

HOUSE FINANCE COMMITTEE
April 16, 2003
1:46 PM

TAPE HFC 03 - 59, Side A
TAPE HFC 03 - 59, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:46 PM.

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 Carl Moses
Representative Bill Stoltze
Representative Jim Whitaker

MEMBERS ABSENT

Representative Reggie Joule

ALSO PRESENT

Representative Berkowitz; Tom Wright, Staff, Representative John Harris; Leitoni Tupou, Special Assistant, Department of Corrections; Larry Jones, Executive Director, Parole Board, Department of Corrections; Johanna Bales, Tax Auditor, Department of Revenue; Mike Barnhill, Assistant Attorney General, Department of Law.

PRESENT VIA TELECONFERENCE

John Robertson, Medical Director, Department of Corrections.

SUMMARY

HB 224 "An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales; and providing for an effective date."

HB 224 was REPORTED out of Committee with a "do pass" recommendation and two previously published zero fiscal notes, #1 from the Department of Law and #2 from the Department of Revenue.

HB 229 "An Act relating to special medical parole and to prisoners who are severely medically and cognitively disabled."

CSHB 229 (FIN) was HEARD and HELD for further consideration.

#hb224

HOUSE BILL NO. 224

"An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales; and providing for an effective date."

MIKE BARNHILL, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, testified in support of the bill and provided information about the legislation. He referred to the Master Settlement Agreement, initiated in Alaska and 45 other states as a result of the 1998 settlement of tobacco company litigation. The Master Settlement Agreement established a stream of revenue that lasts in perpetuity. He noted that Alaska's most recent annual payment was for \$17.5 million.

Mr. Barnhill stated that the revenue stream could however be reduced under certain circumstances. He noted that one circumstance was known as a non-participating manufacturer (NPM) adjustment. He explained that states could avoid an NPM adjustment in two ways: first, by enacting an NPM statute, and second, by diligently enforcing the statute. He referenced Alaska's NPM statute, located in AS 45.53. He explained that the statute creates economic equanimity under the Settlement Agreement between participating and non-participating manufacturers. He pointed out that participating manufacturers fund the Settlement Agreement revenue stream by raising the prices of cigarettes. He stated that the NPM statute requires non-participating manufacturers to deposit money into an escrow account based on cigarette sales in the state. He noted that in FY 01 and 02, the amount deposited equaled 1.5 cents per sale.

Mr. Barnhill also addressed the enforcement of the statute. He noted that the Department of Revenue sends letters to non-participating manufacturers advising them of their legal obligations. If compliance does not occur after several letters, the manufacturers are referred to the Department of Law, and a lawsuit may be filed if the sales are significant. He pointed out the case of a company in India that did not comply, resulting in a lawsuit filed by the state of Alaska. He discussed the difficulties of filing an international lawsuit, and noted that in 2001 Alaska, along

with the state of Maine, passed complimentary legislation designed to enhance the states' ability to enforce their escrow laws. He added that in 2002, the National Association of Attorneys General formed a working group to design model statutes and encourage uniformity between states. He stated that the proposed legislation, HB 224, resulted from this working group.

Mr. Barnhill explained that the statute establishes a list, developed by the Department of Revenue, of the manufacturers and brands of cigarettes allowed for sale in the state of Alaska. He noted that to be on the list, a manufacturer must do one of two things: either certify annually that they are a participating manufacturer under the Settlement Agreement, or a non-participating manufacturer in compliance with state law. A distributor may refer to the list and determine which brands they may sell. He noted that the legislation also provides for provision of information by manufacturers in order to monitor compliance. It also provides penalties for non-compliance, and addresses special conditions for foreign manufacturer enforcement. He added that the bill provides a tax credit for distributors who purchase a brand of cigarettes that are later taken off the list for non-compliance.

