

MINUTES
SENATE FINANCE COMMITTEE
April 10, 2002
9:44 AM

TAPES

SFC-02 # 52, Side A
SFC 02 # 52, Side B

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 9:44 AM.

PRESENT

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

Also Attending: SENATOR GENE THERRIAULT; DENNIS POSHARD, Legislative Liaison/Special Assistant, Department of Transportation and Public Facilities; RON SOMERVILLE, Resource Consultant, House and Senate Majority;

Attending via Teleconference: From Anchorage: FRANK DILLON, Executive Vice President, Alaska Trucking Association; KEITH BAYHA, Alaska Public Waters Commission

SUMMARY INFORMATION

SB 226-HIGHWAY DESIGN & CONSTRUCTION

The Committee heard from the sponsor, the Department of Transportation and Public Facilities and the Alaska Trucking Association. A committee substitute was adopted and the bill moved from Committee.

SB 219-FED/STATE NAVIGABLE WATERS COMMISSION

The Committee heard from a resource consultant and the Alaska

Public Waters Commission. The bill was held in Committee.

SB 280-WATER/SEWER/WASTE GRANTS TO UTILITIES

The Committee heard from the sponsor. A new fiscal note was adopted and the bill moved from Committee.

SB 185-PCE AMOUNT & ELIGIBILITY

The Committee adopted an amendment and the bill reported from Committee.

#SB226

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 226(TRA)

"An Act requiring certain highway projects to be designed and constructed so that the highways will adequately serve anticipated traffic levels for at least the next 30 years; and providing for an effective date."

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

Co-Chair Donley, sponsor, testified that the bill relates to the "design life" of a planned road in urban areas, defined by traffic engineers as the length of time the schematics of the road should last. He explained this does not apply to the asphalt construction but rather, for example, how long a left turn lane is operable before increased traffic blocks the regular lanes. He expressed his observations of roads in Anchorage and in other communities that are no longer adequate for the amount of traffic traveling on them.

Co-Chair Donley indicated that federal law requires the geometry of a major road project built utilizing federal funds must be sufficient for "at least 20 years". He also learned that federal law requires a 50-year design life for bridges. He added that federal requirements for overall planning in metropolitan areas request a design life of up to 23 years.

Co-Chair Donley, in describing the current situation, suggested traffic counts could be incorrect and that the method for determining the counts should be reassessed. He shared that he questioned the Department of Transportation and Public Facilities on this matter and was first told that a designed road might not be built for up to eight years and thus the actual design life is only 12 years, despite initially being designed to last 20 years. He pointed out however, that once he introduced this legislation, the

Department informed him this was not the case. He surmised that once construction begins, such issues as right-of-way or problems with contractors cause the projects to be delayed beyond the completion date estimated in the design life. He stated the intent of this legislation is to avoid repeated reconstruction caused by outdated designs. He spoke of the consequences of three-year delays on smaller projects costing less than \$1 million with a design life of only ten years.

Co-Chair Donley referenced a letter from the Federal Highway Administration [copy on file] indicating the agency does not oppose this legislation and that it would have no impact on federal funding.

Co-Chair Donley shared that he originally considered legislation to require the design life of road projects to be 30 years, which he pointed out is the maximum allowed in federal law. He indicated the committee substitute proposes different design life requirements dependant upon the cost of the project. He detailed that a ten-year design life would be required for projects with a cost of less than \$1 million, a 20-year design life would be required for project costing between \$1 million and \$5 million, and a 25-year design life would be required for projects with a cost of over \$5 million.

Co-Chair Donley suggested extending the design life requirement to 20 years for the projects costing less than \$1 million. He justified this due to constant road construction occurring during the short construction season in Anchorage for smaller upgrade projects. He remarked that fewer road projects would be possible, but that the public would benefit because there would be less need for upgrades and roads would be fully operational for longer periods of time.

Senator Ward commented that before this legislation was introduced, he was unsure why roads did not last longer, because he assumed such a process already was in place. He opined that roads in other states operate longer.

Senator Ward assumed there would be some "strain" on smaller projects and suggested further discussion on the matter.

Co-Chair Donley clarified this bill only applies to road construction projects located in federally recognized metropolitan planning areas, which are larger communities. He furthered this legislation would not apply to locally funded projects, which would allow communities the option to undertake smaller projects without these requirements. He informed the Anchorage Metropolitan Area

Transportation Study (AMATS) does not generally undertake projects of less than \$1 million.

