

MINUTES
SENATE FINANCE COMMITTEE
April 24, 2001
10:05 A.M.

TAPES

SFC-01 # 83, Side A
SFC-01 # 83, Side B
SFC-01 # 84, Side A

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 10:05 A.M.

PRESENT

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

Also Attending: SENATOR JOHN COWDERY; CARL ROSE, Executive Director, Association of the Alaska School Boards; FREIDA ARNHEIGHT, Superintendent, North Slope Borough School District; DENNIS POSHARD, Legislative Liaison, Special Assistant, Office of the Commissioner, Department of Transportation and Public Facilities; MARK O'BRIEN, Chief Contracts Officer, Contracting, Procurement & Appeals Division, Department of Transportation and Public Facilities; DON SMITH, Staff, Senator John Cowdery; DOUG GARDNER, Assistant Attorney General, Department of Law.

Attending via Teleconference: From Fairbanks: Charles Wieggers; Bert Bell, Alaska General Contractors (AGC); Ton Johansen; From Nome: Mike Wassman, Engineer, Kawerak Inc.; From Anchorage: Dick Cattanach, Alaska General Contractors (AGC); Eden Larson, Executive Director, Associated Builders and Contractors (ABC); April Ferguson, Bristol Bay Native Corporation; Bill Watterson; Bernard Richard, U.S. Economic Development Administration; Kevin Brady, Attorney, Oles Mornson Law Firm; Katelyn Markley, Alaska Industrial Development and Export Authority (AIDEA); Bill Reno, Attorney, Oles

Mornson Law Firm; Martin Moore; From Saint Marys: Walton Smith, City Manager; Off-Net: Ken Evans, Alaska Native Tribal Health Consortium (ANTAC).

SUMMARY INFORMATION

SB 83-CONSTRUCTION OF HIGHWAYS BY DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Following teleconferenced testimony, CS SB 83 (FIN) was reported out of Committee.

SB 152-DOTPF-RELATED CONTRACT CLAIMS

Following teleconferenced testimony, SB 152 was reported out of Committee.

SB 174-EDUCATION FUNDING

CS SB 174 (FIN) was reported out of Committee.

SB 193-APPROP:STUDY EFFECTS OF PERM FUND DIVIDND

SB 193 was scheduled but not heard.

#SB174

SENATE BILL NO. 174

"An Act relating to education funding; and providing for an effective date."

Co-Chair Kelly requested a reconsideration motion be taken on SB 174 so that the Committee could consider a technical amendment.

Senator Wilken moved to rescind action taken on moving SB 174 out of Committee.

Co-Chair Kelly noted that the version of the bill before the Committee was version "C". There being no objection, action was RESCINDED.

Senator Wilken moved to adopt Amendment #6. [Copy on File]. He stated that the amendment would clarify the intent of the change in the local requirement for organized Alaska. The affect of the amendment would pass on half of the amount, in order that the taxpayer and the general fund would each carry half the funding load. He pointed out that on Page 2, Line 30, the word "annual" would be inserted, which would clarify that it would affect the

prior year and would be an annual calculation. Also, it would establish a local assessed value calculation.

Senator Hoffman objected for the purpose of discussion. He asked if there had been a comparison for the 1999 date.

Senator Wilken noted that he did not have that information. He believed that would be included in the fiscal note received from the Department. He added that the 1999 were the figures which had been used.

Co-Chair Kelly asked if the objection was maintained. There being no further objection, Amendment #6 was ADOPTED.

Senator Olson moved to rescind action taken on failure to adopt Amendment #4 which would delete Section #1. [Copy on File]. He advised that none of the school districts in his area or rural Alaska were in support of the bill.

Co-Chair Kelly objected. He argued that the bill would provide more money to his district and also the North Slope Borough District.

CARL ROSE, Executive Director, Association of the Alaska School Boards, Juneau, voiced concern with passage of the bill because of issues with fairness and district redistribution. Mr. Rose commented that the Association is concerned about the future of education in the State of Alaska. He asked what will happen to children moving forward and their success with the high school qualifying exams. He requested that members take a long-term view and create a real fiscal plan.

Mr. Rose stressed that SB 174 was a "regressive" approach in addressing the future. The issue of adequacy is not being addressed. He added that the Association is in favor of an increase in the foundation formula and redistributing money in an adjusted method. He claimed that there should not be any changes made to SB 36 until there is further and more appropriate information available. He voiced strong objection to the proposed legislation.

