

MINUTES
SENATE FINANCE COMMITTEE
February 28, 2002
9:08 AM

TAPES

SFC-02 # 21, Side A
SFC 02 # 21, Side B
SFC 02 # 22, Side A

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 9:08 AM.

PRESENT

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

Also Attending: WILDA RODMAN, staff to Senator Therriault; TIM ROGERS, Legislative Program Coordinator, Municipality of Anchorage; KEVIN RITCHIE, Alaska Municipal League; BARBARA MICKLOS, Director, Child Support Enforcement Division, Department of Revenue; NANCI JONES, Director, Permanent Fund Dividend Division, Department of Revenue; DIANE WENDLANDT, Assistant Attorney General, Collections and Support Sections, Civil Division, Department of Law; FRANKLIN TERRY ELDER, Director, Division of Banking, Securities and Corporations, Department of Community and Economic Development; LISA BELL, Executive Vice President and Chief Operating Officer, Alaska Pacific Bank;

Attending via Teleconference: From Anchorage: LINDA WILSON, Deputy Director, Public Defenders Agency, Department of Administration

SUMMARY INFORMATION

SB 11 -COMPULSORY SCHOOL ATTENDANCE

The Committee heard from the sponsor. An amendment was adopted and

the bill moved from Committee.

SB 337-ELIGIBILITY FOR MUNICIPAL TAX EXEMPTION

The Committee heard from municipal representatives. The bill moved from Committee.

SB 338-INELIGIBILITY FOR PFD/ CRIME VICTIMS COMP

The Committee heard from the Department of Revenue, the Department of Law, and the Department of Administration.

HB 106-FINANCIAL INSTITUTIONS

The Committee heard from the Department of Community and Economic Development and the banking industry. A committee substitute was adopted and the bill was held in Committee.

SB 243-CHIROPRACTORS: SUNSET/LICENSING

This bill was scheduled but not heard.

#SB11

SENATE BILL NO. 11

"An Act relating to the legal age for attending school; and providing for an effective date."

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

AT EASE 9:09 AM / 9:10 AM

Amendment #2: This amendment deletes "the legal age for attending school" and inserts "required school attendance" to the title of the bill to read, "An Act relating to required school attendance; and providing for and effective date."

This amendment also deletes the language in Section 1 and inserts language to read as follows.

Section 1. AS 14.30.010 is amended by adding a new subsection to read:

(c) If a parent, legal guardian, or other person having the responsibility for or control of the child elects to enroll a child who is six years of age in first grade at a public school, after enrollment, the child is

subject to the provisions of (a) and (b) of this section.

This amendment also changes the effective date of this legislation from July 1, 2001 to July 1, 2002.

Senator Lemman moved for adoption.

Senator Austerman objected for explanation.

Senator Lemman reminded the Committee of the sponsor's intent to address the matter of parents enrolling their six-year-old children in school then having the children attend school sporadically. Senator Lemman noted this practice requires educators to concentrate effort on bringing these students to the same level as the students who attend regularly. He opined the proposal to lower the mandatory attendance age from age seven to age six would be "a bit of a reach and went too far". Therefore, he proposed this amendment, which requires those students under the age of seven, who are enrolled, to attend school and allows law enforcement to enforce truancy rules.

Senator Lemman informed that the sponsor and the Department of Education and Early Development have no objection to the amendment.

WILDA RODMAN, staff to Senator Therriault, testified to affirm the sponsor does not object to adoption of the amendment.

Senator Green questioned the phrase "after enrollment" as it appears in the amendment.

Senator Lemman explained this provision would not apply unless the parent or legal guardian enrolls the child. He stated this language is recommended by the drafter.

Co-Chair Kelly asked if Senator Green thought this changes the intent of the bill.

Senator Green did not, but found it confusing.

Co-Chair Donley opined that given the "on-going problems and the threats of this Administration against home schooling," specific language that could not be interpreted differently, is preferred. He relayed concerns raised at a recent meeting of the Anchorage caucus about the Administration's actions regarding home schooling.

