**MINUTES**
**SENATE FINANCE COMMITTEE**
**May 03, 2001**
**6:56 PM**

## TAPES

SFC-01 # 93, Side A
SFC 01 # 93, Side B

## CALL TO ORDER

Co-Chair Pete Kelly re-convened the meeting at approximately 6:56 PM.

## PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Loren Leman
Senator Lyda Green
Senator Gary Wilken
Senator Lyman Hoffman
Senator Donny Olson
Senator Ward

**Also Attending:** REPRESENTATIVE JOE HAYES; CHRIS CHRISTENSEN, Deputy Administrative Director, Alaska Court System; ROBERT BUTTCANE, Legislative and Administrative Liaison, Division of Juvenile Justice, Department of Health and Social Services; CANDACE BROWER, Program Coordinator, Office of the Commissioner, Department of Corrections; AV GROSS, Attorney representing the North Slope Borough;

**Attending via Teleconference:** From Anchorage: BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources;

## SUMMARY INFORMATION

HB 101-CHARTER SCHOOLS

The bill moved from Committee.

SB 161-NO PAY FOR JUDGES UNTIL DECISION

The Committee adopted a committee substitute and heard from the Alaska Court System. The bill moved from Committee.

SB 139-STATE WATER USE

The Committee heard from the Department of Natural Resources. A committee substitute was adopted and amended with two amendments. The fiscal note was amended and the bill moved from Committee.

SB 169-HATE CRIMES: AUTOMATIC WAIVER OF MINORS

The Committee heard from the Department of Health and Social Services and the Department of Corrections. A committee substitute was amended and adopted and the bill moved from Committee.

SB 186-MUNICIPAL TAX: PIPELINE PROP/G.O.BOND DEBT

The Committee heard from the sponsor and the North Slope Borough. A committee substitute was adopted and the bill was held in Committee.

HB 32-SEX CRIME AND PORNOGRAPHY FORFEITURES

The Committee heard from the sponsor and the bill was held in Committee.

#HB101

SENATE CS FOR CS FOR HOUSE BILL NO. 101(HES)
"An Act relating to charter schools; and providing for an effective date."

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

Co-Chair Donley stated that after conducting an investigation, he was prepared to support this legislation.

Co-Chair Donley offered a motion to move SCS CS HB 101 (HES) from Committee with two accompanying fiscal notes, one from the Department of Education and Early Development, Teaching and Learning Support for $1,425,000 and another from the Department of Education and Early Development, K-12 Support for $609,800.

There was no objection and the bill MOVED from Committee.

#SB161

CS FOR SENATE BILL NO. 161(JUD)
"An Act relating to the withholding of salary of justices, judges, and magistrates; relating to prompt decisions by justices, judges, and magistrates; and relating to judicial retention elections for judicial officers; and providing for an effective date."

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

Co-Chair Donley moved to adopt CS SB 161, 22-LS0009\X as a working draft.

Without objection it was ADOPTED.

Co-Chair Donley stated that he has been working with Chris Christensen from the Alaska Court System to develop this committee substitute, which would improve the language in existing statute regarding the six-month requirement for judicial decisions without expanding it to apply to the appellate level. He explained the committee substitute adopts a state policy indicating the State of Alaska expects most trial court, and a majority of appellate court decisions to be rendered within six months following oral arguments of the case. He noted these goals are consistent with goals announced by Chief Justice Dana Fabe.

Co-Chair Donley also pointed out the committee substitute provides in statute, that the number of times a trial court justice has had salary withheld due to outstanding cases beyond the six-month deadline would appear in the Official Election Pamphlet (OEP) for voter consideration when that judge's term is up for retention.

Co-Chair Donley continued the committee substitute stipulates that 8a report would be issued to the legislature listing the number of pending judicial matters that have surpassed the deadline. He stated this ensures that judges' salary warrant information is provided to the public and to organizations such as the Judicial Council, which he said has not always occurred. He explained the inability for interested parties to obtain this information was due to a decision made in the Department of Administration regarding confidential personnel information.

CHRIS CHRISTENSEN, Deputy Administrative Director, Alaska Court System, relayed the Chief Justice's appreciation of Co-Chair Donley for listening to the court system concerns and for his efforts to address those concerns on this matter.

Mr. Christensen stated the committee substitute, "does eliminate all the problems, which we discussed at the last meeting regarding the danger to the six month rule." He remarked that the intent language is a "reasonable expression of the legislature's wishes, given that it is the funding authority." He assured efforts are made to accomplish the timely resolution of cases and the court administration shares the legislature's interest in continuing the process.

Co-Chair Donley offered a motion to move from Committee CS SB 161, 22-LS0009\X with new zero fiscal note from the Alaska Court System.

Senator Hoffman asked if Mr. Christensen had any opposition to the committee substitute.

Mr. Christensen asserted he did not oppose the committee substitute.

Without objection the bill MOVED from Committee.

#SB139

> CS FOR SENATE BILL NO. 139(RES)
> "An Act relating to fees for certain uses of state water and to the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

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

AT EASE 7:03 PM / 7:04 PM

Senator Leman moved to adopt CS SB 139, 22-GS1087\P as a working draft.

The committee substitute was ADOPTED without objection.