AT EASE 10:19 AM/10:21 AM

A roll call was taken on the motion to rescind action taken on Amendment #4.

IN FAVOR: Austerman, Hoffman, Olson
OPPOSED: Wilken, Green, Lemman, Donley, Kelly

Senator Ward was not present for the vote.

The MOTION FAILED (3-5).

Senator Wilken moved to report the amended CS SB 174 (FIN) out of Committee with individual recommendations and the accompanying fiscal notes.

Senator Hoffman asked if the title would change.

Co-Chair Kelly replied it would not.

Senator Olson objected to moving the bill from Committee. He explained that the bill will have a dramatic affect on the North Slope Borough.

FREIDA ARNHEIGHT, Superintendent, North Slope Borough School District, stated that SB 174 would be devastating to the North Slope Borough School District. It will remove State funding which amounts to \$9 million dollars. Taking away the State funding also removes the effort to have grants, which accounts to a little over \$10 million dollars. She urged reconsideration of the implementation of the legislation.

Senator Olson maintained his objection.

A roll call was taken on the motion to move the bill.

IN FAVOR: Green, Leman, Wilken, Donley, Kelly
OPPOSED: Austerman, Hoffman, Olson

Senator Ward was not present for the vote.

The motion PASSED (5-3).

CS SB 174 (FIN) MOVED from Committee with "individual recommendations" and with a new fiscal note by the Department of Education & Early Development.

#SB83

SENATE BILL NO. 83

"An Act relating to construction of highways by the Department of Transportation and Public Facilities."

SENATOR JOHN COWDERY stated that SB 83 would amend AS 19.10.170(a) to require that no highway construction project that exceeds \$250,000 may be done in house by force account. Current law would still require that any project that exceeds \$100,000 in value and

proposed to be constructed in house, would require a written finding of fact.

Senator Hoffman commented that when work done in rural Alaska is completed by the local residents, there is more pride in the final product. Many companies use force accounts to provide jobs in the rural areas. He emphasized that everyone should want to see the infrastructure in rural Alaska sustained.

Senator Hoffman pointed out that ninety-six percent of the projects in rural Alaska go to a statewide bid. He asked why should a contractor be worried about only four percent of the money staying in rural Alaska areas. Senator Hoffman argued the need for the proposed legislation.

Senator Cowdery indicated that \$33 million dollars had been put out to a competitive bid process. He believed that contractors would hire local people when that possible in order that they would not have to pay per diem costs.

Senator Hoffman claimed that allowing for the four percent often times provides training that workers need in order to become a part of a Union.

Senator Cowdery stated that the people living in rural Alaska were entitled to the same Davis-Bacon wages as all other workers in the State.

Senator Olson referenced comments made by Senator Cowdery regarding paying of David-Bacon wages to those employees. He understood that those employees were not State employees. He questioned if it was known that any State contracts where competitive bidding had not been used.

Senator Cowdery explained that SB 83 mainly addresses projects done by the Department of Transportation & Public Facilities.

Senator Olson noted that he had distributed handouts illustrating forced accounts to Bush Alaska. [Copy on File]. He claimed that the proposed legislation addresses force accounts; these accounts have saved the State a fair amount of money over the years.

MIKE WASSMANN, Engineer, Kawerak Inc., testified via teleconference from Nome that his agency had just entered into a contract with the Bureau of Indian Affairs (BIA), the Alaska region office, to develop a regional transportation program using money from the T-21 fund. Annually, the BIA brings into Alaska about \$20 million dollars. Passing SB 83 would prevent such an opportunity. Mr. Wassman believed that the bill would have affects on the Department's ability to manage its' affairs. He maintained that most contractors bring in their own employees and only hire a few

local residents for laborer positions. The contractors generally do not have the time and/or money for training the local people.

CHARLES WIEGERS, Associated Builders and Contractors (ABC), testified via teleconference from Fairbanks to comment that the intent of the Alaska Statutes over the years has been circumvented by the Department of Transportation & Public Facilities in various projects. He claimed that in the St. Mary's road case, the justification for using funds on that project was that the Department believed it would be cheaper to pay lower wages than it would be to hire a contractor. Mr. Wieggers stated that using economically depressed labor force is inherently wrong. He testified in favor of the legislation.

DICK CATTANACH, Alaska General Contractors (AGC), testified via teleconference from Anchorage, and disagreed with the statement that Alaska contractors do not hire local help. He explained that the cost of transportation and per diem increases a wage by \$10-\$15 per hour. SB 83 would sets parameters for using a force account. A force account is a procurement method available to any public entity. The bill establishes a limit of \$250,000 dollars and anything above that must go to a competitive bid process. It also would limit the Department of Transportation & Public Facilities having the opportunity to use public interest findings.

