

ALASKA STATE LEGISLATURE

SENATE RULES COMMITTEE

May 12, 2002

1:50 p.m.

MEMBERS PRESENT

Senator Randy Phillips, Chair
Senator John Cowdery, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

SENATE BILL NO. 55

"An Act changing the name of the Alaska Pioneers' Home to the Alaska Pioneers' and Veterans' Home and of the Alaska Pioneers' Homes Advisory Board to the Alaska Pioneers' and Veterans' Home Advisory Board; relating to services for veterans in the home; relating to the advisory board for the home; making other amendments to the statutes relating to the home; making conforming amendments to other statutes; and providing for an effective date."

ADOPTED A SENATE RULES COMMITTEE SUBSTITUTE AND APPROVED FOR CALENDARING

SENATE BILL NO. 230

"An Act relating to recommending or refusing psychotropic drugs as a treatment for children and to the evaluation and treatment of children with behavioral or psychological problems."

APPROVED FOR CALENDARING

SENATE BILL NO. 317

"An Act relating to the national forest income program in the Department of Community and Economic Development and to the authority of the department to adopt regulations; and providing for an effective date."

APPROVED FOR CALENDARING

SENATE BILL NO. 366

"An Act relating to the fee for the Chitina dip net fishing permit; and providing for an effective date."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 53(STA)

"An Act establishing the Alaska Seismic Hazards Safety Commission."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 56(FIN)

"An Act relating to minimum wages; and providing for an effective date."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 207(RLS)

"An Act moving election district 24 as described in the Constitution of the State of Alaska at statehood from the Second Judicial District to the Fourth Judicial District and adding the Nabesna area to the Third Judicial District and removing it from the Fourth Judicial District."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 208(RES)

"An Act relating to aquatic farming of shellfish; and providing for an effective date."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 246(JUD)

"An Act relating to regulation of a person providing insurance for the cost of medical care, to confidentiality of insurance records, to insurance hearings, to insurance fees, to annual and quarterly statements by insurers, to managed care insurance, to taxes on insurance, to insurer certificates of authority, to risk based capital for insurers, to unauthorized and nonadmitted insurers, to surplus lines insurance, to health insurance, to life insurance, to annuity insurance, to consumer credit insurance, to insurer liquidation, to multiple employer welfare arrangements, to the Alaska Insurance Guaranty Association, to hospital and medical service corporations, and to regulation of insurance producers, agents, brokers, managers, and adjusters; and providing for an effective date."

APPROVED FOR CALENDARING

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 254(FIN)

"An Act relating to the teachers' retirement system, the judicial retirement system, and the public employees' retirement system and to the tax qualification under the Internal Revenue Code of those systems; amending the definition of 'actuarial adjustment' in the teachers' retirement system and the public employees' retirement system; repealing certain provisions of the teachers' retirement system and the public employees' retirement system;

amending the statutory limitation on payment of warrants to make an exception for warrants making benefit payments or refunds under various state retirement and benefit programs; and providing for an effective date."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 276(L&C)

"An Act relating to temporary permits and licenses by endorsement issued by the Board of Nursing; and relating to the delegation of nursing duties."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 287(FIN)

"An Act relating to the exemption of commercial fishing entry permits from claims of creditors and execution on an interest in a limited entry permit; and providing for an effective date."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 296(CRA)

"An Act relating to mergers and consolidations of municipalities."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 332(FIN)

"An Act extending the termination date of the Council on Domestic Violence and Sexual Assault; relating to the council's duties; placing the executive director and staff of the council in the exempt service; and providing for an effective date."

APPROVED FOR CALENDARING

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."

APPROVED FOR CALENDARING

HOUSE BILL NO. 447

"An Act relating to the interest rates that may be charged on loans by the Commercial Fishing and Agriculture Bank."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 499(JUD)

"An Act declaring legislative intent to reject the continuity of enterprise exception to the doctrine of successor liability adopted in *Savage Arms, Inc. v. Western Auto Supply*, 18 P.3d 49 (Alaska 2001) as it relates to products liability; providing that a successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity is subject to liability for harm to persons or property caused by a

defective product sold or otherwise distributed commercially by the predecessor only if the acquisition is accompanied by an agreement for the successor to assume the liability, results from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor, constitutes a consolidation or merger with the predecessor, or results in the successor's becoming a continuation of the predecessor; defining 'business entity' that acquires assets to include a sole proprietorship; and applying this Act to the sale, lease, exchange, or other disposition of assets by a corporation, a limited liability company, a partnership, a limited liability partnership, a limited partnership, a sole proprietorship, or other business entity that occurs before, on, or after the effective date of this Act."

