

HOUSE FINANCE COMMITTEE
May 08, 2003
2:16 P.M.

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CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:16 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Mike Chenault
Representative Richard Foster
Representative Mike Hawker
Representative Carl Moses
Representative Bill Stoltze
Representative Jim Whitaker

MEMBERS ABSENT

Representative Eric Croft
Representative Reggie Joule

ALSO PRESENT

Representative Ethan Berkowitz; Representative Beth Kerttula; Representative John Coghill; Senator Georgianna Lincoln; Representative David Guttenberg; Representative Carl Morgan; Rynniva Moss, Staff, Representative John Coghill; Rex Shattuck, Staff, Representative Nancy Dahlstrom; Tom Wright, Staff, Representative John Harris; Rick Urion, Director Occupational Licensing, Department of Community and Economic Development; Larry Markley, Lobbyist, Alaska Regional Electric Cooperative Association (ARECA), Anchorage; Kate Tesar, Lobbyist, Alaska Yacht Services; Kelly Hepler, Director, Division of Sport Fish, Department of Fish and Game; Randy Ruaro, Staff, Representative Bill Williams

PRESENT VIA TELECONFERENCE

Ron Miller, Executive Director, Alaska Industrial Development and Export Authority, (AIDEA), Anchorage; Eric Yould, Executive Director, Alaska Regional Electric Cooperative Association (ARECA), Anchorage; Gail Voigtlander, Assistant Attorney General, Department of Law, Anchorage; Brad Thompson, Risk Management, Department of

Administration; Joe Hart, General Manager, Chitina Native Corporation, Glennallen; Ken Johns, President, AHTNA Native Corporation, Glennallen; Ruth Ann Warden, Special Project Coordinator, AHTNA Native Corporation, Glennallen; Dean Brown, Deputy State Forester, Division of Forestry, Department of Natural Resources, Nome

SUMMARY

HCR 21 Relating to establishing the Alaska Energy Policy Task Force.

CS HCR 21 (FIN) was reported out of Committee with a "do pass" recommendation and with a new fiscal note by the Legislative Affairs Agency.

HB 210 An Act relating to the Chitina dip net fishery; and providing for an effective date.

CS HB 210 (RES) was reported out of Committee with a "do pass" recommendation and with a new fiscal note by the Department of Fish & Game and zero note #1 by the Department of Natural Resources.

HB 245 An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date.

CS HB 245 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Law, zero note #2 by the Department of Natural Resources and indeterminate fiscal note #3 by the Department of Administration.

HB 251 An Act exempting certain foreign pleasure craft from the mandatory pilot age requirement.

CS HB 251 (FIN) was reported out of Committee with a "no recommendation" and with a new note by the Department of Community & Economic Development.

#HCR21

HOUSE CONCURRENT RESOLUTION NO. 21

Relating to establishing the Alaska Energy Policy Task Force.

Co-Chair Harris MOVED to ADOPT work draft #23-LS1079\D, Lauterbach, 5/8/03, as the version of the legislation before the Committee. There being NO OBJECTION, it was adopted.

Co-Chair Harris explained that the resolution would establish the Alaska Energy Policy Task Force, the first stage for developing a statewide energy plan. Initially, the plan will address Rail belt concerns and the issues in these areas. The plan will also provide the Legislature with a report addressing power cost equalization (PCE) concerns, mining and other general interests. General obligation (GO) bonds will be discussed next year and a framework will be developed.

TOM WRIGHT, STAFF, REPRESENTATIVE JOHN HARRIS, explained the changes made to the committee substitute. The Board's composition resulted from changes adopted in the work draft. Originally, the Chair of the Regulatory Commission of Alaska (RCA) was scheduled to be the Chair of the task force. Following conversations with RCA and the Alaska Industrial Development and Export Authority (AIDEA), concern had been voiced that the RCA Chair could have a conflict of interest, that chair was removed. It has been requested that a member of the Alaska Energy Authority (AEA) be added to that position.

A member was also added, jointly chosen by the Minority leaders of the House & Senate and named by the President, making a nine-member panel with full representation of members chosen by the Governor, the President of the Senate and the Speaker of the House.

Co-Chair Harris referenced the fiscal note, providing for board member travel and per diem.