Senator Hoffman suggested the same arguments for mandatory attendance should apply to kindergarten students as well. He suggested lowering the mandatory attendance age to five years for

those children enrolled in school.

Co-Chair Kelly understood the sponsor's intent is to address the specific problems of certain schools: the sporadic attendance of some six-year-old students. He surmised the inclusion of kindergarten would go "beyond the scope".

Ms. Rodman affirmed.

Senator Hoffman spoke to the larger problem of children skipping school in that there is insufficient authority and resources to enforce attendance rules.

Co-Chair Kelly, for Senator Austerman's benefit, summarized the discussions of the first hearing, as he was not present at that meeting.

A roll call was taken on the motion to adopt Amendment #1.

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

OPPOSED: Senator Hoffman

The motion PASSED (8-1)

The amendment was ADOPTED.

Co-Chair Donley offered a motion to "move the new Senate Finance committee substitute for Senate Bill 11 from Committee with the accompanying zero fiscal note."

There was no objection and SB 11 (FIN) MOVED from Committee with accompanying indeterminate fiscal note #1 from the Department of Education and Early Development.

AT EASE 9:21 AM / 9:22 AM

#SB337

SENATE BILL NO. 337

"An Act relating to eligibility for an exemption from municipal property taxes for certain seniors and disabled veterans."

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

Co-Chair Donley, sponsor, testified this bill would allow local governments to adopt eligibility requirements for the existing senior citizens and veterans property tax exemption, that are parallel to eligibility requirements for receipt of a permanent fund dividend.

Co-Chair Donley stated the public policy of the existing mandated exemption, which he noted is an unfunded mandate by the State upon local governments, is to encourage senior citizens to live in Alaska and to assist disabled veterans. He explained the same criteria as used for qualification for the permanent fund dividend is proposed for the tax exemption because senior citizens who do not qualify for the dividend are also not residing in the State long enough to make significant economic and community-service contributions necessary to warrant the exemption.

Co-Chair Donley explained this legislation provides local governments "a tool" for managing the tax exemption program.

TIM ROGERS, Legislative Program Coordinator, Municipality of Anchorage testified in Juneau in support of the bill. He noted this legislation is a result of recommendations of the Anchorage Senior Citizens Advisory Commission made in 1997. He detailed the recommendations identified a "loophole" in existing law.

Mr. Rogers listed that the Municipality of Anchorage currently exempts \$18.2 million worth of property taxes for 86,000 participants through this program. He continued that approximately five-percent of those participants do not qualify to receive a permanent fund dividend. He clarified this legislation would not automatically exclude these participants.

Mr. Rogers added that this legislation would also simplify the application process both for the participants and for the municipality.

Co-Chair Kelly asked the amount of funds that would be "saved".

Mr. Rogers answered the Municipality of Anchorage would save between \$100,000 and \$200,000.

Senator Leman asked the percentage of property owners who receive this exemption.

Mr. Rogers replied that approximately 16 percent participate, which has increased approximately five percent a year.

KEVIN RITCHIE, Alaska Municipal League, testified in Juneau that the League's Revenue Finance subcommittee discussed and endorsed this bill. He thanked the Committee for considering granting the municipalities the authority to make these decisions. He relayed the fairness issue was also discussed and it was agreed that the purpose of the senior citizens property tax exemption program should encourage Alaskans to remain in the State as they get older. He continued, however, that if these senior citizens are not residents, the tax exemption might not be a benefit to the municipalities.

Senator Green offered a motion "move Senate Bill 337 from Committee with individual recommendations."

There was no objection and SB 337 MOVED from Committee with a new zero fiscal note, dated 2/26/02, from the Department of Community and Economic Development.

#SB338

SENATE BILL NO. 338

"An Act making certain individuals convicted of crimes ineligible for permanent fund dividends and relating to certain payments of compensation from the crime victim compensation fund; and providing for an effective date."

