

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

May 8, 2002
3:14 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator Dave Donley, Vice Chair

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 180(JUD)

"An Act relating to persons who provide services related to children; establishing a legislative task force on child services; and providing for an effective date."

MOVED CSHB 180(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 350(FIN) am

"An Act relating to murder, conspiracy, criminal mischief, and terroristic threatening; and providing for an effective date."

MOVED SCS CSHB 350(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 348

"An Act relating to violations of domestic violence protective orders."

MOVED HB 348 OUT OF COMMITTEE

HOUSE BILL NO. 501

"An Act relating to the use of unclaimed property to pay court-ordered restitution; and providing for an effective date."

MOVED HB 501 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 235(STA)

"An Act relating to emergency and disaster relief forces as state employees for purposes of workers' compensation benefits; relating to the Emergency Management Assistance Compact and the implementation of the compact; and providing for an effective date."

MOVED CSSB 235(STA) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 32

Proposing amendments to the Constitution of the State of Alaska relating to a marine and rail transportation fund.

MOVED CSSJR 32(JUD) OUT OF COMMITTEE

SENATE BILL NO. 87

"An Act providing special absentee ballots for voters in remote areas."

MOVED SB 87 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 304(2d RLS) am

"An Act relating to the education fund and the infrastructure and economic development fund, to the market value of the permanent fund, to distribution of the income of the permanent fund, and to the determination of net income of the mental health trust fund."

HEARD AND HELD

PREVIOUS SENATE COMMITTEE ACTION

HB 180 - No previous action to record.

HB 350 - No previous action to record.

HB 348 - See HESS minutes dated 4/24/02.

SB 235 - See State Affairs minutes dated 1/24/02 and 1/31/02, and Labor and Commerce minutes dated 2/21/02.

SJR 32 - See Transportation minutes dated 4/30/02.

SB 271 - See Transportation minutes dated 2/26/02 and 4/30/02.

SB 87 - See State Affairs minutes dated 5/05/01 and 2/10/02.

HB 304 - See Judiciary minutes dated 5/6/02.

WITNESS REGISTER

Representative Lesil Maguire
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 180 and HB 350

Ms. Linda Wilson, Deputy Director
Alaska Public Defender Agency
Department of Administration
PO Box 110200

Juneau, AK 99811-0200

POSITION STATEMENT: Opposed to HB 350

Ms. Anne Carpeneti
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Suggested an amendment to HB 350

Ms. Minta Montalbo
Staff to Representative Croft
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Available to answer questions about HB 348

Ms. Heather Nobrega
Staff to the House Judiciary Committee
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about HB 501

Major General Phil Oates
Commissioner
Department of Military &
Veterans Affairs
PO Box 5800
Ft Richardson, AK 99505-0800

POSITION STATEMENT: Presented CSSB 235(STA)

Ms. Carol Carroll
Director, Administrative Services
Department of Military &
Veterans Affairs
PO Box 5800
Ft Richardson, AK 99505-0800

POSITION STATEMENT: Answered questions about CSSB 235(STA) and stated opposition to SB 271.

Mr. Wayne Rush
No address provided

POSITION STATEMENT: Supports CSSB 235(STA)

Mr. Mike Mitchell
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Supports CSSB 235(STA)

Mr. Bob Doll
Director, Southeast Region
Department of Transportation &
Public Facilities

3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Opposed to SB 271 and SJR 32

Ms. Sara Boario
Staff to Senator Lincoln
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented SB 87 for the sponsor

Ms. Gail Fenumiai
Division of Elections
Office of the Lt. Governor
PO Box 110017
Juneau, AK 99811-0017

POSITION STATEMENT: Answered questions about SB 87

Mr. Jack Shay, Mayor
Ketchikan Gateway Borough
344 Front St.
Ketchikan, AK 99901

POSITION STATEMENT: Testified as the President of the Alaska Municipal League in support of CSHB 304(2nd RLS)

Mr. Jim Weidner
Secretary, A Friend of the Dividend
5479 Chena Hot Springs Rd.
Fairbanks, AK 99712

POSITION STATEMENT: Opposed to CSHB 304(2nd RLS)

Mr. Dale Ulrich
Save Your Dividend Alaskans
Anchorage, AK

POSITION STATEMENT: Opposed to CSHB 304(2nd RLS)

Mr. R. Merrick Pierce
A Bright Future for Alaskans
PO Box 10045
Fairbanks, AK 99710

POSITION STATEMENT: Opposed to CSHB 304(2nd RLS)

Mr. Jim Kelly
Director of Communications
Alaska Permanent Fund Corporation
PO Box 25500
Juneau, AK 99802-5500

POSITION STATEMENT: Answered questions about CSHB 304(2nd RLS) and said the Permanent Fund Board favors the payout methodology in the bill but wants inflation proofing.

Representative Bill Hudson

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about HB 304

ACTION NARRATIVE

TAPE 02-27, SIDE A

Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 3:14 p.m. Senators Therriault, Cowdery and Chair Taylor were present. The first matter before the committee was CSHB 180(JUD).