Representative Stoltze inquired if there would be outside hire. Co-Chair Harris responded that it is intended to hire someone currently working for the Legislature.

Mr. Wright added that the Alaska Energy Authority and AIDEA are willing to work with the task force providing as much expertise as possible. He believed the utilities would also "come on board". Representative Stoltze suggested that at the proposed salary, the position would be someone willing to work "pro bono".

RON MILLER, (TESTIFIED VIA TELECONFERENCE), EXECUTIVE DIRECTOR, ALASKA INDUSTRIAL DEVELOPMENT EXPORT AUTHORITY (AIDEA), ANCHORAGE, interjected that AIDEA intended to help.

LARRY MARKLEY, LOBBYIST, ALASKA REGIONAL ELECTRIC COOPERATIVE ASSOCIATION (ARECA), ANCHORAGE, stated that ARECA had discussed this proposal informally as it had only recently been introduced. ARECA has not yet taken a formal

resolution regarding the concern, however, from conversations, there appears to be support. There have been recommendations made and he preferred that Mr. Yould address those suggestions in more detail.

- ARECA members recommend that the task force members elect the chair.
- ARECA recommends increasing the number of utilities from two to three, two from the Rail belt and one from the rural areas. Presently, one comes from the Rail belt and the other from non-Rail belt areas. He added that because the utilities will be very involved, it would be good to have the extra person representing a Rail belt utility.
- To place someone from the mining industries on the task force.

Co-Chair Harris believed that the President of the Senate or the Speaker of the House would place someone from the mining industry on the board if they thought that person was good. He agreed that the board should choose the Chair and recommended that an amendment be made.

Representative Stoltze questioned the intent of RCA's involvement the RCA. Co-Chair Harris explained that RCA is the critical component because they have previously been involved in these types of cases. They should be "on board". He realized the conflict of interest, and that RCA would only be involved in the decisions and the effort.

ERIC YOULD, (TESTIFIED VIA TELECONFERENCE), EXECUTIVE DIRECTOR, ALASKA REGIONAL ELECTRIC COOPERATIVE ASSOCIATION (ARECA), ANCHORAGE, noted that the members of ARECA believe that the resolution has merit and that they do support HCR 21. ARECA suggests modification to the number of members on the task force. He questioned if RCA should be the chair or even have membership on the commission. He indicated that ARECA supports the task force electing their own chair.

Co-Chair Harris pointed out that the new committee substitute has the membership from the Regulatory Commission removed. At this time, membership consists of:

- One member from AEA
- Commissioner of Revenue
- Two members appointed by the Governor who are not members of the Legislature
- Three members chosen by the President of the Senate who are not members of the Legislature
- One member chosen by the Minority Leaders of the House & Senate

- Two members chosen by the Speaker of the House who are not members of the Legislature

Mr. Yould agreed with those placements. He suggested that because the issue is about the utility industry, there should be three members from the electric utility industry, two of which should come from the Rail belt, primarily because that is where the majority of the power comes from. ARECA recommends consideration that the mining industry be included in membership. He offered to answer questions of the Committee.

Co-Chair Harris noted that the resolution is written to indicate that a utility would not have more than one member on the task force. It states that at least one member would be from a Rail belt utility and one from a non-Rail belt utility. He indicated that he would support that someone from the mining industry is represented, suggesting that to the Senate President and/or the Speaker of the House. Mr. Yould voiced his appreciation and agreed that Commissioner Corbus would be a great addition.

Representative Stoltze asked if there would be support to include a consumer on the board that buys more than \$50 million dollars worth of power. Mr. Yould stated that ARECA would not oppose that. Co-Chair Harris indicated that he did not support the idea, pointing out that person could be chosen. He hoped to keep the board "relatively small" and not too political.

Co-Chair Harris MOVED to AMEND Page 2, Line 18, deleting language, "who shall act as chair of the task force" and inserting on Page 2, Line 27, adding a new subsection #6, "The Chair will be appointed by the Board".

Co-Chair Harris asked if Representative Berkowitz was comfortable with that language.

REPRESENTATIVE ETHAN BERKOWITZ commented that it would be important to have members from the Denali Commission.

