

HOUSE FINANCE COMMITTEE
May 05, 2003
9:16 A.M.

TAPE HFC 03 - 76, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 9:16 A.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 Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Bill Stoltze
Representative Jim Whitaker

MEMBERS ABSENT

Representative Richard Foster

ALSO PRESENT

Representative Harry Crawford; Randy Ruaro, Staff,
Representative Bill Williams; Josh Applebee, Staff,
Representative Tom Anderson; Greg O'Claray, Commissioner,
Department of Labor and Workforce Development; Gray
Mitchell, Director, Division of Labor Standards and Safety,
Department of Labor and Workforce Development

PRESENT VIA TELECONFERENCE

None

SUMMARY

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.

CS HB 155 (FIN) was reported out of Committee with "individual recommendations" and with a new fiscal note by the Department of Labor and Work Force Development.

HB 216 An Act relating to municipal taxation of refined fuel products.

HB 216 was HEARD and HELD in Committee for further consideration.

#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.

Co-Chair Harris MOVED to ADOPT work draft #23-GH1119\S, Craver, 5/1/03, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

GREG O'CLARAY, COMMISSIONER, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, provided an overview of the differences between the bills. He pointed out that the only change had been made to Page 2, Line 26, and that section was deleted. It addressed "lease hold improvements" and was controversial.

GRAY MITCHELL, DIRECTOR, DIVISION OF LABOR STANDARDS AND SAFETY, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, offered to answer questions regarding the fiscal note.

Co-Chair Harris noted that the bill would raise revenue for the State, however, he asked if it would be costing the State more money for those contracts.

Commissioner O'Claray replied that was correct. There would be a small increase in costs to cover those contract costs. Prior to the bill, the State was "eating" that cost through the general fund budget. He thought that it amounted to about 1% of the contract price. It will be a "pure revenue generator" and in the Murkowski Administration terminology, it acts as a "user fee". Prior to this time, the Department had not been charging contractors for investigation and compliance of the certified payroll for the minimum wage rate. The legislation has those that use the service pay for the services.

Co-Chair Harris pointed out that the bill places a user fee on contractors. He questioned if any of those funds would be available for further training and/or retraining displaced workers. Commissioner O'Claray replied there was no money allocated for that concern. The Administration is not "warm and fuzzy" about program receipt authority. He referenced other special funds such as the Worker's Comp Safety Fund.

Representative Croft asked which fiscal note would accompany the bill.

Commissioner O'Claray responded that the correct fiscal note indicates a \$2.5 million dollar change in revenue with a total general fund source of \$53.9 dollars for reclassification of a position within that Department, who will receive the on-line and hard copy certified payroll. He added that the position would be changed to an accounting-tech position.

Representative Whitaker referenced the fiscal note in the amount of \$2.5 million general fund dollars generated per year. He asked if that fee would be paid by contractors or through the State contracts. He accessed that through the preparation of the bids, each contractor would include that cost and would be essentially charging the State more money.

Commissioner O'Claray advised that the money would come from a larger "pot". There is a cap on each of the fees with no more than \$5,000 per public contract. Representative Whitaker inquired if the federal dollar amount would be reduced for the charges. He requested further explanation.

Commissioner O'Claray addressed the "relativity" of that amount. He used the example of building a road, a project in the amount of a \$20 million dollars, and then adding the \$5,000 fee to that job. Prior to the proposed legislation, the Legislature was funding positions, which were being used to investigate and enforce Title 36 laws. That money was coming directly from the general fund. Through the legislation, those funds would come from federal construction dollars.

Co-Chair Harris inquired what the \$2.5 million dollars was intended to be used for. Commissioner O'Claray explained that it was his plan to replace the entire general fund budget for the Division of Labor Standards and Safety and that amount would adequately cover those costs. However, the Governor has submitted several user fees and position revenue generating legislation and that HB 155 was included in those pieces.

Representative Croft MOVED to ADOPT Amendment #1, #23-GH1119\S.1, Craver, 5/5/03. (Copy on File).

Co-Chair Williams OBJECTED.

Representative Croft acknowledged that there had been "good work done" dividing up responsibilities of the general contractors and the sub contractors. The way current language reads, the Department could withhold an amount sufficient to pay what needs to compensate for enforcement. If a one-sub contractor was underpaying their worker, the

difference would be the "hammer that you have", in opposition stating that they had not properly filed or paid. Then the entire payment could be withheld until that was remedied. Representative Croft stated that the entire payment should be subject but rather that he would like to see them have the right to withhold against the prime. Amendment #1 addresses that concern.

Commissioner O'Claray responded that the Department had dealt with the Associated General Contractors (AGC) regarding the compromise. He indicated that the Department would be more comfortable leaving the language as is. He acknowledged that an "aggressive approach to control would happen" with some of the changes proposed.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Joule, Moses
OPPOSED: Stoltze, Whitaker, Chenault, Hawker, Meyer,
Williams, Harris

Representative Foster was not present for the vote.

The MOTION FAILED (3-7).

Representative Croft MOVED to ADOPT Amendment #2. (Copy on File).

Co-Chair Williams OBJECTED.