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

Co-Chair Donley testified this bill modifies the eligibility requirements for the permanent fund dividend for people convicted of a crime. He noted that under current law, after two years of a violent criminal's "release", the offender could begin to receive dividends. He added that current law stipulates, "individuals do not qualify for a dividend if, during the qualifying year they are convicted of a felony or, if during all or part of the qualifying year they are incarcerated as a result of a felony or a misdemeanor [conviction], and they have a prior felony or two or more misdemeanor [convictions]." He explained this provides that regardless of the offence committed, a felon is eligible to receive a dividend two years after release from prison.

Co-Chair Donley stated this legislation would change the current provisions to stipulate that individuals convicted of a felony or misdemeanor would lose their permanent fund dividend for at least two years, regardless of whether or not they have a prior conviction. He qualified this would apply to those convicted of a

crime and are incarcerated for that offense.

Co-Chair Donley added this legislation establishes a "sliding scale" whereby offenders convicted of more serious and violent crimes would be ineligible to receive dividends for longer periods of time. He also noted that offenders convicted of unclassified felonies would lose their dividend forever. He informed these are the most serious class of felonies in Alaska, and include murder, attempted murder, solicitation and conspiracy to commit murder, kidnapping, rape, sexual abuse of a minor and misconduct involving a controlled substance, i.e. drug dealers. He listed those convicted of a Class A, B or C felony crime of violence would be ineligible to receive a dividend for 20 years; those convicted of lesser, non-violent, felonies would be ineligible to receive a dividend for ten years; those convicted of a violent misdemeanor, Class A or B, would lose their dividend for five years; and those convicted of a nonviolent misdemeanor, and who are incarcerated for that offense, would be ineligible to receive a dividend for two years following release.

Co-Chair Donley noted that an individual convicted of a violent misdemeanor, but not incarcerated for that offense, would be ineligible to receive a dividend for two years, rather than the five years stipulated for those receiving a prison sentence. He described the "double threshold" applied to misdemeanor convictions, of determining whether the crime committed was violent, and whether the Court determined jail time is warranted for the offense.

Co-Chair Donley noted the final provision applies to the offense of First Degree Criminal Mischief under AS 11.46.480(a)(3), intentional damage to an oil or gas facility, which stipulates the person convicted of this crime would be ineligible to receive a dividend for 20 years. He stated the public policy for this provision relates to the recent shooting of a hole in the Alyeska Pipeline. He emphasized the expense for repair and cleanup, in addition to the millions of dollars of lost revenue of the spilled oil. He stressed that a person who inflicts such "malicious damage" to the facilities that generate the funds in which the dividends are derived, should not be entitled to collect a dividend. He qualified the existing statute contains a significant monetary "threshold" of the amount of damage inflicted that is applied to this provision.

Co-Chair Donley predicted this legislation would generate significant revenue, as the denied dividend funds would be available for State expenditure in the same manner current inmate dividends are diverted for use by the Department of Corrections,

the Violent Crimes Compensation Board, the Council on Domestic Violence and Sexual Assault, and grants for non-profit victim's advocacy groups. He noted this legislation also stipulates that if a victim of a crime has received a judgment or order of restitution against the offender, the victim would receive first priority for the dividend funds.

Co-Chair Donley acknowledged that some municipalities and other entities garnish permanent fund dividends from offenders for the purpose of offsetting expenses. He asserted the "more important public policy call," that permanent fund dividends should not be awarded to people who commit serious crimes and who "break their social contract with their neighbors". He asserted that the right to vote is revoked and yet money is given to these offenders by the State of Alaska.

Co-Chair Donley noted the high operating expenses of the Department of Corrections and remarked it is reasonable to deny the funds to those who incur the costs, and instead utilize the funds to assist in covering their expenses.

Senator Austerman asked how this affects municipalities that practice garnishment and whether they would receive dividend funds under this legislation.

Co-Chair Donley understood municipalities utilize the "dividend flow" to offset some costs, although he was unfamiliar of the details of the programs. He suggested an amendment could be offered to the bill to make provisions for municipalities.

Senator Austerman anticipated administrative difficulties in tracking the ineligibility periods of all offenders in the State.