Amendment #1: This amendment makes the following changes to the committee substitute.

> Page 3, lines 23- 27:
> Delete all material.
> Insert a new bill section to read:
> Sec. 4. AS 46.15.020(b) is amended to read:

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Environmental Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

(2) keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; and shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator;

(3) cooperate with, assist, advise, and coordinate plans with the federal, state, and local agencies, including local soil and water conservation districts, in matters relating to the appropriation, use, conservation, quality, disposal, or control of waters and activities related thereto;

(4) prescribe fees or service charges for any public service rendered consistent with AS 37.10.050 - 37.10.058, except that the department may charge under regulations adopted by the department an annual $50 administrative service fee to maintain the water mana2ement program (5) before February 1 of each year, prepare a report describing the activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner shall notify the legislature that the report is available; the report must include

(A) information on the number of applications and appropriations for the removal of water from one hydrological unit to another that were requested and that were granted and on the amounts of water involved;

(B) information on the number and location of sales of water conducted by the commissioner and on the volume of water sold;

(C) recommendations of the commissioner for changes in state water law; and

(D) a description of state revenue and expenses related to activities under AS 46.15.035 and 46.15.037."

Senator Green moved for adoption and referenced earlier discussion regarding water rights and the involved parties in the state. She shared that in communities with a large agricultural presence, the local soil and water conservation districts are involved in the process. The intent of this amendment, she explained, is to ensure their remaining involvement.

AT EASE 7:06 PM / 7:07 PM

Senator Leman detailed the four changes made in the committee substitute. The first, he said, is a technical change of "relating" to "related" in the Section 2 title, "FINDINGS, POLICY, AND PURPOSE RELATED TO AUTHORIZATIONS FOR CERTAIN TERMPORARY USES OF STATE WATER." on page 2, line 21. He informed that language deleted from page 4, following line 7, and on line 21, allowed the commissioner to extend authorization for temporary use of water for an additional five years. He noted this provision was removed in response to concerns raised by Senator Wilken during the previous hearing. He concluded with the replacement of "public health" with "human health" on line 25. This, he said, is to make the terminology consistent with that used by the United States Environmental Protection Agency flood page, as well as the National Institute of Health. He clarified that public health relates to epidemiology and diseases whereas human health is related to the effects of human activities and is more appropriate for this legislation.

Senator Green explained that Amendment #1 replaces certain language from a previous committee substitute, 22-GS1087\J, which the Committee did not adopt, and provides that the commissioner shall adopt procedural and substantive regulations to carry out the provisions in the legislation.

Senator Green stated that additional language was recommended by the bill drafter that requires the Department of Environmental Conservation to submit an annual report to the legislature. She was unsure how this relates to the current Version "P".

BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources, testified via teleconference from Anchorage to the amendment. He stated the proposed language is acceptable.

There was no objection and the amendment was ADOPTED.

Amendment #2: This amendment inserts language into Section 1 (c) on page 2, line 17 of the committee substitute. The amended subsection reads as follows.

> (c) It is the policy of the legislature that the Department of Natural Resources minimize:
>
> (1) the required costs, including application fees, on individuals and businesses withdrawing less than a significant amount of water;
>
> (2) consider providing a partial fee reduction for water rights holders and applicants who have approved

irrigation management plans.

Senator Green moved for adoption.

Co-Chair Kelly objected for the purpose of discussion.

Senator Green noted this amendment was also prepared to the Version J committee substitute. She read the inserted language of Section 1 (c)(2) and explained approval of irrigation management plans is the current practice in the soil and water conservation districts, and this provision allows the districts to obtain for credit for the work already completed.

Mr. Loeffler commented there are a number of industries in addition to agricultural activities that conserve water in a variety of ways. He did not oppose the amendment.

Co-Chair Kelly removed his objection and the amendment was ADOPTED without further objection.

Senator Green offered a motion to report the committee substitute as amended from Committee.

Co-Chair Donley moved to amend the motion in order to amend the fiscal note.

Without objection, Senator Green WITHDREW her motion.

Co-Chair Donley moved to amend the Department of Natural Resources fiscal note dated April 12, 2001 to delete the addition of five full-time positions in FY 02.

There was no objection and the fiscal note was AMENDED.

Senator Green again offered a motion to move from Committee, CS SB 139, 22-GS1087\P, as amended, with forthcoming zero fiscal note from the Department of Natural Resources.

The bill MOVED from Committee without objection.

AT EASE 7:16 PM / 7:17 PM

#SB169

SENATE BILL NO. 169
"An Act relating to the nonapplicability of the delinquency laws to certain minors accused of certain crimes against persons directed at certain victims."

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

Co-Chair Donley testified this legislation would be an addition to current statute requiring waiver to adult court for certain juveniles over the age of 16 charged with committing certain offenses. He referenced a list of these offenses. [Copy on file.]

Co-Chair Donley informed that this bill adds Class A misdemeanor and felony crimes of violence against a person motivated by race, sex, color, creed, physical or mental disabilities, ancestry or national origin, to the list of juvenile offenses mandated to adult court.

Co-Chair Donley noted adult court proceedings are open to the public, whereas in a juvenile case, the public would be unable to learn the ruling and subsequent punishment. He added another advantage to the legislation is that it "raises the level of this" and helps to deter "this kind of despicable activity in the future" by demonstrating to would-be offenders that there are consequences for this conduct.

