

HOUSE FINANCE COMMITTEE  
April 09, 2003  
1:45 P.M.

TAPE HFC 03 - 55, Side A  
TAPE HFC 03 - 55, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:45 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  
Representative Jim Whitaker

MEMBERS ABSENT

None

ALSO PRESENT

Representative Tom Anderson; Anne Carpeneti, Assistant Attorney General, Criminal Division, Department of Law; Eddy Jeans, Manger, School Finance and Facilities Section, Department of Education and Early Development; Greg O'Claray, Commissioner, Department of Labor and Workforce Development

PRESENT VIA TELECONFERENCE

Chris Beheim, Director, State Crime Lab, Anchorage; Bruce Richter, Program Manager, National Law Enforcement and Correctional Technology Center, Anchorage; Jennifer Esteral, American Civil Liberties Union (ACLU), Anchorage; Linda Wilson, Deputy Public Defender, Anchorage; John Wheatley, Senior Vice President, Brady Company, Insurance Brokerage Firm, Anchorage; Terry Fike, President, Alcan General Contractors, Anchorage; Dick Cattanach, Executive Director, Associated General Contractors, Anchorage; Vince Beltrami, President, Anchorage Building and Construction and Trades Council, Anchorage; Nancy Peterson, City of Valdez; Phil Anderson, President, AGC Landscaping, Fairbanks; Sarah

Lefebvre, Vice President, Exclusive Landscaping and Paving,  
Fairbanks

SUMMARY

HB 49 An Act relating to the DNA identification registration system; and providing for an effective date.

CS HB 49 (JUD) was reported out of Committee with a "do pass" recommendation and with zero fiscal note #1 by the Department of Public Safety, zero fiscal note #2 by the Department of Law, and fiscal note #3 by the Department of Administration.

HB 155 An Act relating to the submission of payroll information by contractors and subcontractors performing work on a public construction contract; and providing for an effective date.

HB 155 was HEARD and HELD in Committee for further consideration.

HB 171 An Act repealing the charter school grant program; and providing for an effective date.

HB 171 was reported out of Committee with "individual" recommendations and with fiscal note #1 by the Department of Education & Early Development.

#HB49

HOUSE BILL NO. 49

An Act relating to the DNA identification registration system; and providing for an effective date.

REPRESENTATIVE TOM ANDERSON noted that HB 49 would expand the Alaska State database of DNA samples to include all persons convicted of a crime against a person or any felony under Alaska's criminal code. It would also require the collection of DNA samples from those juveniles adjudicated as a delinquent for the same offense. Additionally, HB 49 makes provisions for volunteer and anonymous donations. Persons required registering, as sex offenders are also required to submit DNA into the database. HB 49 would require that all offenders and minors currently incarcerated on State supervised parole for felony convictions or certain sexual misdemeanor offenses provide samples to the Department of Public Safety.

Representative Anderson stated that expanding the databases

to include all convicted offenders would have multiple benefits:

- Solves crimes - DNA collection from all convicted felons, rather than just sex offenders and perpetrators of serious violent crimes, which would result in an increase in the amount of violent crimes solved. Offenders who are required to submit DNA when convicted of non-violent felonies would be identified as they leave DNA behind at a rape and/or murder scene.
- Prevents crimes, helps solving a crime, and solving it quickly, which has a direct effect on preventing additional crimes by the same perpetrator. An offender who is not apprehended in a timely manner remains free to commit more crimes.
- Exonerates the innocent - Increases the DNA database to those convicted of non-violent offenses, which would reduce the occurrence of innocent people who are wrongly suspected, arrested and convicted of crimes they did not commit. Two common scenarios exemplify how a larger DNA database protects such innocent people, one where the guilty party is listed and secondly, where the innocent party is in the database.
- Increases Cost Efficiencies - According to a study completed by the National Institute of Justice, rape is the costliest crime in America, in which victim costs can total up to \$127 billion dollars. The study estimated that when all factors are considered, the estimated cost of rape per victim is \$87,000. If the average rapist commits eight rapes, but a DNA databank stops the offender half way through the spree, then four rapes are prevented creating a savings of \$348,000 dollars.

Representative Anderson identified the numerous agencies indicating support and letters of endorsement ranging from the Chief of Police Association to the Alaska Peace Officers Association. The fiscal note indicates zero because federal funding is concurrent with the program. President Bush has indicated that he intends to supplement this cause with over \$1 billion dollars of continuous funding for the program to make it state and nationwide.