Co-Chair Kelly referenced the fiscal note submitted by the Department of Public Safety, which addresses this issue.

Senator Austerman referenced Section 2(d)(1) on page 2, lines 5 through 7, which reads as follows

(1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony or misdemeanor and the judgment has not been reversed or vacated;

Senator Austerman commented that under this language, a jaywalker could lose their dividend.

Co-Chair Donley corrected that jaywalking is a violation not a

misdemeanor. He explained a misdemeanor is a crime in which jail time of less than one year could be required. He noted that offenders are often convicted of "simple assault" and are not incarcerated, particularly if it is a first offense.

Co-Chair Kelly pointed out this legislation would pertain to a conviction of Fourth Degree Assault, which could result from an offender who "takes a swing at someone and miss[ed]".

Co-Chair Donley commented it would be difficult to obtain a conviction for such an event.

Co-Chair Kelly agreed, but qualified that if the offender was a youth, the juvenile justice system could impose a sentence at a youth facility because the probation officer determines the youth should spend the night in jail in order to "teach a lesson." He asserted there is a different threshold in this situation as the intent is to impose punishment, but rather to discourage future behavior. He asked if this legislation would apply to Title 47, which governs the juvenile justice system.

Co-Chair Donley responded the intent of this legislation is to apply only to those convicted and subsequently incarcerated. He informed he would consult with the Division of Legal and Research Services on the possible relationship this bill would have to the juvenile justice system.

Co-Chair Kelly and Co-Chair Donley discussed methods of distinguishing between the adult criminal justice system and the juvenile justice system.

Senator Austerman referenced the charge of Minor in Possession. He noted that the driver's license of a juvenile charged of this offense, even if found not guilty, is still revoked.

Co-Chair Donley replied that most juveniles are not formally adjudicated but rather referred to a diversion system and are therefore never formally convicted of the crime. He repeated that he would research the matter further and investigate whether Minor in Possession is considered a serious misdemeanor, which could qualify under this legislation.

Senator Wilken, pointing out there are different levels of felonies, asked if there are different levels of misdemeanors.

Co-Chair Donley answered there are Class A and Class B degrees of misdemeanors in Alaska.

Senator Wilken wanted to ensure "the punishment fits the crime" and asked for the definition of offenses that qualify as Class A or Class B Misdemeanors.

Co-Chair Donley agreed to provide a list of the offenses classified as Class A and Class B Misdemeanors.

Senator Leman shared his main concern is that victims receive restitution and that child support and student loan obligations are paid. He pointed out this legislation does not address child support and student loan payments.

Co-Chair Donley understood other statutes address collection authority for child support and student loan debts. He agreed payment is made easier through permanent fund dividends.

Senator Leman restated that current law allows the State to garnish the dividends of those owing child support or student loans. He asked if under this legislation, whether the funds would remain available for payment of these debts.

BARBARA MICKLOS, Director, Child Support Enforcement Division, Department of Revenue, testified that under current statute, child support receives the highest priority for garnishment of dividends with only bankruptcy receiving a higher priority. She noted this legislation does not change this priority system. She raised concern however that increasing the number of people ineligible to receive a dividend and subsequently reducing the amount of funds available, would result in less money paid to the families.

Ms. Micklos explained for Senator Leman's benefit, that diversion of the funds is not automatic as is the case with the Department of Corrections receiving the dividend funds of incarcerated offenders. She detailed that the Child Support Enforcement Division could only garnish a dividend from those who have applied for the dividend. She added that in some instances, the Division has obtained a court order requiring the debtor to apply for the dividend for the purpose of garnishment.

Senator Leman stressed this is his concern. He spoke to the necessity for a mechanism whereby the Division could apply for the dividend funds on behalf of the party owed child support from an ineligible offender. Otherwise, he surmised the funds would be redistributed to the qualifying dividend recipients.