Representative Croft explained that the amendment would delete the definition of contractor, as there currently is an adequate definition in statute. Additionally, it would give the Commissioner of the Department of Labor & Workforce Development the authority to receive the money as program receipts for running that Department. Representative Croft acknowledged that the Administration does not like the idea of program receipts, noting that he had spoken to the Cheryl Frasca, Office of Management and Budget, regarding a reform of that idea. He added that those fees are as good as "any other" to have as program receipts.

Commissioner O'Claray reiterated that under the direction of the Office of Management and Budget and the Governor's Office, he would not support the amendment.

Representative Croft reiterated that the fee was appropriate.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Joule, Moses, Harris
OPPOSED: Whitaker, Chenault, Hawker, Meyer, Stoltze,
Williams

Representative Foster was not present for the vote.

The MOTION FAILED (4-6).

Representative Whitaker referenced Page 2, Section 2, asking how many primary contracts there had been per year, which would apply to that section. Commissioner O'Claray responded around 1,000 contracts.

Representative Whitaker commented that if there were that many, how would the fiscal note work. Mr. Mitchell explained that they had provided a five-year average with approximately 1,000 projects per year. The average value of those projects was roughly \$250,000 per project and which is how the \$2.5 million dollar fiscal note came to be.

Co-Chair Harris pointed out that the bill called for a 1% contract price not to exceed \$5,000 dollars. Representative Whitaker replied that he was now comfortable with the number.

Vice-Chair Meyer MOVED to report CS HB 155 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so moved.

CS HB 155 (FIN) was reported out of Committee with "individual recommendations" and with a new fiscal note by the Department of Labor & Workforce Development.

#HB216

HOUSE BILL NO. 216

An Act relating to municipal taxation of refined fuel products.

Co-Chair Harris MOVED to ADOPT work draft #23-LS0822\U, Cook, 5/4/03, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

JOSH APPLEBEE, STAFF, REPRESENTATIVE TOM ANDERSON, accompanied Randy Ruaro to the table.

RANDY RUARO, STAFF, REPRESENTATIVE BILL WILLIAMS, noted that changes had been made to Section 3, which addresses the "scope" of the bill. The previous version was broad and the language needed to be narrowed so that the bill would prohibit tax on both sale transfers of fuel refined within the boundaries of the borough. He stated that the previous version created issues across the State within the municipalities. He claimed that the proposed version was acceptable.

Representative Croft questioned the changes. Mr. Ruaro stated that the entire Section 3 had been rewritten to preclude taxes on wholesale transfer of fuel refined within the boundaries of a borough.

Representative Croft noted that language from the "Q" version would be deleting fuel used in the aircraft and leaving in the wholesale transfer portion. Mr. Ruaro replied that the initial difference was in regard to what the prohibition actually could apply to. In the previous "Q" version, it would apply to any borough around the State, whereas, the current version allows it to be limited to boroughs where the prohibition applies. He added that in the previous version, fewer boroughs could apply. That language is listed on Page 1, Lines 11 & 12.

Co-Chair Harris asked if the bill dealt with an increase to the fuel tax. Mr. Ruaro responded that the bill does not levy a fuel tax.

Representative Joule inquired why would the Legislature want to remove a tool from the municipalities. He thought that section would "hurt" the municipalities. Mr. Ruaro clarified that it had been a policy decision. He noted that Mr. Cook had addressed the idea in a previous committee hearing. Representative Joule understood that the bill's language currently only affects a few areas in the State.

Representative Croft advised that the policy was more logical than that. It currently states that the "only boroughs that can not access the tax, would be the ones that have the refinement in their district". He commented that it would be best to indicate only boroughs that actually refine it, could tax it. By passing the "U" version, Fairbanks could not tax but every other municipality could. Representative Croft warned that there will be problems within the multiple jurisdictions.

Representative Whitaker agreed with Representative Croft's interpretation. In response to Representative Joule's concerns, he admitted that he too had concerns. He believed that it would be challenged and overturned. The conclusion is that the only tax that remains in place would be the ones imposed within the boundaries of the borough. He noted, a broader statewide concern is that by allowing a borough to tax, then the transfer of goods becomes essentially a "restraint of trade". He believed that would create problems for the State. He added that the legislation does have significant merit. Representative Whitaker agreed with the concerns voiced by Representative Croft.

Mr. Ruaro referenced the May 29th, 2002, letter received from attorney, Mr. Avrum Gross, regarding the ability of successive jurisdictions to tax. The version of the bill

does not give authority to the successive jurisdictions to impose a tax. (Letter in Packet). He reiterated that in the proposed bill, that question would be left unanswered.

Representative Croft noted that it would remove the right that municipalities know they have and leave the right that we are not sure they have. He did not understand the "fix".

Co-Chair Williams noted that he would like to hold the bill in Committee until some of the questions have been answered.

Co-Chair Harris noted that the "Q" version deals with turban powered aircraft. He asked why that had not been in the proposed version. Mr. Ruaro replied that section of the "Q" version was part of a tax that would occur outside borough boundaries and have refineries in them. The committee substitute was changed to apply only to boroughs with refineries within their boundaries.

Co-Chair Williams noted that HB 216 would be HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 9:58 A.M.