Senator Austerman commented that the "economy of scale" must also be considered. He explained that when spending less than \$1 million on a project, an extensive design time might not be prudent.

Co-Chair Donley replied that Federal Highway Administration authorities "seem to pretty confident about their 20 year plan process." He admitted that 25-year design time projects have not been implemented to date and that it does become more difficult to accurately predict traffic patterns and traffic load. However, he pointed out that federally funded bridge construction projects must have a 50-year design life. He noted that right of way acquisition, particularly in urban areas, "have become a real major inhibitor to getting these projects done."

Senator Olson predicted that longer design life stipulations would require increased consulting efforts and would incur additional expenses. He also noted that with the construction of a natural gas pipeline, the population of the State and the subsequent traffic loads would increase. He asked the anticipated increased design and planning costs this legislation would impose.

Co-Chair Donley was unsure that design expenses would increase because the same design life process would occur. He admitted that project costs would increase because the roads must be designed to last longer. He reiterated that fewer projects would be possible, but that the finished roads would last longer. He addressed the impact of the natural gas pipeline, stating that it is uncertain whether it would generate a significant influx of people into the State. He hoped the pipeline construction would be undertaken utilizing local labor and corporations and benefit the existing economy.

Senator Hoffman asked if this legislation would apply to the City and Borough of Juneau.

DENNIS POSHARD, Legislative Liaison/Special Assistant, Department of Transportation and Public Facilities, answered that Anchorage is the only community in Alaska with a federally recognized metropolitan planning area. He qualified that although Fairbanks and the Mat-Su areas are close to receiving a designation, neither community has 50,000 residents "within an urbanized area", which is one criterion.

FRANK DILLON, Executive Vice President, Alaska Trucking Association, testified via teleconference from Anchorage to thank

Co-Chair Donley for his efforts on this bill. He stressed the need to address road infrastructure. He intended the road design to be feasible as long as possible.

Co-Chair Donley proposed an amendment to the proposed committee substitute to stipulate that all major upgrades and new construction projects with a cost of under \$5 million must have a design life of 20 years.

Senator Leman objected to the proposed amendment because many seemingly small projects have a significant cost. He gave as example of the installation of a stoplight on a secondary road in Anchorage at a cost of one-half million dollars. Therefore, he was unsure "we want to tie the hands of planning" for projects in areas where a 20-year design life is unnecessarily.

Co-Chair Donley stated it is "a close call" and he would defer to Senator Leman.

Co-Chair Donley moved for adoption of CS SS SB 226, 22-LS0993/B as a working draft.

Without objection the committee substitute was ADOPTED as a working draft.

Co-Chair Donley moved "the committee substitute for sponsor substitute for Senate Bill 226, the Utermohle 4/9/02 version from Committee with forthcoming zero fiscal notes I believe ... with the fiscal notes that are advanced."

There was no objection and CS SB 226 (FIN) with forthcoming zero fiscal note from the Department of Transportation and Public Facilities 4/17/02, MOVED from Committee.

AT EASE 10:08 AM / 10:15 AM

#SB219

CS FOR SENATE BILL NO. 219(RES)

"An Act establishing and relating to the Joint Federal and State Navigable Waters Commission for Alaska; and providing for an effective date."

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

RON SOMERVILLE, Resource Consultant, House and Senate Majority,

testified to the bill. He referenced the supporting documents before the members, specifically information from the Department of Law [copies on file].

Mr. Somerville gave history of the issue beginning at statehood in 1959, when Alaska acquired title to the approximately 60 million acres of submerged lands in the State. He informed that court decisions have affirmed this acquisition; however there has been difficulty in determining what constitutes as navigable waters.

Mr. Somerville listed three issues involved in the determination of navigable waters, the first being a federal "quiet title Act", which provides a mechanism by which a state could acquire title to navigable waters. He stated that the courts have ruled that the federal defendants in these matters could be involved in adjudicating a disputed title in which the federal government claims an interest. However, he qualified that in instances where the federal government "refuses" to claim an interest, the court has ruled that the federal government has no jurisdiction in the matter. He characterized this situation as a "catch-22" because the State could file a 180-day notice for quiet title to particular submerged lands and if the federal authorities do no contest the claim, the courts could refuse to rule on the claim.