Co-Chair Donley corrected the funds would be allocated to the "four statutory suggested uses": the Department of Corrections, the Victims Compensation Board, the Council on Domestic Violence and

Sexual Assault, and grants to non-profit organizations. He asserted the funds would be utilized for "a very high public purpose". He suggested the statutory suggested uses could be increased to include the Child Support Enforcement Division.

Senator Hoffman pointed out the Department of Revenue fiscal note addresses this issue specifically. He cited that in FY 05, child support collections would be reduced by \$1.1 million; the amount would increase to \$1.7 in FY 08, and continue to increase in future years. He furthered that the amount the Division collects and deposits into the general fund as reimbursement to public assistance benefits, would be reduced approximately \$4 million annually.

Senator Hoffman shared Co-Chair Donley's concerns regarding dividends paid to felons.

SFC 02 # 21, Side B 09:57 AM

Senator Hoffman continued suggesting that the length of time an offender is ineligible to receive a dividend could be increased but that the current allocation system should remain unchanged.

Senator Austerman requested further explanation of the provision that stipulates a convicted felon is ineligible to receive a dividend.

NANCI JONES, Director, Permanent Fund Dividend Division, Department of Revenue, testified that the dividend is "not a one to one relationship" as the ineligible offenders are not allowed to submit an application. She detailed the process of the Division matching a list of inmates against residency and other eligibility criteria. She noted that an inmate, who would not have otherwise qualified for a dividend due to residency requirements, would not be included in these calculations. She continued that the number of inmates ascertained to otherwise be eligible to receive a dividend is multiplied by the amount of the dividend, and the total is appropriated to the aforementioned statutorily suggested uses.

Co-Chair Donley stated that although the fiscal notes indicate the amount of dividend funds the State "accesses for other purposes," the State would not actually lose revenue because the revenue would be garnered "in a different way", although it remains accounted as general funds.

Ms. Micklos affirmed, "There is a wash in terms of a loss to the

State." However, she stressed that currently, 90 percent of the Division's collections are paid to families and that permanent fund dividends comprise a major portion of collected funds. She listed \$16.7 million of a total \$90 million, was collected from dividends the prior year.

Co-Chair Donley asked how much of the predicted loss of \$1.1 million would be collected if the dividends were not available. He assumed this amount would be recouped by salary and other income sources.

Ms. Micklos reiterated the Division could garnish a dividend only if the recipient is delinquent in child support payments. Therefore, she informed, the Division attempts to collect the debt from other sources. She emphasized, however that in some instances, the dividend is the only asset a debtor has. She also pointed out the dividends are only available for garnishment in October of each year and that during the remainder of the year, the Division attempts to secure funds from other income sources.

Co-Chair Donley requested the witness prepare proposal whereby a list of those owing child support could be cross-referenced with those who are ineligible to receive a dividend to determine the amount of funds that would otherwise be collected from these individuals. He furthered these funds could then be allocated to the Division for payment to the families due child support. He surmised this process could protect the mission of the Division and also increase funding for the four statutorily suggested uses.

Ms. Micklos agreed to this undertaking.

Senator Leman remarked his concerns would be alleviated if such a method were implemented. He realized that student loan repayment and other obligations are important but stressed they are of lesser priority than child support.

Senator Hoffman requested figures reflecting the predicted losses to student loans, court ordered restitutions, municipalities and private businesses.

Co-Chair Donley noted court ordered restitutions would continue to have access to the dividend funds through the Victims Compensation Board. He asserted that although he is "real sensitive" to child support issue, he is not as concerned with "every little judgment or claim the State has" because the funds are deposited into the State treasury.

Senator Hoffman was concerned about the affect this legislation

would have on the viability of the student loan program.

Co-Chair Donley questioned the number of student loan recipients who have committed a serious crime. He surmised there are very few.

Senator Lemman agreed child support is the highest priority in this matter, although the other dividend uses are worth consideration. He noted that recent statutory changes enabling businesses to recover losses by garnishing up to 80 percent of a debtor's dividend, has been effective. He assumed people convicted of serious crimes also are probably not satisfying other financial obligations.

