

HOUSE FINANCE COMMITTEE
March 12, 2003
1:44 P.M.

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CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:44 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Mike Chenault
Representative Eric Croft
Representative Richard Foster
Representative Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Bill Stoltze

MEMBERS ABSENT

Representative Jim Whitaker

ALSO PRESENT

Representative James Holm; Senator Gretchen Guess; Larry Dietrick, Director, Spill Prevention and Response, Department of Environmental Conservation; Josh Govaars, Staff, Representative James Holm

PRESENT VIA TELECONFERENCE

Ed Bryant, Detective, Anchorage Police Department Metro Drug Unit, Anchorage; Tim Rogers, Legislative Program Director, Municipality of Anchorage, Anchorage; Tim Biggane, Director, Emergency Operations, Fairbanks North Star Borough, Fairbanks; Elise Hsieh, Assistant Attorney General, Department of Law, Anchorage

SUMMARY

HB 23 An Act relating to court-ordered restitution and compensation following a criminal conviction.

HB 23 was WAIVED from the House Finance Committee.

HB 59 An Act relating to the evaluation and cleanup of sites where certain controlled substances may have

been manufactured or stored; and providing for an effective date.

CS HB 59 (FIN) was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Public Safety and fiscal note #2 by the Department of Environmental Conservation.

HB 75 An Act making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date.

HB 75 was HEARD and HELD in Committee for further consideration.

HB 76 An Act making appropriations for the operating expenses of the state's integrated comprehensive mental health program; and providing for an effective date.

HB 76 was HEARD and HELD in Committee for further consideration.

HB 150 An Act making capital appropriations and reappropriations; capitalizing a fund; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date.

HB 150 was HEARD and HELD in Committee for further consideration.

#HB23

HOUSE BILL NO. 23

An Act relating to court-ordered restitution and compensation following a criminal conviction.

Co-Chair Williams stated that HB 23 would be WAIVED from the House Finance Committee. He noted that a zero fiscal note had been attached in the House Judiciary Committee. The bill and the zero note were waived from Committee.

#HB59

HOUSE BILL NO. 59

An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been

manufactured or stored; and providing for an effective date.

REPRESENTATIVE JIM HOLM requested that the work draft be brought before the Committee.

Representative Foster MOVED to ADOPT work draft #23-LS0341\S, Lauterbach, 3/18/03, as the version of the bill before the Committee. There being NO OBJECTION, the work draft was adopted.

Representative Holm explained the functions of the bill. Alaska currently does not have basic standards for the cleanup of illegal drug labs. HB 59 would establish basic standards and requirements for the cleanup of the sites to guarantee safety for future residents.

Over the past four years, over ninety meth amphetamine (meth) labs were discovered in Alaska. The labs were found in apartments, hotels, cabins, mobile homes, and even on boats. If left untreated, chemicals from "cooking meth" can be extremely hazardous and pose a serious threat for future residents, particularly children.

Representative Holm stated that HB 59 would require that once law enforcement agencies discover an illegal lab, the property owner would be responsible to clean up the hazardous materials. A complete cleanup of the site would be needed before the structure could again be utilized. In order to demonstrate that the property was fit for habitation, the owner must provide test results showing the levels of contamination below the Department of Environmental Conservation limits.

HB 59 stipulates that the Department or a law enforcement entity would provide information to the owner on required testing procedures and guidelines for cleanup. Additionally, a list of laboratories that may be used for determining whether the property is fit for use would be provided to the property owner. He pointed out that HB 59 stipulates full disclosure to future buyers if the property was used as an illegal drug site and was not properly cleaned to the Department's standards.

Representative Chenault asked if that requirement would hold true if the premise had been sufficiently cleaned to the standards.

Representative Holm replied that would not happen. It would only occur if it had not been adequately cleaned.

Co-Chair Harris asked if a tenant in a facility was fronting a meth lab and it was raided, would the owner then be

responsible for the clean up activity. Representative Holm acknowledged that was correct.

Co-Chair Harris inquired if that owner would have the authority to sue the tenants who were illegally using the property. Representative Holm explained that the bill addresses the owners of the property and that the property owner does carry the liability for the property. He pointed out that a risk analysis indicates tort law. If there is a civil action, the owner would then place the action back to the renter who offended the property. In many cases, the resources to go after the guilty party are not available. He acknowledged that was the risk.

Representative Holm stated that he and Senator Guess believe that it is more important to error on the side of protecting children living in these buildings. Without adequately cleaning the premises, there could be risks for the children living there. He added that the adults could address their concerns through the civil process.