Representative Stoltze asked for information about statutes exempting tribal entities from paying taxes on cigarette sales. Mr. Barnhill referred to national research investigating Internet sites selling tax-free cigarettes. Representative Stoltze referred to the sale of tax-free tobacco on reservations.

JOHANNA D. BALES, TAX AUDITOR, DEPARTMENT OF REVENUE noted that she coordinates the cigarette and tobacco products excise tax program. She referred to the passage of the Native Claims Settlement Act in 1977, and its establishment of corporation status for every tribe in the state of Alaska. She noted that the only tribe with a reservation status was the Metlakatla Indian Community, making them the only native tribe in the state that can purchase cigarettes without paying tax. She noted that the Department of Revenue had negotiated with the tribe and reached an agreement, whereby the tribe will collect and pay state taxes if their purchase of tobacco products exceeds a certain amount. She added that the Klawock Indian Community maintained 2.5 acres of Indian Country Land, which includes a smoke shop where they can sell cigarettes without paying tax. She concluded that Alaska differed from others states in this issue, and did not experience the same difficulties.

In response to a question by Representative Meyer, Mr. Barnhill clarified that the zero impact fiscal notes were a result of existing complimentary legislation. He added that

the proposed legislation simply updates current procedures and makes enforcement easier.

Vice-Chair Meyer asked if there was legislation considering placing a stamp on cigarettes to indicate its place of purchase. Mr. Barnhill noted that SB 168-CIGARETTE SALE/DISTRIBUTION ["An Act relating to . . . payment of cigarette taxes through the use of cigarette tax stamps; . . ."] did propose this action.

Representative Foster MOVED to report HB 224 out of Committee with individual recommendations and accompanying fiscal notes. There being NO OBJECTION it was so ordered.

HB 224 was REPORTED out of Committee with a "do pass" recommendation and two previously published zero fiscal notes, #1 from the Department of Law and #2 from the Department of Revenue.

#hb229

HOUSE BILL NO. 229

"An Act relating to special medical parole and to prisoners who are severely medically and cognitively disabled."

Representative Harris stated that the legislation was a House Finance Committee bill, sponsored by his office. He noted that the legislation related to medical leave for disabled inmates.

TOM WRIGHT, STAFF, REPRESENTATIVE JOHN HARRIS, SPONSOR provided information about the bill. He explained that the bill gave the Board of Parole the ability to grant releases to prisoners in need of extreme medical services. He noted that the likelihood of re-offending by this population was quite low, since these inmates were infirmed and in need of extensive medical assistance. He also noted that released prisoners then became eligible for medical benefits such as Medicaid and Veteran's benefits not available to them while interned. He added that the price of providing health services to inmates was substantially higher than the cost of services available in other states or public facilities.

Mr. Wright referred to the fiscal notes: one from the Department of Corrections, reflecting a savings of \$500 thousand; one from the Division of Public Assistance [DHSS] totaling a cost of \$39.1 thousand [for FY 04]; and one from the Division of Medical Assistance [DHSS] totaling a cost of \$344.4 thousand, \$137.8 thousand of which is a General Fund match.

LARRY JONES, EXECUTIVE DIRECTOR, PAROLE BOARD, DEPARTMENT OF CORRECTIONS testified in support of the legislation. He

identified the current statute as the primary mechanism through which consideration was given to these disabled inmates. He stated that the Board had been frustrated in its efforts to consider such prisoners for parole, and noted that since 1996 only 14 inmates had been eligible for consideration for release.

Mr. Jones observed that the proposed legislation opened certain statutory definitions, allowing more prisoners to receive review before the Parole Board. He maintained that the public safety factor was very minimal, since these inmates were at the end stages of their lives. He pointed out that such disabled inmates often died soon after their release. He contended that out of the hundreds of discretionary paroles granted by the Board each year, these persons released for medical reasons were highly unlikely to recidivate. He stated that the Board had recently promulgated its regulations assuring notification of victims in the cases of these releases. He also discussed the hardship experienced by families of terminally ill inmates and pointed out the benefits to them from the bill. He reiterated the Board of Parole's support of the legislation.