APPROVED FOR CALENDARING

HOUSE BILL NO. 507 am

"An Act naming the Trooper Hans-Peter Lothar Roelle Memorial Weigh Station and the Officer Justin Todd Wollam Memorial Bike Trail; and providing for an effective date."

APPROVED FOR CALENDARING

CS FOR HOUSE BILL NO. 521(CRA)

"An Act relating to municipal improvement areas."

APPROVED FOR CALENDARING

HOUSE BILL NO. 527

"An Act relating to entry into the Minto Flats State Game Refuge for purposes of exploration and development of oil and gas resources."

APPROVED FOR CALENDARING

PREVIOUS SENATE COMMITTEE ACTION

SB 55 - See State Affairs minutes dated 2/8/01, 5/5/01 and 4/18/02 and HESS minutes dated 4/29/02.

SB 230 - See HESS minutes dated 3/4/02 and Judiciary minutes dated 5/11/02.

SB 317 - See Labor and Commerce minutes dated 3/21/02.

SB 366 - See Resources minutes dated 5/8/02.

HB 53 - See State Affairs minutes dated 4/18/02, Resources minutes dated 4/29/03 and Finance minutes dated 5/9/02.

HB 56 - See Labor and Commerce minutes dated 3/26/02, Finance minutes dated 5/8/02 and Rules minutes dated 5/10/02.

HB 207 - See Judiciary minutes dated 5/11/02.

HB 208 - See Resources minutes dated 4/24/02, Judiciary minutes dated 5/3/02 and Finance minutes dated 5/11/02.

HB 254 - See State Affairs minutes dated 4/11/02 and 4/16/02, Rules minutes dated 4/26/02 and Finance minutes dated 5/11/02.

HB 287 - See Resources minutes dated 5/8/02 and Finance minutes dated 5/10/02.

HB 296 - See CRA minutes dated 4/10/02 and 4/17/02 and Judiciary minutes dated 5/1/02 and Finance minutes dated 5/9/02.

HB 332 - See Judiciary minutes dated 4/29/02 and Finance minutes dated 4/29/02.

HB 350 - See Judiciary minutes dated 5/8/02 and Finance minutes dated 5/10/02.

HB 447 - See Resources minutes dated 4/19/02 and 5/8/02 and Finance minutes dated 5/10/02.

HB 499 - See Labor and Commerce minutes dated 5/4/02 and Judiciary minutes dated 5/10/02.

HB 507 - See Transportation minutes dated 5/10/02.

HB 521 - See CRA minutes dated 5/3/02.

HB 527 - See Resources minutes dated 5/10/02.

WITNESS REGISTER

Commissioner Jim Duncan
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Answered questions about SB 55

Mr. Richard Benavides
Staff to Senator Davis
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Stated support for CSSB 230(JUD)

Ms. Amy Erickson
Staff to Representative Murkowski
Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Explained the provisions of HB 246 and HB 521

Ms. Barbara Cotting
Staff to Representative James
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Testified for the sponsor of HB 254

Mr. Guy Bell
Division of Retirement and Benefits
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Answered questions about SCS HB 254(RLS)

Senator Dave Donley
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the intent of Amendment 1 to HB 276

Representative Peggy Wilson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Supports Amendment 1 to SCS HB 276(RLS)

Ms. Pat Hartley
Staff to Representative Scalzi
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about HB 287

Ms. Lori Backes
Staff to Representative Whitaker
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the provisions of HB 296

Ms. Patti Swenson
Staff to Representative Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the contents of HB 332

Mr. David Brewster
Staff to Representative McGuire
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the contents of HB 350

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

POSITION STATEMENT: Answered a question about HB 350

Mr. Dale Anderson
Staff to Representative Mulder
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the provisions of HB 447

Ms. Heather Nobrega
Staff to Representative Rokeberg
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the contents of HB 499

Ms. Judy Ohmer
Staff to Representative Kott
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the provisions of HB 507

ACTION NARRATIVE

TAPE 02-14, SIDE A

Number 001

CHAIRMAN RANDY PHILLIPS called the Senate Rules Committee meeting to order at 1:50 p.m. Senators Cowdery, Therriault and Phillips were present. Senator Halford arrived momentarily. The committee took up SB 55.

#SB55

SENATOR THERRIAULT moved to adopt Version P of SB 55-PIONEERS' AND VETERANS' HOME/ADVISORY BD as the working document of the committee.

CHAIRMAN PHILLIPS announced that without objection, Version P was adopted.