Co-Chair Harris asked why the legislation had not passed last year.

SENATOR GRETCHEN GUESS emphasized that the bill had passed the House Floor, Senate Resources Committee, Senate Judiciary Committee and had been scheduled for the Senate Floor on that difficult last day.

Representative Stoltze inquired the average costs for these types of clean-ups. Representative Holm did not know the per site cost.

JOSH GOVAARS, STAFF, REPRESENTATIVE JAMES HOLM, explained that the cost would depend on how big the meth lab was.

Representative Stoltze requested information on the types of responsibilities that are being passed to the landlords and property owners.

LARRY DIETRICK, DIRECTOR, SPILL PREVENTION AND RESPONSE, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, observed that the characterization of the clean-up extent was accurate.

Senator Guess interjected that from testimony last year, it was indicated that the average cost clean up cost would be between \$2,000 - \$5,000 dollars. Property owners are responsible for paying those costs.

Co-Chair Williams asked if the owner could go after the guilty party. Senator Guess explained that in any property situation, the owner is always responsible for their property. The owner could go through restitution on the criminal side and civil law could then go after the expenses

for the tenant responsible for creating the lab. Through HB 59, the owner remains responsible; however, the owner only must address the items listed in the legislation if they want to have the property reoccupied.

Representative Stoltze asked if the current landlord/tenant laws contain enough protection for the landlords.

Representative Croft pointed out that A.S. 34.03.120 Landlord/Residential/Tenant Act already clarifies that concern. He added that it was unfair to characterize HB 59 as changing who is responsible to pay. The landlord has always had the obligation to rent out a safe place and the tenants have the obligation to keep the rental as a clean and safe environment and not do to do illegal activities. The practical solution is not waiting to do the clean up but rather to fine those tenants participating in illegal activities.

Vice-Chair Meyer asked clarification that if he owned a rental space, would it be his obligation to make sure that the unit was cleaned-up after the meth lab tenants were evicted. He questioned if he would be held liable if the new tenant's children got sick.

Representative Croft replied that was true in current law. Without this bill, the owner would still be liable; however, the bill establishes the structure for doing what needs to be done. Without HB 59, there would not be a standard for cleaning and then re-renting.

Vice-Chair Meyer suggested that the bill could put an "extra" burden of responsibility on the owner of the rental.

Senator Guess clarified that the bill only becomes effective when there has been a "bust" by law enforcement. The bill does set guidelines if someone thinks that there was illegal drug use and wanted to properly clean it up. The bill does not require a clean up unless law enforcement has actually certified that there was a bust. An appeal process does exist if that party wanted to appeal the law enforcement decision. Senator Guess noted the two types of property owners:

- The one who does not care and re-rents, and
- The type that is diligently concerned about these types of concerns and truly wants to do the right thing.

Senator Guess emphasized that to date, there have not been guidelines for people that want to do the "right" thing.

Vice-Chair Meyer asked if it was essential that there was a bust or conviction. Senator Guess replied that there must be.

Vice Chair Meyer noted that he supported the bill but voiced concern with the unintended consequences. He thought that it would impact the homeowners liability insurance.

Senator Guess pointed out that contained in the homeowners mortgage statement, there is an obligation to the homeowner for the bank to clean up.

Representative Hawker pointed out that he did not see anything that specifically endorses or clarifies the landowner's recourse against the perpetrator who has caused the damage against the property. Additionally, the legislation asks the landowner to assume all the potential liability against a renter. He asked if it would be appropriate to include a sidebar indicating that cleaning would be the responsibility of a cleaning contractor.

Senator Guess noted that had been discussed in the Senate Judiciary Committee last year. Senator Taylor inserted the language "unknowingly, which has specific meaning in statute. The owner would have to "knowingly" re-rent to be liable. She reminded members that the bill would be passed along to the Senate Judiciary Committee for discussion.

Representative Hawker inquired where the "knowingly" provision was located in the bill. Representative Joule pointed out it could be found on Page 4, Subsection ©.

Representative Croft advised that "knowingly" is a criminal and high standard. He pointed out that it was a reference to the criminal code given the context in which it is used. Representative Croft asked if Representative Hawker would be more comfortable if the language stated that: "Nothing in the act precludes any recourse that you have under contract in the landlord/tenant act against the tenant for the costs of cleaning up".

Representative Hawker agreed he would be comfortable with the inclusion of language clarifying that the owner was not prejudice toward any of those rights. He referenced "knowingly" and asked what would happen in a landlord situation in which definitely dangerous chemicals were present that required a professional contractor to clean up.