Representative Croft referenced Page 3, Lines 27 & 28, "law enforcement cases including". He asked if there was any limitation on the law enforcement. He stated he was concerned about how broad that language was.

Representative Anderson explained that language was taken from original law. He assumed that the federal government and the Federal Bureau of Investigation (FBI) has different regulations, however, they would be able to utilize the same information through the coded system.

Representative Croft mentioned the "parameters" of the language. He questioned the basic protections in the bill from misuse. Representative Anderson referred that question to Ms. Carpeneti from the Attorney General's Office, Department of Law.

Co-Chair Harris referenced the indeterminate fiscal note from the Department of Administration, Public Defender Agency. He asked what would happen if that note was zeroed out.

LINDA WILSON, (TESTIFIED VIA TELECONFERENCE), DEPUTY PUBLIC DEFENDER AGENCY, ANCHORAGE, commented that their agency cannot predict what the fiscal impact is going to be. Ms. Wilson claimed that the legislation would significantly increase the number of cases for the number of crimes, which a person may have to submit a sample. There currently are 32 offenses and the legislation would add over 80 more for which a person must submit a DNA sample. The legislation would include those on probation or parole on the effective date. That creates a very broad reach. Ms. Wilson had no idea how many cases it would include. She reiterated that the note was indeterminate because there is no way for the Agency to predict the impact.

Co-Chair Harris inquired if the Public Defender Agency had received a supplemental request this year. Ms. Wilson acknowledged that they had.

CHRIS BEHEIM, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, STATE CRIME LAB, ANCHORAGE, testified that the DNA database has had a positive impact on law enforcement. It has aided 34 different investigations this past year. The State of Alaska has one of the more successful databases in the country. He added that the State could do better by collecting the DNA from all felons and individuals convicted of sex offenses. Mr. Beheim reiterated that the legislation could enhance the current system even more.

At this time, there are approximately 140 unsolved homicides and sexual assault cases and with an expanded database, the number of unsolved crimes could increase. He concluded that this is an extremely important tool for law enforcement that is cost effective.

BRUCE RICHTER, (TESTIFIED VIA TELECONFERENCE), PROGRAM MANAGER, NATIONAL LAW ENFORCEMENT AND CORRECTIONAL TECHNOLOGY CENTER, ANCHORAGE, stated that the legislation

would be the single most cost effective tool that the State could give law enforcement for expanding their reach of the database. The success of other states could be reflected in what will happen in Alaska. Mr. Richter trusted that the down-stream federal funding would come.

Representative Croft inquired about the Alaskan success stories. Mr. Beheim listed various sexual assault situations that have occurred throughout the State and how the DNA technology helped solve those crimes. He elaborated that this indicates the power of DNA to both exonerate and bring people to justice.

JENNIFER ESTERAL, (TESTIFIED VIA TELECONFERENCE), AMERICAN CIVIL LIBERTIES UNION (ACLU), ANCHORAGE, voiced opposition to the proposed bill. She noted that ACLU urges an end to the progressive expansion of the collection of the DNA. She stressed that this is not only fingerprinting and that DNA provides the government control over personal and private information. Ms. Esteral stressed that the laws are becoming progressively more inclusive. DNA is now being collected before the crime has happened.

Ms. Esteral pointed out that the ACLU supports the use of DNA database for positive medical, scientific, and forensic purposes; however, she stressed that there is tremendous potential for abuse and that HB 49 does not create any safeguards.

Representative Joule asked if there had been cases of misuse from the DNA collection base. Mr. Beheim responded that there has never been a case where the DNA database sample was misused. He added that there are many safeguards involved. It can be used only for identification and law enforcement identification purposes.

Mr. Richter added that once that the crime lab has made confirmation of identification, that information serves as the application base for a search warrant. He emphasized that there are checks and balances built into the current system.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW, voiced the Department's support for the bill and offered to answer questions of the Committee.

Representative Croft questioned if there should be any constraints placed on law enforcement use of the DNA. Ms. Carpeneti explained the language referenced currently is in existing law. She pointed out that the word "including" was added because law enforcement attempted to identify missing body parts from victims. That language has been effective since the DNA concern was enacted. She interjected that

there have been no problems to date and that the bill does contain protections.