ROBERT BUTTCANE, Legislative and Administrative Liaison, Division of Juvenile Justice, Department of Health and Social Services, agreed with the sponsor that there is a need to communicate a social value that "says hate crimes are not acceptable in this state." However, he testified that the department does not favor the expansion to the list of automatic waiver crimes, especially for offenses that would involve low-level felonies and misdemeanor offenses.

Mr. Buttcane stated that the juvenile system would impose "more strenuous significant sanctions" for those low-level offenses then what is currently imposed in the adult system. He explained that a young person committing a misdemeanor offense in the adult system would most likely receive a suspended jail sentence of only a few days and perhaps a fine and community work service. On the contrary, he stressed, young people who commit a crime of bias as described above, and who's case is handled in the juvenile court system, are required to participate in victim impact activities, cultural sensitivity and, in the past, have been required to complete a book report, write an essay or otherwise learn about issues and challenges facing the targeted minority group. He added that these offenders are required to complete "a number of hours" of community work service specifically on behalf of the people offended.

Mr. Buttcane continued that the juvenile system is better equipped to deal with young offenders who have committed low-level felony and misdemeanor offenses, especially, he stressed, when the same crimes would be addressed with less intensity in the adult system.

Mr. Buttcane shared that the department recommends consideration of the duel sentencing provision enacted into law in 1998. He suggested expanding this to add a prosecution phase to the public with the option to allow the court to enter a delinquency disposition and to direct the delinquency system to process the juvenile. At the same time, he elaborated, the court would pronounce an adult sentence and if the juvenile failed to successfully complete a delinquency process, the adult court could impose a criminal sentence and the juvenile would be transferred to the Department of Corrections.

Co-Chair Kelly clarified that a Class B felony, which is a crime against a person, is currently contained in the duel sentencing provision.

Mr. Buttcane affirmed, but noted this provision requires a prior delinquency adjudication before it could be imposed.

Co-Chair Kelly asked what is the difference between a Class B felony crime against a person and Class A misdemeanor crime against a person.

Mr. Buttcane replied a Class A misdemeanor crime against a person would include an assault in the fourth degree, which could apply to "a wide range of behaviors, by words or conduct, placing another person in fear, or causing physical injury not of a serious nature." He gave examples as "bloodying somebody's nose and bruising their arm."

Mr. Buttcane defined a Class B felony as possibly a sexual assault in the second degree. He noted there were few Class B felony charges.

Co-Chair Kelly expressed concern that a fourth-degree assault charge "can be pretty meaningless." He asked for an expanded definition of Class A misdemeanor crimes against a person.

Mr. Buttcane understood the intent of the legislation is to apply to the offense that is included in the automatic waiver provision.

Co-Chair Kelly asked if theoretically, a 16-year old could be mandated to adult court because "he scared another 16-year old."

Mr. Buttcane affirmed and noted, "It is conceivable this would meet the conditions." However, he stressed the difficulty is whether a prosecutor would take this type of case to court, and if not, the juvenile system has no jurisdiction over the matter.

Mr. Buttcane continued listing crimes constituting a Class B felony, as intentionally causing physical injury to a person by means of a dangerous instrument. He noted the distinction between second and first-degree assault pertains to the seriousness of the injury in that first-degree assault would involve "serious, protracted, impairment, life-threatening type injuries." He defined sexual assault in the second degree as sexual contact without consent, sexual contact with a person who is mentally incapable or incapacitated, or sexual contact with a person who has been entrusted to the care of the offender by law.

Co-Chair Kelly remarked the legislation is directed at the recent paintball attack in Anchorage that targeted Native Alaskans. He asked if these crimes are second-degree assault.

Mr. Buttcane answered that all three perpetrators involved were charged with three counts of assault in the fourth degree.

Co-Chair Kelly asked if these cases were formally adjusted or handled through adjudication.

Mr. Buttcane answered that delinquency petitions were filed against the two juveniles involved and a criminal complaint was filed against the one adult.

Co-Chair Kelly asked the maximum sentence the juveniles could receive under the current system.

Mr. Buttcane responded the perpetrators could be institutionalized at the McLaughlin Youth Center for a period not to exceed two years or until their 19th birthday, or they could be placed on probation for the same amount of time. He pointed out that these offenders could receive up to two-year sentences, which is an advantage of the juvenile system because regardless of the level of crime, the delinquency disposition could be applied.

Mr. Buttcane shared that he has received an institutional order in court for a young person who stole a pack of cigarettes, and that juvenile spent two years at the McLaughlin facility. He qualified there are many circumstances that lead the court in reaching a finding, which he noted in this case, demonstrated this youth required a high level of isolation and security. He noted the

circumstances in other cases could lead to a finding that the offender would not be institutionalized and instead be supervised in the community. He restated there is wide latitude in the juvenile sentencing system that extends beyond the particular offense to the various circumstances involved. He listed: response to other treatment efforts, behavior in school, response to parental supervision, substance abuse, mental capacity and other factors as contributing to the circumstances in a case.

Mr. Buttcane stressed that a two-year sentence is the maximum that could be imposed in the paint ball attack cases, and that it is unlikely the offenders would be sentenced the full two years.