Representative Croft explained that without "knowingly", they could use other language such as "knew" or "should have known". The knowingly modifies the transfer and violation. The owner must know that they are in violation. If the owner believes that the unit was sufficiently cleaned, then

they did not "knowingly" transfer in violation of that section.

Representative Hawker asked what recourses would the owner have.

ELISE HSIEH, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, explained that they could attempt to make a case under the definition of "knowingly". The person would have to argue against the knowingly. If that person thought that the owner of the property knew that it had been a meth lab or had some role in it, the same action would be taken. The proposed language would clarify it.

Co-Chair Williams reminded Committee members that there had been five attorneys on the House Judiciary Committee who had examined these concerns.

Representative Stoltze suggested that the bill would be costly to implement. He believed that there would need to be some changes to the landlord/tenant law to help negate some of the liabilities. He encouraged providing some protections to the landlord.

Representative Holm acknowledged that he was concerned about putting owners at risk through no fault of their own. He pointed out that people, who rent, do have protections. Representative Holm responded that he and Senator Guess concern lay with protecting those who cannot protect themselves. Under these circumstances, renting property makes it inherent as a responsible landlord to keep an eye on the properties. He reiterated that the bill does address a dangerous concern.

Representative Stoltze agreed that meth labs are dangerous, however, he was concerned about the fringe issues.

Representative Hawker questioned the rights of the lien holders and how the bill could affect them, particularly when they cannot sell or transfer a lease. He asked if there was any limitation being imposed on a lien holder or their ability to foreclose on a property or to sell.

Mr. Govaars understood that the property could not be sold until the clean up had occurred. He did not know what would happen for the lien holders.

Ms. Hsieh interjected that the bill does not define the person that owns or sells, but she did note that it could broadly include the lien holder. She added that it appears that the person could not transfer, sell, or rent the property until it was cleaned up. The bill was not meant to

stop a lien holder that does know and wants to foreclose and take possession.

Representative Hawker asked if the bill would provide notice to the lien holder regarding the situation. Senator Guess responded that HB 59 does not provide that notice, however, the Senate version does. She added that work was being done with the Department of Public Safety to determine the cost associated with alerting the lien holder.

Mr. Govaars advised that the adding of the lien holder to the legislation as a requirement of notification would add a fiscal note. Someone would have to be hired to do a title search and pay for it. He projected that it would cost nearly a full time position and acknowledged that had been a concern. As the owner of a house and having a lien holder, it would be required to let the lien holder know if there had been significant damage to the property.

Representative Hawker disagreed. He stressed that this legislation was broad and encompassing. He voiced great concern with the unintended consequences that would result.

Co-Chair Williams advised that if Representative Hawker had concerns, he would hold the bill in Committee.

Senator Guess interjected that a property could still be sold if the information had been disclosed. If both the buyer and seller are in agreement, then the situation could be okayed. She agreed that the concern was valid.

Co-Chair Williams argued that these concerns had been fully discussed in the House Judiciary Committee. Representative Hawker reiterated that it was his interest to protect the financial interests of the lien holders.

Ms. Hsieh advised that as long as full disclosure is made under this bill, the interest for the lien holder would not change the situation. She believed that there probably was some sort of obligation of the owner to give notice to any lien holder.

Co-Chair Williams MOVED to ADOPT Amendment #1. (Copy on File). He noted that the sponsor, Representative Holm, had distributed the amendment. Co-Chair Harris OBJECTED to Amendment #1.

Representative Holm explained the amendment, noting that it had been brought forth by the Department of Public Safety and the Department of Environmental Conservation.

- Page 5, Lines 17-19: Delete "one of the following substances above the limit set by the department for

that substance: lead, mercury, met amphetamines, volatile organic compounds, and other";

- Page 5, Line 21: Insert "The Department of Public Safety shall annually submit a list of substances to the Department of Environmental Conservation."
- Page 5, Line 22: Delete "specifically listed in (a) of this section" and insert "specified by the Department of Public Safety".

Senator Guess explained the changes between the legislation from last year and the one currently before the Committee. She advised that the State Trooper's had come forward informing the Legislature of situations that had changed. They support the current language, as does the Department of Environmental Conservation.

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Senator Guess reiterated that the purpose for those two departments encouraged the changes affected.

Representative Holm interjected that there are other hazard materials which should be added such as iodine, red phosphorous, lye, sulphuric acid, hydrochloric acid, hydraulic acid, lithium methyl, sodium methyl, mercury, lead, meth residues and certain organic compounds.