Representative Foster MOVED to report CS HCR 21 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HCR 21 (FIN) was reported out of Committee with a "do pass" recommendation and with a new fiscal note by the Legislative Affairs Agency.

#HB210
HOUSE BILL NO. 210

An Act relating to the Chitina dip net fishery; and providing for an effective date.

REPRESENTATIVE JOHN COGHILL advised that HB 210 would eliminate the \$25 dollar fee for a Chitina Dip netting permit. In 2000, the Legislature imposed the increased fee to guarantee access to the fishery by utilizing \$18 dollar per permit to pay AHTNA and Chitina Corporations a trespassing fee for river access across their land.

Legislation promoted by Senator Pete Kelly provided funding to undertake a survey in 2001. There was a specific \$100,000 dollar appropriation for survey and signs. The Department of Transportation & Public Facilities (DOTPF) was able to obtain the person who had done the majority of surveying for native allotments using aerial photography. There is approximately \$54,000 dollars remaining for the brochure design and printing costs. DOTPF indicated that enough remains and would include two information signs placed at the Pavilion and O'Brien.

Representative Coghill pointed out that the results of the survey indicate that the vast majority of access to the river is public land, thus, there should be no reason for people to trespass on private lands to access the Chitina fisheries. One key facet of the legislation is to make sure the public access is adequately marked in order to protect private property owners from trespassing.

Last year Gordy Williams, legislative liaison, testified that the Chitina dip net fishery is the largest in the State and in 2001, the Department of Fish and Game issued over 8,000 household permits. The elimination of the fee is a policy call, stipulating that Chitina is the only fishery in the State that has been singled out to pay a maintenance fee. Representative Coghill maintained that Chitina should be handled in the same manner as all other fisheries.

JOE HART, (TESTIFIED VIA TELECONFERENCE), GENERAL MANAGER, CHITINA NATIVE CORPORATION, GLENNALLEN, submitted comments on the proposed legislation. He emphasized the following points and addressed the impacts that the dip netters have and the pressures placed on private property. He commented that those concerns seem to be overlooked.

- Cutting of trees
- Building of new trails
- Fire rings and fires
- Left behind trash at campsites
- Parking and camping
- Shooting
- Fish remains from cleaning

Mr. Hart listed the pressures on the community and services:

- Dumping of trash prior to leaving Chitina in available dumpsters
- Stress placed on very limited emergency medical services
- Additional and heavy traffic, speeding and damage to roads
- Increased use of laundry facilities and public water wells
- Increased potential for forest fires requiring additional monitoring by Chitina's volunteer fire department
- Increased numbers of visitors for law enforcement to deal with and monitor

Mr. Hart clarified that this is an access issue, regardless of the fisheries classification and that the dip netters will be accessing the Copper River across private property. Comments have indicated that the fee structure should be determined based upon classification. The access is the same regardless of the classification and should not be a factor in establishment of the fee. Access is access, and that is what the fee is used for. The requirement of a sport license should not impact the amount of the fee.

With the landslide south of O'Brien Creek closing the road, the dip netters will be impacting private properties because the right-of-way is closed at the slide. That creates a very unsafe situation similar to what happened on the Denali Highway several years ago. The State of Alaska closed the highway, yet a car was allowed to travel the highway and the passengers got stuck and froze. Such circumstance places the State in a bad legal situation. That ground is unstable and not scheduled to be repaired due to the large costs.

Mr. Hart continued, between 8,000 and 10,000 people descend on the town with a population of 123, some making multiple trips. During the height of the fishery, 2,000 people may be present daily. Proportionately, that would be like 500,000 tourists descending on Juneau. Those people all have trash and sewage, which must be disposed of. Unlike Juneau, Chitina has no local police force for law enforcement or other infrastructure.

Another concern is the misuse of the right-of-way. The State of Alaska would not allow 10,000 people to camp and recreate on the Glenn Highway in Anchorage. People have suggested placing signs and fences. In the past, wooden signs were used for firewood and metal signs for target practice. Fencing of the property is not in the best

interest of the view shed, tourism or the Alaskan landscape. The legal width of the right-of-way is not in agreement. The legal case Chitina Native Corporation had against the State of Alaska in the early 1990's was not pursued aggressively because of a good faith offering by the State of Alaska for the establishment of this fee. Now the State wants to "back out" of the agreed position. He noted that Department of Transportation & Public Facilities' documentation indicates the same right-of-way at the end of the McCarthy road, which is only 200 feet.