Co-Chair Kelly summarized the witness's statement that the Administration does not support this bill.

Mr. Buttcane agreed that the Administration does not support any increase to the list of automatic waivers, especially for low-level crimes.

Mr. Buttcane commented that in the delinquency system, of those crimes of hate or bias, some are related to the perceived sexual orientation of the victim. He stressed that any expansion of punishment guidelines for bias and hate crimes that does not include a provision for sexual orientation is incomplete. He recognized this is not currently included in the sentencing aggravator, or the Human Rights Commission purview.

Co-Chair Kelly asked if the witness was saying that the Administration would not support changes to the hate crime statutes if sexual orientation were not included as a potential targeted minority group.

Mr. Buttcane responded that he is unprepared to speak on behalf of the Administration. However, he noted that other hate crime legislation, HB 200 that was introduced by the governor, includes hate crimes based on the sexual orientation of the victim.

Co-Chair Kelly asked if the governor's proposed hate crime legislation contains a provision addressing juvenile offenders.

Mr. Buttcane answered it does and explains the legislation requires the juvenile convicted of a hate crime to participate in some type of sensitivity training.

Senator Ward asked if the Administration would support SB 169 if sexual orientation were added to the list of targeted minorities.

Mr. Buttcane reiterated that the department does not support any increase in the automatic waiver to adult court especially for lower-level felony or misdemeanor crimes. He also reiterated that any hate crime legislation that does not include bias related to perceived or actual sexual orientation is considered incomplete.

Senator Ward opined that if Governor Knowles does not support this legislation his actions are inconsistent with a statement made during a press conference regarding the paint ball incident.

Mr. Buttcane specified that HB 200 provides that juveniles charged with committing a hate crime are not moved to adult court, but remain in the juvenile delinquency system. He noted this legislation imposes minimum mandatory sentence requirements and community work service hours.

Senator Ward asked if the offense is therefore not treated as a criminal offense when committed by a juvenile.

Mr. Buttcane corrected that the matter is treated as a criminal act but processed as a delinquency.

Co-Chair Kelly stated that Governor Knowles has been consistent with regard to waiver of minors to adult court.

Senator Ward remarked that he has heard in the media over the past three weeks that the governor considers that "hate crimes took a special niche in the world." Senator Ward charged, "Now it comes time to actually do something about it and he says 'oh, no we can't bother the darlings.' It's kind of interesting."

Co-Chair Kelly commented, "the governor is taking a horrible incident and he's trying to get broad sweeping change that has nothing to do with that incident." Co-Chair Kelly remarked that it is unfortunate that the Administration has made sexual orientation a part of this matter. He therefore supported Co-Chair Donley's legislation.

Co-Chair Donley asked if the paint ball incident would be classified as a felony under current statute. He shared that when he learned of the attack, he surmised the crime would be classified as a Class C felony.

Mr. Buttcane responded that the Division of Juvenile Justice has worked closely with the Department of Law to impose the highest possible charges in the paint ball incident, which was assault in the fourth degree. He informed that a paint ball gun does not qualify as a dangerous instrument or weapon.

Co-Chair Kelly noted the sentence for conviction of assault in the fourth degree could be up to two years in prison.

Mr. Buttcane affirmed a juvenile offender convicted of assault in the fourth degree could be sentenced to the McLaughlin Youth Facility for up to two years. He qualified it is improper for him to make conjecture as to the outcome of this pending case, but made a general statement that it is unlikely the offenders of these types of crimes would be institutionalized. However, he stressed, juveniles adjudicated in this type of crime would probably be placed on probation and would see a probation officer on a weekly basis, which would not occur in the adult criminal justice system.

Co-Chair Donley clarified the most that the perpetrators in the paint ball incident could be charged with is a Class A misdemeanor

AT EASE 7:40 PM / 7:46 PM

Co-Chair Donley moved to amend and adopt CS SB 169, 22-LS0778\F. The conceptual amendment deletes, "or a class A misdemeanor crime against a person," in Section 1 (a)(4) on page 2, lines 18 and 19. The amended language reads as follows.

> (4) that is a felony crime against a person in which the minor is alleged to have directed the conduct constituting the crime at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin.
>
> New Text Underlined

Without objection the committee substitute was AMENDED and ADOPTED.

CANDACE BROWER, Program Coordinator, Office of the Commissioner, Department of Corrections, testified in opposition to the bill for the same reasons voiced by Mr. Buttcane. She appreciated the amendment to remove misdemeanors from the list of hate crimes waived to adult court, but thought the Class C felonies should be removed as well. She expressed that when considering whether to waive a juvenile charged of a crime to adult court; it must be done with "great care and caution." She warned that committing juveniles to adult court is a "slippery slope" because the adult system is not conducive to addressing the needs of juveniles. She trusted the juvenile justice system to "make these offenders accountable for what they do and to intervene in their behaviors in a much more appropriate way then we can."

Co-Chair Donley stated for the record that dual sentencing has not been effective.

