industry and educate about substantial improvements to production procedures.

Senator Green asked if this program in any way duplicates or conflicts with activities of the Alaska Science and Technology Foundation (ASTF) or other organizations.

Mr. Carter replied he did not believe so. He shared that it was originally considered whether the grants would be administered through the ASTF. However the intent of this program is that participants would not be required to hire a grant writer, which is required of most organizations currently working with the ASTF.

Senator Hoffman asked if there was a requirement that the non-profit organizations expend the grant funds to only promote generic products. Specifically, he wanted to know if a grant to promote fish products could be used to promote salmon only.

Mr. Carter replied that the language was drafted to be as simple as possible. He stated that he had not considered different fishing user groups.

Senator Austerman asked if this legislation excludes fisheries resources.

Mr. Carter replied that it does not. He explained that this program is not specifically intended for fisheries-related industries because the Alaska Seafood Marketing Institute (ASMI) addresses this resource. He qualified that the proposed grant program does not exclude fisheries.

Senator Austerman asked if the revenue from the fishing industry would be used to fund this program.

Mr. Carter assured it does not and that general funds are used.

AT EASE 9:59 AM / 10:00 AM

Co-Chair Kelly ordered the bill HELD in Committee.

AT EASE 10:00 AM / 6:00 PM

#HB103

#HB104

CS FOR HOUSE BILL NO. 103(FIN)(brf sup maj fld)

"An Act making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds; and providing for an effective date."

CS FOR HOUSE BILL NO. 104(FIN)

"An Act making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program; and providing for an effective date."

Co-Chair Kelly moved to adopt SCS CS HB 103, 22-LS0410\T as a working draft.

There was no objection and the committee substitute was ADOPTED.

Co-Chair Kelly moved to adopt SCS CS HB 104, 22-LS0411\O as a working draft.

Without objection the committee substitute was ADOPTED.

Co-Chair Kelly detailed the changes in the HB 103 committee substitute. He stated it "adopts something that we've had in many bills that have passed through this Committee over the last few years." He explained this as comparable to the federal Hyde

Amendment language that restricts the use of federal funds for abortion services. He noted the language is contained in the Department of Health and Social Services portion of the budget as well as in a special provision for the Constitutional Budget Reserve (CBR) fund.

Senator Hoffman referenced Section 32 relating to the non-severability clause. He asked what the legislature would do if the court finds this provision unconstitutional but the legislature maintains that it is constitutional.

Co-Chair Kelly detailed the history of bringing the matter of funding for abortion services before the court and the subsequent court actions ruling against the methods utilized by the legislature. He noted that the court left leeway in each decision it issued, by finding that the legislature did not handle the matter in the proper manner and that by changing the way the budget was funded, it could possibly be found constitutional. He stressed, however, that each time a different approach was attempted by the legislature, the court continued to rule it as unconstitutional.

Co-Chair Kelly informed that the manner in which this committee substitute is structured, the courts may or may not "strike it down". He opined that if the court does rule against the legislature in this budget, "they'll have to show pretty blatant disregard for the constitution, at least the separation of powers that exists in the constitution." He predicted the court would be "reluctant to strike down the entire HESS (Department of Health and Social Services) budget over this issue."

Senator Hoffman asked if the budget is struck down whether a special legislative session would be necessary.

Co-Chair Kelly answered yes.

Co-Chair Kelly offered a motion to authorize the Division of Legal and Research Services and the Division of Legislative Finance to make non-substantial technical and conforming changes to the budget bills where necessary.

There was no objection and the motion PASSED.

Statewide

STWIDE #2: This amendment reduces the appropriation from \$39,578,400 in Section 24, subsection (c) on page 53, lines 8 and 9 of the version "S" committee substitute. The amended language reads as follows.

(c) The sum of \$32,578,400 is appropriated from the general fund to the Alaska debt retirement fund (AS 37.15.011).

This amendment also increases the appropriation from \$100,000 in Section 24, subsection (d) on page 53, lines 10 through 13 of the version "S" committee substitute. The amended language reads as follows.

(d) The sum of \$1,100,000 is appropriated from the lapsing balance of the appropriation made in sec. 1. ch. 133, SLA 2000, page 13, line 29, and allocated on lines 30-31 (public assistance-Alaska temporary assistance program-\$66,112,800) to the Alaska debt retirement fund (AS 37.15.011).

This amendment also changes the funding source from AHFC Dividend funds in Section 17 on page 50, lines 3 through 7 of the version "S" committee substitute. The amended language reads as follows.