Senator Green remarked that if this legislation is proposed as a penalty for the offender, she questioned the continuation of dividends for the purpose of satisfying that individual's debt of "sweet issues". She stated it would be unfair for the State to receive payment of a debt if a private debt holder is unable to collect payment.

Senator Hoffman opined that once an offender has paid their debt to society, the individual should be eligible to receive a dividend.

Senator Lemman countered that the State is investing funds each year to incarcerate the offender and there is an accumulated debt regardless that the offender has served the time of the sentence. He commented the offender would likely never pay off the actual cost that society has invested in the incarceration. He suggested the dividend is a "token amount" that could be utilized to pay some of the investment.

Senator Hoffman asserted Senator Lemman's comments might be true, but cautioned if this legislation passes into law it could be challenged in court using the same argument.

Senator Green asked if there was concern that this legislation could result courts considering the number of years an offender would be ineligible to receive a dividend as part of the punishment and therefore imposing shorter prison sentences.

Co-Chair Donley replied this could occur but stressed the intent of sentencing statutes prohibits judges from considering dividend eligibility in sentencing. He surmised this legislation could have some impact in the cases of minor crimes of violence. He stated that because of the graduating scale based on the seriousness of the crime committed, this bill meets equal protection and due process considerations. He pointed out that no other state offers a dividend and therefore Alaska "reserves the authority to be able to

withhold it and set the criteria for it, so long as it does so in a reasonable manner that's consistent with constitutional provisions."

Co-Chair Donley expressed his intent to work with the Child Support Enforcement Division to develop an alternate funding mechanism for child support obligations. He agreed with Senator Green that the offenders incurred the debt and it should not be the responsibility of the State to cover those debts. However, he emphasized the circumstances are different "in the unique case of child support," because the State currently intervenes and acts as an agent for private parties, "because children are so important to the State." He also noted the burden returns to the State if children are not properly supported by their parents.

Senator Green commented, "I agree with you and I disagree with you."

Senator Austerman asked about the logistics of determining the amount of dividend funds available. He questioned how, after an offender completes probation, the State would know if residency and other criteria would otherwise be met, because the offender does not submit an application.

Co-Chair Donley posed the question to Ms. Jones, asking her how offenders who leave the State are currently tracked.

Ms. Jones responded that offenders who qualified for a dividend, before serving their sentence would qualify for at least one year following release, because they remained Alaska residents during their imprisonment. She noted a new system would be required to calculate the residence eligibility for the otherwise ineligible offenders.

Co-Chair Donley suggested this could be done using voter registration records, driver license records and other methods.

Senator Ward asked about collection of dividends for offenders on probation in Alaska.

Ms. Jones answered the Department of Corrections could provide a list of those on probation, which would be cross-referenced in the same manner as the current inmate lists.

Senator Austerman reiterated his concern of the "maze and nightmare" of creating a program to accurately track the offenders and their residency qualification. He noted that while serving probation, the offender's residency would be accounted for, but

questioned how this could be done after probation is complete.

Co-Chair Donley suggested establishing a "standard" to include dividend funds for those offenders who register to vote, obtain an Alaska drivers license or are under the supervision of the Department of Corrections.

Senator Hoffman pointed out drivers licenses are valid for five years and suggested an offender could leave the state after only one year. He recommended utilizing census data instead.

Senator Austerman supported the concept of utilizing dividends as financial restitution to the State.

DIANE WENDLANDT, Assistant Attorney General, Collections and Support Sections, Civil Division, Department of Law, testified via teleconference from Anchorage, that she is responsible for supervision the collections, which includes: criminal fines, cost of incarceration, cost of appointed council, forfeited bonds, penalties, and restitution for victims. She stated the Collections Section collects an average of \$3.5 million annually, with a small portion of that amount used to fund the collection efforts and the majority of the funds deposited into the general fund or allocated to other departments.