Senator Green repeated earlier comments she made in the Senate Chambers that she would not support any legislation that contains this language. She voiced concerns that the way this bill is constructed it would never include "someone who attacked my grandchildren nor many of the children of everyone in this room." She stated she found this bill places "a very strange level of scrutiny" on determining whether a crime is committed out of bias or hatred. She didn't know how this could conclusively be determined "unless someone is stupid enough to make a film of it" as done by the perpetrators in the paint ball attack on Alaskan Natives. She asserted that if the "result of a crime is harm, damage, hurt, pain, suffering, etc., the result is the same."

Co-Chair Donley offered a motion to move from Committee, CS SB 169, 22-LS0778\F, as amended with new indeterminable fiscal note from the Department of Corrections.

The bill MOVED from Committee without objection.

AT EASE 7:52 PM / 7:53 PM

#SB186

> SENATE BILL NO. 186
> "An Act establishing a limit on the general obligation debt that may be authorized and issued by home rule and general law municipalities; and providing for an effective date."

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

Co-Chair Donley moved to adopt CS SB 186, 22-LS0851\C as a working draft.

There was no objection and the committee substitute was ADOPTED.

Co-Chair Donley testified this bill would set limits on bonding exposure to local governments in Alaska by placing a $10,000 per resident ceiling on municipal general obligation bond debt. He noted the bill also limits the mil rate to one-percent for oil and gas property tax for municipalities with a per capita assessed value of property over $500,000.

Co-Chair Donley stated this legislation is partially in response to

the recent Bullock vs. State of Alaska, Alaska Supreme Court decision. He noted this legislation would not impact any existing bonded debt and would only apply to additional debt incurred by a local government after the effective date.

Senator Wilken asked why the bill has no fiscal note other then the indeterminable fiscal note and analysis submitted by the Department of Revenue.

Co-Chair Donley surmised there would be a fiscal impact to the state but that it would take several years before there was a major impact.

Senator Wilken suggested the Committee could issue a fiscal note for the Department of Revenue to assist in consideration of the bill.

SFC 01 # 93, Side B 07:56 PM

AVRUM GROSS, Attorney representing the North Slope Borough, testified to the 20 years he has represented the borough primarily on this and related issues. He asserted this bill is aimed at the North Slope Borough (NSB) as a result of the Bullock case and would prohibit the borough from issuing any bonds for the next ten to 11 years. He added that it would prohibit the borough from refinancing existing bonds even if lower interest rates could be procured, which would save the borough money.

Mr. Gross told the Committee the bill contains language in the committee substitute, which he did not understand.

Mr. Gross expressed, "You must realize that this is a life and death bill as far as the North Slope Borough is concerned."

Mr. Gross gave a background on the statute this bill would change, which he said came out of a legislative special session in 1973 called by Governor Bill Egan because delays to the Trans-Alaska pipeline project were threatened. This special session, Mr. Gross reminded, was called to resolve lawsuits filed by oil companies against the state in response to legislation adopted during the 1972 regular legislative session that attempted to regulate the pipeline in ways the oil companies "found offensive." He informed that he was present at this special session as council to the Atlantic Richfield Company.

Mr. Gross recounted the special session addressed the regulation of

the pipeline, which he said was removed and that the "state caved in on its ability to regulate the pipeline." In addition, he informed, the special session addressed the matter of taxation, specifically property taxation of the values that would be created by construction of the pipeline and related facilities along the pipeline from the North Slope to Valdez. He stressed that other taxes were already established to "make sure that the oil wealth would be spread across all the citizens of the state." He listed severance, income and royalties, as these taxes, noting they remain in existence and generate revenues from oil production for the state.

Mr. Gross pointed out two issues that arose in this special session; "how much the oil companies should pay" and "who they should pay it to." He stated that property taxes are traditionally municipal taxes and are the way local governments are financed. However, he stated, some argue that during the time of the special session as well as in the present, that this was "too much for too few" and that it would be unfair to let the citizens of the NSB, Valdez, Fairbanks, and other communities along the pipeline route, to tax these properties in the same manner other property is taxed across the state. He listed salmon canneries in Kodiak and Bristol Bay, and office buildings in Anchorage and noted these communities do not share the revenue garnered from property taxes on these properties with the state. The fact that one municipality has more property than another, he stated, up to the point of the special session had never been considered an issue.

Mr. Gross told the Committee the special legislative session resulted in some compromises. He said the first agreement was that oil companies would pay 20 mils tax to the state on all oil properties and that any property tax paid to municipalities would be credited against the 20 mils owed to the state. Secondly, he noted municipalities with oil and gas properties within their boundaries would be allowed to tax these properties to raise money for their operating budgets under "a very complicated formula".

Co-Chair Kelly interjected to request the witness address his earlier statement that there is a flaw in the bill regarding the NSB ability to bond in the future.

Mr. Gross continued that the last element of the compromise is to allow boroughs to issue bonds based on the fair market value of the oil and gas property within their borders and without limits. He said the specific intent was that the NSB, which he stressed was specifically discussed in the legislature, would be able to bond, realizing that prior to that time the borough had no assets on which to base bonds. He emphasized the borough had no public

facilities and that the oil and gas activities are from a nonrenewable resource.

Mr. Gross raised this issue, he said because the sponsor testified that the intent of the legislature during the special session has been ignored or mistaken. Mr. Gross countered that the intent of the legislation adopted during the special session "is crystal clear" in stating there is no limitations on the ability of boroughs to issue bonds based on the value of property. In addition, he said, it was specifically discussed during the special session that the NSB would be allowed to issue bonds to, "try to catch up to some of the things that every other municipality in the state has had for years."