JOHN ROBERTSON, MEDICAL DIRECTOR, DEPARTMENT OF CORRECTIONS, testified via teleconference in support of the legislation. He noted that there was an increasing population of inmates with terminal illness, particularly those over fifty. He cited the poor medical care that inmates may have received prior to internment. He stated that their current population had over 400 prisoners over the age of fifty in need of medical assistance. He pointed out that a number of resources became available to inmates once they were no longer under the Department of Corrections.

Mr. Robertson also noted the great expense to the state of Alaska of providing a correctional officer in the community if an inmate is onsite at a hospital or clinic while still under the full jurisdiction of the corrections system. He estimated an expense of \$36 an hour for such officers. He also noted that an average inmate might cost \$300 thousand annually just for correctional officer expense. He added the example of inmates who had family members in areas of the country with up to 40 percent lower medical costs. He reiterated that the inmates in question generally died within six months of their discharge. He noted that these inmates were not in a physical condition where they might re-offend, requiring assistance simply for daily living activities. He pointed out that inmates would have a detailed discharge plan, outlining their place and type of care and follow-up by parole officers.

Vice-Chair Meyer observed that the bill would also potentially pertain to violent offenders. He raised concern for the victims' participation in the parole process. Mr.

Barnhill clarified that victims could actually attend parole hearings in the case of special medical parole. He noted that the bill pertained to all prisoners under the jurisdiction of the state of Alaska, even those in facilities located in Arizona.

LEITONI TUPOU, SPECIAL ASSISTANT, DEPARTMENT OF CORRECTIONS, in response to a question by Vice-Chair Meyer, confirmed that the fiscal note reflected the cost of transporting prisoners back to the state of Alaska from the Arizona facility.

Vice-Chair Meyer referred to the fiscal notes and compared the \$500 decrement in the Governor's budget to the \$403 thousand General Fund match listed in the fiscal note [Medical Assistance/DHSS] for FY 08, and the ongoing \$78 thousand General Fund match. He observed that by the year 2007 and 2008, the bill ceased to generate a savings. Mr. Wright responded that the fiscal note was based on the assumption that inmates receiving medical parole who were then eligible for Medicaid would receive that service. He pointed out that prisoners might participate in other health benefits, such as native health organization benefits, or family provided health benefits. He noted discussions with the Department of Health and Social Services regarding the assumption that prisoners eligible for Medicaid services would participate in that program.

Mr. Robertson added that the average prognosis of these inmates was three to six months. He maintained that the fiscal assumptions were based on longevity of several years. He indicated that fewer inmates would become eligible for Medicaid based on their prognoses. He also speculated that the medical cost index savings would exceed \$500 thousand annually. He pointed out that the medical cost index was predicted to increase in the coming year by ten percent.

Mr. Jones confirmed that the average life expectancy for these inmates historically did not exceed six months, more likely less than three months.

Vice-Chair Meyer raised concern for the strong feelings of victims of violent crimes, particularly in cases of sexual assault, about the fate of their assailants. Mr. Jones acknowledged that these victims' rights were highly valued by the Board of Parole. He also noted that many of the inmates had not committed violent crimes. He pointed out that many of them were older patients, and many were not ambulatory, reducing the concern over re-offence.

In response to a question by Vice-Chair Meyer, Mr. Jones noted that the average birth years for these prisoners were between 1940 and 1950.

Representative Stoltze noted Section 2, line 17, and referred to language making information about the prisoner's employment and residence addresses unavailable to victims. Mr. Jones noted that this resulted from statutory cautions surrounding discretionary paroles.

Representative Stoltze proposed that the language be changed from "may not" include to read, "shall" include. He maintained that victims had the right to know such information about the released inmates.