Representative Whitaker commented on the possible elimination of federal funding and that the Legislature should recognize the potential costs associated with the bill. He voiced his support.

Representative Foster MOVED to report CS HB 49 (JUD) out of Committee with individual recommendations and with the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

CS HB 49 (JUD) was reported out of Committee with a "do pass" recommendation and with zero fiscal note #1 by the Department of Public Safety, zero fiscal note #2 by the Department of Law, and fiscal note #3 by the Department of Administration.

#HB171  
HOUSE BILL NO. 171

An Act repealing the charter school grant program; and providing for an effective date.

EDDY JEANS, MANGER, SCHOOL FINANCE AND FACILITIES SECTION, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, explained that the HB 171 would eliminate charter school grants. The State grant program implemented in FY2002, allocates money per ADM for each new charter school. The funding was intended to supplement the federal start up grants for charter schools.

The Alaska Department of Education and Early Development is working closely with U.S. Department of Education to increase the level of start-up grants provided by the federal government therefore eliminating the need for the State supplemental grant program beginning in FY 2005. The State will allocate to new charter schools \$150,000 a year for the first three years and \$45,000 in the fourth year, totaling \$495,000 dollars start up funds over a four year period.

The bill becomes effective July 1, 2004. The delayed implementation will allow the State to fulfill its commitment of start-up grants to the existing charter schools. Any new charter schools approved to operate in FY 2004 would be eligible for the federal grant funds.

Co-Chair Harris asked if the State could anticipate more federal money. Mr. Jeans replied that was the "bottom line".

Co-Chair Harris asked what would happen without the money. Mr. Jeans advised that with the one-year delay, if the federal funds do not come through, the Department would be back before the Legislature requesting reinstatement of the program. However, he added that every indication from the federal government indicates that the grant request will be looked upon favorably.

Co-Chair Harris asked the benefits of a charter school to students and the State of Alaska. Mr. Jeans noted the amount of parental involvement in those schools. Charter schools are "grass root movements" and the parents are very involved in the classrooms. Charter schools have flexibility in their regulations; however, they are required to follow the same assessments as the regular public schools. Charter schools are public schools and have a contract with their local school district to operate the program.

Co-Chair Harris inquired how much the State provides for each student in the charter school. Mr. Jeans explained that would vary depending on the program. Some of the charter school programs are correspondence programs and are funded at 80%. The main difference results from the student population of the charter school. If there are less than 150 students, the current foundation statute requires them to be added to the local school in that district. Therefore, their funding would be reduced. If they have over 150 students, they are allowed to go through the school size adjustment table just as any public school in the district.

Co-Chair Harris asked if there were less than 150 students in the charter school, would they then get added to the regular school system and counted as such. Mr. Jeans explained that in statute is the "school size adjustment table", which adjusts for the student economy of scale. Within that section of statute, it stipulates that before a charter school is counted as a separate, independent school, there must be more than 150 students. If there were not that many students, it would be added to the largest school for funding purposes. Mr. Jeans reiterated that if there are over 150 students, they are then counted as their own separate school.

Co-Chair Harris noted that the correspondence program is separate. Mr. Jeans acknowledged that was correct, pointing out that there are a couple charter schools funded as a correspondence program. Those programs will be funded at 80%.

Vice-Chair Meyer inquired if there had been a statewide increase in the charter school programs. Mr. Jeans

acknowledged that charter schools are on an increase statewide. That is directly related to legislation passed in 2001, which expanded the number from 30 to 60 charter schools in the State that can be operated by districts. He added that the State Board of Education just approved four new charter schools for this upcoming year; (1) in Mat-Su, (2) in Anchorage and (1) in Ketchikan.

Vice-Chair Meyer asked how much additional money does a charter school receive. Mr. Jeans explained that there is not an easy answer and that it does depend on the size of the student population. The formula adjusts for economies of scale. If there is a small school of 150 students, there will be fixed costs associated, which would increase the amount. The formula adjusts for the economies of scales.

Representative Croft pointed out that the State expects money for the FY05 budget, not this year. Mr. Jeans corrected Representative Croft pointing out that the State expects to receive the money this year. The effective date is FY04 because the Department is attempting to make the districts that are under the current State program "whole". That request is in the FY04 budget. Mr. Jeans added that once the federal grants are closed, they cannot be reopened. All new charter schools will be under the new federal allocation for charter school start up.