Representative Foster commented that Nome is highly mineralized and that the gravel in Nome shows approximately levels 20 times higher in saturated mercury. He asked if a person in Nome would be able to sell their house with the legislation in place.

Senator Guess stressed that mercury was one of the compounds which had been removed from the list. She added that many of the compounds that would be of concern to Representative Foster are now off the list.

Representative Holm acknowledged that mercury, lead, and volatile organic compounds need to be excluded.

Co-Chair Harris maintained that the only items that should be included on the list should be "illegal substances".

Mr. Dietrick advised that the original lists were common compounds. He added that today was the first time that Department of Environmental Conservation had seen the list. Some items on the list are straightforward and he did not know if any of them were illegal to possess.

Co-Chair Harris stated that the only time the concern would come into effect was when the person was busted for illegal use.

Co-Chair Harris WITHDREW his OBJECTION to Amendment #1. There being NO further OBJECTIONS, Amendment #1 was adopted.

ED BRYANT, (TESTIFIED VIA TELECONFERENCE), DETECTIVE, ANCHORAGE POLICE DEPARTMENT METRO DRUG UNIT, ANCHORAGE, testified in support of the legislation. He informed members that the chemicals being discussed were listed under AS 11.71 under "listed chemicals". The intent to manufacture must be present for a Schedule 1 or Schedule 2 substance and be in possession of them. Mere possession of these in your home would not be a problem. It is a problem if you have the intent to manufacture meth amphetamine. Mr. Bryant pointed out an additional concern on Page 7, Line 19:

".... Controlled substance listed on schedule I or II as A.S. 11.71 or a precursor chemical for the substances has occurred; or.."

Mr. Bryant stated that a precursor is an item, which becomes the final product. In order to evade detection, some of the manufactures are manufacturing the necessary chemicals. He recommended adding the language "necessary chemical" to that line. He warned that there is new information out "on the street".

Co-Chair Harris asked if Mr. Bryant was recommending that to Line 19, adding the definition "necessary chemical". Mr. Bryant said yes.

Co-Chair Harris MOVED Amendment #2, to Page 7, Line 20 inserting "or necessary chemical" after the language "precursor chemical".

There being NO OBJECTION, Amendment #2 was adopted.

TIM ROGERS, (TESTIFIED VIA TELECONFERENCE), LEGISLATIVE PROGRAM DIRECTOR, MUNICIPALITY OF ANCHORAGE, ANCHORAGE, voiced support for the legislation. He spoke to the hazards involved with meth labs and the additional costs to the property owners. He stated that the safety concerns far outweigh the additional costs. He reiterated his strong support for HB 59.

TIM BIGGANE, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, EMERGENCY OPERATIONS, FAIRBANKS NORTH STAR BOROUGH, FAIRBANKS, voiced full support for the proposed legislation. Over the past few years, there has been a dramatic increase of meth labs in that area. Mr. Biggane stressed how destructive these drugs are and the impact they are having in the local community health. He listed the irritants from

the drugs and noted that in many of these situations, when the party involved is evicted, nothing is being changed and there is no clean up.

Representative Foster applauded the work done on the bill, however, he pointed out that if there was a problem in his area, it would be very costly to thoroughly clean any place. He stressed that most people in those areas could not support the action required by the legislation.

Representative Foster MOVED to report CS HB 59 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

CS HB 59 (FIN) was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Public Safety and fiscal note #2 by the Department of Environmental Conservation.

Representative Foster elaborated that he was uncomfortable holding the third party responsible for cleaning up the work resulting from the renter.

#HB75

HOUSE BILL NO. 75

An Act making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date.

Co-Chair Harris stated that SS HB 75 was the new amended version, which the Governor had proposed for the operating budget. He advised that it would now be available for the subcommittees to discuss in full detail.

SS HB 75 was HELD in Committee for further consideration.

#HB76

HOUSE BILL NO. 76

An Act making appropriations for the operating expenses of the state's integrated comprehensive mental health program; and providing for an effective date.

Co-Chair Harris stated that SS HB 76 was the new amended version, which the Governor had proposed for the operating expenses for the State's comprehensive mental health program. He advised that it was now available for the subcommittees to discuss in full detail.

SS HB 76 was HELD in Committee for further consideration.

#HB150

HOUSE BILL NO. 150

An Act making capital appropriations and reappropriations; capitalizing a fund; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date.

Co-Chair Harris noted that HB 150 was the Governor's proposed capital appropriations bill. The bill is now available for further consideration.

HB 150 was HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 2:50 P.M.