WALTON SMITH, City Manager, Saint Mary's, testified via teleconference from Saint Mary's and pointed out that the people in rural Alaska have the highest unemployment rates in the State of Alaska. He voiced concern why ninety-six percent was not enough capital for the contractors of the State. He noted concern with the word "abuse" being used by the contractors. People in rural Alaska are being begrudged for a \$3 million dollar project. He maintained that \$250,000 dollars was no where near enough to cover the projects being done under Intermodal Surface Transportation Efficiency Act (ISTEA) and other funding being combined for public health work. He stated that AGC is greedy and "mean-spirited". He stressed that people in rural Alaska need to learn trades and need to learn how to make a living.

BERT BELL, Alaska General Contractors (AGC), testified via teleconference from Fairbanks to voice support for SB 83. He claimed that his firm always hires locally and provides training locally.

EDEN LARSON, Executive Director, Associated Builders and Contractors (ABC), testified via teleconference from Anchorage in support for SB 83. He observed that the use of the force account has been growing throughout the State. He commented that it does not make sense that the State should be moving into the construction business.

KEN EVANS, Alaska Native Tribal Health Consortium (ANTAC), testified via teleconference Off-Net in opposition to the bill.

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Mr. Evans commented on statewide sanitation and construction programs. Most of the rural projects are funded through multiple federal and State dollars. Some of the projects include contributions from the State of Alaska. The local and tribal governments often choose the force account construction as the means to construct important facilities. He pointed out that was one of several construction options available to small communities. The force construction account empowers the rural communities by leveraging the traditional benefits of construction, which strengthens the local economy and enhances the infrastructure sustainability. He noted that ANTAC strongly recommends that the alternative of force account construction remain available to the communities and tribes within Alaska.

Co-Chair Kelly indicated that he had scheduled an evening meeting for further testimony on SB 83.

TON JOHANSEN testified via teleconference from Fairbanks and advised that the contracting community was not getting ninety-six percent of the dollars. He suggested that the legislation goes beyond urban areas, noting that there will be seven projects in the Fairbanks area this year on a forced account basis. Those seven projects have a value of about \$800 thousand dollars. Mr. Johansen supported the idea of a competitive bid process.

APRIL FERGUSON, Bristol Bay Native Corporation, testified via teleconference from Anchorage against the proposed legislation. She stated that the bill would begin a process of removing a tool that local governments could choose to utilize to help maintain a cash economy in their communities. That option helps to keep those people in their communities and encourages local hire. Force accounting allows jobs to stay in the villages and maintains the rural infrastructure. She reiterated that the legislation would have a long-term negative impact on rural Alaska.

BILL WATTERSON testified via teleconference from Anchorage and voiced his support for SB 83. He noted concern with the build-up of State supervisory forces to manage the work and the special purchases of equipment. He added that the State does not have a methodology for accountability to access the overhead to determine the total cost of a project.

BERNARD RICHARDS, U.S. Development Economic Administration, testified via teleconference Off-Net and suggested that there are

enough projects, which can serve the need of many different entities. One of the most effective tools used in Alaska is the use of force accounts. Force accounts provide training and then those funds are turned over and spent locally. In general, the majority of the projects have been cheaper by using the force accounts than if they had been put out to bid. He urged members to consider that it will cost the State more using contracting. He questioned if the State does have that additional money. Mr. Richards emphasized that force accounts are a valuable tool for rural Alaska.

Senator Olson asked Mr. Bell about the contradiction regarding "local hire" with the contractors and village people.

Mr. Bell explained the inventory of projects done in the rural areas. He reiterated that his company has always hired from the local communities first. He surmised that local hire was better for the village relationship. He added that there are fewer contractors working in the bush because there is less work available now in those areas.

Senator Olson advised that it had come to his attention that most contractors have dealt with paying employees in the Bush areas less than Davis-Bacon wages.

Mr. Bell stated that was not true. He emphasized that all the work his company does, both private and public, has paid Davis-Bacon wages. He added that in the North, there are different negotiated agreements. In those areas, they pay on the maintenance side, 80% Davis-Bacon wages. The hours offered are usually 7/10's or 7/12's, making up for the income.

Co-Chair Kelly noted that SB 83 would be HELD in Committee for further consideration.