Mr. Hart claimed that the State of Alaska has a responsibility to protect the private property located in proximity to the fishery. The issue seems to be focused on one side of that fishery where the right-of-way is located. The fishermen use both sides of the river and do not stay below the ordinary mean high water mark, which has never been established by the State of Alaska or the Bureau of Land Management (BLM) on the Copper River.

There are frequently releases of raw sewage from RV's along the roadways and in the gravel pits. People clean their fish at Suzy Lake and then leave the fish remains behind, creating problem bears for the town. Chitina, a town of only few dozen people, is left with the trash of 8,000 to 10,000 people. The dumpsters and toilet facilities currently available now through the fees are not adequate. The fear is that the dumpsters, toilets, or our lands will become a dumping ground for the public.

Mr. Hart added that the funds for proper enforcement for the fishery are not going to be increased, which means little or no monitoring and enforcement of trespassing laws for the State of Alaska private properties. The best solution for the State of Alaska would be to continue its agreement for incidental use of 75% of private property. The amount of dip netters being represented by the Chitina Dipnet Association is a very small minority consisting of membership of only 500 people. Mr. Hart emphasized that there are 9,000 to 10,000 dip netters who use the fishery each season.

The negative impacts brought by the dip netters to Chitina are growing. The Legislature is considering removing one of the only funding sources for the Village to work with in dealing with the pressures on all of the other properties impacted by not only these users, but also all visitors to the area. Leaving the fee in place would not deny anyone access to the fishery and they would simply be asked by the State of Alaska to assist in paying for the access to do so and clean up the trash and toilets they use.

Before there was an agreement between the State, Chitina and AHTNA, village members patrolled the lands and were met with

angry dip netters who were distraught because they could not access the river. Many dip netters bring weapons with them to Chitina, and when combined with alcohol, it creates an unsafe situation. This could likely lead to a range war situation where representatives may be injured or indeed killed in the process of protecting the lands.

Mr. Hart added that although no one wants to address it, Native lands are not viewed in the same light or treated with the same respect as other private lands. Dip netters would not wander, throw trash in, or relieve themselves in someone's back yard in Kenai with the same abandoned that they do in Chitina.

Mr. Hart recommended that the Committee not pass HB 210 and allow the State of Alaska and the Department of Fish & Game to enter into an agreement with a fee of \$15 per permit for the next year. There needs to be meetings focused on looking at long-term solutions to the issues and concerns raised. Members of departments from the State could be requested to present answers to the many questions, and then the private property owners could bring forward reasons for compensation for the impacts. He stressed that the time is short and that the dip net fishery opens in June and that there is not enough time to deal with all the unresolved issues. For that reason, Chitina requests an extension of the current agreement for another year, during which time all of the issues could be addressed.

RUTH ANN WARDEN, (TESTIFIED VIA TELECONFERENCE), SPECIAL PROJECT COORDINATOR, AHTNA NATIVE CORPORATION, GLENNALLEN, voiced concern with removing the fee. The remedy for mitigating the issues has not been determined. There is a long list of problems and issues as referenced by Mr. Hart. Ms. Warden emphasized that trespassing on the property is a "huge" concern. That is true especially in the areas where the people are recreating, fishing and hunting. The current plan does work. The plan allows Chitina, the Indian corporation and the State of Alaska to work together to address some of these issues. It provides access for those people through the private lands without ramifications.

Ms. Warden stressed that it would not be a good solution to remove the fees and attempt to address all these issues in a short period of time. A year extension would be desirable to work out these concerns.

Co-Chair Williams pointed out that a similar issue exists in Ketchikan. He commented on map distributed by Senator Lincoln, indicating that a snow slide that washed out the road system. Land in Saxman has experienced these same types of problems. Placement of signs did not work so the Native Corporation began working with the public and building up the facilities for the public to use. That is

paying off for his area and asked if that could be done in Chitina, charging and then policing. The State can no longer be collecting fees and policing those areas for the dip net fishery. He inquired if it would be possible to build a road to the waters edge to help control the flow of people.