Representative Hawker noted the absence of information from victims' rights advocacy groups expressing their position on the legislation. Mr. Jones noted that one individual from a victims' rights organization in Anchorage had testified via teleconference at the [House] State Affairs Committee hearing. He observed that their testimony was not entirely negative, and recognized the Board of Parole's strong advocacy for victims' rights.

Representative Hawker observed that the treatment programs for these inmates were extremely expensive, with an aggregate cost to the State of \$1.1 million per year. He suggested that communities and other services might not support these same costs. He pointed out that Medicaid might be expected to support them, in addition to public assistance for living costs. He asked how those costs that exceeded such benefits might be financed.

Mr. Robertson referred to instances when inmates traveled to family members in another state and the bulk of the cost for their care had been borne by the family. He also noted that some inmates might choose home or end of life care, as opposed to intensive care. He speculated that inmates often opted for intensive care while incarcerated for fear of dying within the correction system. He discussed the effect of the 8th Amendment rights of inmates in determining the standard of medical care. He added that the difficulty was in determining the extent of care needed after the inmates were released. He noted that the state of Alaska paid a higher rate of reimbursement than Medicaid, which was not available to inmates while in the Department of Corrections. He reiterated that the cost of correction officers represented a substantial savings not included in the fiscal notes.

Representative Hawker questioned whether the fiscal note from the [Department of Health and Social Services] was incorrect if it did not include the figures pertaining to correction officers. He suggested that the fiscal notes were not adequately accurate or thorough.

JERRY BURNETT, DIRECTOR, ADMINISTRATIVE SERVICES, DEPARTMENT OF CORRECTIONS conceded that the zero savings in future

years was an estimate, since they could not accurately predict how many inmates might be released from year to year. He suggested that the fiscal note might be indeterminate rather than zero.

Representative Hawker maintained that, given the undetermined amounts in the fiscal note, the bill might actually represent an aggregate cost to the state of Alaska rather than a savings.

Co-Chair Harris stated that the fiscal note reflected a projected savings to the Department of \$500 thousand based upon the release of the current number of potentially eligible inmates. He maintained that the question was which agencies would then assume the costs and services for the released inmates. He speculated that some inmates might not present any cost to the state, if families assumed the cost of their care. He suggested that the Department of Corrections could have estimated the future costs, as did the Department of Health and Social Services. He acknowledged that the focus would be on FY 04, since one could not accurately predict potential savings or costs in future years without knowing the number of paroled inmates.

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Mr. Burnett suggested that if his Department projected savings in future years, and budgeted based on those savings, and if medical costs were to increase, this would cause a budgetary problem. He explained that this was the reason for not including projected savings in the fiscal note.

Co-Chair Harris observed that the projected future costs did seem to offset potential savings. He pointed out, however, that the bill effectively gave the Parole Board the ability to grant medical leave to a prisoner that they determined presents no hazard to the public, due to their extreme disability. He maintained that this presented a lesser difficulty and lesser cost than providing care to these inmates within the correctional system.

Representative Croft suggested that since the only justification for the possible risk associated with the legislation was cost savings, it behooved the Committee to review accurate fiscal notes. He proposed that, even though these were cost estimates, the Department of Corrections and the Department of Health and Social Services communicate with one another and use similar bases for their projections.

Co-Chair Harris asked if the Department of Corrections could estimate costs similarly to the Department of Health and Social Services. Mr. Burnett speculated that these

calculations would be based upon FY 04 assumptions, projected out using the medical rate of inflation. He stated that the Department could provide such a fiscal note.

Co-Chair Harris estimated that the first year of savings would total approximately \$330 thousand of general funds. Mr. Burnett confirmed that the amount would then increase by ten percent per year. He agreed to produce such a fiscal note.