Senator Wilken voiced his support for the bill.

#SB152

SENATE BILL NO. 152

"An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

DICK CATTANACH, Alaska General Contractors (AGC), testified via teleconference from Anchorage and noted that he had submitted written testimony regarding AGC's position on the legislation. He offered to answer any questions of the Committee.

BERT BELL, Alaska General Contractors (AGC), testified via teleconference from Fairbanks that it is wrong to use someone's money and not pay interest on it. He predicted that the State would loose. He spoke in support of the legislation.

TON JOHANSEN testified via teleconference from Fairbanks, to voice support of the bill.

KEVIN BRADY, Attorney, Oles Mornson Law Firm, testified via teleconference from Anchorage and encouraged the passage of SB 172. He claimed that passing the bill would give some incentive to settle claims where the costs are less. He offered to answer questions of the Committee.

BILL RENO, Attorney, Oles Mornson Law Firm, testified via teleconference from Anchorage in support of SB 152. He stated that the dispute-resolution process is badly broken. He emphasized that SB 152 could help address the current process problems and deal with them "fairly".

KATELYN MARKLEY, Alaska Industrial Development and Export Authority (AIDEA), testified via teleconference from Anchorage that SB 152 could result in additional interest payments for the State on contract related claims. She added that there is no way to predict what the legislation will cost in the future. AIDEA development finance funds generally do not use general fund money. In the past, claims have been negotiated through the actual settlement. If AIDEA funds are required of AIDEA's net income, then there will be declines, which will result in a decrease to the annual dividends. She stated that SB 152 could affect economic developers, AIDEA and the general fund with decreased funding.

EDEN LARSON, Executive Director, Associated Builders and Contractors (ABC), testified via teleconference from Anchorage that the Associated Builders and Contractors supports SB 152.

BILL WATTERSON testified via teleconference from Anchorage support for SB 152.

Co-Chair Kelly stated that SB 152 would be HELD in Committee for further consideration.

AT-EASE 11:05 AM / 6:18 PM

#SB83

SENATE BILL NO. 83

"An Act relating to construction of highways by the Department of Transportation and Public Facilities."

DENNIS POUCHARD, Legislative Liaison, Special Assistant, Office of the Commissioner, Department of Transportation and Public Facilities, introduced Mark O'Brien.

MARK O'BRIEN, Chief Contracts Officer, Contracting, Procurement & Appeals Division, Department of Transportation and Public Facilities, stated that the Department was opposed to SB 83. He discussed that the effect of the bill would prohibit the Department or any agency that it might transfer projects to, from working on construction projects force account even if they were in the best interest of the State. When the Department uses its' employees or the employees of a local public agency, it is generally referred to as a force account. Most of the projects which the Department considers force accounts are federally funded.

In addition to the statutory requirements, the decision must be in the best interest of the State, the federal government also requires that it be cost effective. An example of these projects would be the small community roads and boardwalk projects accomplished in conjunction with other community projects.

When the Department of Environmental Conservation Village Safe Water or the Bureau of Indian Affairs or the Indian Health Service is in a community rebuilding an existing infrastructure, it is often in the State's best interest for cost effectiveness that the Department transfers the project to the appropriate agency. If the Department is prohibited from force account projects in excess of \$250 thousand dollars, the likely result will be an increase to construction costs. The additional burden will then reduce the total number of projects that can be funded in the program.

Mr. O'Brien stated that force accounts are a tool available to the Department to accomplish construction projects and used on a limited basis. In the past three years, that account accounted for less than three percent of the Department's annual capital budget.

In response to Senator Olson, Mr. O'Brien explained that the confusion stated in previous testimony regarding the percentages lies in that those portions of the capital budget spent for items other than the construction of the contract itself. That includes the design of the project and administration fees, which are not included in the actual construction costs typically handed over to a contractor. Four percent is the percentage of the total program that the Department has.

Senator Olson assumed that the architect and engineer firms came from Anchorage and Fairbanks. He asked if there were any firms from outside the State of Alaska.

Mr. O'Brien replied not generally and that design consultants used are primarily from Alaska.

Senator Ward asked if the force accounting were required to pay Davis-Bacon wages.

Mr. O'Brien replied they were.

Senator Ward asked how it was decided what wage was paid.

Mr. O'Brien explained that the statutory requirements for payment of Davis-Bacon wage apply only to contractors and sub-contractors. Local communities that are doing the projects on a force account basis and that community establishes the wages paid.

Senator Ward asked if the Administration was funding that.