Mr. Hart responded that they had tried to control the flow using a gated area, which required someone to be on guard 24-hours a day. The public did not like that access and complained to the Department of Transportation & Public Facilities and the Department of Fish and Game. That entire concern was placed into litigation. He reminded members that there are 8,000 to 10,000 dip netters in comparison to the 500 people encouraging passage of the legislation. He surmised that there could be a program built but that it would be impossible to implement that this year.

SENATOR GEORGIANNA LINCOLN highlighted the map distributed to the Committee members.

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Senator Lincoln pointed out the O'Brien Creek area. She noted how each area would be affected by the trespassing, pointing out that the best fishing is at some of the bluffs. Bluffs do not stop fishermen. The trails are narrow and there are private lands intermingled with State lands and that many people come armed, which can lead to dangerous situations. There are no Village Public Safety Officers (VPSO) on duty. Senator Lincoln voiced appreciation that the sponsor had attempted to work out a situation, however, the gates are to be opened on June 9th. There needs to be a way to work with Chitina to accommodate them during this period. There is no way that they can get the fences up this year. She noted that the fishery ends the end of September.

Mr. Hart advised that the majority of the people start showing up around the 4th of July weekend. Senator Lincoln reiterated that this is a volatile situation. She recommended calling the fee a "user fee or costs related to the impacts on the community". She implored the Committee members help to get the village through this season and then they could work something out for next year.

REPRESENTATIVE CARL MORGAN spoke to concerns with the other side of the river and how the private lands are affected. Co-Chair Williams interjected that the only way to manage the problem would be in working with the public to address these problems. He recommended hiring someone to police the areas, pointing out that the bill goes into effect on July

1st. Representative Coghill corrected that the bill has an immediate effective date.

Senator Lincoln reiterated that the areas do not have the time to prepare a plan and that hiring only one person would not be effective. Representative Coghill advised that last year, the opponents had prepared the same argument. He stressed that they currently are charging a trespass fee for public lands. He reiterated that this is not a new discussion. He acknowledged that there are safety hazards associated with the river and that the State knows where the borders of the State lands and private lands are and that the borders are now clearly delineated.

Senator Lincoln acknowledged that the village areas need to work on these concerns. The Department of Fish & Game has admitted that they do not have a resolution with Chitina. She maintained that there is no other place in the State of Alaska where there is such an influx of fishers going through such a narrow area. She foresaw problems if these issues are not equitably resolved.

Co-Chair Harris asked whether the Department of Transportation and Public Facilities still plans to pay the Chitina Native Corporation for any damages done to property as a result of the trespassing even without the fee. Representative Lincoln replied that had not been confirmed in writing. She speculated that the Department would not reopen the slide at Brian Creek, which would make private lands more congested with increased safety concerns.

Co-Chair Harris inquired if there was any other place in the State where a fee was charged for access.

KELLY HEPLER, DIRECTOR, DIVISION OF SPORT FISH, DEPARTMENT OF FISH AND GAME, explained that this is a unique situation.

Co-Chair Harris asked if there was enough opportunity for people to cross on public land to avoid the private lands. Mr. Hepler replied that approximately 60% of the land from Chitina down to the southern access was accessible. One of the primary spots is around Brian Creek. Regarding the right-of-way, many people access the areas with their boats, however, there continues to be a lot of tension. He concurred with the suggestion that the Native corporations create a parking area.

Co-Chair Harris stated that he did not want to see the private property owners have their rights abused. He added that he would like to see money placed in the State's budget to compensate for the concern. He asked about the fiscal note. Mr. Hepler replied that some funds go for publishing the permit and bathroom facility use. In response to a question by Co-Chair Harris, Mr. Hepler explained that \$18 -

\$25 dollars goes to Chitina and the other funds for contractual work.

Co-Chair Harris asked whether the Department of Fish and Game would continue to pay for waste management if the fee was discontinued. Mr. Hepler responded that was a decision for the Department of Administration, noting that he would not like to lose the \$180 thousand dollars from his budget for that purpose. Co-Chair Harris commented that he would look toward the Capital Budget to locate funding for Chitina to help resolve these issues.