#HB180

CSHB 180(JUD)-YOUTH SERVICES: REGULATION & TASK FORCE

REPRESENTATIVE LESIL MAGUIRE, sponsor of HB 180, explained that CSHB 180(JUD) is another step the Legislature can take to protect Alaska's children. It passed the House almost unanimously on April 29. She noted that Congress recently passed the Adoption and Safe Families Act because of concern for children who were being placed in unsafe situations or not removed from them. CSHB 180(JUD) will bring Alaska's laws up to the standards in the federal legislation. It will bring Alaska statutes into compliance with federal licensing requirements in the areas of prohibited crimes and it provides standards for mandatory denial of licenses to six state licensed facilities. CSHB 180(JUD) does not chart new water; it affects the areas that are already licensed - foster homes, residential childcare facilities, residential psychiatric treatment centers, child placement agencies, maternity homes, and domiciliary schools. She clarified that the domiciliary schools are boarding facilities. Finally, CSHB 180(JUD) also limits the state from approving or licensing any person that has been convicted of a felony in one of four areas: child abuse or neglect; spousal abuse; a crime against a child; or a crime involving rape, sexual assault or homicide. She noted that CSHB 180(JUD) provides guidelines that will allow departments to make decisions regarding the licensing of certain child care facilities through proof from authorized criminal background checks. The state can deny licensing to any person convicted of the above felonies.

REPRESENTATIVE MAGUIRE said that in addition, the state may not approve or license any prospective foster or adoptive parent if the parent has, within the last five years, been convicted of a felony involving physical assault, battery, or a drug related offense. CSHB 180(JUD) also calls for the creation of a task

force to explore the notion of criminal background checks for other areas. She informed members that she was asked by a constituent to include a provision requiring mandatory background checks for all adults who volunteer in children's clubs such as the YMCA. She received quite a few comments and concerns from the non-profit community about that requirement because of costs and recruitment problems. In an effort to explore those costs and other challenges, CSHB 180(JUD) sets up a task force to study those concerns and report back to the legislature in January of 2003.

There being no questions or further testimony, SENATOR COWDERY moved CSHB 180(JUD) from committee with individual recommendations and its accompanying fiscal notes.

CHAIRMAN TAYLOR announced that without objection, CSHB 180(JUD) moved from committee.

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#HB350

CSHB 350(FIN)am-TERRORISTIC THREATS & OTHER CRIMES

REPRESENTATIVE LESIL MAGUIRE, sponsor of CSHB 350(FIN)am explained that this legislation is an omnibus homeland security bill. Alaska statutes address issues that relate to terrorism, but they do not take a comprehensive approach to provide tools for prosecutors. CSHB 350(FIN)am is an effort to provide those responsible for homeland security in Alaska the legal tools they need to discourage false threats and to punish actual attempts to practice terrorism in Alaska. Under CSHB 350(FIN)am, it will be a class A felony, punishable by up to 20 years in prison, to intentionally damage oil or gas pipelines or associated facilities. She noted that specific facilities have been identified and damage to them would cause widespread panic and chaos. In addition to oil and gas pipelines, the crime would apply to damage to water utilities, water mains, power, gas or electrical distribution systems, or elements of the emergency responder system. Any unsuccessful attempt to damage those systems or an attempt to damage airplanes or helicopters would be a class B felony. Finally, CSHB 350(FIN)am would raise terroristic threatening from a class C to a class B felony, and define the crime more clearly. The existing definition is ambiguous; CSHB 350(FIN)am narrows it so that it will not apply to a prankster. It also adds the act of making a false report of releasing harmful chemical, biological, or explosive agents into air, food or cosmetics. The current statute does not address air and water so they were added.

SENATOR ELLIS asked for clarification of the reference to cosmetics.

REPRESENTATIVE MAGUIRE explained that cosmetics and food are named in the existing statutes but water and air are not.

SENATOR THERRIAULT referred to page 8, lines 29 and 30 of CSHB 350(FIN)am and asked why bacteriological, biological, chemical and radiological substances were separated out since they are inclusive of each other.

REPRESENTATIVE MAGUIRE said she and Ms. Carpeneti labored over that question. Those substances were differentiated as the result of a compromise with some minority members on the House Finance Committee. Those members felt the original language (a toxic agent that could cause serious bodily harm) was too broad so the federal definition was used to narrow it. Those members were concerned that the original language could apply to a person who did not intend to do harm.

CHAIRMAN TAYLOR took public testimony.

MS. LINDA WILSON, Deputy Director of the Alaska Public Defender Agency, said that since September 11, the federal and state governments have felt the need to respond with appropriate legislation to address terroristic threats and tighten up loopholes to strengthen existing laws. The public defender's agency certainly supports those efforts but it does not support CSHB 350 (FIN)am for the following reasons.

CSHB 350 (FIN)am creates a "disproportionality" within the criminal statutory scheme. Under Alaska's criminal code, crimes are classified according to the type of injury caused and the culpability of the defendant. Murder in the first degree is an unclassified felony offense. Murder in the second degree is also an unclassified felony that includes the crime of felony murder. Within that felony murder aspect, many crimes are listed. If, during the commission or the attempt to commit one of those underlying crimes, or in fleeing from that crime, a person dies, the person may be charged with second degree murder in addition to the underlying offense. CSHB 350 (FIN)am leapfrogs two underlying offenses - criminal mischief in the first degree and terroristic threatening in the first degree as offenses that would qualify under murder in the first degree for felony murder that would otherwise appropriately belong in murder in the second degree. The crimes delineated in the murder in the second degree felony murder include arson in the first degree, kidnapping, sexual assault in the first degree, sexual abuse of a minor in

the first degree, burglary in the first degree, escape in the first degree, robbery in the first degree, and misconduct involving controlled substances in the first degree. Yet CSHB 350 (FIN)am pulls out two crimes that were not even included in murder in the second degree and elevates them to felony murder in the first degree. She stated it is more appropriate that these two crimes be included with all of the other serious crimes that are in murder in the second degree.