Sec. 17. OFFICE OF THE GOVERNOR. The sum of \$947,700 is appropriated from the general fund to the Office of the Governor, division of elections, for reapportionment implementation costs for the fiscal year ending June 30, 2002.

This amendment also inserts a new subsection to Section 24 on page 54, following line 10 of the version "S" committee substitute to read as follows.

(m) The sum of \$6,000,000 from the fiscal year 2002 dividend that is declared by the board of directors of the Alaska Housing Finance Corporation is appropriated from Alaska Housing Finance Corporation corporate receipts to the Alaska debt retirement fund (AS 37.15.011).

Accompanying explanatory language reads as follows.

Reduce general fund capitalization of the Alaska Debt Retirement Fund by \$7,000,000. Capitalize the Alaska Debt Retirement Fund with the remaining \$6,000,000 AHFC Dividend funds and an additional \$1,000,000 reappropriation of surplus FY 01 Alaska Temporary Assistance Program (ATAP) general funds.

Co-Chair Kelly moved to rescind the Committee's action of adopting the amendment for the purpose of amending the amendment.

The action adopting the amendment was RESCINDED without objection.

Co-Chair Donley detailed a conceptual amendment to the amendment to specify that the lapsing balance pertains to general funds in Section 24, subsection (d). The amended language reads as follows.

(d) The sum of \$1,100,000 is appropriated from the lapsing general fund balance of the appropriation made in sec. 1. ch. 133, SLA 2000, page 13, line 29, and allocated on lines 30-31 (public assistance-Alaska temporary assistance program-\$66,112,800) to the Alaska debt retirement fund (AS 37.15.011).

Co-Chair Kelly moved to amend the amendment.

Senator Hoffman requested the Division of Legislative Finance explain.

DAVID TEAL, Director, Division of Legislative Finance responded that as written, Section 24 appropriates a lapsing balance of up to \$1.5 million but does not specify the fund source. Since there are both general funds and Temporary Assistance For Needy Families (TANF) funds that are lapsing, he stated, clarification that general funds would be used in this appropriation is necessary.

There was no objection and the amendment was AMENDED.

Without objection the amended amendment was ADOPTED.

The remaining amendments are to the version "T" committee substitute.

Department of Health and Social Services

H&SS #30: This amendment changes the funding source from general funds to General Fund/Mental Health of \$600,000 in the Institutions and Administration Budget Request Unit (BRU), Alaska Psychiatric Institute component on page 45 lines 16, 20 and 21.

Co-Chair Kelly moved for adoption.

Senator Hoffman objected for an explanation.

Mr. Teal explained that STWIDE #1, adopted by the Committee in the previous hearing, replaced a significant amount of Alaska Housing Finance Corporation (AHFC) appropriations with general funds. He noted the funds appropriated to the Alaska Psychiatric Institute should be specifically General Fund/Mental Health, which this

amendment accomplishes.

The amendment was ADOPTED without objection.

AT EASE 6:10 PM / 6:10 PM

Department of Education and Early Development

E&ED #13: This amendment changes the language in Section 18 on page 51, lines 17 through 22 to read as follows.

Sec. 18. LEARNING OPPORTUNITY, INSTRUCTIONAL MATERIALS, VOCATIONAL EDUCATION AND IN-SCHOOL NURSES GRANTS. (a) The sum of \$6,187,100 is appropriated from the general fund to the Department of Education and Early Development for the fiscal year ending June 30, 2002, for payment as learning opportunity grants to school districts based on the school district's average daily membership to pay for supplemental student instructional programs intended to improve student performance on the high school graduation examination or benchmark examinations.

(b) The sum of \$6,187,100 is appropriated from the general fund to the Department of Education and Early Development for the fiscal year ending June 30, 2002, for payment to school districts based on the school district's average daily membership, to pay for:

(1) textbooks and other instructional materials intended to improve student performance on the high school graduation examination or benchmark examinations, as instructional materials grants;

(2) vocational education programs intended to assist the district in providing vocational education services to students; and

(3) nursing services in schools.

Co-Chair Kelly moved for adoption.

E&ED #13(a): This amendment to the amendment replaces "school district's average daily membership" with "school district's adjusted average daily membership" in the two places it appears in the amendment.

Senator Hoffman moved to amend the amendment. He asserted this would provide a "more equitable distribution" of funds to the vocational and technical education programs. He reminded there have been many discussions on this issue and that "adjusted daily membership" criteria would be fairer to rural areas of the state.