Representative Croft asked about moving the State system and shifting it over to the federal area. He inquired why language should be repealed.

Representative Croft voiced concern about the possibility that only part of the federal money might come through. Mr. Jeans explained that the Department does not intend to continue operating the State grant program. If the federal money does not come through, the Department will come back to the Legislature to determine if they want to reinstitute the State grant program. He noted that Senator Dyson shared that concern as well and put contingent language in the Senate version of the bill, which would address the repealler.

Representative Croft maintained that if the State can fully utilize federal money now, the statute should remain on the books in case the federal funds are not guaranteed. He did not understand the need for the legislation.

Mr. Jeans advised that the reason that the Department submitted the bill is that under the proposal before the federal government, the State will be able to allocated more money to the school districts through the federal program than they receive for both programs currently combined. If the State statute remains on the books, the State allows the entitlement program to remain on the books for districts and

schools to continue to apply in the future for the State grant. That would send a clear message that the intention is to transition from the combined system to a single system.

Co-Chair Harris asked why the fiscal note does not indicate federal revenues. Mr. Jeans understood that there would be sufficient federal authorization in the Teaching and Learning Division to absorb the grant request.

Representative Foster MOVED to report HB 155 out of Committee with individual recommendations and with the accompanying fiscal.

There being NO OBJECTION, it was so ordered.

HB 171 was reported out of Committee with "individual" recommendations and with fiscal note #1 by the Department of Education & Early Development.

**TAPE HFC 03 - 55, Side B**

#HB155

HOUSE BILL NO. 155

An Act relating to the submission of payroll information by contractors and subcontractors performing work on a public construction contract; and providing for an effective date.

GREG O'CLARAY, COMMISSIONER, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, testified that the bill would be a "revenue producer" for the State and would provide sufficient regulations for proper enforcement of the prevailing wage rate under Title 36. He stated that the Administration supports the House Judiciary version of the bill and it would be a cost shift from general funds.

Representative Joule inquired if costs were being shifted to the bid processor on the "other side". Commissioner O'Claray replied that there would be a cost shift. The general contractor would pay for the cost. At present time, there is no fee being charged for the service. The people that use State services should pay their "fair share" in supporting those services. He added that would be a minimal charge.

Vice-Chair Meyer asked if HB 155 was the bill that had been discussed in the Department of Labor Subcommittee and how the proposed fiscal costs had been determined. Commissioner O'Claray responded the fiscal note was new. The original bill moved the recording requirement to the contracting agency, therefore, eliminating a clerk position in the Department of Labor & Workforce Development. Under the

proposed fiscal note there is a requirement for an accounting tech employee to keep track of all the information.

Vice-Chair Meyer pointed out the \$14 thousand dollars fiscal note difference. Commissioner O'Claray acknowledged that was correct.

JOHN WHEATLEY, (TESTIFIED VIA TELECONFERENCE), SENIOR VICE PRESIDENT, BRADY COMPANY, INSURANCE BROKERAGE FIRM, ANCHORAGE, voiced concern about the bill. He noted that that final payment would not be released until the Department of Labor & Workforce Development verifies that all the contractors on the project indicate that they paid prevailing wage. The concern rests with the fact that the contractor's receipt of final payment could be withheld. He asked what would happen if the Department had a backlog of work and needed to undertake an investigation. The time line could lead to issues of cash flow, which is of concern for many companies. He added that could lead to limitation of bonding credit for the contractors. Mr. Wheatley emphasized that this would be an unfair position to put the contractors in.

TERRY FIKE, (TESTIFIED VIA TELECONFERENCE), PRESIDENT, ALCAN GENERAL CONTRACTORS, ANCHORAGE, voiced strong disagreement with the bill particularly in Section 2©, the withholding of the final payment on a public construction contract. Mr. Fike claimed that it is not appropriate to have the general contractor sign an affidavit that they will pay Davis-Bacon wages when they already agreed to that when the contract was originally signed. In current law, the contractor is required through public contract, to submit a weekly-certified payroll. The general contractor has no way to enforce that requirement. There are no rights to go to a subcontractor's office and request to see his books to check if they are paying Davis-Bacon wages. The general contractors do not have the authority to do that and cannot be held liable to sign an affidavit stating that they will do that. Mr. Fike reiterated that there would be no way to enforce that requirement. He inquired the time frame expected final payment would be received.