MS. WILSON continued by informing members that class A felonies, which are below unclassified felonies, are reserved for crimes that involve conduct that actually results in serious physical injury or a substantial risk of serious physical injury. Some examples of crimes classified as class A felonies are arson in the first degree, assault in the first degree, a weapons misconduct offense in the first degree, and escape in the first degree. Class B felonies are for the more serious or aggravated property offenses and offenses against public administration or order and conduct that results in less severe violence against a person than would be in a class A felony. Some examples of class B felonies are burglary in the first degree, perjury, bribery and forgery. CSHB 350(FIN)am elevates criminal mischief in the first degree to a class A felony for damage to property in excess of \$100,000. It also elevates, from a C to a B felony, tampering with an airplane in addition to tampering with an oil or gas pipeline or supporting facility. Increasing these four crimes creates "disproportionality." These four crimes should remain with the other sets of crimes more appropriately described as B and C felonies as they better fit the overall classification scheme.

MS. WILSON said she is specifically concerned about the new offense created within terroristic threatening on page 8. Terroristic threatening right now is a class B felony. CSHB 350 (FIN)am divides terroristic threatening into two degrees and makes the more serious of the two, terroristic threatening in the first degree, a class B felony. This particular section of the bill was amended but the amendment did not make reference to the mental state for this crime. The original language required that the person intentionally placed a person in fear or caused serious public inconvenience or evacuation. The House Finance Committee amended that section so that a crime is committed if the result is that a person was placed in fear, etcetera. However, that amendment did not address the mental element of intent. She suggested including that mental element within the bill.

CHAIRMAN TAYLOR moved to amend page 8, line 28, to insert the

word "intentionally" after the word "person." He then asked Ms. Carpeneti to comment.

MS. ANNE CARPENETI, representing the Criminal Division of the Department of Law, told members the reason the word "intentionally" was removed by House members was that it originally had been a specific intent crime to knowingly send anthrax-type materials with the intent to cause various results. The version under consideration by the House did not require the prosecution to prove that the perpetrator had, in fact, caused those results. The House considered that it wanted to have the result as the element the state needed to prove and made a change on page 9, by adding the results that were caused. Title 11 reads into those circumstances a reckless culpable mental state, meaning the person knew the risk and disregarded it. Therefore, a culpable mental state is included already.

CHAIRMAN TAYLOR asked Ms. Carpeneti if she would object to including the word "knowingly."

MS. CARPENETI said she did not.

CHAIRMAN TAYLOR withdrew his amendment and moved to insert, on page 8, line 28, the word "knowingly" after the word "person." He stated that he felt Ms. Wilson's comments were well founded.

There being no objection, CHAIRMAN TAYLOR's amendment was adopted.

SENATOR THERRIAULT noted that Ms. Carpeneti had mentioned a provision in the Senate version that was more artfully crafted and asked her to direct him to it.

MS. CARPENETI referred to page 9, line 26, and said the problem with changing it back to the Senate language at this time is that the entire section would have to be rewritten because of the way the lead-in reads.

SENATOR COWDERY moved SCS CSHB 350(FIN) am from committee with its zero fiscal note.

CHAIRMAN TAYLOR announced that without objection, SCS CSHB 350(FIN) am moved from committee.

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3:36 p.m.

#HB 348

HB 348-VIOLATION OF A DOMESTIC VIOLENCE ORDER

MS. MINTA MONTALBO, staff to Representative Croft, sponsor of HB 348, asked that members ask any questions of Ms. Carpeneti, as she worked with Representative Croft on this bill.

CHAIRMAN TAYLOR noted there were no questions or further testimony.

SENATOR COWDERY moved HB 348 from committee with individual recommendations.

CHAIRMAN TAYLOR announced that without objection, HB 348 moved from committee.

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The committee took up HB 501.

#HB501

HB 501-UNCLAIMED PROPERTY & RESTITUTION

MS. HEATHER NOBREGA, counsel to the House Judiciary Committee, told members that HB 501 makes it easier for the Department of Law to collect unclaimed property of criminals to pay restitution.

CHAIRMAN TAYLOR noted that it would be a rare situation when property is unclaimed or abandoned but it does occur.

SENATOR COWDERY moved HB 501 from committee with individual recommendations and its accompanying fiscal note.

CHAIRMAN TAYLOR announced that HB 501 moved from committee without objection.

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The committee took up SB 235.

#SB235

SB 235-EMERGENCY MANAGEMENT ASSISTANCE COMPACT

MAJOR GENERAL PHIL OATES, Adjutant General and Commissioner of the Department of Military and Veterans Affairs, said CSSB 235(STA) pertains to the Emergency Management Assistance Compact (EMAC). Other states in our nation stand in line to assist other states on a duty rostered basis. The states are indemnified from any liability for that support and are actually reimbursed for it. He said it is important to note two things: the New York

State Legislature met immediately after September 11 and adopted EMAC; and states have been successful at the federal level in arguing for a soft match to receive the federal supplemental this year. The primary determinant of getting the federal resources will be membership in EMAC. At the end of this year, all but four states are anticipated to have signed on to EMAC. He noted this piece of legislation may be one of the more important pieces of legislation passed this entire year.

CHAIRMAN TAYLOR announced his intention to move the bill from committee today and took public testimony.

MR. WAYNE RUSH stated support for CSSB 235(STA).

MR. MIKE MITCHELL, Assistant Attorney General, informed members he assisted in drafting SB 235 and was available to answer questions. He added the Department of Law supports CSSB 235(STA).