SENATOR THERRIAULT informed members that he met with Commissioner Duncan the previous day. The new language in Version P provides that the effective date will take place when the agreement is signed by both parties. Copies of the agreement will be sent to

the revisor of statutes.

COMMISSIONER JIM DUNCAN, Department of Administration (DOA), explained that substantial progress has been made in the ongoing negotiations between the DOA and Veterans Administration (VA). Section 24 provides that when those negotiations are completed satisfactorily, meaning that veterans who reside in Pioneers Homes could receive per diem payments from the VA and that ownership and management of the Pioneers Homes will remain with the state, copies of the agreement would be presented to the revisor of statutes and the Legislative Budget and Audit Committee. The bill will take effect upon signing.

SENATOR THERRIAULT pointed out the new fiscal note contains half of the original request. He asked if DOA will continue negotiating to get VA benefits for existing residents if less or no funding is provided.

COMMISSIONER DUNCAN said DOA would. He said he really hopes some funding is provided because DOA would like to see an increased benefit to veterans and pioneers alike as a result of the negotiations. However, the negotiations do not hinge on the funding level; they hinge on the provision in the legislation to rename the Pioneer Homes and on the veteran preference on beds.

SENATOR HALFORD moved to calendar CSSB 55(RLS) with its accompanying fiscal note.

SENATOR ELLIS's presence was noted.

CHAIRMAN PHILLIPS announced that without objection, CSSB 55(RLS) would be calendared.

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#SB 230

CHAIRMAN PHILLIPS took up **SB 230-PSYCHOTROPIC DRUGS FOR CHILDREN** and asked if the Judiciary version was before the committee.

MR. RICHARD BENAVIDES, staff to Senator Davis, sponsor of SB 230, verified that the Senate Judiciary Committee adopted a committee substitute.

SENATOR ELLIS moved to calendar SB 230 and any accompanying fiscal notes at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#SB317

CHAIRMAN PHILLIPS asked Senator Taylor to provide an explanation of SB 317-NAT'L FOREST INCOME AND REGS OF DCED.

SENATOR ROBIN TAYLOR, sponsor of SB 317, informed members that a year ago the federal government passed timber receipts legislation, which provides a stable funding source for six years from the federal government. Monies received will be allocated through the Department of Education and Early Development (DOEED) based on a formula that he and Senator Mackie designed six or seven years ago. SB 317 contains clean-up language that gives DOEED sufficient authority to convey those funds pursuant to the formula.

SENATOR HALFORD moved to calendar SB 317 and its accompanying zero fiscal note at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#SB 366

CHAIRMAN PHILLIPS announced that SB 366-CHITINA DIP NET FISHERY PERMIT FEE was before the committee.

SENATOR TAYLOR informed members that the Senate Resources Committee changed the bill to reflect the same fee this year and a zero fee next year.

CHAIRMAN PHILLIPS stated that this bill moved out of the Senate Finance Committee last night.

SENATOR HALFORD moved to calendar SB 366 and its accompanying fiscal notes.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 53

CHAIRMAN PHILLIPS announced the committee would take up CSHB 53(STA)-SEISMIC HAZARDS SAFETY COMMISSION.

SENATOR ELLIS moved to calendar HB 53 and its accompanying fiscal note at the Chairman's discretion.

REPRESENTATIVE JOHN DAVIES, sponsor of HB 53, informed members

that the fiscal note cost is about \$33,000.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 56

SENATOR HALFORD moved to calendar CSHB 56(FIN)-MINIMUM WAGE with its accompanying fiscal notes.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 207

SENATOR HALFORD moved and asked unanimous consent that the committee approve for calendaring CSHB 207(RLS)-REALIGNMENT OF JUDICIAL DISTRICTS.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 208

SENATOR ELLIS moved to calendar CSHB 208(RES)-AQUATIC FARMS FOR SHELLFISH and any accompanying fiscal notes at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 246

CHAIRMAN PHILLIPS asked for an explanation of CSHB 246(JUD)-OMNIBUS INSURANCE BILL.

MS. AMY ERICKSON, staff to Representative Murkowski, Chair of the House Labor and Commerce Committee, informed members that HB 246 primarily contains clarifications to existing law. An amendment made by the Judiciary Committee pertains to title plants (Section 51 on page 20). She indicated it is the only substantive change in the legislation.

SENATOR HALFORD asked if Section 51 requires a hard copy title plant.

MS. ERICKSON said it allows the public record to be used in title searches.

SENATOR HALFORD moved to calendar CSHB 246(JUD) at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 254

The committee took up CSSSH 254(FIN)-STATE RETIREMENT SYSTEMS/WARRANTS.