Representative Hawker referred to a savings in the first year of roughly \$500 thousand, based on 13 inmates identified as potential medical parolees. He asked whether this number of potential parolees regenerated from year to year. Mr. Tupou reiterated that, over the past seven years, the Board reviewed only 14 inmates for medical parole. He explained that current law effectively forced inmates to wait until nearly the point of death before coming before the Board. He noted that the proposed legislation gave the Board more flexibility in when they could review applications for medical parole.

Mr. Robertson maintained that the issue was not about the number of potential parolees, but rather about the types of illnesses that require expensive treatment. He expressed confidence in the potential savings of \$500 thousand. He suggested that with the increasing prison population, there was not a question of whether savings would be realized each year, but that the amount of savings would depend on the illnesses and cost of care and not the number of inmates.

Representative Croft MOVED Amendment #1:

Page 2, line 14, after "because of the prisoner's":
INSERT "severe"

Page 2, line 21, after "suffering from the":
INSERT "severe"

Page 2, line 24, after "suffering from the":
INSERT "severe"

Page 3, line 3 after "likely to remain subject to the":
INSERT "severe"

Page 3, line 25, after "subject to the":
INSERT "severe"

Co-Chair Harris OBJECTED.

Representative Croft pointed out that there was inconsistency in referring to the level of disability. Co-Chair Harris REMOVED his OBJECTION.

There being NO OBJECTION the amendment was ADOPTED.

Representative Croft MOVED Amendment #2.

Page 2, DELETE line 11.

Page 3, line 21:

DELETE: "reduces"

INSERT: "eliminates"

Co-Chair Harris OBJECTED.

Representative Croft noted his discomfort with the level of risk associated with repeat offenses. He asked for more information from the Department regarding this concern.

Mr. Jones contended that the weight of the decision, although subjective, was placed on the board. He explained that the board's standard was "reduces" since "eliminates" constituted death of the inmate.

Representative Croft referred to Section 1, stating "the prisoner is incapacitated to an extent that incarceration does not impose additional restrictions . . ." He asked for clarification as to the citation of criteria for the likelihood of reoffense. Mr. Jones cited Section 1, subsection 2, (A) "the prisoner will live and remain at liberty without violating any laws or conditions imposed by the board; and (B) "because of the prisoner's severe medical or cognitive disability, the prisoner will not pose a threat of harm to the public if released on parole;".

Representative Croft noted that this language was prefaced by: "a reasonable probability exists" that the prisoner does not pose a threat of harm.

Mr. Robertson noted that the initial review of these prisoners was first done at the medical level. He noted that they would not recommend prisoners for medical parole who had any reasonable probability for repeat offense. He conceded that these estimates were not infallible. He gave the example of a prisoner who had Lou Gerrig's disease, which prevented them moving from their bed. He maintained that the risk of such an individual re-offending was only one percent, although they were not eligible for medical parole since they did not fit specific criteria. He suggested that in terms of language, it would be difficult to draw the terms at 100 percent certainty.

Representative Croft WITHDREW the amendment. He expressed his view, however, that the bill still contained too vague a definition of allowable potential risk.

Representative Stoltze MOVED Amendment #3.

Page 3, line 17-18

DELETE: "However the copy of the application sent to the victim may not include the prisoner's proposed residence and employment addresses."

REPLACE with: "The copy of the application sent to the victim **shall** include the prisoner's proposed residence and employment addresses."

Mr. Tupou stated that the Department of Corrections had no objection to the language change.

Co-Chair Harris asked why the language of "may not include" was originally included in statute. Mr. Jones speculated that victims' rights rose to the forefront in the late nineties after this statute was written. He stated that the Board had no objection to the language change.

Vice-Chair Meyer observed that if the inmate released was a sex offender, their address would be made public in any case. He stated his support of the amendment.

Co-Chair Williams WITHDREW his objection.

There being NO OBJECTION the amendment was ADOPTED.

CSHB 229 (FIN) was HEARD and HELD for further consideration.

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ADJOURNMENT

The meeting was adjourned at 2:57 PM