There being no further testimony, SENATOR COWDERY moved CSSB 235(STA) from committee with individual recommendations and its zero fiscal note.

CHAIRMAN TAYLOR objected so that Senator Therriault could ask a question.

SENATOR THERRIAULT asked for an explanation of the changes made in the Community and Regional Affairs Committee.

MS. CAROL CARROLL, Department of Military and Veterans Affairs, explained that a technical change was made that tightened up the eligibility under Workers' Compensation. It clarified that to be eligible, a person had to be called or under the purview of emergency services before covered by workers' compensation.

CHAIRMAN TAYLOR announced that without objection, CSSB 235(STA) moved from committee.

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The committee took up SB 271.

#SB 271

SB 271-MARINE AND RAIL TRANSPORTATION AUTHORITY

CHAIRMAN COWDERY informed members that the Senate Transportation Committee held several hearings on SB 271 and amended it to remove the Alaska Railroad Corporation (ARRC). He pointed out the amendment did not get incorporated into the current version.

CHAIRMAN TAYLOR informed members that is why the committee has a work draft before it, labeled Utermohle 4/19/02 (Version C). He asked for a motion to adopt that work draft in lieu of the original bill.

SENATOR COWDERY so moved.

CHAIRMAN TAYLOR announced that without objection, Version C was adopted as the working draft of the committee. He then asked Senator Ward to testify.

SENATOR JERRY WARD, sponsor of SB 271, told members that Version C creates an Alaska Marine Highway Authority with all of the powers of an authority. A companion piece of legislation, SJR 32, addresses the fact that the authority will operate on dedicated funds. The authority is modeled after many other authorities in the "Lower 48." The authority will be given 500,000 acres of state land. He believes the Alaska Marine Highway System (AMHS) has not been on the same footing as the Alaska Railroad Corporation, which would be have operated at a loss for the last eight years without a land base. When the AMHS was formed in 1963, it did not receive a land base. After several attempts to fund the AMHS through endowments and various sources, the funds have been depleted so that agency now receives a decreasing amount of general fund monies each year.

SENATOR WARD drew members' attention to a letter from Commissioner Pat Pourchot of the Department of Natural Resources, who said that giving 500,000 acres to the authority will divert a significant revenue stream out of the general fund. Senator Ward submitted that if a half-million acres was generating a significant revenue stream, this legislation would not be necessary. The state has 103 million acres of land that are not being developed; if the Alaska Railroad Corporation had that land, everybody would be working for it. He asked members to consider passage of this legislation to remove 500,000 acres of state land from state control and put it into an authority so that the AMHS can eventually become self-sufficient. He added that the AMHS will not become self-sufficient from day one; it will still need general funds or CBR funds. He said he believes the AMHS is every bit if not more important than the Alaska Railroad. Senator Ward informed members that SB 271 is very similar to legislation introduced in the past by former Senator Lloyd Jones and Chairman Taylor, except that SB 271 gives a land base to the authority.

SENATOR THERRIAULT asked if the land would be located around AMHS operations as the railroad land is located along the railroad

corridor.

SENATOR WARD clarified that ARRC's land base is not located around the railroad corridor. Some of the land was transferred in 1983 upon the sale of the railroad, but about 40,000 acres is also available that has nothing to do with the operation of the railroad. He said he does not care where the state land is located because there is no Alaska land that is not valuable. He said he hopes it is land that could be logged right away so that the AMHS could begin to supplement its operations.

SENATOR COWDERY asked if a high percentage of ARRC's profits come from its landholdings rather than from hauling freight.

SENATOR WARD said that is the way it should be because when the railroad was built across the Lower 48, it was given every other section of land to supplement the operation of the railroad. He stated:

Even though they're not under the Executive Budget Act, that \$10 to \$11 million per year - that generates the \$5 to \$6 million worth of profit that they show every year on their books. Without that they would be here asking for a general fund draw, such as we have now put the position of the Marine Highway having to do. It just seems logical to me if it's good enough for the railroad, it's good enough for the Marine Highway System.

SENATOR ELLIS asked if the Southeast Conference opposes SB 271.

SENATOR WARD said he believes that is correct and that they want to leave it as a "line-item agency." He said that is why he referred to Commissioner Pourchot's letter. The flaw in the system is that the 103 million acres owned by the state is not generating any revenue, which is why the commissioner's statement is incorrect.

SENATOR ELLIS asked why the Southeast Conference is opposed to the bill.

CHAIRMAN TAYLOR clarified the Southeast Conference has indicated it will be putting a group together to study the concepts of an authority and to see what other states have done. The Conference was not sure if SB 271 is the best design. At times in the past, it has strongly supported an authority without a land grant.

SENATOR WARD added the Conference said it does not want to go

against the Administration's opposition at this time.

CHAIRMAN TAYLOR took public testimony.

MS. CAROL CARROLL, Department of Natural Resources, said DNR opposes SB 271 for the following reasons that focus on Section 25, which provides 500,000 acres to the fund.