MS. BARBARA COTTING, staff to Representative James, sponsor of SSHB 254, informed members that a proposed Senate Rules Committee substitute was before the committee. She asked that Mr. Bell explain the changes made in the new version.

MR. GUY BELL, Director of the Division of Retirement and Benefits, Department of Administration, told members that several new sections have been added to the proposed committee substitute that make minor modifications to public employee and teacher retirement statutes. Sections 7 and 8 (page 7) make a small change to the conditional service benefit that is available to retired public employees if they enter the teaching profession by allowing them to work one year rather than the minimum two years to receive a supplemental retirement benefit under the Teachers Retirement System (TRS). It is designed as an incentive to bring retired public employees into teaching.

SENATOR HALFORD moved to adopt the proposed committee substitute as the working document of the committee.

CHAIRMAN PHILLIPS announced that without objection, the Senate Rules Committee substitute was adopted as the working document of the committee.

SENATOR THERRIAULT asked Mr. Bell to elaborate on Section 7.

MR. BELL explained that the TRS contains a benefit called the "conditional service benefit." Currently a Public Employee Retirement System (PERS) retiree is allowed to enter the TRS as a teacher and after serving for two years, is entitled to a conditional retirement benefit based on the two years of service. The proposed committee substitute will provide the conditional retirement benefit after one year of teaching. The conditional retirement benefit amounts to 2 percent of the person's salary. Each year of service in the TRS equals 2 percent.

SENATOR THERRIAULT asked if that is based only on the time spent in the teaching profession.

MR. BELL said that is correct. It is based on the actual number of years in the TRS.

CHAIRMAN PHILLIPS announced that no objections to adopt the proposed committee substitute as the working document of the committee were heard.

MR. BELL continued. Language on page 26, Section 34, addresses an issue related to temporary employees of the legislature in the 1970s. During that time, legislative employees were not in PERS. In 1980, those employees were allowed to claim service for time worked in the 1970s but unfortunately some did not. This provision will allow them to claim that service in order to obtain eligibility for retirement benefits, including the Tier 1 health benefit, but they will be required to pay the full actuarial cost of the pension and health benefits.

SENATOR COWDERY asked how many people fall in that category.

MR. BELL said the division does not have an exact count, but only five or six people have contacted the division over the past couple of years.

SENATOR THERRIAULT asked what actuarial costs they will have to pay.

MR. BELL said the division has not done any calculations yet. However, if this provision enables those employees to have Tier 1 rather than Tier 2 status, the division would take the net present value of five years worth of health benefits and charge that cost. He then explained that Section 38 was added on page 30; it relates to peace officers and firefighters in the PERS. Currently, when a person on disability reaches normal retirement age, their benefits are converted to a normal retirement benefit. This provision allows a person to elect to continue to receive the disability benefit when he or she reaches normal retirement age. Often the normal retirement benefit is lower than the disability benefit.

MR. BELL said that Sections 39 and 40 on page 39 again relate to peace officers and firefighters only. They adjust the benefit for occupational death for the survivor from 40 percent to 50 percent of the person's salary at death or 75 percent of the normal retirement benefit they would have accrued. The division has done some calculations and a person would have to have many years of

service to get to the equivalent of a 50 percent benefit or the 75 percent survivor benefit. He noted the final section that has been added is Section 45 on page 32. It applies to peace officers and firefighters and affects Tier 2 and 3 employees. It adjusts the number of years for the calculation of final average salary for the pension benefit from five years to three years. It will increase the benefit by a modest amount. These sections were designed to improve recruitment and retention of peace officers. The cost of that change will amount to .005 percent and it will take effect on the state's system in FY05. The division has drafted a fiscal note that reflects no cost for FY 03 and FY 04 and then \$344,000 in FY 05. The general fund cost will be about half that amount.

CHAIRMAN PHILLIPS asked Mr. Bell to provide a copy of the fiscal note to members.

MR. BELL said the remainder of the bill is for the purpose of complying with the Internal Revenue Code and with existing practice. The bill was designed to bring the retirement system up-to-date with the provisions of the Internal Revenue Code.

CHAIRMAN PHILLIPS clarified that the committee was reviewing Version B.

SENATOR COWDERY asked how the changes in Section 46 will affect divorced couples.

MR. BELL replied that the qualified domestic order language is unchanged.

SENATOR THERRIAULT commented that he heard concern expressed that the Anchorage Police Department has hired away Alaska State Troopers. He noted the language in this bill applies to all employees in that job classification and that he has not heard testimony that these changes will attract employees to state jobs.