Representative Stoltze asked for clarification regarding the charge on the Kenai River. Mr. Hepler explained that would be a charge for parking. Representative Stoltze asked the Department's position on that fee. Mr. Hepler commented that the issue was complex and that the Department has not yet taken a position.

Representative Chenault asked if there were any fees collected or paid in Kenai for dip netting fishing. Mr. Hepler responded that in the past, monies had been spent for trash receptacles. He added that the Department of Transportation and Public Facilities spent time in trash disposal, noting that with the large number of people involved, they were not able to provide the necessary level of service.

Representative Chenault raised the concern that there is an inequity of provided services and that cities incur costs due to the location of those fishing areas, whether in Chitina or in Kenai. He proposed that the cost should be State related rather than a city expense. Representative Chenault cited his experience while representing the Kenai borough area.

Co-Chair Harris asked if the city of Kenai spent money to alleviate a garbage problem that they believed should have been a State responsibility. Representative Chenault acknowledged the problem with the State designating the fishing area and then taking little responsibility for waste management, parking or habitat concerns. He pointed out that a charge for parking had helped offset some costs in his area.

Senator Lincoln thanked the Committee for debating the issue at such length and for giving thought to the people affected by the bill.

Co-Chair Harris MOVED to report CS HB 210 (RES) out of Committee with individual recommendations and with the accompanying fiscal note.

Representative Foster OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Hawker, Stolze, Whitaker, Chenault, Harris,
Williams

OPPOSED: Foster, Meyer, Moses

Representative Croft and Representative Joule were not present for the vote.

The MOTION PASSED (6-3).

CS HB 210 (RES) was reported out of Committee with a "do pass" recommendation and with a new fiscal note by the Department of Fish & Game and a zero note #1 by the Department of Natural Resources.

#HB251

HOUSE BILL NO. 251

An Act exempting certain foreign pleasure craft from the mandatory pilot age requirement.

Co-Chair Harris MOVED to ADOPT work draft version #23-LS0865\X, Utermohle, 5/7/03, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

RANDY RUARO, STAFF, REPRESENTATIVE BILL WILLIAMS, explained the changes made to the committee substitute. Under the bill, foreign flagged vessels would be divided into three classes of foreign flagged recreational vessels. Those under 60' long would not need a marine pilot and vessels over 60' and under 173' would have opportunity to obtain a waiver from the pilotage requirement. That would depend if the requirements determined by the Board of Marine Pilots had been met. Foreign flagged recreational vessels over 173' would continue to need a pilot. The Board of Marine Pilots would establish the standards met.

Co-Chair Harris asked how the 173' number had been determined. Mr. Ruaro replied that number would cover the top end of vessels that have come into the State over the past few years. The marine pilots wanted the number to be as low as possible and that the maximum should have been less.

REPRESENTATIVE BETH KERTTULA referenced a letter in the file from Rear Admiral Underwood referencing gross tonnage. Mr. Ruaro advised that the maritime gross tonnage measurement is a volume measurement and that marine architects are good at getting around gross tonnage requirements.

Representative Kerttula asked if most maritime laws dealt in gross tonnage. Mr. Ruaro acknowledged that this is a different approach; however, the standard regulation lists in gross tonnage.

REX SHATTUCK, STAFF, REPRESENTATIVE NANCY DAHLSTROM, explained that internationally, the standard is read in meters and since Alaska does not use meters, feet have been added.

Representative Stoltze suggested that the marine pilots would know best how to navigate the fragile waters of Southeast. He imagined that there are safety concerns with the legislation.

Mr. Ruaro interjected that in setting the standard, a waiver or exemption applicants would have to meet the Board of Marine Pilots reserve.

Co-Chair Harris agreed that this has been an on-going process and that he would not want to do anything to jeopardize the safety of people on board. The marine pilots are an important service to the operation of marine vessels in Alaska, especially for the larger vessels. He pointed out that the legislation does provide for a size waiver. Competent people will pilot the vessels if the Marine Pilot Board is not satisfied that a ship of a certain size coming into Alaska waters is safely piloted. There will be financial benefit to the State. The State is attempting to reach a compromise with the companies that bring the large yachts to Alaska and these people are not poor.