- State land should be managed for the benefit of all Alaskans and the legislature should appropriate revenue from state lands rather than appropriate the land itself. DNR currently manages state land to benefit all Alaskans and makes quite a bit of money doing so. While the state owns more than 100 million acres, DNR has a limited amount of land that can generate revenue. Most of that land has oil and gas deposits.
- Transferring land from DNR management to other state agencies does not necessarily lead to increased revenue production to the state. Most of the ability to generate revenue from state land is a function of either world markets for resources, the price of oil or minerals, or having the staff needed to make land available for sale or lease.
- Simply transferring land from DNR to the fund will not alone generate more revenue. The bill will be expensive to implement. Any potential increase in the revenue must be weighed against the significant costs required to identify and transfer large acreage from the land from one agency to another and the long term costs to establish another state land management agency that duplicates DNR. The agency will duplicate DNR's functions. The land transfers will cost over \$15 million with most of that cost being for land surveys required to transfer land from DNR to the authority.
- SB 271 will further complicate land ownership in Alaska making resource development and public access more difficult. It would also compound the difficulty in resolving the current school grant lands litigation or in providing additional lands to the University of Alaska as the fund will no doubt select lands that will be most suitable for a legal settlement if the state is required to transfer land to the University or to reconstitute the school trust or land trust.

MS. CARROLL said a staff person from the Division of Lands was available via teleconference to answer specific questions.

CHAIRMAN TAYLOR asked if DNR actively opposed the conveyance of

250,000 acres of state land to the University of Alaska.

MS. CARROLL said that is correct.

CHAIRMAN TAYLOR asked if DNR also actively opposed the conveyance of lands to Alaska's schools and that litigation on that action is pending.

MS. CARROLL said she does not know that DNR actively disagreed with the transfer of the land under the public school land. She said she believes DNR is currently undergoing a process to value that land.

CHAIRMAN TAYLOR responded:

In fact it was the Department of Natural Resources that, back about 25 years ago, that stole all the land away from the Mental Health Trust and we got sued over that one and that cost us - it could have cost us several billions of dollars. In fact what did we do to solve the mental health litigation? We gave them land back, didn't we? And it was land that was given back very reluctantly, I might add, by the Department of Natural Resources who had done such a poor job of managing it that there were not funds available off of that management - giving away lands, selling lands, locking lands up into parks that were designed to be forests and to provide revenue. Sadly it was your department again that put us in that position and we ended up with 3500 families in this state who had purchased land and built houses on it only to find out that it was mental health land that had been conveyed by the Department of Natural Resources in violation of the Mental Health Trust. All of those things are historical things that I think you and I both agree on were probably not the best decisions made in land management by the Department of Natural Resources so when I hear your comment that the Department of Natural Resources must manage for all of the people in the state, I have a hard time conceiving that anybody in their right mind would ever turn over any land to the Department of Natural Resources to manage in light of the track record over there. But that's only a comment on my part.

CHAIRMAN TAYLOR then thanked Ms. Carroll for coming forward and said he was not sure that he favored giving an authority 500,000 acres because although he can't imagine a group that could manage

it worse than the department, an authority might come close. He then asked Mr. Doll to testify.

MR. BOB DOLL, Regional Director for the Southeast Region of the Department of Transportation and Public Facilities (DOTPF), informed members that DOTPF does not support SB 271 for several reasons. First, there is the uncertainty associated with the sale of the land and the amount of revenue it would produce. Second, SB 271 creates a separate authority to perform the function now being performed by the department.

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MR. DOLL said that would be a regressive step regarding the system's ability to respond to public concerns and to general operations. Third, it creates an anomalous position for the marine highway authority with regard to approaching the topic of federal funding for transportation projects in the state. If DOTPF has no responsibility for operating the system and the results obtained, its ability to make an appeal for and gain approval of expenditure of federal funds for transportation on marine highway topics would be impaired. Finally, SB 271 requires a constitutional amendment to set up the fund, which will require a great deal of effort for an administrative change that is within the capability of both the executive and legislative branches of government.

There being no further questions or testimony, SENATOR COWDERY moved CSSB 271(TRA) from committee with its accompanying fiscal note and individual recommendations.

SENATOR ELLIS objected.

The motion to move CSSB 271(TRA) from committee carried with Senators Cowdery, Therriault and Taylor voting in favor, and Senator Ellis voting against.

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The committee took up SJR 32.

#SJR32

SJR 32-CONST. AM:MARINE/RAIL TRANSPORTATION FUND

SENATOR WARD, sponsor of SJR 32, informed members that SJR 32 is a companion bill to SB 271 and is required to dedicate funds to an Alaska Marine Highway Authority.

CHAIRMAN TAYLOR pointed out that a work draft that removed the Alaska Railroad Corporation from the resolution was before the committee.

SENATOR WARD said the Alaska Railroad Corporation was removed by the Senate Transportation Committee and the new draft was before members. He noted some of the Transportation Committee members wanted the railroad removed because of concern about the Executive Budget Act.

CHAIRMAN TAYLOR specified that the work draft was labeled Utermohle 4/18/02 Version C. He then moved that the work draft be adopted and asked for unanimous consent. There being no objection, the motion carried. He then moved Version C from committee.

SENATOR ELLIS objected and commented that Senator Ward has said this legislation is important because he has seen what goes on with the AMHS budget but Senator Ward is in charge of appropriations for the AMHS. He asked Senator Ward if he is using the behavior of the Senate Majority as a justification for this change.

SENATOR WARD said he is in charge of the appropriations but he does not believe the AMHS has been treated fairly. He said he tried to get several land endowment bills through the legislature in 1983 and was told at that time by some of his Democratic colleagues that it would take too long to develop the lands, up to 20 years. He repeated that he does not believe the AMHS is being funded properly and that DOTPF and the Knowles Administration are letting the AMHS sink because they do not have a better plan.

SENATOR ELLIS maintained his objection. The motion to move CSSJR 32(JUD) from committee carried with Senators Cowdery, Therriault and Chair Taylor voting in favor, and Senator Ellis opposed.

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#SB87

The committee took up SB 87.