MR. BELL said the initial proposal that came from Anchorage had a "cafeteria plan" and a local option. It included the three new sections in this bill and two additional items, which were significantly more expensive from an actuarial cost perspective. Rather than go down that path, the division suggested keeping a level playing field between all public employees - state and local government - in terms of recruiting peace officers and firefighters. The division came up with the lowest cost option it could find to do that. He has heard people testify that employees are attracted by other jurisdictions and by the federal

government, not necessarily by municipalities or the state. He indicated that this legislation makes a minor effort because it is low cost yet improves benefits.

CHAIRMAN PHILLIPS asked if DOA supports Version B.

MR. BELL said it does.

CHAIRMAN PHILLIPS asked if Representative James supports Version B.

MS. COTTING said she does.

SENATOR THERRIAULT asked Mr. Bell if these changes will produce an increased annual cost to the state of \$344,000.

MR. BELL said the cost will amount to .005 percent of salary.

SENATOR THERRIAULT stated, "Well, we're still taking a bill that really didn't cost us anything and [turning] it into a cost."

MR. BELL verified that there will be a cost in the future.

SENATOR HALFORD moved to calendar SCS SSHB 254(RLS) [Version 853\B] and its accompanying fiscal note.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 276

CHAIRMAN PHILLIPS informed members that an amendment to **CSHB 276(L&C)-REGULATION OF NURSING** has been proposed by Senator Donley.

SENATOR HALFORD offered to sponsor the proposed amendment and moved to adopt it [Amendment 1] for the purpose of discussion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

SENATOR DONLEY explained that this bill deals with a gap in the law regarding delegation of duties by nurses. When dealing with that area, he believes it is important that nurses not be pressured into improperly delegating their duties. Amendment 1 will safeguard the licenses of nurses who are pressured to delegate duties. It provides that if a nurse believes he or she has been ordered to improperly delegate a task, reports the

incident to the Board of Nursing and is found to be correct by the board, the nurse would be insulated from reprisals by the employer.

REPRESENTATIVE PEGGY WILSON, sponsor of HB 276, stated support for Amendment 1.

SENATOR HALFORD moved to calendar SCS CSHB 276(RLS) at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 287

The committee took up CSHB 287(FIN)-EXEMPT ENTRY PERMITS FROM CREDITOR CLAIMS.

MS. PAT HARTLEY, staff to Representative Scalzi, sponsor of HB 287, told members that HB 287 removes limited entry permits from the exemption section of Title 9 to delete an inference that they are somehow property. It adds in Section 3 of the bill specific language to the Limited Entry Act, spelling out that fishing privileges are exempt from claims of creditors except loans under the Division of Investments or the Commercial Fisheries and Agriculture Bank, and arrears with the Child Support Enforcement Agency. It adds, in Section 2, language to the limited entry statutes making it absolutely clear that the only time a person may transfer an entry permit due to an execution on the permit is for the purpose of enforcing a lien recorded at the Commission under the statutes of the child support enforcement division.

SENATOR HALFORD moved to calendar CSHB 287(FIN) and its accompanying fiscal note at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 296

SENATOR THERRIAULT moved to calendar CSHB 296(CRA)-MUNICIPAL MERGER AND CONSOLIDATION and its zero fiscal note at the Chairman's discretion.

SENATOR HALFORD objected for the purpose of a review of the measure.

MS. LORI BACKES, staff to Representative Jim Whitaker, sponsor of

HB 296, told members the intent of this legislation is to create fairness and timeliness in the process of consolidation petitions by limiting the time allowed to gather signatures on a petition for consolidation to not more than 365 days. Regarding the method used to count votes, the petition must be supported by a majority of the voters within each of the cities affected by the consolidation as well as the voters outside the cities but within the boundaries of the borough.

CHAIRMAN PHILLIPS asked if the situation in Homer triggered this legislation.

MS. BACKES said it did not. She explained that Representative Whitaker recognized some flaws in the consolidation effort in Fairbanks that he felt needed to be addressed.

CHAIRMAN PHILLIPS announced that without objection to Senator Halford's motion, the bill would be calendared.

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#HB 332

The committee took up CSHB 332(FIN)-DOMESTIC VIOLENCE/SEXUAL ASSAULT COUNCIL.

MS. PATTI SWENSON, staff to Representative Bunde, told members that the Senate Finance Committee added a technical amendment to this bill that allows a transition period until the present employee contracts expire next July (Section 4). At that time, all of the positions within the Council will become exempt. The fiscal notes reflect what will happen if the Council is not extended: the duties of the Council will be distributed to agencies throughout state government.