Ms. Wendlandt stated that approximately 85 percent of the collections are against criminal defendants who would likely be affected by this legislation. She informed that approximately 90 percent of funds the Section collects are permanent fund dividend attachments. She described the 80,000 unpaid judgments, which vary from \$40 to several thousand dollars, noting that 10,000 to 15,000 judgments are satisfied each year. She stressed the Section "deals on a very large scale, but very small amounts per judgment" and therefore the cost effectiveness of the collection efforts must be considered. She stated the effort involved in dividend attachment is significantly less than required for income withholding, property seizures and other methods. She continued to detail the collection efforts as they pertain to dividend attachment.

Ms. Wendlandt pointed out this legislation provides for dividend funds to be used for compensation to victims of violent crimes but not to victims of nonviolent crimes.

Co-Chair Kelly interjected to request the witness work with Co-Chair Donley to address these issues.

Co-Chair Donley noted the witness is "rightfully expressing" the impacts on the Section. However, he disagreed the extent of the

impact because the State would automatically receive the funds that the Section currently must employ staff to collect. He also noted there would be no impact on restitution because of the authority of the Victims Compensation Board.

Co-Chair Donley commented that the collected funds are currently accounted as program receipts and reiterated this legislation would account the funds as general funds. He understood the agencies would therefore be required to compete for the general funds, but stressed there would be a net gain to the State.

LINDA WILSON, Deputy Director, Public Defenders Agency, Department of Administration, testified via teleconference from Anchorage in opposition of the bill. She stated that this would impact the Agency's clients, who are indigent people. She spoke to the fines, restitutions and other debts imposed on the clients, and emphasized that if unable to pay these debts, the offenders could be in violation of the conditions of their probation or parole.

Ms. Wilson informed that the Agency received \$190,000 in FY 99, \$190,000 in FY 00, and \$430,000 in FY 01, from the Department of Law.

Co-Chair Donley commented, "It's pretty amazing that some State bureaucracies are so entrenched" as to assert the State should pay offenders' criminal fines. He emphasized the need to "look at the big picture." He stressed this legislation is a revenue generator to the entire State with the exception of those who commit offenses. He stated this would facilitate the prioritization of State programs, as they would compete for funding on "a level playing field" "and not just because one department happened to have access to these off-budget funds and another one didn't."

Co-Chair Donley reiterated his intent to establish a method to utilize the ineligible dividend funds for child support payments.

Co-Chair Kelly ordered the bill HELD in Committee.

#HB106

SENATE CS FOR CS FOR HOUSE BILL NO. 106(JUD)

"An Act relating to the authorizations for certain state financial institutions of certain powers and limitations; relating to confidential records of depositors and customers of certain financial institutions; relating to the examination of certain institutions subject to AS 06; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; relating to credit

cards; amending Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules; and providing for an effective date."

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

AT EASE 10:42 AM / 10:48 AM

Co-Chair Kelly spoke to two proposed committee substitutes, Version "R" and Version "B". He stated Version "R" contains an "opt in" provision, which offers more privacy protection than federal law provides and would comply with the federal law. Version "B", he continued, addresses the privacy issue in an "opt out" manner. He noted both versions have omitted a provision pertaining to credit cards that had previously raised concern.

FRANKLIN TERRY ELDER, Director, Division of Banking, Securities and Corporations, Department of Community and Economic Development, explained "opt out" is a procedure by which financial institutions could share private information about an individual unless the individual directs otherwise. He continued that the "opt in" procedure allows financial institutions to share private information about an individual only if permission is obtained from that individual.

Co-Chair Kelly asked for a description of the private information in question and an explanation of the federal Gramm-Leach-Bliley Act.

SFC 02 # 22, Side A 10:52 AM

Mr. Elder responded that the Gramm-Leach-Bliley Act requires financial institutions to provide customers the details of their privacy policy, as well as "an opportunity to opt out" by mail, telephone, Internet, etc. notification. He furthered that the federal law also allows states the option to adopt a more restrictive privacy policy.

Mr. Elder defined the private information as "personally identifiable, nonpublic information." He noted that names and addresses could be considered public information if listed in the telephone directory. However, he qualified that a list of names and addresses of customers created from the financial institution's database using a "screen" or "filter" of nonpublic information is

considered private information.