Mr. O'Brien replied that it was.

Senator Ward asked if more work would be accomplished by the Administration through funding the program.

Mr. O'Brien explained that the communities are able to extend the money further and realize greater savings.

Senator Ward asked if the Administration supports that throughout the State.

Mr. O'Brien advised that the Administration determines information on a project-by-project basis. Each project would have to be in the State's best interest and cost effective.

Senator Ward suggested that could fit any projects in the State.

Mr. Poshard clarified that one could use the same logic for most projects. However, the Department uses other criteria. The Department tries to determine if there is the where-with-all to handle the project and the size and magnitude of each project requested. Most of the projects which were done by the agency other than the Department, were done in cooperation with another agency. Projects are not indiscriminately handed over just to save money.

Senator Wilken agreed that there is a need for force accounting and also that there is a need for flexibility in the field. He stated that there is a duty to let private industry bid on projects. He noted that he thought the number should be higher than \$250 thousand dollars but lower than \$3 million dollars.

Mr. Poshard understood that the bill assumes that projects over \$250 thousand dollars are required to be bid out. He recommended

that the Department of Law provide an interpretation.

Senator Hoffman explained that the way in which he read the bill, any project over \$100 thousand dollars would have to go to bid. The second paragraph indicates that it must be in the best interest of the State.

Mr. Poshard clarified that in the existing provision in law, the Department is required to do a "best interest" determination if the project is over \$100 thousand dollars. However, he noted that through the bill, anything over \$250 thousand dollars would "tie" the Department's hands.

AT EASE: 6:40 P.M. - 6:45 P.M.

Co-Chair Kelly moved to adopt a conceptual amendment, which would allow the Department the flexibility to use force accounting when there is no responsive bidder. The language would be inserted on Page 1, Line 10, following "less" and would read, "or the Department has not obtained a responsive bid". There being no objection, the amendment was ADOPTED.

Senator Austerman asked about the handouts addressing the force accounts.

Mr. Poshard explained that the labor and other costs were broken out. The labor costs are the costs that do not go to the contracting community. The two columns added together equal the total amount for each project. The combined total would relate to the \$250 thousand dollars limit.

Senator Austerman commented on the handout and pointed out that most of the figures fall within \$500 thousand dollars. He agreed that the smaller projects should use force account. He voiced concern with previous testimony indicating that the contractors would hire local people. He knew that the reality was that the local people don't always get hired and the contractors bring in their own employees. He added that the more work that can be delegated to the villages, the better it would be.

Co-Chair Kelly asked if he supported inserting a new number.

Senator Austerman moved to insert "\$500,000" on Page 1, Line 10, deleting "\$250,000".

Senator Ward objected in order to hear from the sponsor.

Senator Wilken agreed that \$250 thousand dollars was a little too restrictive.

Senator Cowdery indicated his support of inserting "\$500,000".

SFC 01 # 84, Side A

Senator Ward withdrew his objection.

Mr. Poshard stated that the Department, even with the changes, does not support the bill. The Department wants to maintain the maximum amount of flexibility. Even with the \$500,000 limit, it will still have an effect with the Village Safe Water projects. Those projects are done in conjunction with the Village Safe Water Program. In that program, a situation is created where the Department has a fair amount of efficiency in operating the old way with other agencies. He voiced his appreciation for the changes made by the Committee, nonetheless.

Senator Olson asked if the cost numbers were available for the average Village Safe Water project.

Mr. Poshard did not have those numbers, however, the list contained in the Committee members packets, indicate two water projects done in 1998 and done through a force account, one of which amounted to \$800,000 and the other amount was \$700,000 dollars.

Senator Olson inquired if SB 83 had been in place, could those projects have been successfully undertaken.

Mr. Poshard responded that the projects would have been done differently, which would have cost the State more money.

Senator Olson asked if there would have been less quality in the work.

Mr. Poshard could not comment on the quality of the work. The State would be required to have two separate projects that would require two separate bid documents and construction management personnel. It would have to be done very differently.

Senator Leman believed that the proposed legislation was the wrong way to get at the problem. He believed that there should be as much competition as possible. He suggested that the real problem is that Davis-Bacon wages are not the wages being paid in the village areas, which creates a disparity between what the contractors have to pay.