SENATOR THERRIAULT said that normally a fiscal note reflects what will happen if the bill passes.

MS. SWENSON said she also questioned the fiscal note but was told this is the normal process for an extension.

SENATOR THERRIAULT indicated that the fiscal note does state that the costs of the Council are already in the budget.

CHAIRMAN PHILLIPS asked if anyone in the Senate Finance Committee was opposed to this measure.

MS. SWENSON said not that she recalls. She repeated that the costs are already contained in the budget so the fiscal note reflects the costs to other state agencies if the Council is not

extended.

SENATOR ELLIS moved to calendar CSHB 332(FIN) and its accompanying fiscal notes with individual recommendations at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 350

The committee took up CSHB 350(FIN) am-TERRORISTIC THREATS & OTHER CRIMES.

MR. DAVID BREWSTER, staff to Representative McGuire, sponsor of HB 350, informed members that this measure is known as the "omnibus homeland security bill" and updates Alaska's statutes that address public areas and conveyances. HB 350 adds to existing law terrorist threats that cause evacuations of areas or disrupt transportation schedules. It increases criminal penalties for certain acts of terrorism; terroristic threatening and for certain imitation substances. It also increases penalties of threats to water and food supplies, air, utilities and pipelines.

SENATOR THERRIAULT asked what change the Senate Judiciary Committee made.

MR. BREWSTER deferred to Ms. Carpeneti for that information.

SENATOR THERRIAULT informed members that HB 350 was heard by the Senate State Affairs Committee and that the changes it made were not incorporated in the current version.

MS. ANNE CARPENETI, Assistant Attorney General, clarified that the House version did incorporate most of the changes that the Senate State Affairs incorporated into its version of the bill. The Senate Judiciary Committee added the word "knowingly" on page 8, line 28.

SENATOR ELLIS pointed out that Senator Taylor wanted to use the word "intentionally" but the Department of Law recommended using the word "knowingly."

SENATOR THERRIAULT moved to calendar the Senate Judiciary version of HB 350 and its attached fiscal notes.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 447

The committee took up HB 447-COM FISH & AGRICULTURE BANK INTEREST RATE.

MR. DALE ANDERSON, staff to Representative Mulder, sponsor of HB 447, said the general purpose of HB 447 is to ensure that the Commercial Fishing and Agriculture Bank (CFAB) is able to continue serving its Alaskan member-borrowers in an efficient manner and equitably compete with other lending institutions throughout the state.

CHAIRMAN PHILLIPS indicated that HB 447 has a zero fiscal note.

SENATOR HALFORD moved to calendar HB 447 with its zero fiscal note at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 499

The committee took up CSHB 499(JUD)-SUCCESSOR LIABILITY FOR PRODUCT LIABILITY.

MS. HEATHER NOBREGA, counsel to the House Judiciary Committee, stated that HB 499 covers a very small area of law, that being products liability. Within that area of law, the bill clarifies when a successor corporation should be held liable for the liabilities of the predecessor corporation's assets. The general rule is that when a corporation purchases another's assets, the successor corporation is not responsible for liabilities. However, in products liabilities, courts have made exceptions to that doctrine to provide recovery for an injured plaintiff. The court has used four generally recognized exceptions to the rule to determine when a corporation is not liable. The issue of products liability has not yet been addressed in Alaska statutes.

SENATOR ELLIS asked which court case set this legislation in motion.

MS. NOBREGA said the ongoing case is Savage v. Western Auto. She explained:

There is a products liability case right now in the courts. They - since products liability has never been

addressed in Alaska, they had to - they appealed to the Supreme Court for the Supreme Court to decide whether it is the law of the land in this state. In their case, the plaintiffs asked for the law of the land to be three doctrines. The Supreme Court adopted two of those doctrines. They didn't even look at the third one because they decided it just wasn't necessary at that point in time to even look at that.

One of the doctrines is one of the four [indisc.] of those generally accepted by the law of the land. The other doctrine that was called continuity enterprise is a modern theory - a modern doctrine that over 36 jurisdictions in the country have rejected. The restatement of torts has rejected it and we are rejecting it with this bill because we do not think that that should be the law of the land in this state. It is an ongoing litigation. The trial is set for November. What this bill will do is say this is the law of the land in this state and this is what you should be applying to the facts of the case, and not that one exception. It is only taking away that one exception. It is not in any way affecting the final outcome of this ongoing litigation.

SENATOR COWDERY said it is his understanding that Western Auto was a distributor of Savage Arms products. Western Auto sold a weapon to a customer. After the weapon was then sold several more times, an accident occurred and the victim's family sued the insurance company. The insurance company settled the suit and is now trying to recover its costs. He asked if that is an accurate description.