Mr. Somerville spoke to the next issue as the navigable criteria. He explained that in Alaska, as in most states, the courts primarily determine the navigability on a case-by-case basis utilizing established criteria. He detailed a case that established precedent involving an area near Gulkana where the lands in question are submerged part of the year, but exposed other parts of the year. He informed that it was determined that the land is navigable because the waters were used for purposes of commerce at the time of statehood, whether by raft, canoe or other means.

Mr. Somerville shared that the Alaska Department of Law submitted to the US Department of the Interior, a list of approximately 200 identified rivers or areas that met the criteria established in the Gulkana court decision and that should be declared navigable waters. He stated that it was decided the State would litigate to obtain the status of navigable waters for three rivers: Black, Kandig and Nation. After nine years and approximately \$1 million in expenses, he stated the federal 9th Circuit Court of Appeals ruled that two of the rivers are navigable because the federal government had claimed an interest. However, he pointed out, the court determined it did not have jurisdiction over making a determination with regards to the Black River because the federal government had not claimed an interest in that area.

Mr. Somerville continued with the third issue, which he pointed out is unique to Alaska, and relates to the obligation of the federal Bureau of Land Management to "meander" the boundaries of bodies of water of a certain size and to make navigability determinations. He stated that prior to 1983, this did not occur and that as a result, a significant amount of land was conveyed, which the State asserts are navigable waters and should not have been conveyed. He noted that a 1983 administrative agreement ordered that a manual survey be conducted, which was affirmed by the US Congress in 1988.

Mr. Somerville continued that since statehood, 13 rivers have been affirmed as navigable by federal courts. He noted the approximately 22,000 rivers in the State, which could be disputed for navigability, and approximately one million lakes and other bodies of water of a significant size. He calculated the current rate of determination of navigability is too slow and too expensive.

Mr. Somerville asserted the State must hold title over these navigable waters in the event the State decides to use, lease or claim management jurisdiction over the areas.

Mr. Somerville stated the intent of this legislation is to expedite the identification of navigable and non-navigable water bodies to allow a certification process by the US Secretary of the Interior or Congress.

Mr. Somerville addressed the proposed committee substitute, 22-LS0965\J. He relayed a conversation between Senator Halford and the US Secretary of the Interior relating to possible administrative processes that could expedite the identification. As a result of this information, Mr. Somerville informed that the proposed committee substitute provides for a joint commission comprised of State and federal agencies, although it specifies the commission would exist even if the federal government chose not to participate. He noted the original version of the bill provides that the commission would not exist without federal participation. He surmised the inclusion of federal agencies on the commission would give the body a higher status and would allow the federal agencies more input into the determination of navigability.

Senator Austerman asked if a unilateral commission would have the same authority as a joint commission that included federal agency participation.

Mr. Somerville replied it would be beneficial to have both federal and state government involved. He noted this legislation is patterned after the Federal State Land and Planning Commission that was created under the Alaska Native Claims Settlement Act (ANCSA).

He stated that even without federal participation, the proposed commission would compile a list of identified navigable waters for submission to the US Secretary of the Interior.

Senator Austerman referenced a statement issued by the Alaska Public Waters Commission on SB 219, Establishing and Relating to the Navigable Waters Commission for Alaska, [copy on file] and distributed by Senator Wilken. He noted the statement offers recommendations and asked the witness to address these.

Mr. Somerville responded that the costs of the Land Use Planning Commission are considerably higher than the proposed commission, in part because the mandate of the proposed commission is "much narrower" than the original commission.

Mr. Somerville spoke to the opportunities to review the proposed commission's activities and expenses in the future. He surmised that the cost would be more expensive than the amount proposed in the accompanying fiscal note. However, he asserted that if the navigability of only ten rivers were resolved, the financial benefit would be greater than the current method.

KEITH BAYHA, Alaska Public Waters Commission, testified via teleconference from Anchorage, to reference the written testimony he submitted.

Senator Hoffman referenced the first paragraph of the sponsor statement, which states that the commission would become a reality only if Congress could provide authorization in federal law. He asked where this language is contained in the legislation.

Mr. Somerville corrected that the proposed committee substitute does not contain this language and that such congressional authorization would not be necessary.

Senator Hoffman next asked if the proposed committee substitute would only designate those navigable waters that were used for commercial efforts at the time of statehood.

Mr. Somerville affirmed this is one of the criteria for establishing navigability.