Co-Chair Kelly referenced a memorandum to the Committee from the Division of Legal and Research Services, dated 2/28/02, regarding Version "B" [copy on file]. He cited Terri Lauterbach, drafter of this legislation, states that this version may provide more consumer protection than the federal act, "however, I cannot say for sure that the federal government would reach that conclusion." Co-Chair Kelly asked if the Division of Banking, Securities and Corporations share this opinion.

Mr. Elder affirmed and further detailed the two-line reference to the Gramm-Leach-Bliley Act, which pertains to disclosure of private information. He noted that the Federal Trade Commission acts as an arbitrator in the event there is a question of whether a state has adopted a more restrictive privacy policy.

Co-Chair Kelly asked if the current law in Alaska is "opt in" or "opt out".

Mr. Elder answered the banking code requirement has been "opt in" for over 30 years. He stated, however, there is no privacy provision in the codes governing other financial institutions. He added that the Gramm-Leach-Bliley Act is the first federal law addressing these privacy issues, which has resulted in this legislation to instill privacy provisions in AS 06.01 rather than the statute governing banking activities.

Mr. Elder added that Version "R" contains "compromise" language reflecting agreement reached by the Division and the Alaska Bankers Association. This language, he stated, achieves the Division's goal to "continue the tradition of Alaska of protecting the privacy of individuals" but also allows for the "extension of financial services" among different financial institutions.

Co-Chair Donley clarified the Division supports Version "R".

Mr. Elder affirmed.

Senator Green asked if this legislation would impose the same prohibitions on insurance companies that are performing banking functions.

Mr. Elder answered it does and informed that the Gramm-Leach-Bliley Act essentially "breaks down those walls" between different types of financial institutions.

Senator Green understood the need to share information for

liability purposes in the insurance industry is different than the need for information sharing in the banking industry.

Mr. Elder furthered there is no restriction on information sharing among affiliates and that the Gramm-Leach-Bliley Act and this legislation only apply to non-affiliates. The federal law and this bill, he continued, pertain to information sharing for the purpose of providing services of the financial institution or marketing partner.

Co-Chair Donley moved to adopt SCS CS HB 106, 22-GH1026\R as a working draft.

Senator Hoffman asked if because of the events involving the Enron Corporation, whether more states are considering "opt out" provisions to provide greater consumer protection.

Mr. Elder clarified the "opt in" method provides more protection for consumers.

There was no objection and the committee substitute, Version "R", was ADOPTED as a working draft.

LISA BELL, Executive Vice President and Chief Operating Officer, Alaska Pacific Bank, testified on behalf of the Alaska Bankers Association in support of the committee substitute. She opined that Version "R" contains a "workable compromise" and that it "modernizes the State banking code in two important ways." She explained the committee substitute provides parity between State-chartered and federal-chartered financial institutions operating in Alaska, and that it allows small Alaska banks to compete effectively with larger banks.

Ms. Bell qualified the original position of the Association supported complete compliance with the Gramm-Leach-Bliley Act. However, she stated a reasonable compromise was reached when the bill was under consideration by the House of Representatives. She emphasized the Association's goal is to allow small banks to offer financial-related products and services to their customers and that the committee substitute allows this.

Ms. Bell predicted rural Alaska residents would benefit most from this legislation, as it would allow them to receive more information on available products and services.

Senator Ward requested an analysis of the provisions in the committee substitute that are required for conformance to the Gramm-Leach-Bliley Act and the provisions that are not required.

Mr. Elder referred to sectional comments prepared by the Division [copy on file]. He gave as an example, insurance activities that are currently allowed under the Gramm-Leach-Bliley Act, but would be prohibited under this legislation.

AT EASE 11:07 AM / 11:07 AM

Co-Chair Donley shared that he requested from the sponsor, an opportunity to review the Version "J" committee substitute.

Co-Chair Kelly ordered the bill HELD in Committee.

#

ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 11:08 AM