Mr. Gross gave an example of Ketchikan, which has had infrastructure for about one hundred years, and has bonded over that period of time to built schools, sewer systems, parks, etc. and would continue to do so. He informed that prior to passage of the legislation from the special session, the NSB had no sewers, water systems, schools, public safety facilities, fire facilities or any other infrastructure. He remarked that the legislature was aware of this and specifically authorized the NSB to bond, knowing that it would be "very expensive." The NSB, he said, has subsequently issued many bonds totaling "a lot of money". He emphasized that because the population in the borough is sparse, and because of higher costs for infrastructure, the per capita bonded indebtedness is "extremely high."

Mr. Gross addressed SB 186 before the Committee saying it purports to prohibit boroughs from issuing bonds if they have a certain level of per capita bonded indebtedness. He stressed this punishes the NSB for "doing exactly what the legislature authorized it to do." He expressed, The North Slope Borough would be prohibited from issuing bonds for ten to eleven years; any bonds, of any kind, for anything."

Mr. Gross continued that this bill would also prohibit the NSB from refinancing any existing bonds. He pointed out that even if lower interest rates were available, the borough could not take advantage of them.

Mr. Gross remarked "this is a devastating bill for the North Slope Borough," and requested the Committee give the legislation more review. He told the members, "You are literally going to destroy the bonding power of the NSB if you pass this" which is a "drastic step to take in the name of helping state finances at this late hour."

Co-Chair Kelly countered that the earlier legislature "could have never imagined the extravagance" with which the residents of the NSB would utilize this bonding authority "to the detriment to the rest of the state." He remarked that if there are technical problems with the bill he was interested in them. However, he expressed, "I'm having a hard time buying in to the old 'poor North Slope' and all they're doing is what everyone directed of them because I don't think the people back then imagined what they'd use their bonding power for."

Mr. Gross replied the NSB has utilized its bonding authority to produce "the kind of life that people in Anchorage take for granted." He stressed that most residents of the state take infrastructure items, such as sewer for granted, but there were no sewer systems on the North Slope. He emphasized the higher construction costs in northern regions.

Co-Chair Kelly repeated his request that the witness address the problem areas of SB 186 regarding refinancing of current bonds.

Mr. Gross emphasized that the entire bill was a problem. He qualified he did not understand the first section, which was added earlier in the day. He cited Sections 6 and 7 as prohibiting the NSB from issuing new bonds or refinancing existing bonds even at lower rates.

Co-Chair Donley offered that if there is a way to rewrite these sections to allow refinancing ability without extending the terms of the bonds, he surmised the Committee would be open to it. He suggested the witness prepare such language to accomplish this while maintaining the intent of the legislation.

Mr. Gross asked if the sponsor's concern is that the borough would refinance its existing bonds. He asked what the sponsor wanted the language to provide.

Co-Chair Donley responded, "The goal is very clear, to hold bonded indebtedness down below $15,000 per capita." He said he does not oppose allowing refinancing so long as it does not extend the amount of time it would take to bring the debt below the proposed maximum.

Mr. Gross replied that language allowing such, would address one of his concerns with the bill.

Senator Wilken agreed that the 1973 legislation provided a vehicle to allow the NSB to fund its infrastructure. He referenced an analysis prepared by Fitch IBCA, Duff and Phelps [Portions of this

report are on file] He read, "The borough's significant current capital needs are primarily to extend water and sewer and other utility services to seven outlying villages, build schools and complete mandated projects. Much of the infrastructure is funded so future needs would decline from prior levels." Therefore, he ascertained there is an ability to reduce the bonded indebtedness of the borough.

Senator Wilken remarked that this issue would not concern him except that it takes funds from the 20-mil tax rate imposed on oil and gas properties. He pointed out that every dollar that goes to the NSB to support debt is a dollar that is not deposited into the general fund and distributed across the state.

Senator Wilken suggested the intent of the original legislation was to prevent "pools of wealth," which he emphasized, creates "pools of debt." He stated this is what has actually occurred in the last 30 years and remarked, "This is the disparity that I see that needs to get fixed."

Senator Wilken informed that assessed value determines property taxes and the economy in most of Alaska. He divided the number of people by the full and true assessed value and calculated the statewide average per person, not including the NSB, as $72,000. He listed Fairbanks residents at approximately $57,700, Anchorage at $63,000, Ketchikan at approximately $80,000, and the lowest amount is in the Lake and Peninsula Borough at $38,000. He explained the assessed value "engine" on the North Slope is $1,160,000 per person, which is 16 times the statewide average. He did not think the legislature, in 1973, envisioned this leverage on assessed value, of which, 97 percent is from oil and gas property. He then calculated the average debt per Alaskan is $2,573, including residents of the NSB. On the contrary, he stated, the per capita average of the NSB is $64,409, which is 20 times the statewide average.

Senator Wilken surmised these figures are "so far out of reason" and that he could not understand this. He explained the proposed debt limit of $15,000 per capita is still five times the amount of any other municipality. He pointed out that the community of St. Paul has a per capita debt of $13,000, but is primarily because of a large port project.