Senator Green objected.

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator Austerman and Senator Hoffman

OPPOSED: Senator Leman, Senator Ward, Senator Wilken, Senator Green, Co-Chair Kelly and Co-Chair Donley

The motion FAILED (3-6)

The amendment FAILED to be amended by E&ED #13(a).

Senator Green stressed the need for clarification that the school districts have authority to choose from the allowable expenditures for this appropriation listed in subsection (b).

Senator Wilken expanded on the clarification stating that the school districts could determine its priorities in allocating these funds between the allowable expenditures. He noted that the districts are not obligated to allocate funds to all three items.

Co-Chair Kelly ascertained subsection (a) appropriates approximately \$6 million for instructional materials intended to prepare students for the high school graduation and benchmark examinations and commented that he intended for subsection (b) to appropriate the remaining \$6 million for purposes not related to the examinations. He objected to the amendment as currently drafted because the language in subsection (b)(1) specifies the examinations.

Co-Chair Kelly recommended amending the amendment to delete "intended to improve student performance on the high school graduation examination or benchmark examinations," from subsection (b)(1).

Senator Hoffman suggested the intent should remain that textbooks and materials would be purchased with the goal of improving student performance.

E&ED #13(b): This amendment to the amendment deletes "on the high school graduation examination or benchmark examinations, as instructional materials grants."

Co-Chair Kelly moved to amend the amendment to incorporate E&ED #13(b).

Without objection the amendment was AMENDED.

E&ED #13(c): This amendment to the amendment deletes "intended to assist the district in providing vocational education services to students".

Senator Leman moved to amend the amended amendment. He stated that the same goal could be reached with the deletion of this language.

The amended amendment was AMENDED without objection to incorporate E&ED #13(c).

Senator Hoffman asked why some of the funds could not be utilized for additional teaching positions.

SFC 01 # 69, Side B 06:19 PM

E&ED #13(d): This amendment to the amended amendment deletes "and" at the end of subsection (b)(2), inserts "and" to the end of subsection (b)(3) and inserts a new subsection (b)(4) to read "teachers."

Senator Hoffman moved to amend the amendment.

Senator Green objected.

Senator Hoffman asked what was the basis for the objection.

Co-Chair Kelly spoke in favor of the amendment. He qualified he does not support the use of Learning Opportunity Grants for salary increases. However, he supported using these funds to hire new teachers if a school district was in need of more teachers to lower student-to-teacher ratios or to implement a new program. He remarked that the districts should have the ability to use these funds "at it sees fit" for purposes intended to improve student performance, but did not consider salary increases as such a purpose.

AT EASE 6:20 PM / 6:25 PM

Senator Leman stated that while he saw merit in the proposal, he would vote against the amendment to the amendment. He suggested pay increases to those teachers that demonstrate exceptional performance that thereby helps students in meeting the benchmarks.

Senator Austerman added that he too would oppose the amendment to the amendment saying that he thought it strayed too far from the

intent of the Learning Opportunity Grants. He shared that when he visits schools, he is approached by students showing him that their textbooks are the same as those used by their grandparents. He stated that if the goal is to provide more money for teachers, that matter should be addressed separately.

Co-Chair Donley noted the recommendation of the Governor's Education Funding Task Force to provide additional funding for books and supplies. He asserted that the intent of the Learning Opportunity Grants is to meet that recommendation.

A roll call was taken on the motion.

IN FAVOR: Senator Hoffman, Senator Olson and Co-Chair Kelly

OPPOSED: Senator Ward, Senator Wilken, Senator Austerman, Senator Green, Senator Lemman and Co-Chair Donley

The motion FAILED (3-6)

The amended amendment FAILED to be amended by E&ED #13(d).

Senator Hoffman asked if the instructional materials as listed in subsection (b)(1) could include computers.

Co-Chair Donley answered that although it was not his original intent, nor the intent of the task force, the Committee should decide as a whole on whether to include computer equipment as an allowable expenditure. He understood the focus of the task force was primarily on the insufficient textbooks and supplies. He recalled testimony heard over the years about teachers purchasing supplies with their own money.

Senator Hoffman asked if Co-Chair Donley, as the maker of the amendment, would support the inclusion of computers and information technology.

Co-Chair Donley replied that he would defer to the recommendations of the task force.

Senator Ward understood the language of the amendment as well as the recommendations of the task force, as not including computers and other information technology as allowable expenditures of the Learning Opportunity Grants.