Mr. Shattuck pointed out the section of the bill that imposes a civil fine for violations in not using a pilot.

KATE TESAR, LOBBYIST, ALASKA YACHT SERVICES & PROVISIONING, voiced her appreciation to the Chairman and his staff in working out a solution. The bill is a good compromise. Under Co-Chair William's direction, there is now a fee structure that will raise approximately \$102 million dollars and that vessels would also a fee for exemptions. She noted the overwhelming coastal support.

Representative Kerttula asked why the change from tonnage to feet. Ms. Tesar explained that there is no correlation between tonnage and footage. Part of the problem is that with yachts, it is difficult to determine how much they weigh. Using footage makes identification easier. Representative Kerttula asked if most pleasure craft would be less than 300 gross tons. Ms. Tesar did not know. They are built to varying specifications and that there is "no rule of thumb".

Vice-Chair Meyer asked how the waiver would work. Ms. Tesar replied that the Department would have 30 days to receive back a response.

Representative Kerttula asked if there had been input received from the marine pilots. Ms. Tesar was not comfortable responding to that question.

RICK URION, DIRECTOR, OCCUPATIONAL LICENSING, DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, spoke to the problems with the proposed legislation. There are a couple of "hoops" that will be difficult for the Department to "jump through". The first concern is in regard to the listed length listed of 173'. He stated that number had been determined as a compromise that satisfied someone's personal concern and stressed that was not a good way to address public policy. The number should be based on real facts.

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Mr. Urion added that the Board should have the power in making decisions regarding establishment of the criteria. The Board can respond and make those decisions. He requested that the Department be given that authority.

Co-Chair Williams replied that there had been pilots involved in making these decisions. He asked if the Department had provided previous input on the consideration. Mr. Urion acknowledged that he had known about the bill since inception but had not participated in the meetings. Co-Chair Williams reiterated that the Department had not participated.

Co-Chair Williams asked what Mr. Urion wanted the Committee to do. Mr. Urion advised that he wants to make it easier for people to get licenses. Co-Chair Williams reiterated that the concern has been before the Committee since the beginning of the year. Co-Chair Harris interjected that the process has a way to go and that Mr. Urion would be able to place further departmental input down the road.

Co-Chair Harris MOVED to report CS HB 251 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 251 (FIN) was reported out of Committee with a "no recommendation" and with a new note by the Department of Community & Economic Development.

#HB245

HOUSE BILL NO. 245

An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date.

GAIL VOIGTLANDER, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, introduced CS HB 245 (JUD). The legislation will provide protection from tort lawsuits in four areas of governmental activity. The first is in the area of search and rescue:

- Immunity from tort lawsuits for State and local government and their employees. She noted that there are approximately 400 search and rescues conducted each year in Alaska.
- The Alaska State Troopers coordinate search and rescue activities using State and community resources.
- That provision is addressed in Section 2 of the bill.

The second area of governmental activity is in intra-military Tort Claims:

- Bars tort actions for damages against the State and its employees by service members – there is no change to the entitlement to State workers compensation when on State duty and federal benefits when on federal duty.
- Provides the State and its military personnel the same protection from tort lawsuits that the federal government and federal military personnel have under the Feres Doctrine and is consistent with the vast majority of states. The provisions are found in Sections 4 - 6 of the bill.
- Acts of the organized militia unless the acts were in the line of duty while on active State service under AS 26.05.070. That provision is found in Section 3 of the bill.

Both of those provisions recognize that the federal government and not the State of Alaska, is responsible for injuries and claims while service members are under federal command and control.

The third area of governmental activity would be the protection in Civil Defense:

- Bars tort claims against the government, employees and authorized volunteers for damages sustained by a civilian defense worker, and do not affect the worker's or authorized volunteer's rights to State workers compensation.
- Bars third party tort claims against the government, employees, and authorized volunteers for damages unless malice or reckless indifference is shown by clear and convincing evidence.
- These provisions are found in Sections 7 - 10 of the bill.