Senator Wilken opined that the Bullock vs. Alaska case is a message from the court to the legislature that it is time to address the issue.

Senator Wilken predicted, "This is a $100 million deal ten years

from now for the general fund." He stressed this legislation does not "clamp down" on the NSB but rather gives an ability to fund five times the amount of the remaining communities in Alaska."

Co-Chair Donley added that he did not believe in 1973 it was envisioned that oil and gas property taxes would not provide the full amount of property tax revenue. He also did not think the earlier legislature predicted that the oil supply would last as long as it has. He continued that in 1973 it was not understood that one borough would develop a $490 million permanent fund savings account. Therefore, he stressed many things have changed since the adoption of the original bonding authority. He did not find the argument that the original legislation was adopted 30 years ago and "it's worked great" persuasive because he did not think it has worked great. This, he said, is because none of the current conditions could have possibly been foreseen.

Mr. Gross responded that he did not testify that just because the legislation was adopted 30 years ago it was great. Rather, he remarked, it is unfair to retroactively determine that because the NSB issued the amount of bonds it has, the borough could not issue additional bonds for the next ten or eleven years. He stressed that this legislation does not provide that the borough could issue up to five times the amount of per capita bonded debt, as Senator Wilken stated. Mr. Gross expressed the legislation instead penalizes the borough for issuing bonds as the legislature permitted.

Mr. Gross admitted that the concerns raised are valid. However, he stressed that in 1973 the NSB had no tax base and that in 20 to 30 years it would again have no tax base after oil production has ceased. He also noted the value of the oil and gas properties decreases every year, resulting in less revenue, and remarked, "that is all they have, and when it's gone, that's it." Therefore, he informed that the borough has "a brief window of time" to make capital improvements. He agreed that the borough has bonded "enormously" but noted it would not be able to do so, regardless of whether this legislation passes.

Co-Chair Kelly requested reviewing the refinancing issue and the possibility of a "ramp down provision so these next eight to ten years, there isn't just this brick wall that they run into." He assured this was not the intention of the Committee. However, he voiced concern that if proposed natural gas development occurs, relative property taxes could be "sucked up" by the NSB, resulting in a similar situation to this.

Co-Chair Kelly addressed the witness' comparison of infrastructure

of the NSB to that of Anchorage and Fairbanks, stressing there are many amenities the NSB has that are not provided in other municipalities. He said he does not begrudge NSB residents from receiving these, but opined the current system has been abused. He admitted there is disagreement between him and Mr. Gross on whether there has been abuse.

Senator Olson requested an explanation of how the decision in the Bullock vs. Alaska case and subsequent rulings are related to this legislation.

Mr. Gross detailed the history of the case brought by Don Bullock, a former employee of the Department of Revenue, that unsuccessfully advocated that the manner in which the statutes governing taxation of oil and gas properties in the NSB and other areas, were being improperly interpreted. Mr. Bullock, according to Mr. Gross, alleged that the administrators of the oil and gas property tax for the past 25 years had been mistaken. Mr. Gross relayed that the Alaska Supreme Court ruled it was plaintiff who was mistaken and that the state officials administering the tax were correct.

Mr. Gross continued that some people hoped the court would rule in favor of the plaintiff primarily because they felt the NSB was getting too much money. He said this is the reason for SB 186, which would change the law to reflect what had been hoped for in the court decision.

Senator Olson shared that this raised more questions and he requested time to consider them before action was taken on the bill.

Co-Chair Kelly stated that the bill would be held for the purpose of addressing the issue of refinancing of existing bonds.

Co-Chair Donley chaired remainder of the meeting.

Senator Wilken commented that he has a more optimistic view of the future of the North Slope in twenty or thirty years.

Mr. Gross pointed out that he is the former chair of the governor's Gas Pipeline Commission 1975 charged with determining the pipeline route. He stated that he is therefore more pessimistic.

Senator Ward referenced the sponsor statement [copy on file], which states that the NSB currently has approximately $65,000 per resident for bond indebtedness and that this legislation reduces that amount to $15,000. He asked if there was an amount between these two that the borough could support.

Mr. Gross replied that any amount less than $65,000 would mean the borough could not issue any bonds until the bonded indebtedness is paid down to that level.

Co-Chair Donley announced the bill would be held to determine how to allow refinancing without extending the date the bonds expire. He also wanted to research the "ramp down" option that would limit the amount of debt to no more than the statewide average. He predicted this would allow for any emergencies. He stressed that the NSB has a permanent fund that would "be the envy of any community in America." Therefore, he ascertained the borough has adequate resources with which to draw to fund any projects it is prohibited from bonding.

Senator Wilken requested the Department of Revenue detail the fiscal note further.

Co-Chair Donley ordered the bill HELD in Committee.

#HB32

> SENATE CS FOR CS FOR HOUSE BILL NO. 32(JUD)
> "An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense."

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

REPRESENTATIVE JOE HAYES read the sponsor statement into the record as follows.