SB 87-SPECIAL ABSENTEE BALLOTS

MS. SARA BOARIO, staff to Senator Georgiana Lincoln, sponsor of SB 87, explained that SB 87 will give voters living in remote locations the opportunity to vote using the 60-day special advance absentee ballot. In current statute, only voters living, working or traveling outside of the United States are eligible for the special ballot. However, distance, terrain and natural conditions have prevented voters in remote areas from receiving their by-mail ballots because the current three-week window of opportunity has not provided enough time for them to be received. The Division of Elections already distributes the special 60-day absentee ballot so there will be no additional cost. Concerns

were expressed in the Senate State Affairs Committee about the interpretation of the words "remote" and "reasonable" but the Division of Legal Services addressed those concerns to the satisfaction of the committee.

SENATOR COWDERY asked if villages would be considered remote.

MS. BOARIO said the Division of Legal Services recommended that the Division of Elections' regulations be reviewed to see how they are applied to determine permanent absentee voters. One of the criteria in the regulations the Division uses to identify absentee voter is if the voter resides in a remote area of Alaska where distance, terrain, or other natural conditions deny the voter reasonable access to the polling place.

MS. GAIL FENUMIAI, Division of Elections, affirmed that SB 87 is designed for people in remote locations without access to a polling place due to distance, terrain, or other natural conditions. Mail service may be sporadic in the wintertime or no mail service may be available. If they receive a ballot 60 days before the election, there is a better chance they can get it back in time to be counted for the election.

SENATOR COWDERY asked if the timeline established by law on deadlines for absentee voting will still hold.

MS. FENUMIAI said that is correct.

There being no further questions, SENATOR COWDERY moved SB 87 from committee with individual recommendations.

CHAIRMAN TAYLOR announced that without objection, SB 87 moved from committee.

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#HB304

CSHB 304(2nd RLS)am-PERM. FUND INCOME/ DIVIDENDS/ FUNDS

CHAIRMAN TAYLOR said the committee has received several letters on HB 304. He then asked Mr. Shay to testify.

MAYOR JACK SHAY, Ketchikan Gateway Borough and President of the Alaska Municipal League (AML), told members the AML supports CSHB 304(2nd RLS)am. The AML realizes the legislation is controversial. The AML is appreciative of any consideration the committee gives to this legislation.

MR. JIM WEIDNER, a member of A Friend of the Dividend, said he has campaigned to support the permanent dividend program since its inception in the early 1980s. He said the purpose of the permanent fund and dividend is to implement the state's

constitutional requirement to maximize the benefits of Alaska's resources to all people. He enumerated seven examples of how the permanent fund dividend meets the public purpose:

- It equally distributes Alaska's public wealth without regard to age, sex, race, creed, color, economic status, geographic location or political affiliation;
- It establishes a stable, statewide economic floor which would not otherwise exist in all areas of the state;
- It helps reduce economic poverty and welfare dependency and related social problems, such as alcohol, violence, child abuse and criminal behavior;
- It maximizes individual responsibility by allowing each person the individual freedom to invest their money as they see fit;
- It reduces government [indisc.] and uneven wealth distribution and waste inherent in the government's political system;
- It promotes conversion of the Alaska economy from a self-serving paternalistic system benefiting a very few; and
- It reduces the cost of living for Alaskans and promotes small scale business and competitive economic development.

MR. WIEDNER said that elements of HB 304 and HB 20 were posed on a ballot initiative several years ago. That ballot initiative to raid the permanent fund was well funded and supported by the political establishment and people living off of the state's oil wealth spending. The University of Alaska promoted it, as well as the teachers' union and Commonwealth North. That initiative lost with 83 percent of the vote, a crushing political defeat. It failed in every single precinct in the state. He said that some people spend their dividends on their children's education, others use it for house repairs, car payments, clothing, and donations. He noted it is part of human nature to want to get something with someone else's money. Dividends are what they are today because former predatory attempts have been fought off. He asked that committee members oppose the legislation.

MR. DALE URICH, Secretary of Save Your Dividend Alaskans (SYDA), said he agrees with the former speaker and opposes CSHB 304(2nd RLS)am or any other legislation that attempts to tap the permanent fund dividend. He stated that SYDA supports legislators who are fighting to reduce government spending and oppose these types of bills and its members will be at the polls. He asked legislators to strike the term "budget shortfall" from any text they are working on and use the word "overspending" instead.

MR. R. MERRICK PIERCE, representing A Bright Future for Fairbanks, said the cumulative impact of HB 303, HB 304 and HB 20 will have a devastating effect on the Fairbanks North Star Borough economy. The population in the borough has fallen since

1995. Wages in the borough are not keeping up with inflation. If the three bills were to pass, they would pull about \$90 million annually out of the private sector of the borough. That represents the same amount as the annual budget of the Fairbanks North Star Borough. He finds it unimaginable that any legislator from that borough could support these pieces of legislation. He noted that recent research published by the Wall Street Journal showed that the states that cut taxes the most had the largest increase in jobs. Also, those states with the lowest taxes were more likely to have population growth. He stated that if these pieces of legislation pass, the Fairbanks North Star Borough will see jobs and population loss. He asked members to defeat these bills.

CHAIRMAN TAYLOR asked Mr. Pierce to repeat the amount of money passage of these bills will cost the Fairbanks North Star Borough.

MR. PIERCE replied \$90 million.