MARTIN B. MOORE testified via teleconference Off-Net that many communities are in opposition to SB 83. He pointed out that the village people need force accounting because of the 1998 fisheries

disaster. He added, the year 2000 has been another disaster. The fishing industry is no longer a mainstay for those remote village areas. He proposed criteria which are needed:

- Finding ways and means to cheaper energy resources;
- Finding alternatives to welfare institutions;
- Establishing manufacturing sites & home cottage industries;
- Finding innovative markets for the declining salmon fishing industry; and
- Construction of the North Slope Natural Gas pipeline to village communities.

Co-Chair Donley moved to report CS SB 83 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note.

Senator Hoffman objected.

A roll call vote was taken on the motion.

IN FAVOR: Lemman, Ward, Wilken, Austerman, Donley, Kelly
OPPOSED: Hoffman, Olson

Senator Green was not present for the vote.

The motion PASSED (6-2).

CS SB 83 (FIN) MOVED from Committee with "individual recommendations" and with fiscal note #1 by the Department of Transportation & Public Facilities.

#SB152

SENATE BILL NO. 152

"An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

SENATOR JOHN COWDERY stated that the proposed legislation would require that when a contract settlement with the Department of Transportation & Public Facilities is in dispute and then settled in favor of the contractor, interest must be paid to the contractor on the settlement amount for the time that the contract was in dispute. Interest would accrue at the rate applicable to judgments and the interest accrues from the date the claim is filed through the date of the decision.

Senator Hoffman commented that the bill would create constitutional concerns with equal protection. The Department of Transportation & Public Facilities has procurement authority for all construction projects conducted in the State and prejudgment claims will affect all agencies conducting construction. He questioned claims against the other agencies besides the Department of Transportation & Public Facilities.

Senator Cowdery replied that if other agencies owe money and the court indicates that, then those agencies should also be responsible to pay the interest due.

Senator Hoffman asked why the other agencies were not included in the legislation.

Senator Wilken mentioned that Page 1 was difficult to read and noted that there is no effective date placed in the bill.

Co-Chair Kelly asked if there were any proposed amendments.

Senator Lemman thought that the State interest rate was too high and acknowledged that this bill was not the vehicle to make that change.

DOUG GARDNER, Assistant Attorney General, Department of Law, commented that the concerns indicated by the Associated General Contractors, propose stipulations that are currently being litigated in a case called Quality Asphalt. The letter does not address the problems that the Department of Law sees with the bill.

Mr. Gardner suggested that the Committee should consider that the majority of states do not implement the interest penalty. The legislation would put Alaska in a minority position. Most states pay interest on liquidating claims. The cost of the application of the bill would be "unknown". The fiscal note could be significant if the bill was given any retroactive charges.

Many of the Department of Transportation & Public Facilities projects are funded by the Federal Highway Administration (FHWA), the Federal Aviation Association (FAA) or the Federal Transit Authority. Some of the agencies would not pay interest charges. All agencies that build through the State, contract with the Department of Transportation & Public Facilities. Every single agency would be required to pay interest on administrative claims. The Committee could see, in the years to come, a lot of supplemental requests to cover these costs.

Mr. Gardner invited the Committee to consider some of the equal protection issues voiced by Senator Hoffman. The bill changes the procurement code and singles out construction projects. A savvy

litigator could misconstrue that information. The other projects, such as the Railroad, would be required to have similar statutes in place and to also pay interest.

Senator Ward asked how many states have implemented the legislation.

Mr. Gardner remembered of the 17 states that were checked, only one pays interest on a disputed claim. He offered to go back and recheck which states had been checked.

Mr. Gardner explained that the Department of Transportation & Public Facilities does pay interest on administrative claims. That issue did not become litigated until fairly "late in the game". Contractors probably became familiar with receiving interest payments until the Courts changed that. That was a change in findings.

Senator Wilken addressed equal protection. He understood that the contractors had been excluded from the interest payments that the State already pays.

Mr. Gardner commented that the responses found in that letter were confusing. In the cases that are brought as direct actions to Superior Court, the State has allowed itself to be sued on certain types of conditions elected by the Superior Court.

Senator Donley moved to report SB 152 out of Committee with individual recommendations and with the accompanying fiscal notes.

Senator Hoffman maintained his objection.

A roll call vote was taken on the motion.

IN FAVOR: Leman, Ward, Wilken, Donley, Kelly
OPPOSED: Olson, Hoffman

Senators Austerman and Green were not present for the vote.

The motion PASSED (5-2).

SB 152 MOVED from Committee with a "do pass" recommendation and with a fiscal note by Department of Community & Economic Development and note #1 by Department of Transportation & Public Facilities.

ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 07:31 P.M.