Senator Hoffman asked where this language is contained in the committee substitute.

Mr. Somerville replied this criterion is established in federal law.

Senator Hoffman requested the language of the federal law.

Senator Lemman clarified that an act of Congress would not be required for the commission to take affect, although such an act would be necessary if the commission were to be jointly comprised of federal and state agencies.

Mr. Somerville affirmed.

Senator Lemman asked if Mr. Bayha had advice as to how the governor should appoint members to the commission, noting that the Alaska Public Waters Commission written testimony states that the members should possess a technical background rather than be appointed only for political reasons.

Mr. Bayha replied the organization has not identified specific individuals to nominate for the positions on the proposed commission. However, he qualified that the commission had speculated on whom the governor might appoint. He expressed concern that if all members were "previous political personalities" the proposed commission might not contain sufficient technical knowledge necessary to be effective. Therefore, he relayed that the commission recommends a combination of political and technical perspectives.

Senator Lemman attempted to ascertain whether the legislation should contain provisions requiring that appointees must possess certain technical knowledge on the matter.

Mr. Bayha replied that if legislative intent were clarified, changes to the bill would not be necessary.

Senator Lemman expressed his intent that only those with adequate technical ability served on the commission.

Mr. Somerville reminded that the proposed commission is patterned after an existing commission, which does follow criteria for technical expertise of appointees.

Senator Wilken asked the influence Governor Tony Knowles' action of not appealing Katie John vs. State of Alaska to the US Supreme Court has had on this legislation.

Mr. Somerville stressed this legislation "does not in any way overturn, or in any way interfere, with the federal government claiming its Federal Reserve water rights."

Senator Lemman directed attention to page 3, line 11 of the proposed

committee substitute pointing out the requirement that at least one member of the commission must be an Alaskan Native. He asked if this legislation applies state statute defining Alaskan Native as a person with at least one-quarter-blood quantum, or "the looser definition" utilized for qualification of medical benefits and other governmental services.

Mr. Somerville was unsure and again noted the bill is patterned after the Federal State Land Planning Commission, which contains the requirement that at least one member be an Alaskan Native. He stated the qualification of Alaskan Native under the provisions in ANCSA, is one-quarter blood quantum.

Co-Chair Kelly commented it is inappropriate to appoint members to a panel on the basis of race. He indicated he would offer an amendment to remove this restriction from the proposed committee substitute.

Co-Chair Kelly also voiced concern with inclusion of Governor Tony Knowles in the appointment process. Co-Chair Kelly remarked, "We have found over a period of time in his actions and him not pursuing court, Supreme Court cases and other actions that are..."

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Co-Chair Kelly continued, "... designed to protect the sovereignty of Alaska is not there." Co-Chair Kelly expressed he would be concerned about a commission appointed by the current governor. He furthered, "We've not seen a lot of results from the task forces and commissions that he's appointed in the past actually solve problems, but they're usually used as public relations vehicles and they become very contentious and they rarely solve anything. They just create new problems." Co-Chair Kelly indicated he would hold the bill in Committee to restructure the appointment process and also to address the effective date.

Senator Hoffman requested a fiscal note from the Department of Natural Resources, as the Department would be impacted.

Co-Chair Kelly ordered the bill HELD in Committee.

#SB280

CS FOR SENATE BILL NO. 280(RES)

"An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water

supply and wastewater systems."

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

SENATOR GENE THERRIAULT, sponsor, reminded that questions were raised during the previous hearing regarding whether grants received could be "charged off" to rate-paying customers, as well whether stockholders of a utility would benefit from grants received in the event of the sale of that facility.

Senator Therriault informed the Regulatory Commission of Alaska (RCA) submitted a letter dated April 8, 2002 [copy on file] that clarifies the matters in that it essentially answers no to both questions. He indicated an enclosed graph further explains the method in which rates are set.

Senator Hoffman asked if 36 communities participate in this program

Senator Therriault stated he would provide a list of those communities.

Senator Austerman referenced the first paragraph of the aforementioned letter that states that the grant funds could not be used to assess the new value through the utility; however, elsewhere the letter states that the value is set based upon cash flow. He suggested this is a contradiction because if the facility were doubled utilizing the grant funds, the cash flow would also double.