TAPE 02-14, SIDE B

MS. NOBREGA said that several companies are involved. Western Auto was the final company to sell the product. The family sued both Western Auto and the makers of the rifle, which is Savage Industries. Western Auto settled and now its insurance company is trying to sue the company that purchased the company that made the rifle for the amount it paid to the family.

SENATOR COWDERY asked if the settlement was less than \$5 million.

MS. NOBREGA said she believes it was about \$5.4 million.

SENATOR COWDERY asked if it is two or three times that amount now due to interest and attorneys' fees.

MS. NOBREGA said she has heard it is about \$14 million. She

repeated that HB 499 will not affect the outcome of the trial; it will determine the law of the land.

SENATOR HALFORD questioned Ms. Nobrega's statement that HB 499 will not affect the outcome of the trial.

MS. NOBREGA said that is correct because there is no final outcome yet. She added:

The Supreme Court is deciding what the law is therefore then - just ignoring this bill for right now - the Supreme Court then sends what the law is back down to the court. Then you have to argue whether or not the facts of the case - applying the facts of the case to the law will equal some kind of judgment for Western Auto to get money. The Supreme Court found two areas of the law they decided, or two, let's say, [indisc.] that you can argue in the lower court. One is generally recognized and it's allowed for in this bill. The other is a modern theory that has been rejected by many and we're also rejecting. They will be able to - if this bill becomes law - there are four actual exceptions in there they would be able to argue. So there actually has been no arguing of the law and the facts. We're still in the setting the law phase of the litigation - what is the law that we want to apply these facts to. There will be a long trial to look into all of the facts of who the shareholders were of each company, what assets were purchased, are they still manufacturing, what are they still manufacturing, how those two companies - the successor who bought the company and the company who manufactured the rifle initially, how those two work together. That is successor liability and that is what the whole trial would be about. Should this company be liable for the rifle manufacturer's defective product? There is no final judgment now. They're only looking at the law right now and what the law is.

SENATOR HALFORD asked if the reason HB 499 will not affect the final judgment is because it does not exist but that HB 499 will affect the outcome of the case and who wins, who loses, who pays and who receives.

MS. NOBREGA said how the facts are applied in the case will [indisc.] the final judgment but there have not been any facts argued to any theories of law.

SENATOR HALFORD asked if the people arguing the other side of the

case agree with Ms. Nobrega's interpretation.

MS. NOBREGA said they do not.

SENATOR HALFORD remarked that this bill will change the rules.

MS. NOBREGA said that changing the rules and affecting the outcome are two different things. She agreed that HB 499 will change the rules.

SENATOR HALFORD said the threshold is to convince the committee that the rules in the case should be changed.

SENATOR THERRIAULT commented that changing the rules will change the outcome because the one exception they may have relied on would no longer be available.

SENATOR COWDERY said that he owned an excavating company at one time. The name of the company still exists but he sold all of the equipment at an auction. He said he doesn't understand how someone who was injured on that equipment could blame his corporation.

MS. NOBREGA said she does not believe that scenario would fall under HB 499 because he was not a manufacturer or distributor of that equipment. She explained that products liability does not hold users of equipment liable.

SENATOR COWDERY said he manufactured rollover protection equipment for his equipment.

MS. NOBREGA said the maker of a product will always be liable. Whether or not the company that buys that product and resells it is liable is the question. She said she was not sure how to work Senator Cowdery's scenario into the discussion right now. She said the general rule is that no one wants to hold successor companies liable because no one would buy an existing company. That is the reason the exceptions exist.

SENATOR THERRIAULT asked if the four other exceptions will still be available.

MS. NOBREGA said that is correct.

SENATOR THERRIAULT cautioned that the state does not want to get into a situation where someone may try to break the chain by selling just the machinery and not the stock.

MS. NOBREGA said most of the exceptions work around the theory that these are good reasons to hold the company.

SENATOR HALFORD suggested the evaluation is whether the continuation of a 75-year old name is worth picking up the liability of a product that carries that name.

SENATOR THERRIAULT said he believes that would be an integral part of arguing that it was either a merger or a continuation of the predecessor.

SENATOR HALFORD said in this case there was actual distress and bankruptcy.

MS. NOBREGA said when a company purchases another's assets and continues to make the same products and use the same name, it would be subject to liability and that would be entered into the valuation of how much was paid for that company.

SENATOR HALFORD said that is what happened in the Western Auto case - they kept the name and most of the products although not the product that caused the accident.