The final area of protection is the Fire Management and Fire Fighting Activities:

- Amends two statutory sections to bar tort claims by third parties against the State, local government, other firefighting groups and their employees.
- Every year the State Division of Forestry is called upon to respond to hundreds of fires throughout the State of Alaska. The change is necessary due to two Alaska Supreme Court cases holding that the State may be sued for firefighting activities.
- Litigation disrupts Forestry's day-to-day operations and diverts substantial State resources to defend lawsuits. That provision is consistent with federal and common law practices in other jurisdictions that immunize those activities. The provision does not affect existing entitlement to workers compensation or the availability of federal or state disaster relief benefits.

Representative Kerttula asked what the military would be able to sue for and what could the volunteers sue for.

Ms. Voigtlander explained that military would not be able to sue under the tort case. They would be able to receive worker's compensation either through the State or through the federal government. The legislation avoids someone under federal orders and would be interpreted that military members could not sue the State for injuries to themselves.

Ms. Voigtlander addressed the types of claims that volunteers could have. Representative Kerttula referenced Page 4, Lines 3-13, the defense activity. Ms. Voigtlander advised that was the civil defense portion of the bill. A civil defense worker would be covered by worker's compensation if they were an employee. Above and beyond that, there is a pre-existing statute that provides worker's compensation benefits to authorized volunteers if they are

not otherwise on some worker's compensation role. The legislation bars a tort lawsuit by a volunteer civil defense worker and it would not affect any person's entitlement to worker's compensation.

Representative Kerttula questioned the exception of "malice and reckless indifference" would allow. Ms. Voigtlander responded that would allow a lawsuit against the government or a government employee arising out of civil defense activities. Representative Kerttula commented that would be the plaintiff suing the government not the volunteer suing back. Ms. Voigtlander said that was correct.

Representative Kerttula asked if there was any avenue left for a volunteer in any type of tort against the government. Ms. Voigtlander replied that the only area left for tort lawsuits would be if a third party was injured because of an act of the organized militia and that militia was serving on State orders. Then that claim would be allowed, as opposed to the person acting under federal orders. Regarding civil defense, the only area would be a third party liability. If that exception was shown for fire fighting and fire management activities, the legislation would bar all claims and there would be no exception.

Co-Chair Harris referenced a National Guard case, which sued the State for a plane that crashed. Ms. Voigtlander advised that case involved a federal plane piloted by a federal pilot and that there was a lawsuit filed against the State.

Representative Stoltze referenced Page 5, Lines 3 & 4, language regarding vaccinations. Ms. Voigtlander noted that vaccinations are voluntary. For those that volunteer for the vaccinations as part of their job, they would be covered through worker's compensation. There is medication to cover those that develop a bad reaction to a vaccination. Ms. Voigtlander reiterated that all vaccinations have been on a voluntary basis. Representative Stoltze inquired if they had been involuntary in the past. Ms. Voigtlander did not know.

Representative Stoltze inquired if there would be an objection to adding an amendment to reference voluntary vaccinations.

Co-Chair Williams pointed out that language currently exists in federal law. In response to Representative Stoltze, Ms. Voigtlander admitted that she did not know that much about the State's Public Health Program and crisis scenarios. Representative Stoltze stated that he would pursue this concern at a later date.

Representative Foster stated that it was not an option to get the shots when he was in the military. Co-Chair Harris agreed that the shots are not voluntary.

DEAN BROWN, (TESTIFIED VIA TELECONFERENCE), DEPUTY STATE FORESTER, DIVISION OF FORESTRY, DEPARTMENT OF NATURAL RESOURCES, NOME, voiced how important the legislation is to the fire-fighting in the State. The Division of Forestry has the responsibility for all fire fighting in Alaska. Ms. Brown pointed out that they fight between 500-700 fires each year and that nearly 86% of those fires are human caused. Ms. Brown emphasized the importance of safety concerns and indicated that the bill not only addresses liability for local fire fighters but for the State fire crews. The legislation provides the State the same benefits enjoyed by the federal sector for tort immunity.

Representative Foster MOVED to report CS HB 245 (JUD) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HB 245 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Law, zero note #2 by the Department of Natural Resources and indeterminate fiscal note #3 by the Department of Administration.
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ADJOURNMENT

The meeting was adjourned at 4:30 P.M.