Senator Therriault clarified the cash flow is the rates the utility is allowed to charge and that the RCA only allows rates based on the private capital contributed. Therefore, he explained if more customers were served, but the private investment was not increased, the RCA would require the rates to be lowered. He furthered that the purchaser, in the event of the sale of the utility, would examine the cash flow, which would be based only on the private investment. He pointed out that the purchaser would not pay for the "transparent assets" because those assets could not be recouped. He emphasized that the RCA is directed to require the utility to charge rates only to cover the actual debt and to allow for "an ongoing economic enterprise".

Co-Chair Kelly understood that a purchaser would establish a capitalization rate, which would "ultimately be tied to the dollar amount" customers could be charged. He explained that if the grant revenues could not be charged back to the customers, the grant

funds invested in the expansion of the utility would never "flow back" and be available for reinvestment in the business or as profit.

Senator Therriault affirmed and reiterated that the transparent asset, which is the "product of the grant" could not be "built into" the rates.

Co-Chair Kelly furthered this is despite an increased number of customers.

Senator Austerman understood the utility could double in size although the rate structure could not be increased. However, he asserted that because the facility has doubled, the cash flow would increase because of the increased number of customers paying the existing rate structure.

Senator Therriault responded the RCA would require the utility to reduce the rates so individual ratepayers rather than the shareholders who have not increased their investment would realize the benefit of the grant.

Senator Therriault again referenced the letter, pointing out that if a utility is sold, at the time of the facility's overall rate review, the RCA is directed by statute to establish a new rate based on the purchase price or the "book value", whichever is lower. He defined book value as that portion of the capital that was contributed by private industry. Therefore, he noted, if the purchaser buys the facility at an amount lower than the book value, the RCA would require rates based on the "good deal" obtained; however, he noted if the purchase overpaid for the facility, the RCA would only allow a rate structure based on the private capital investment. He suggested that an overpayment of a utility could be rejected by the RCA if it determines the utility would be an "unworkable business operation."

Senator Leman clarified that operation expenses resulting from an expansion are recoverable, although capital expansion costs could not be recuperated.

Co-Chair Donley asked what would happen if a utility went out of business and the assets were liquidated.

Senator Therriault replied that most assets are "pipes in the ground", and that only a utility operator would be interested in purchasing them.

Senator Hoffman asked about property owned by the utility.

Senator Therriault answered that the utility does not generally own the land where pipes are located. He doubted grants would be awarded for the construction of office buildings and other facilities not directly related to actual utility delivery.

Senator Ward and Senator Therriault next discussed privatization, competition and a monopoly.

Senator Therriault stated the utilities are regulated service providers.

Senator Ward suggested that if established utilities were awarded these grants, there would be no possibility of another operator entering the market and competing to provide the services.

Senator Therriault informed there is no prohibition from undertaking the process to start competition and qualifying to receive the grants. He predicted this would not occur because this legislation only applies to water and sewer utilities and the rate base could only "support so much".

Senator Hoffman asked if other utility providers benefit from a similar grant program.

Senator Therriault answered that some electric utility providers participate in a grant program.

Senator Lemman clarified these are cooperative utility companies.

Senator Hoffman specified privately owned utility companies.

Senator Austerman commented he would not oppose reporting this bill from Committee although he was not convinced to vote for its passage from the Senate.

Senator Lemman moved to "report SB 280 from Committee with individual recommendations and I don't agree with the fiscal notes, I'll read them, move them along and recommend appropriate action be taken at the time when fiscal notes are passed."

Senator Ward objected to comment on separate legislation that was passed from a different committee with "an understanding that when they bought it they knew what they were getting. And I allowed that one to go back. I certainly am going to remove my objection and let this one go out at this time, but I just want the Committee to know when people buy stuff, and they know what they're buying, I think that's a pretty fair indication as to they're sophisticated buyers

and then to come back in either case and ask the public to then change the agreement to purchase I think that there has to be a clear public purpose in there. And I'm not saying that there isn't in this case and the previous one, but I'm not quite there where I see it yet."

Senator Ward removed his objection to the motion to report the bill from Committee.

Senator Leman WITHDREW his motion to report the bill from Committee at the request of Co-Chair Kelly for the purpose of addressing the fiscal note.

Co-Chair Kelly moved to adopt a forthcoming zero fiscal note for the Department of Environmental Conservation.

There was no objection and a new fiscal note was ADOPTED.

Senator Leman re-offered his motion "with the revised fiscal note."