SENATOR THERRIAULT asked if they kept the name of the business or the name of the product.

MS. NOBREGA said it is her understanding that they kept the name but they did not buy the particular rifle that exploded.

SENATOR ELLIS asked if one of the parties in the lawsuit requested the bill.

MS. NOBREGA said the request came from representatives of Savage Arms. She pointed out that concerns have been expressed about the retroactivity provision. She maintained that most attorneys in the state would say the bill contains what was the law of the land until the Supreme Court adopted the continuity of enterprise theory. She noted that without the retroactivity provision, there will be a "bubble in time of a weird theory that most people aren't used to..." By making it retroactive, the law of the land regarding successor liability will be kept at the status quo before, during, and after the case.

SENATOR ELLIS asked how far back in time the retroactivity extends.

MS. NOBREGA said it extends forever, which is the way attorneys figured the law was before this case.

SENATOR ELLIS asked how she knows what attorneys all over the state think and whether she polled them.

MS. NOBREGA said she knows because she went to law school. She stated that before this decision, the idea of products liability

had never been addressed in Alaska.

SENATOR HALFORD asked what happened to the victim of the accident in this case from the perspective of equity.

MS. NOBREGA said she does not know the specifics but believes the injury was severe.

SENATOR HALFORD asked if the injury was one that was worth \$5 million.

MS. NOBREGA said that is what Western Auto settled for but that she does not know what the injury was worth.

SENATOR HALFORD asked if Western Auto settled and then sued Savage Arms.

MS. NOBREGA said that is correct; the manufacturer of the rifle is no longer in existence so Western Auto "is going to the next deepest pocket they can find."

SENATOR HALFORD asked if the argument is between two companies at this point.

MS. NOBREGA said the argument is between Allstate Insurance and Lloyds of London, and Savage Arms.

SENATOR HALFORD asked if the injured party is taken care of.

MS. NOBREGA said that is correct.

SENATOR COWDERY moved to calendar CSHB 499(JUD) and its zero fiscal note at the Chairman's discretion.

SENATOR ELLIS objected.

CHAIRMAN PHILLIPS announced the motion carried with Senators Cowdery, Halford, Therriault and Phillips in favor and Senator Ellis opposed.

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#HB507

SENATOR HALFORD moved to calendar **HB 507am-NAMING TRANSPORTATION FACILITIES & AREAS.**

SENATOR ELLIS objected.

CHAIRMAN PHILLIPS asked for an explanation of the measure.

MS. JUDY OHMER, staff to Representative Kott, sponsor of HB 507, explained that HB 507 began as a way to commemorate a lot of

Alaska's fallen heroes - those people who gave their lives to others in service. It then became a "naming" bill via additions made in the Senate Transportation Committee. HB 507 began with a weigh station at mile 10.6 on the Glen Highway named after State Trooper Roelle and a bike trail along the Glen Highway named after Officer Justin Todd Wollam.

SENATOR COWDERY noted that three more places were named in commemoration in the Senate Transportation Committee version.

SENATOR THERRIAULT asked Ms. Ohmer if Trooper Roelle's family wants a weigh station named after him.

MS. OHMER said very much so.

SENATOR COWDERY moved to calendar HB 507am and its zero fiscal note at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that with no further objection, the motion carried.

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#HB 521

The committee took up CSHB 521(CRA)-MUNICIPAL IMPROVEMENT AREAS.

MS. AMY ERICKSON, staff to Representative Murkowski, sponsor of HB 521, informed members that this legislation clarifies an ambiguity in the current law that tax increment financing can be used to improve public areas. It can be used with revenue bonds and general obligation bonds. HB 521 also extends the definition of improvement area to include areas adjacent to blighted land.

SENATOR COWDERY moved to calendar CSHB 521(CRA) and its accompanying fiscal note at the Chairman's discretion.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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#HB 527

The committee took up HB 527-MINTO FLATS GAME REFUGE.

REPRESENTATIVE HUGH FATE said HB 527 is the result of a problem brought to his attention on April 25. The Department of Natural Resources (DNR) had denied access into the core area of the Minto Flats. The Commissioner agreed there is probably a need for clarification. At the same time discussions were ongoing with DNR, the interior delegation requested that the House Resource Committee sponsor it. He believes the amendment made in the Senate Resources Committee is appropriate.

SENATOR HALFORD moved to calendar HB 527 with its accompanying fiscal note.

CHAIRMAN PHILLIPS announced that without objection, the motion carried.

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There being no further business to come before the committee, CHAIRMAN PHILLIPS adjourned the meeting at 3:00 p.m.