Senator Hoffman suggested that the entire \$6 million did not have to be spent on computers.

Senator Ward disagreed and was willing to vote on the amendment as he understood it to be. He predicted that some districts would spend all available funds on new technology rather than textbooks, if given the opportunity.

AT EASE 6:31 PM / 6:33 PM

Co-Chair Donley shared that the task force report lists "proper technology" in its recommendations of items needing additional funding.

E&ED #13(e): This amendment to the amended amendment deletes "and" at the end of subsection (b)(2), inserts "and" to the end of subsection (b)(3) and inserts a new subsection (b)(4) to read "appropriate technology."

Senator Hoffman moved to amend the amended amendment.

Senator Green objected and listed the items recommended by the task force: up-to-date textbooks, appropriate technology, general classroom supplies. However, she stressed, new textbooks is a higher priority than updated software.

Senator Hoffman noted that the trend is moving toward using textbooks less and information technology more. It therefore seemed appropriate to him to "allow our children to benefit by many of the computers that allow our students to learn at a faster rate." He warned that by eliminating information technology from the list of allowable expenditure, it appears "we want our kids to stay in the 20th Century."

Senator Wilken commented the purpose of the grants is to improve student performance and that every school district has elected officials committed to doing just that. He suggested allowing the school boards to make their own decisions as to how the funds should be spent, whether for textbooks or for computers. He stated the current language should not be changed with this amendment to the amendment.

Senator Hoffman expressed that based upon the interpretation of the language stated by Senator Wilken he WITHDREW his motion to amend the amended amendment without objection.

The amended amendment reads as follows.

Sec. 18. LEARNING OPPORTUNITY, INSTRUCTIONAL MATERIALS, VOCATIONAL EDUCATION AND IN-SCHOOL NURSES GRANTS. (a) The sum of \$6,187,100 is appropriated from the general fund to the

Department of Education and Early Development for the fiscal year ending June 30, 2002, for payment as learning opportunity grants to school districts based on the school district's average daily membership to pay for supplemental student instructional programs intended to improve student performance on the high school graduation examination or benchmark examinations.

(b) The sum of \$6,187,100 is appropriated from the general fund to the Department of Education and Early Development for the fiscal year ending June 30, 2002, for payment to school districts based on the school district's average daily membership, to pay for:

- (1) textbooks and other instructional materials intended to improve student performance;
- (2) vocational education programs; and
- (3) nursing services in schools.

A roll call was taken on the motion to adopt the amended amendment.

IN FAVOR: Senator Ward, Senator Wilken, Senator Austerman, Senator Green, Co-Chair Kelly and Co-Chair Donley

OPPOSED: Senator Hoffman, Senator Leman and Senator Olson

The motion PASSED (6-3)

The amended amendment was ADOPTED.

AT EASE 6:38 PM / 6:38 PM

Co-Chair Donley thanked the Director and staff from the Division of Legislative Finance, the Senate Finance Committee Secretary and staff, the Committee members' Finance Committee aides, and especially James Armstrong from his staff for the work that was done on the FY 02 operating and mental health budgets.

Senator Hoffman voiced concern with the unconstitutionality of the non-severability clause and the possible special session that would be required to provide funding for the Department of Health and Social Services. He spoke of payments that must be made to providers for services such as Medicaid.

Co-Chair Kelly assured that he shared those concerns and stated that he hoped that before the judge "goes traipsing through our constitution with impunity," the judge would measure those concerns as well.

Senator Hoffman countered that the judge is required to interpret

the law and that if the judge determines this budget violates the constitution, the judge would have to rule accordingly.

Co-Chair Kelly opined that the judicial branch is filled with many "hard-working, talented and dedicated" employees, but that "in recent years, they have done things that courts in the rest of the United States have never done since the inception of our country; things that other courts would be aghast at." He continued, "We as legislators have a duty to defend our branch of government. I think we have to draw a line at some point and stand up to the judiciary for our branch of government." He asserted the committee substitute "puts us in the best position we can be in to stand up to the judiciary. That's really the only intent."

Co-Chair Kelly offered a motion to move SCS CS HB 103, 22-LS0410\T, as amended, from Committee.

Without objection the bill MOVED from Committee.

Co-Chair Kelly offered a motion to move SCS CS HB 104 22-LS0411\O, as amended, from Committee.

There was no objection and the bill MOVED from Committee.

#

ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 06:43 PM.