Senator Wilken informed that he owns ten percent of the utility this legislation specifically would impact. He stated the ratepayers would benefit from this bill, as savings from lower operating costs would be passed along to the customers. He also noted that Fairbanks Water and Sewer is one of the first private utility operators in the United States, and therefore the processes are new. He supported this legislation.

Senator Hoffman agreed with Senator Wilken's assessment, which is why he asked about the possibility of privatized electric utilities participating in a grant program. He surmised if all utilities were funded with grants, operating costs would be reduced, resulting in less dependence on the Power Cost Equalization (PCE) program.

Co-Chair Donley commented that to be successful rates must be reduced. He spoke of the Anchorage Water and Sewer utility and the lower percentage of per capita financial assistance it has received over ten years compared to other areas of the State.

Senator Hoffman again requested the list of utilities. He pointed out his water and sewer expenses in Bethel of approximately \$270 per month are considerably higher than that of any other Committee member.

There was no objection and CS SB 280 (RES) MOVED from Committee with a zero fiscal note written by the Senate Finance Committee 4/10/02 for the Department of Environmental Conservation.

#SB185

SENATE BILL NO. 185

"An Act relating to the basis for determining eligibility for and the amount of power cost equalization payments; and providing for an effective date."

This was the third hearing for this bill in the Senate Finance Committee. CS SB 185, 22-LS0465\U, was drafted to incorporate amendments adopted at the previous hearing.

AT EASE 11:05 AM / 11:06 AM

Amendment #2: This amendment inserts a new bill section on page 1, following line 11 of the committee substitute to read as follows.

Sec. 2. AS 42.45.100(a) is amended to read:

(a) The power cost equalization and rural electric capitalization fund is established as a separate fund for the purpose of

(1) equalizing power cost per kilowatt-hour statewide at a cost close to or equal to the mean of the cost per kilowatt-hour in Anchorage, Fairbanks, and Juneau by paying money from the fund to eligible electric utilities in the state; and

(2) making grants to eligible utilities under AS 42.45.180 to improve the performance of the utility.

This amendment also inserts a new bill section on page 2, following line 10 of the committee substitute to read as follows.

Sec. 4. AS 42.45.110(b) is amended to read:

(b) An eligible electric utility is entitled to receive power cost equalization

(1) for sales of power to local community facilities, calculated in the aggregate for each community served by the electric utility, for actual consumption of not more than 70 kilowatt-hours per month for each resident of the community; the number of community resident shall be determined under AS 29.60.020; and

(2) for actual consumption of not more than 500 kilowatt-hours per month sold to each residential customer [OF NOT MORE THAN

(A) 450 KILOWATT-HOURS PER MONTH FOR THE MONTHS OF OCTOBER THROUGH MARCH, AND

(B) 350 KILOWATT-HOURS PER MONTH FOR THE MONTHS OF APRIL THROUGH SEPTEMBER].

This amendment also inserts a new bill section on page 3, following line 4 of the committee substitute to read as follows.

Sec. 6. AS 42.45.110(c) is amended to read:

(c) The amount of power cost equalization provided per kilowatt-hour under (b) of this section may not exceed 95 percent of the power costs, or the average rate per eligible kilowatt-hour sold, whichever is less, as determined by the commission. However,

(1) during the state fiscal year that began July 1, 1999, the power cost for which power cost equalization were paid to an electric utility were limited to minimum power costs of more than 12 cents per kilowatt-hour and less than 52.2 cents per kilowatt-hour;

(2) during the state fiscal years beginning July 1, 2007, and each following state fiscal year [JULY 1, 2000, AND JULY 1, 2001], the commission shall adjust the power costs for which power cost equalization may be paid to an electric utility based on the weighted average retail residential rate in Anchorage, Fairbanks, and Juneau; however, the commission may not adjust the power costs under this paragraph to reduce the amount below the lower limit set out in (1) of this subsection; and

(3) DURING EACH FOLLOWING STATE FISCAL YEAR, THE COMMISSION SHALL ADJUST THE POWER COSTS FOR WHICH POWER COST EQUALIZATION MAY BE PAID TO AND ELECTRIC UTILITY BASED ON THE WEIGHTED AVERAGE RETAIL RESIDENTIAL RATE IN ANCHORAGE, FAIRBANKS, AND JUNEAU, PER KILOWATT-HOUR FOR SALES TO RESIDENTIAL CUSTOMERS OF 400 KILOWATT-HOURS PER MONTH; THE COMMISSION MAY NOT ADJUST THE POWER COSTS UNDER THIS PARAGRAPH TO REDUCE THE AMOUNT BELOW 16.75 CENTS PER KILOWATT-HOUR; AND

(4) the power cost equalization per kilowatt-hour may be determined for a utility without historical kilowatt-hour sales data by using kilowatt-hours generated.