> As the use of computers and the Internet expands so too do crimes involving the use of these technologies. One area of particular concern is sex crimes against children. Adults prone to abusing children will use the Internet to solicit a minor for sex or to set up a meeting with a child in order to rape or abuse the child. Further, Many people, who are inclined to distribute or view child pornography, are now using their computers to do so. These are new technologies and the state still has relatively few tools for dealing with criminals using these technologies. HB 32 provides us with another tool to use in combating sexual predators.

Across the country and at the federal level there are forfeiture laws in place. Several other states already have laws on the books specifically relating to the forfeiture of computers used in sex crimes. The use of computers in sex crimes is a national problem. As more and more states pass forfeiture legislation it is becoming increasingly obvious that this is a useful and valuable tool in the fight against computer crimes.

HB 32 would make it possible for the police to stay on top of this rapidly changing industry without spending more state dollars. Advances in computer technologies seem to happen on a daily basis. New technology can often "outwit" last year's model, leaving the police at a large disadvantage in their attempt to curb crimes committed with the aid of the newest technology. In order for the police to combat computer and Internet crimes effectively it is imperative that they be constantly provided with new hardware.

Under AS 12.55.015(c) the court may award forfeited property or a percentage of it to any municipal law enforcement agency involved in the arrest or conviction of the defendant. This would allow the courts to pass on seized property to the police so that the police can stay up to date with available technology in a cost-effective manner.

HB 32 is designed to help protect our children in a twofold manner: 1) forfeiture is a proven tool in the fight against crime, and 2) the forfeited property can be given to our local law enforcement agencies in order to help make sure that they have the necessary tools to protect our children. I ask for your support in passing this legislation.

Representative Hayes pointed out changes to the intent language made in the Senate Judiciary Committee, which cite case law to "make it absolutely positively airtight" that the only equipment that could be seized was that owned by the perpetrator and not by a third party. He showed that Section 3 of the committee substitute specifies that property owned by an employer could not be seized.

Representative Hayes referenced information provided showing some cases that this new law would apply. He also referred to letters of support and one letter in opposition to the bill from a nudist organization [not provided] regarding their concerns with vehicle forfeiture. He assured their concerns were addressed in the Senate Judiciary committee substitute with language that specifies computers as the only equipment that could be taken.

Representative Hayes then directed the Committee's attention to other information regarding how forfeitures work as well as statutes from other states. [Copies on file.] He noted this legislation is "the most progressive" language on the West Coast of the United States addressing these types of crimes.

Senator Ward asked if this legislation includes e-mail of pornography materials.

Representative Hayes answered that it does not. He told of law enforcement organizations that infiltrate Internet chat rooms and other areas to locate suspected pedophiles and perpetrators of sex crimes. He noted that if a person receives a pornographic e-mail message, but deletes it and does not pass it along to another user, that person would not be subject to the provisions of this law.

Senator Leman asked if the person who sent a pornographic e-mail could be prosecuted and under this legislation, forfeits their computer equipment.

Representative Hayes did not think so unless the intent is distribution rather than a joke. He assured that this question has been addressed in other committees.

Senator Leman hoped the forfeiture provision would apply saying that it does happen occasionally.

Senator Green asked if the penalties proposed in the bill are in addition to other punishment. She asserted, "this is a lot of work to take someone's computer if they're not being punished."

Representative Hayes replied that only upon conviction as a sexual predator could computer equipment could be seized.

Senator Ward asked about equipment belonging to the State of Alaska.

Representative Hayes reiterated that the intent language inserted by the Senate Judiciary Committee specifies legislative intent that only equipment owned by the perpetrator could be seized. He stated that equipment owned by an employer, parent, spouse, etc., of the offender could not be confiscated.

Co-Chair Donley drew attention to the committee substitute provision setting the procedure for the utilization of any confiscated equipment.

Co-Chair Donley asked why there is no fiscal note from the Department of Law.

Representative Hayes explained there would be no additional expense to the Department of Law because conviction on child pornography charges would automatically provide for equipment seizure without the need for additional specific prosecution.

Senator Ward shared that Department of Public Safety Deputy Commissioner Del Smith relayed to him that it is not against the law to send an e-mail using another person's e-mail address. Senator Ward suggested this legislation could be used to make such a practice illegal.

Representative Hayes was unsure how this could be done since this legislation is specifically directed to child pornography and sex crimes. He again detailed the process of investigators entering chat rooms using an alias as a child to attract child abusers.

Senator Ward ascertained this legislation is "pretty broad and covers a lot of territory." He stated that having no law making it illegal to send pornography using another person's e-mail address "could be a problem." He gave a scenario of someone distributing pornography from the governor's address.

Senator Hoffman suggested Senator Ward introduce new legislation to address this matter.

Senator Ward wanted to hold the bill in Committee so he could draft an amendment to make such a practice illegal. He also stated that impersonating a public servant is shown to be against the law, but is actually not, according to the Department of Public Safety.

Co-Chair Donley understood the concerns but did not think this issue complied with the title of the bill.

Senator Ward asserted that he was certain, "the sponsor would want to do whatever is necessary in order to protect the public from these sexual predators."

Co-Chair Donley noted the bill has the support of the Committee and requested the sponsor work with Senator Ward on addressing this matter. He stated the bill would be reconsidered at the next meeting.

Co-Chair Donley ordered the bill HELD in committee.

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**ADJOURNMENT**

Co-Chair Donley adjourned the meeting at 08:42 PM