CHAIRMAN TAYLOR stated:

I ballparked at about that same place, maybe a little bit higher, because they're talking of taking \$1 billion total out of the state's economy in the form of income taxes, raid on the permanent fund in this bill - 304, and then the additional \$70 million that they're taking in HB 20. I was told that totals almost a billion and if you divide that out by the population for how many people live in the Fairbanks North Star Borough, I actually came out with a number that would roughly be about - I think you're about 25 percent of the population of this state - maybe you're not but if you're 20 percent of the population of this state, that's \$200 million that has to come out of the Fairbanks area and it comes in the form of reduced payments on permanent fund dividends, which is [HB] 304 and [HB] 20 and then of course increased income taxes in the other bill. I was a little bit higher than that.

He then asked if Mr. Pierce used both the income tax and the raid on the permanent fund in calculating \$90 million.

MR. PIERCE said the North Star Borough has about 13 percent of the state population. He said his calculation was based on about 77,000 North Star Borough residents who collect a dividend based on \$700 per dividend. That equals about \$53 million from the permanent fund dividend. He calculated the income tax using 34,000 workers paying \$100 each, which equals about \$34 million.

CHAIRMAN TAYLOR agreed that will have a devastating impact on the Fairbanks economy, which he considers one of the more healthy in the state. He then thanked all participants and informed members that Senator Ward has submitted an amendment.

SENATOR WARD said he hopes the committee does not move CSHB 304(2nd RLS)am out but if it does, he has proposed an amendment that changes the effective date so that CSHB 304(2nd RLS)am will take effect upon passage of SJR 23, which is the constitutional spending limit. He said he believes that Alaska is not living within its means and instead of privatizing, prioritizing, and looking at other industries to see whether or not they should contribute to the overspending of state government, it is proposing to reach into the pockets of every man, woman, and child. He said if the committee wants to steal the dividend, he asks that it put an effective date on the legislation so that it cannot do so until a constitutional spending limit is voted on.

CHAIRMAN TAYLOR stated that he will have to oppose the amendment because he would hate to see people vote to take money out of the dividend without allowing them a vote on that specific question. He said he does not know of a politician who is currently in office who did not promise the people of Alaska that the permanent fund would not be touched without a vote of the people. He said the amendment to CSHB 304(2nd RLS)am would place a condition on the taking of money from the fund based upon a public vote on a spending cap which is a whole different question. He suggested keeping the two questions separate in that there must be a spending cap in place before a separate vote is taken on whether or not to raid the fund.

SENATOR WARD said he agrees and that is the reason he asked the committee not to pass the bill out. He noted the Governor, when asked directly by the press, gave an answer that was 3½ minutes long and was not a "yes" or "no" to the question of whether he would veto a bill that did not require a vote of the people. He said when the 1989 raid of the permanent fund took effect, a majority of the Republicans stopped it until, "the Governor came down and solicited the help of the Democrats to put that on the ballot." He said it is very intoxicating to spend other people's money.

CHAIRMAN TAYLOR announced that the committee would hold CSHB 304(2nd RLS)am at this time and asked Mr. Kelly to testify.

MR. JIM KELLY, Director of Communications for the Alaska Permanent Fund Corporation, informed members that two things are required to manage a large amount of money for a long period of time if the purpose is to provide benefits to people: provide a stable and growing amount of income for the current generation and manage the payout so that the fund will be there for the

beneficiaries of the future. The methodology proposed in CSHB 304(2nd RLS)am is one that the trustees believe will accomplish both. Changing the distribution payout to 5 percent of market value is an improvement over the status quo. The Senate Judiciary Committee passed out a proposed constitutional amendment, which provides for a spending limit on the use of the permanent fund income last week. That is the Board of Trustees preferred route as it puts limits on how much of the fund can be used and it provides Alaskans a chance to vote on the issue. He said the issue of how the money will be used once the payout methodology is in place is not one the Board of Trustees has been involved with. However, the Trustees are concerned that the fund be inflation-proofed so that benefits can be provided in the future. The constitutional amendment puts inflation proofing in the Constitution and that will ensure that the fund will produce \$40 billion over the next 25 years, an amount double the amount of income from oil. He stated that CSHB 304(2nd RLS)am repeals statutory inflation proofing which would be acceptable if, at the same time, a constitutional amendment is passed. Otherwise, the Trustees have difficulty with CSHB 304(2nd RLS)am because the intention to limit the payout to 5 percent is good, but one legislature can undo what another has done. He concluded by saying there is a lot of merit in this legislation but it needs to be "married" to the constitutional amendment.

4:41 p.m.

CHAIRMAN TAYLOR thanked Mr. Kelly and said he asked the sponsor of the bill how to secure inflation proofing the fund and where the inflation proofing dollars would reside. He said he believes a major restructuring of that portion of the bill is necessary and that it should be "married" to a constitutional amendment. He asserted that it is such a terrific risk to hope that legislators in the future will do the right thing and continue to inflation proof the fund. He said no one has dared cross that line in the sand before, but there is now a majority in the House that want to cross that line and want to make certain that the people cannot vote. He thanked Mr. Kelly and his staff for their responsiveness to the committee.

REPRESENTATIVE BILL HUDSON said he would like to address some questions posed by committee members last week. He distributed a chart of permanent fund financial projections on which he highlighted the last five years of statutory met income. He noted a question was raised about how to guarantee that the fund will not be drained in a low-income year.