DICK CATTANACH, (TESTIFIED VIA TELECONFERENCE), EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS, ANCHORAGE, pointed out areas of concern with the legislation.

- Section 1 - The report should be filed every second week. He noted that in the House Labor and Commerce Committee, he had suggested that it be filed consistently every two weeks, either on the 1<sup>st</sup> and 3<sup>rd</sup> or on the 2<sup>nd</sup> and 4<sup>th</sup> week and be consistent for everyone.

- Section 2 © - Regarding withholding the final payment against the contractor for acts of some sub contractor that he has no control over. The contractor has no legal authority over that person and there is no way that the contractor could place pressure on that person to sign the affidavit. That requirement would penalize the contractor who abides by the law for another persons action.
- Section 4 - Applies to on-going projects. The contractor is responsible for getting the affidavit and complying with Section 2© again.

Mr. Cattanach summarized that if the bill moves from Committee, there is no question that the cost of public construction will increase statewide. The bill extracts money from the construction budget to the operating budget. The bill would take the payments from the complying contractors and delay them indefinitely until they meet the conditions of 2©. Non-complying contractors would not be penalized for their actions. Paper work associated with the bill will skyrocket and will seriously drive up the construction costs in the State of Alaska.

Representative Croft referenced Section 2© and asked what language could help. Mr. Cattanach explained that if the general contractor did not originally file the requested affidavit, then the penalty would make sense. He, however, questioned if payment should be held up for everyone involved.

VINCE BELTRAMI, (TESTIFIED VIA TELECONFERENCE), PRESIDENT, ANCHORAGE BUILDING AND CONSTRUCTION AND TRADES COUNCIL, ANCHORAGE, noted that they oppose the bill. The Governor's letter attached to the introduction of the bill stated that there would be \$1.15 million general fund dollars revenue generated. Mr. Beltrami pointed out the cuts laid out for the Title 36 program. He believed that there would be a greater burden on the Department in keeping track of the affidavits and bookwork. He understood that the Department would loose the one and only wage and hour technician that the State currently has. Contractors would be waiting on the release of funds and waiting for the Department to sign off on those funds with less staff.

Mr. Beltrami requested that the House Finance Committee grant program receipt authority to the Title 36 program to capture a portion of the \$1.15 million dollars. He recommended that action could help save the much needed position in the Title 36 program and perhaps help to fund an additional position to help with the increased responsibilities so that the contractors would not be left waiting for that final payment.

NANCY PETERSON, (TESTIFIED VIA TELECONFERENCE), CITY OF VALDEZ, reiterated previous testimony concern with Section 2©. She commented that the held release of the funds causes a burden to that City. If the building is done in a reasonable time frame, then recommendations should be built in.

PHIL ANDERSON, (TESTIFIED VIA TELECONFERENCE), PRESIDENT, AGC LANDSCAPING, FAIRBANKS, spoke in strong opposition to the proposed legislation. He maintained that the legislation would place the contractor in a "working for the Department of Labor & Workforce Development" position and that he would have to collect his money from another State agency. Mr. Anderson claimed that the funds that the Department expects to receive would end up costing the State more on the other end. To hold up final payment, the State would be obligated to pay interest. The Department would be penalizing not just the Department of Labor & Workforce Development and other state agencies through interest and user fees but the construction companies would pass them on.

SARAH LEFEBVRE, (TESTIFIED VIA TELECONFERENCE), VICE PRESIDENT, EXCLUSIVE LANDSCAPING AND PAVING, FAIRBANKS, testified in opposition to the legislation. She commented that if the purpose of the bill is to generate revenue to the State then the legislation should be streamlined to focus on revenue and eliminate the portion of the bill that cause the problems. Section 2, Lines 4 - 22 is problematic. She asserted that the affidavit process was unnecessary. Ms. Lefebvre maintained that fees would be paid up front.

Representative Croft asked if penalties against the general and subcontractors should be divided. Mr. Cattnach agreed that would be more appropriate but cautioned that the contractor could still be placed in a "contractual loggerhead" with the subcontractor.

Representative Stoltze disapproved of the position paper submitted by the Department of Labor. He noted that it had not been dated and was not written on letterhead. He asked that future correspondence from the Department be appropriately submitted.

HB 155 was heard and HELD in Committee for further consideration.

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#### ADJOURNMENT

The meeting was adjourned at 3:01 P.M.