This amendment also inserts a new bill section on page 3, following line 16 of the committee substitute to read as follows.

Sec. 8. AS 42.45.110(d) is amended to read:

(d) An electric utility whose customers receive power cost equalization under AS 42.45.100 - 42.45.150 shall set out in its tariff the rates without the power cost equalization and the amount of power cost equalization per kilowatt-hour sold. The rate charged to the customer shall be the difference between the two amounts. Power cost equalization paid under AS 42.45.100 - 42.45.150 shall be used to reduce the cost of all power sold to local community facilities, in the aggregate, to

the extent of 70 kilowatt-hours per month per resident of the community, and to reduce the cost [TO EACH RESIDENTIAL CUSTOMER] of the first 500 [NOT MORE THAN 450] kilowatt-hours per residential customer per month [FOR THE MONTHS OF OCTOBER THROUGH MARCH, AND NOT MORE THAN 350 KILOWATT-HOURS PER MONTH FOR THE MONTHS OF APRIL THROUGH SEPTEMBER].

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Donley moved for adoption.

The amendment was ADOPTED without objection.

Co-Chair Donley moved "the Finance Committee version for SB 185 from Committee with accompanying Senate Finance Committee fiscal note."

Senator Wilken objected to make a comment regarding discussions held on the matter of funding the Power Cost Equalization (PCE) program in the Committee during the years 1999 and 2000. He referenced Senate Finance Committee minutes from April 13, 2000 [copy on file], whereby former Committee member Senator Al Adams indicated intent that National Petroleum Reserve-Alaska (NPR-A) funds would be divided between the permanent fund, the school public trust fund and the PCE fund. Senator Wilken remembered that Senator Adams promised to convince villages in the North Slope Borough to "relinquish" claim to the NPR-A funds in order to benefit PCE.

Senator Wilken reminded that at the previous hearing on this bill, he had asserted that the projects funded with NPR-A funds are "essentially fluff projects". He referenced a list of eight projects funded with \$1.79 million of NPR-A funds [copy on file] and surmised they were not necessitated by the impacts of oil development.

Senator Wilken noted that in other boroughs in Alaska, similar projects are instead funded with borough funds. He predicted if the communities that currently receive NPR-A funds for these projects were to forgo receiving the funds, that the North Slope Borough would provide funds to undertake the projects.

Senator Wilken asserted that the promise made in the year 2000 is still pertinent and the Committee should attempt to convince those villages to authorize use of the NPR-A funds for the PCE program.

Senator Hoffman countered that the statements made during the April 2000 meeting related to an amendment containing standard budgetary

language. This language, he explained, clarified that the NPR-A funds would be divided to the permanent fund, the public school trust fund and the PCE fund according to a formula. He stressed there is a priority for the allocation of the funds, which has been practiced accordingly.

Senator Wilken removed his objection to reporting the bill from Committee.

Senator Austerman understood the NPR-A funds are federal funds and that established criteria in federal law provides how they could be spent. He was unsure how state statutes could overrule the federal law on this matter.

Senator Wilken described how the federal government collects 50 percent of NPR-A production funds with the remaining 50 percent "for the benefit of the people of Alaska." He continued that of the 50 percent allocated for Alaska, one-half is guaranteed to the North Slope Borough. He detailed the State's ability to appropriate the remaining 25 percent.

Co-Chair Kelly ruled the discussion about the impact of NPR-A funds is out of order due to the motion on the table.

Without objection CS SB 185 (FIN) with a zero fiscal note for the Department of Community and Economic Development, authored by the Senate Finance Committee 4/2/02, MOVED from Committee.

Senator Austerman realized the issue of NPR-A fund appropriation is "a thorn in the side" of some Committee members. He predicted the discussion would continue as to Senator Adam's assertions unless the statute is changed. He listed other issues instituted by past legislatures, including grain elevators in the Matanuska-Susitna Valley and the rocket launch facility in Kodiak. He suggested reaching a resolution on the PCE matter.

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ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 11:17 AM