REPRESENTATIVE HUDSON said the question of a public vote and how to guarantee inflation proofing was discussed in the House. He believes a public vote is only guaranteed by the passage of SJR 13. He pointed out that at the present time, inflation proofing

and payment of permanent fund dividends is subject to the legislature. The legislature has open entrée to the entire earnings of the permanent fund on an annual basis and has put the money into the fund statutorily in order to pay the dividends based on a five year average of the statutory net income. In the year 2002, the statutory net income was \$376 million yet the legislature passed out \$938 million in dividends by virtue of the formula and \$602 million in inflation proofing by virtue of statutory provisions. He said if legislators agree that an enormous fiscal gap exists, that the probability of filling that gap from new revenues in the immediate future is not likely, that the legislature will not be able to cut \$800 million from the budget, that no income tax will pass, and that the CBR will be gone in three years, there will be no place to go except into enormous taxes, enormous cuts, and the earnings reserve of the permanent fund. He said the point of fiscal policy members is that rather than wait until the permanent fund money is devoured, the legislature should begin to use some of the earnings of the permanent fund early coupled with a modest income tax along with budget cuts. He noted the House reduced the budget by \$100 million this year. He said the House is trying to offer the Senate a series of things that it took out to public hearings and worked on with the Department of Revenue and the Permanent Fund Corporation. He noted Mr. Kelly was accurate in saying the Trustees would like to see inflation proofing of the corpus of the permanent fund fixed into the Constitution, which will require a public vote. He asked what is wrong with adopting SJR 13 as nothing in CSHB 304(2nd RLS)am interrupts that.

TAPE 02-28, SIDE A

REPRESENTATIVE HUDSON said CSHB 304(2nd RLS) does not begin the 50-50 split until 2004. It does tap \$300 million for the 2003 budget to reduce the amount of take on the CBR to prolong its life as an income account and shock absorber for the operating budget.

CHAIRMAN TAYLOR thanked Representative Hudson.

SENATOR THERRIAULT asked why the fiscal policy group felt that expending out of the earnings reserve is preferable to the CBR. He pointed out that both accounts generate income.

REPRESENTATIVE HUDSON said he disagrees that the CBR is a fund that is established to "jack the price up."

SENATOR THERRIAULT said that is how it has been used.

REPRESENTATIVE HUDSON asserted that has been recent. He recalled that when the Republicans were in the minority, they used it to reduce the expenditure, not to increase it. He said as long as

the legislature has individuals who say they won't vote to use CBR funds unless another project is funded in their district, the cost will go up. He said the fiscal policy group felt the CBR fund is the shock absorber for the capital budget and the earnings reserve is the shock absorber for the permanent fund and that prefers to take \$300 million from the earnings reserve because the CBR is down to \$2.3 billion now. Even if \$100 million in interest is added, it will drop down too fast with an \$800 million budget gap.

REPRESENTATIVE HUDSON asked members to give the legislation a chance and stated:

...and if we can have an open and honest dialogue and discussion of what's in the state's best interest, and if we can take the politics all of aside - this is not a campaign ploy on my part - it's not a re-election ploy on my part, I am not introducing taxes and trying to distribute the earnings of the permanent fund in order to further my chances to get re-elected. I think anybody with any common sense would recognize the way you get re-elected is to put more pork in the pot and stay the devil away from people's assets. But I think, as an Alaskan at any rate, this is the most important issue confronting not only us, but the next administration.

CHAIRMAN TAYLOR said he totally disagrees because:

We give the bureaucrats, we give the big government folks around here the key to the golden door, and they never need to talk to another citizen in the state. They've got themselves an endowment that will pay for every single new salary, benefit, and bonus for every state worker forever. Will they ever develop one inch of land in this state? Will we ever see the Beluga coal fields used for a coal field? Will we ever see the vast timber resources of this state used? Will you or I ever be able to buy a piece of Alaska land from the Department of Natural Resources that now only has one person even selling land? No Bill, you won't. I guarantee you, as long as these halls can suck money out of the back pockets of working Alaskans through income taxes or steal money out of the back pockets of working Alaskans through the permanent fund, they never have to develop one inch of this state and they won't. They haven't for over 20 years.

REPRESENTATIVE HUDSON replied that he and Chairman Taylor could

have a wonderful discussion on this issue.

CHAIRMAN TAYLOR said what is so difficult is that HB 304 should be the very last resort that the legislature turns to for money, but sadly it is the first resort. He noted the legislature can't give land to the University because the Governor will veto those kinds of actions.

REPRESENTATIVE HUDSON said that he agrees and would also like to see more land available, resource development and to hold the damper down on public spending and privatization and other methods. He voted for all of those efforts. However, where he disagrees is that HB 304 is just a part of many actions that need to be taken otherwise the CBR will be lost and when it is gone, the people will not receive any permanent fund dividend at all. He said when the CBR is gone, the legislature will have no other place to go except the earnings reserve of the permanent fund.

CHAIRMAN TAYLOR said it will be depleted somewhat because of low income years and by inflation proofing so there will be nothing for this government to grab.

REPRESENTATIVE HUDSON asserted there will be no permanent fund dividend unless, "you want to try to develop this thing with some action up front and work it on out."

CHAIRMAN TAYLOR said that is why he wants to put a constitutional amendment on the ballot to provide voters with an opportunity to stabilize inflation proofing.

REPRESENTATIVE HUDSON said HB 304 does the same thing.

CHAIRMAN TAYLOR said if he could get DNR to sell 200,000 acres per year, he might be willing to look at something like HB 304. He noted that when the Administration will not sell a square inch of land or develop anything, it's hard to believe the state's only choice is to tax people.

REPRESENTATIVE HUDSON said he will not argue that. He then thanked members.

CHAIRMAN TAYLOR adjourned the meeting at 4:47 p.m.

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